

This set of minutes was approved at the Town Council meeting on March 3, 2008

**DURHAM TOWN COUNCIL
MONDAY, FEBRUARY 4, 2008
DURHAM TOWN HALL - COUNCIL CHAMBERS
6:00 PM**

MEMBERS PRESENT: Chair Neil Niman; Councilor Mark Morong (arrived at 6:30 PM); Councilor Karl Van Asselt; Councilor Jerry Needell; Councilor Diana Carroll; Councilor Julian Smith; Councilor Peter Stanhope; Councilor Cathy Leach; Councilor Henry Smith (left at 7:02 PM)

MEMBERS ABSENT: Councilor Henry Smith

OTHERS PRESENT: Town Administrator Todd Selig; Town Planner Jim Campbell; Town Engineer David Cedarholm; Director of Public Works Mike Lynch; Town Clerk-Tax Collector Lorrie Pitt

I. Call to Order

Chair Niman called the meeting to order at 6:04 PM. He said the meeting was starting early so that the Council could go into Nonpublic session, and said the regular meeting would begin at 7:00 pm.

II. Approval of Agenda

Councilor Van Asselt MOVED to approve the Agenda as submitted. Councilor Leach SECONDED the motion.

Chair Niman noted that Unanimous Consent Agenda Item B, the non-industrial sewer connection application for the Christie property at Jenkins Court had already been reviewed by the Durham Water/Wastewater/Solid Waste Committee, so the Council would actually be voting that evening on whether to approve the application.

The motion PASSED unanimously 8-0.

III. Nonpublic session

Councilor Julian Smith MOVED to go into nonpublic session on Personnel matters in accordance with RSA 91-A:3 II (a) and (c) relative to the annual evaluation for the Town Administrator. Councilor Leach SECONDED the motion, and it PASSED unanimously 8-0 by roll call vote:

<i>Chair Niman</i>	<i>yes</i>	<i>Councilor Julian Smith</i>	<i>yes</i>
<i>Councilor Van Asselt</i>	<i>yes</i>	<i>Councilor Needell</i>	<i>yes</i>
<i>Councilor Stanhope</i>	<i>yes</i>	<i>Councilor Carroll</i>	<i>yes</i>
<i>Councilor Leach</i>	<i>yes</i>	<i>Henry Smith</i>	<i>yes</i>

The Council entered Nonpublic Session at 6:04 PM.

The Council returned to public session at 7:00 PM.

Councilor Stanhope MOVED to seal the Nonpublic Session Minutes. Councilor Henry Smith SECONDED the motion, and it PASSED unanimously 8-0.

The Council stood in recess from 7:00-7:07 pm

Councilor Henry Smith left the meeting at 7:02 PM.

After the recess, Chair Niman noted that the Council hadn't completed the annual evaluation of the Town Administrator, and would do so under Other Business.

IV. Special Announcements

Drawing of Town Council candidate names to establish order of listing on the March 11, 2008 Town Election ballot - Lorrie Pitt, Town Clerk-Tax Collector

Ms. Pitt asked a member of the audience, Doug LaRosa of Trittech Engineering, to choose the names at random out of a hat. The names came up in the following order:

Town Council

Matthew Fitch 1

Councilor Julian Smith 2

Douglas Clark 3

Michael Sievert 4

Library Board of Trustees

Elise Daniel 1

Renee Vannata 2

V. Approval of Minutes

None

VI. Councilor and Town Administrator Roundtable

Administrator Selig noted that Town departments had geared up for the celebrations after the Super Bowl, but said things had been very quiet.

There was discussion that it would be good if the number of police officers at future such events could be scaled back.

Councilor Carroll said she had recently gone to the Jackson's Landing ice rink where among other work that had been done recently, the chiller tubes had been replaced. She said she saw a lot of happy skaters there, and she thanked the Public Works

Department and Councilor Leach for all the work that had been done to get the rink ready.

Chair Niman noted that there were some members of the Firefighters' Association present at the meeting. He said he had spoken about the Fire Department at the previous meeting, and said the head of the Durham Professional Fire Fighters Association, Dave Emanuel, who he had known for many years, had dropped by to speak with him.

Chair Niman said he was disappointed that it looked like the proposed organizational changes at the Fire Department would not happen. He said he had told Mr. Emanuel that he wanted to save the Town some money. He said that if the Town could broaden the tax base, it would be able to afford the current Fire Department, but it couldn't afford it now. He said he had challenged Mr. Emanuel to come up with an alternative way to save \$70,000.

He said there would be a tough economy over the next 2-3 years, and said he didn't feel comfortable continually raising taxes in Durham. He said the open captain positions presented an opportunity, and said he wanted to get a sense of whether the Council would potentially want to hold off on filling these positions in order to save money.

Councilor Leach said she had agreed with Chair Niman on this issue at the previous Council meeting, and also noted that Administrator Selig had said this was the time for the Council to weigh in on this issue. She said she felt this was a good time to look at whether there might be other things to look at in terms of cost savings, in the Fire Department and probably in other Town departments as well.

Councilor Needell said Administrator Selig had gone through an earnest effort to make a significant change at the Fire Department, and had then decided not to move forward with this. He complimented him for attempting this, and said he was confident that Administrator Selig would be looking for other things that could possibly be done. He said he had no direction to give Administrator Selig concerning this. He said it would be fine if another proposal came forward, but said he was not looking to the Fire Department now to make any particular changes.

Councilor Morong said it seemed that losing three captains positions would leave the Town shorthanded. He said that by the time the third captain was hired, there might perhaps be some ideas on some different ways to do things in the Fire Department.

Councilor Stanhope said he was disappointed that Administrator Selig was not able to bring forward a Budget that wouldn't impact the tax rate. But he said he didn't feel that a particular Town department should be singled out. He said the Town departments that were concerned with life safety were probably the most critical, so it was important to go slow in terms of making changes. But he encouraged Administrator Selig to bring forward proposals that might be appropriate, and said the Council could then debate them.

Councilor Van Asselt noted that he had voted no on the Town/UNH fire agreement, an agreement he felt was unfair to the Town. He provided details on this, and suggested that this should be revisited, along with the policing agreement.

There was discussion on whether this was perhaps a different kind of discussion the Council might need to have.

Chair Niman said he hoped that in the coming year, the Council would be looking more closely at all of the Town departments and their budgets. He said he had singled out the Fire Department now because there were some open positions.

Administrator Selig said that a year ago, he had brought forth suggested changes to many departments, and this was one of them. He said he had recently concluded that the proposed Fire Department change was not viable at this time. But he said he would continue to look for ways to bring costs down. He noted that for 5 years, there had been discussion on shift staffing, and the Council had voted to sustain a 5 person shift. He said if there was a changing perspective on this on the part of the Council, it would be helpful for him to know this.

Councilor Leach said she was fine with the idea of Administrator Selig looking at this issue if he felt it was worthwhile to do so. But she said it hadn't been looked at in the two years during which she had been on the Council.

Chair Niman suggested that this issue could be put on a future Agenda.

Councilor Needell said if this was an initiative Administrator Selig wanted to bring forward, that was fine. But he said he was not hearing that the Council as a whole was asking for this, and noted that he personally would not encourage Administrator Selig to move in that direction.

Administrator Selig said he didn't think they should move in that direction, and spoke briefly concerning this.

Councilor Carroll said it was important for Councilors to hear from the Fire Department concerning what it needed in order to do a good job. But she realized that there was only a certain amount of money available.

Councilor Morong asked whether it would be possible to get some perspective from the State on whether the existing fire agreement was fair, without actually re-negotiating it. He said perhaps some information could be put together concerning this. He said if the Town prevailed with the police department, it might achieve the same kind of thing with the fire department.

Administrator Selig said the negotiations on the police agreement at that point were being undertaken with the University, and not the State. He also said he would not propose bringing the fire agreement to the State and arguing that it was unfair, stating that he was not convinced that it was unfair.

Councilor Needell noted that the following evening, the School District deliberative session would take place at 7 pm at the High School.

VII. Public Comments (NLT 7:30 PM)

No members of the public spoke.

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

- A. Shall the Town Council accept a non-industrial sewer extension application for the River's Edge Apartments by Tritech Engineering Corporation on behalf of Northam Builders and refer said application to the Durham Water/Wastewater/Solid Waste Committee for detailed review and development of recommendations?
- B. Shall the Town Council approve a non-industrial sewer connection application for property located at 14 Jenkins Court owned by Thomas Christie?

Councilor Van Asselt MOVED to approve Unanimous Consent Agenda Items A and B. Councilor Needell SECONDED the motion, and it PASSED unanimously 8-0.

IX. Presentation Item

None

X. Unfinished Business

- A. Continued discussion and **FIRST READING ON ORDINANCE #2008-02** amending Chapter 175 "Zoning", Sections 175-7 Definitions; 175-53 Table of Uses; 175-54 Table of Dimensional Standards; and 175-55 General Dimensional Controls of the Durham Town Code as recommended by the Planning Board

Chair Niman noted that at the previous meeting, the Council had requested additional information on the proposed Ordinance changes concerning retail uses in certain districts. He asked if Councilors were ready to move forward on a motion regarding Ordinance #2008-02.

Administrator Selig explained that the Council had previously postponed action on a motion regarding Ordinance #2008-02 in order to get more information on the proposed changes, and to get input from Planning Board members.

There was discussion on the process that had been followed at the previous Council meeting concerning this motion, and what had been included in it.

Councilor Needell asked if each of the proposed Zoning Ordinance changes could perhaps be addressed separately, or if they had to be done as a block.

There was discussion with Mr. Campbell about this. He said the changes they wanted

to move forward now could probably be separated out from those the Council felt shouldn't be moved forward at that time, and these could be sent back to the Planning Board for further discussion. It was noted that all of the changes had been posted, so they all were in effect until action was completed.

Chair Niman asked the Council members if they thought the only issue with respect to the proposed changes had to do with retail, and if they were comfortable with the other proposed changes.

Councilor Van Asselt said in addition to the retail items, he would like another explanation of the change relating to calculation of useable area.

Mr. Campbell provided details on how the sentence "if the site will use onsite sewage disposal" had been mistakenly left out of Section 175-55 F 4, although it had been included in Section 175-55 F 3. He explained that the proposed change was to include that same sentence in F 4, and he provided details on this.

There was discussion about the fact that this change would mean that if Town water and sewer were available, neither the soils in 175-55 F 3 or 175-55 F 4 would have to be subtracted from the useable area on a property, which meant there would be more developable land available.

Mr. Campbell said the issues where there were still concerns related to the mixed use definitions concerning retail, and additions as well as deletions to the Table of Uses concerning mixed uses involving retail. He reviewed the items that could be moved forward now in a motion.

Councilor Needell MOVED to accept on first reading:

Section 175-7 Definitions, regarding "Subdivision"

Section 175-53 Table of Uses; regarding "Excavation"

Section 175-54 Table of Dimensional Standards, regarding minimum frontyard setback in the Church Hill District, and RSA language for minimum permitted building height with Planning Board approval;

Section 175-55 F:4 under General Dimensional Controls, regarding "Calculation of useable area"

Councilor Leach SECONDED the motion, and it PASSED unanimously 8-0.

Chair Niman summarized that still to be discussed by the Council was whether retail uses should be allowed or not in the Professional Office District and the Route 108 (OR) District, as well as the related definition changes in Section 175-7.

Councilor Van Asselt posed a series of questions on the proposed change concerning the Professional Office District.

1. How much consideration was really given to this change vs. reaction to development within the district. He asked if this was considered in terms of the overall good of the Town vs. developments in or near the district?
2. How much research, information, and data was collected - along with opinions of

people who might develop in this district, on the impact of this change within the district (i.e., would the desired development of mixed use occur with a mix of residential/offices vs. the option of residential/office/retail and combinations?

3. How closely these proposed changes were evaluated in terms of the recently passed Zoning Ordinance? He said there had been much discussion about areas of Town that could be developed for uses other than single family homes, including the Professional Office District, as part of an effort to broaden the tax base. He asked if they were taking this outcome away by taking this retail option away.
4. What is the relationship between this change and what might occur at Stone Quarry Drive and the Durham Business Park? He noted that both were already underway and looking at putting in office uses. He said there was also the question of what might occur in the ORLI district. He said if only office uses were done, which was what was proposed for Stone Quarry Drive and the DBP, the question was where retail uses would go, as part of an effort to broaden the tax base.
5. Was the proposed Zoning change looked at from the standpoint of both positives and negatives, as it might relate to development in the Central Business District and Mill Plaza?
6. Was the proposed change looked at from the standpoint of “retail” and Durham residents (including students) and the impact of “no retail” on shopping patterns and interests of residents and students, in terms of shopping and walking vs. shopping and driving, etc.?

Councilor Van Asselt noted that he had read the Minutes of the Planning Board meeting where this proposed Zoning change was discussed.

Regarding the 1st question, Mr. Campbell said the site plan application for the property on Strafford Ave. had sparked the Planning Board’s conversation on retail. He said the issue kept coming up from that point on, and said this was driven by the fact that the retail use there could be a convenience store that sold alcohol. He said the Board had heard from members of the public that this would not be a good thing in that area, especially for the property in question because of its proximity to a residential neighborhood. He said the Board had also heard from Police Chief Dave Kurz that having retail businesses outside the downtown areas stretched out the area of Town the department had to cover.

Councilor Leach said her understanding was that the various concerns were related more to convenience stores than traditional retail uses.

Mr. Campbell said that was true, and said the concern was especially about the sale of alcohol. He noted that the Planning Board was still working on the definition of convenience store, as a stand alone definition in the Ordinance, and as a land use category in the Table of Uses. He provided details on this, and said the Board had decided not to move forward with that quite yet, but did decide to move forward with not allowing retail as part of mixed use.

Regarding the 2nd question, he said the public hearings on the proposed Ordinance

changes were posted, but the Planning Board did not hear from any property owners in the Professional Office District or the Route 108 (OR) District. He said the only response was from a member of the public concerning the frontyard setbacks in the Church Hill District.

Regarding Councilor Van Asselt's third question, Mr. Campbell agreed that when the Ordinance was originally changed, retail was included in those districts in order to allow a greater variety of uses there, which could expand the tax base.

Councilor Needell noted that there was a fair amount of discussion by the Planning Board on why retail was included, and whether the intent really was to allow it in the Professional Office district, or was an oversight.

Steve Roberts, a member of the Planning Board, said from his perspective, not allowing retail uses in the Route 108 (OR) District was a more clear-cut situation because of the potential visual impact there. He said the Master Plan provided pretty strict guidance regarding not changing the visual impact for this gateway to the Town, which allowed little wiggle room.

He said the Planning Board's discussion on allowing retail uses in the Professional Office District in part included the power of the conditional use process to address possible impacts of potential retail uses. He said with this process, the Board didn't have to allow a retail use in that district if it impinged unfavorably on residents.

He said the Master Plan had provided guidance regarding increasing the tax base, and he said retail uses were sometimes desired away from the Town center. He said whether this was a good idea depended on the type of business. He said the Professional Office District was not a uniform district, noting that there were some properties there that did not abut residential properties.

Mr. Roberts noted that his opinion on this had been a minority opinion, and the Board hadn't voted his way concerning the issue of allowing retail uses in the Professional Office District.

Councilor Leach asked if some perspective could be provided on why other members of the Board felt the way they did.

Councilor Needell said part of this hinged around trying to understand the intent of the previous Zoning change that had allowed retail in this district. He said this district was largely inclusive of fraternity row on Madbury Road, and said the conversations he had heard on this district centered on professional offices. He said he personally had not heard retail discussed for that district.

He noted that the drafting of the Ordinance changes took years, and that he hadn't heard all of the discussion on this proposed district. He also pointed out that the name of the district focused on professional office uses, and retail was only allowed under this quirky, mixed use category. He said there was therefore some well-intentioned questioning about what was really meant.

Councilor Needell also said that not all Board members and others in Town were as much in favor of the conditional use process as others, so there was discussion by the Board on whether it liked this tool in terms of deciding on something like where retail belonged. He said he was not especially in favor of conditional use, which left the decision-making to whoever happened to be on the Planning Board at a particular time. He said he preferred permitted and non-permitted uses. He said conditional use was a complicated process, and one he didn't find to be satisfying.

He said predominantly, the Planning Board felt the Professional Office District was talking about professional office uses when it was created, and that the Board also didn't necessarily want to continue the conditional use process in the district for mixed use with retail.

There was discussion between Councilor Needell and Councilor Leach concerning the fact that the Professional Office District didn't just include Madbury Road.

Councilor Needell noted that there was a variance process available for unusual conditions. But he said it was important for the Council and the Planning Board to be clear in terms of whether it wanted retail in this District. He said he thought this was what the majority of Planning Board members had said determined concerning this, and had said they would rather see retail move out from the Central Business District to the Church Hill District.

But he said whatever decision there was to be concerning this issue, moving forward, it should be a clear one. He said the Board's decision was not uniform one, and said there had been a lot of debate before the recommendation was made. He said Councilor Van Asselt had asked some very important questions in terms of other questions that could have and should have been asked. He said perhaps it was more appropriate for the Council to ask some of those questions.

Chair Niman said he was on the Council when it had approved this part of the Zoning Ordinance. He said he had been uneasy about the Professional Office District, what it meant, and why it was being created. He said he had asked what the Town's plan was for redevelopment of this part of Town, and the reuse of the properties there. He said Mr. Campbell and planning consultant Mark Eyerman had said there was no strategy concerning this.

He asked whether retail was one possible avenue for accomplishing that goal. He said that concerning the Burton property in this district, a question was whether retail was needed as part of that project in order to make it viable. He said if that was the case, a question was how many properties in the district would need retail in order to make things work so they could be converted to an alternative use.

He said he thought the purpose of this Zoning change had been to convert those properties to an alternative use. He said if retail was a vehicle for converting properties and transforming those zones, he didn't know if he wanted it to be ruled out. He said until that question was answered, he couldn't vote on this proposed

change.

Mr. Campbell said allowing retail provided more choices, and said he wouldn't rule it out. He noted that the use that captured the most revenue there was residential, while commercial uses were more of a gamble.

Councilor Stanhope said by limiting the commercial uses in the Professional Office district to office uses, the Town was effectively saying there wouldn't be development. He provided details on some other properties in Town that had high vacancy rates. But he said he realized that the Planning Board should have the authority to say what was appropriate, especially when a proposed use was located near a residential neighborhood.

Councilor Leach said she would prefer it if retail was allowed as a conditional use, where it could be left up to the Planning Board to determine what was appropriate. She said she thought having more retail would be a good thing for residents, noting that there were a lot of people in Durham who were looking for more retail businesses in Town. She said that was her main concern.

Mr. Campbell noted that since the Ordinance had changed, there had been two applications for mixed uses in the Professional Office District, and both wanted a retail use as part of the development. He also said the conditional use process for the Strafford Ave. application had allowed the Board to say there would be no beer and malt liquor sold there, and that the hours of operation would be limited. He said that with the application for the property on Garrison Ave, the applicant agreed not to sell alcohol for any retail operation that went in there.

Councilor Needell noted that these conversations with applicants were complicated, and that the applicants had said they were comfortable with the alcohol restriction. He said the Planning Board had been reluctant as to whether it had the authority to require this restriction, given the State's involvement in this issue.

Councilor Morong said he generally agreed with Councilor Van Asselt, but said he didn't think the Planning Board needed to poll the property owners in a district to find out where they stood, and said that was why there was a public hearing process. He said he hadn't heard anything that evening that had made him want to change the Table of Uses. He said for districts that were more diverse, the conditional use process could be used.

Councilor Carroll said she had been concerned about allowing retail in the Professional Office District and its possible impact on the Central Business District. She said this area was not thriving but had some good business people there. She said she hoped redevelopment of Mill Plaza would provide a big boost, but said she didn't think that moving retail out further from the downtown area would be helpful.

She said that regarding the Route 108 (OR) District, the Town had heard from residents that they didn't want to see sprawl. She said putting retail businesses on a busy street was the definition of sprawl, so the Town had heard that residents didn't

want retail in the OR-Route 108 District.

Mr. Roberts asked that planning not be left to the ZBA, and said it was not fair to leave so many loopholes in the Zoning Ordinance. He also said that many towns had embraced the conditional use process with great success, and he noted that the conditional use process could be made tougher in order to protect citizens.

Chair Niman said that several years ago, there had been criticism of the University for its retail/convenience store operations on campus, and the response was that students were lazy. He agreed that it would be good to have all the retail uses downtown, but he said if students were reluctant to walk downtown, he would like to fill that need in order to get tax dollars. He said that to a certain extent, they needed to locate businesses where the market was.

Councilor Van Asselt suggested sending back to the Planning Board a list of questions, if there was interest by the Council in this idea.

There was discussion on how to proceed.

Chair Niman asked if it was the consensus of the Town Council that it would like to continue to see retail uses allowed as a conditional use in the Professional Office District.

Councilor Needell said he would like there to be a vote on this.

Councilor Van Asselt MOVED that the Town Council would like to continue to see retail available in the Professional Office District as a conditional use in the Professional Office District. Councilor Julian Smith SECONDED the motion.

Councilor Stanhope said he had a property in this district that would be impacted by this decision, and asked if he should therefore recuse himself.

The Council agreed that that was appropriate.

Councilor Needell noted that currently, one could not simply convert a property to retail, and said it had to be a mixed use development that included retail.

Councilor Van Asselt said he would love to take the next step, but said he was taking baby steps at this point.

Chair Niman noted that there could be a Council initiated Zoning change.

Councilor Carroll said she would vote against the motion because she would like to see energy focused on the downtown area.

The motion PASSED 5-2, with Councilor Carroll and Councilor Needell voting against..

Mr. Campbell noted that retail as a stand-alone use was not allowed in Route 108 (OR) District, and was only allowed as a conditional use as part of a mixed use with parking.

Councilor Leach asked what the Planning Board's thinking had been concerning the proposed change to not allow retail as part of this kind of mixed use, and determined from Mr. Campbell that this was based on the discussions on the proposed Stone Quarry Drive development. She then said her recollection was that most of the discussion had to do with warehouses out there, and asked what had come of this issue.

Chair Niman summarized that the Council had decided it would add wording to the Ordinance regarding warehouses, but said he was hearing that the Planning Board hadn't addressed this. He said the Council could recommend a change to the Ordinance concerning this, or could ask the Planning Board to do this. But he said before going any further with this, he would make sure the proposed wording change was ok from a legal perspective.

Councilor Leach asked if most of the public comments were also based on having multi-unit residential development out there. There was discussion with Mr. Campbell that there had been some comments on potential multi-unit residential development out Route 108, even though the Ordinance didn't allow this.

Chair Niman said residents had expressed anxiety about possible strip malls, although he said there was no factual basis for this concern because the provisions of the Zoning Ordinance wouldn't allow this. He said the change to remove retail from the OR-Route 108 District was being done to calm peoples' fears.

Councilor Leach said her question at the time was where the strip malls could go anyway.

Chair Niman said the Town had hired Underwood Engineering to determine where this kind of development could possibly be built, and nothing was found.

In response to a question from Councilor Van Asselt, Mr. Campbell noted that there were specific development standards for that district, to protect viewscales, etc. He provided details on this.

Councilor Van Asselt asked if making the proposed change concerning retail would impact the Stone Quarry Drive project, and Mr. Campbell said no, because it was operating under a 4 year exemption, which ended in 2008. He said if the developer lost that, the development would have to adhere to the present Zoning Ordinance. He said that was a reason the development agreement was currently moving forward.

Councilor Leach asked what the Planning Board's thinking was concerning the proposed change to not allow retail in the Route 108 (OR) District.

Mr. Campbell said his understanding was that this was going to be a Council-initiated

Zoning change, but that the Planning Board had agreed to take it on.

There was further discussion on this. Councilor Needell said Chair Niman had brought forward two recommendations, one of which was a change in the definition of warehouse to eliminate the possibility of misinterpretation. He said the Town Attorney had said the definition could be worded better. He said the second recommendation was the result of a lot of comments by residents who didn't want to see retail in the Route 108 (OR) District. He said Chair Niman's intent in bringing this recommendation forward was to eliminate residents' concerns.

He said the Council was about to move forward concerning this when it was realized that the Planning Board was working on proposed changes concerning retail, so it was the Council's recommendation that the Planning Board include this proposed change in what it was bringing forward.

Councilor Needell noted that it had been a recommendation from the Council to take this use out. He said at the same time, because of discuss on the Professional Office District, the Planning Board was planning to separate out the 2 existing mixed use definitions into 4, in order to separate the retail use from the office use so they could be controlled independently.

In answer to Councilor Van Asselt, he said his comment at a Planning Board meeting where this issue was discussed was that that the Council was not saying that it minded if these use categories were split, but that the one use category the Council was worried about was mixed office with office/retail, and this was the one the Council was asking to be removed. He said it was clearly stated at the time that the Council wanted to leave office as it was.

Councilor Van Asselt said when one looked at the development standards for possible development in the Route 108 District (OR) , not including Stone Quarry Drive, the possibility of seeing a strip mall in that District was remote. He said what was not an unlikely idea was that there could be some kind of retail use there, if sewer and water, etc., were available.

Councilor Needell noted that in order to put retail there, a parking structure also would have to be put in, and he said this seemed like an odd combination. He asked why this would be the only kind of retail that would be allowed there.

Chair Niman said he thought what Councilor Needell was saying was that if they wanted to allow some kind of retail use on Route 108, the Zoning Ordinance would have to be changed in a different way.

Councilor Van Asselt asked if the proposed changes to the Zoning Ordinance concerning the Route 108 (OR) District would limit the potential to broaden the tax base.

Councilor Needell said that by approving this proposed change, an option was being eliminated, which was to allow a mixed use development that included retail uses and

a parking structure. He questioned whether this in fact was an option it was felt would ever happen in that district. He also said it was perhaps a better direction for the community to remove the fear that it might happen.

Councilor Van Asselt asked whether the Council was voting on this because people were afraid. He said he didn't see why these options weren't left open in these districts.

Administrator Selig said the Master Plan tried to provide a vision for this district, and retail use with a parking structure was inconsistent with that vision. He said it therefore made sense to make that change. But he said the Council could also talk about whether it agreed with the vision in the Master Plan, which was developed in the late 1990's, as a separate discussion.

He noted that previously, there had been two mixed use categories, but with the recommended changes, there would now be 4 mixed use categories.

Councilor Needell MOVED on first reading to discontinue the Conditional Use (CU) of retail with parking in the Route 108 (OR) District. Councilor Julian Smith SECONDED the motion, and it PASSED 5-2, with Councilor Van Asselt and Councilor Leach voting against it.

Councilor Needell MOVED on first reading to add the definition "Mixed use with parking (parking and office) to the Table of Uses. Councilor Morong SECONDED the motion, and it PASSED unanimously 8-0.

Based on a summary from Councilor Needell, the Table of Uses will be as follows:

1. The proposed new mixed use category "mixed use with residential (office down/multi-unit residential up) will not be added to the Table of Uses, and this definition will not be added to Section 175-7.
2. The existing category "mixed use with residential (office/retail down, multi-unit up)" will stay in the Table of Uses and in 175-7 as a definition. Under it, the Table will reflect that this use is allowed by conditional use in the Professional Office District (and is also permitted, or allowed by conditional use in some other districts.)
3. The existing category "mixed use with parking (parking and office/retail)" will stay in the Table of Uses, and in 175-7 as a definition. Under it, the Table will reflect that this use is not allowed as a conditional use in the Route 18(OR) District (but allowed as a conditional use in some other districts.)
4. The proposed new mixed use category "mixed use with parking (parking and office)" will be included in the Table of Uses.

The Council stood in recess from 8:50 to 8:55 PM.

- B. Continued discussion on the possible establishment of an agricultural commission under the provisions of RSA 673:1-11 as requested by the Conservation Commission

Chair Niman noted that a member of the public was present to speak on this issue, and hadn't realized that the appropriate time to speak had been during the Public Comments period.

The Council agreed that the member of the public should be allowed to speak, but that the Council was not setting a precedent in allowing this. It was agreed that the Council would decide on this kind of situation on a case by case basis.

Ray LaRoche, 37 Bennett Road said he was a farmer in Durham, and a life long resident of Durham. He said there were families in Durham that wanted to protect their farms, and didn't want to see the development rights sold off. He said they wanted to work these farms, and wanted someone to represent their interests. He noted that there was future generations in his family that were interested in preserving his family's property. He said he and others would like to get something started concerning this in Durham, and said they were willing to work with the Council on this.

Councilor Carroll said she had done some homework on Agricultural commissions, and said the first thing she had found was that they provided a voice for farmers, so these voices didn't get lost. She noted that Mr. LaRoche's family had been in Durham for over 100 years. She said she had done research on agricultural commissions in Massachusetts, and said they offered a structure where farmers as well as interested citizens who might not be farmers could work together.

Councilor Julian Smith said a basic misunderstanding that members of the public might have about an agricultural commission was that it was designed to prevent development. He said agricultural commissions were in fact designed to help keep farmland in production and to restore farmland and put it back into production.

He said it would not stop development, but would help farmers find support, in a variety of ways, for the continuation of their activities. He said an agricultural commission could advocate for the continuance of agricultural uses, and could advise the Planning Board or the Conservation Commission when such advice was needed on specific issues, pieces of land, etc.

Councilor Leach asked what the structure of an agricultural commission would be, and who would provide this voice for farmers.

Councilor Julian Smith said an agricultural commission should be made up of people who were knowledgeable about agriculture. He said that currently, no one in Town was bringing together such knowledgeable people, and said an agricultural commission could do that, the same way other advisory committees in Town worked, for example the IWMAC committee and the Energy committee, in order to help the Council understand that something needed to be done or not done.

Councilor Needell said he thought an agricultural commission was an excellent idea. He asked how large such a commission would be, and what kinds of terms would be proposed for members.

Councilor Julian Smith said the Council could advise him on these kinds of things, and he provided details as to how this might work, including the idea that he could provide a draft proposal and the Council could respond to it.

Councilor Stanhope asked whether, if the Council went forward with something like this, Councilor Smith foresaw that a minimum requirement should be that members of the commission were in fact actively deriving a portion of their income as farmers in Durham.

Councilor Julian Smith said he thought that some members, at least two or three, should be active or retired farmers. He noted that farmers tended to be pretty busy, given the fact that many of them had other jobs to help pay taxes, and he said the commission could include non-farmers.

Councilor Stanhope said Durham had a proliferation of committees, and said he saw the possibility that there could be some redundancy if an agricultural commission was established. He asked if it was perhaps time to create a Durham “Green” committee, which had subcommittees. He said he was also concerned about having more non-farmers than farmers on an agricultural commission.

Councilor Julian Smith said if there were a lot of applicants, those who were most qualified would be chosen.

Councilor Stanhope said in theory that sounded good, but he said there was no way to hold the Council to such a standard.

Councilor Morong said these should be Council appointments, but said he wouldn’t want to see membership restricted to farmers. He also said he didn’t see problems with the quality of people appointed to boards in Durham.

Administrator Selig said he thought the Council should differentiate between working farms and non-working farms. He said he could see potential disagreement between this new committee and the EDC, and perhaps the Council as well, concerning the use of land with prime agricultural soils on it. He said the Council should grapple with that issue. He said while everyone could be excited about the idea of preserving working farms, it was a different issue than preserving land that had been farmland.

Councilor Julian Smith noted that in some cases the Conservation Commission would recommend that a piece of land not be developed, and local boards were then free to take this advice or not. He said an agricultural commission could point out ways that development of a large piece of land could benefit a developer while also taking into consideration old farm fields on that land.

He noted that with Langley property, a new owner of that property might not look for ways to leave the land there open for hay or as pasture if it didn’t receive encouragement from the Town to do this. He said the same thing would be true for the Fogg property. He said if that land were no longer hayed, who would speak

concerning how to keep that in production. He said this was the kind of advocacy role an agricultural commission could take.

Councilor Van Asselt asked how many towns and cities in NH had agricultural commissions.

Councilor Carroll said the legislation concerning this was new. She said there about 4 towns in the area that had implemented this since August, and said there were several in other parts of the State. She said there were 109 cities in towns that had commissions in Massachusetts, which had started its program in 2000-2001.

Councilor Leach asked if the towns in NH that created agricultural commissions had a lot of farmland.

Councilor Carroll said that didn't necessarily matter. She noted that one of the purposes of agricultural commissions was to bring some balance between people who lived in a rural community (some of whom had moved to a more rural area because they liked living in such an area), and the farmers who still had working farms there. She provided details on some of the issues and conflicts that could be involved, and why some balance was needed concerning this.

In answer to a question from Councilor Van Asselt, Councilor Julian Smith said this idea had been brought to the Conservation Commission, and it had agreed the idea should be brought before the Council. He said some members had previously expressed some interest in the State legislation.

He said one reason an agricultural commission should be considered was that the Conservation Commission was concerned with broader issues of conservation, while the conservation of farmland was a more limited issue. He said many members of the Conservation Commission members would prefer that old farmland be allowed to revert to nature, while an agricultural commission would tend to emphasize keeping farmland in a man-made condition.

Councilor Van Asselt asked if the Conservation Commission had voted that this idea should be brought before the Council., and Councilor Smith said there was general consensus concerning this. Councilor Van Asselt asked how an agricultural commission would help to broaden the tax base, and Councilor Julian Smith said he didn't know that it would.

Councilor Van Asselt said agricultural land in Durham was not just found in the rural district, but also said there were large tracts of agricultural land in the ORLI District and the MUDOR District, and said there was also some land on Technology Drive. He asked whether by creating an agricultural commission, the Town would really be creating another organization that was not interested in doing development.

Councilor Julian Smith said an agricultural commission couldn't stop development in these districts. He asked if the issue was that there was concern that there would be more people coming forward who had an interest in these issues.

Councilor Van Asselt said creating an agricultural commission, by its nature, would be putting another step in the development process. He said he would have no problem with an agricultural commission that focused on working farms, but said he did have a problem with a broad definition of farmland, when two major Zoning districts contained large tracts of it.

Administrator Selig said if the Council wanted to protect agricultural land, it could do rezoning, and said an agricultural commission wasn't needed to accomplish this.

Councilor Needell said an agricultural commission was similar to the concept of a heritage commission concept, and would play an advisory role to owners of agricultural land, whether they were working farms or not. He said such a commission could assist the Planning Board with a planning issue, if requested, but he said the Planning Board didn't have to seek its advice.

He said what Councilor Van Asselt was talking about had more to do with how the recent changes to the Zoning Ordinance had provided the Conservation Commission with a much stronger role in the conservation subdivision process. He said he didn't see that an agricultural commission would impose additional roadblocks in the application review process, and said he didn't foresee the conflicts Councilor Van Asselt had expressed concern about.

Councilor Carroll said she had talked with farmer Eric Sawtelle in Lee, who told her that the Lee Master Plan had recommended setting up an agricultural commission, which the Town did. She said an inventory of farms in Lee found that there were 82 working farms there, producing something that was then for sale. She said the commission put out a newsletter, had an annual Farm Day, had guided tours of farms in town, hoped to support a harvest dinner, and hoped to have seminars on various topics.

She noted that some residents of Durham had talked about the idea of having a community garden, and she said this was the kind of idea that could be considered by an agricultural commission. She said there were all kinds of activities relating to food, soil and agriculture that a commission could undertake.

Councilor Leach said the Heritage Commission was made of members of the HDC, and she said an agricultural commission could be a subset of the Conservation Commission. She noted that these two commissions could perhaps be polar opposites in terms of goals. She asked if the Conservation Commission and an agricultural commission would be able to work together, and if not, would issues between them wind up on the Council's agenda.

Councilor Julian Smith said they probably would have more in common than not. Regarding the impact of an agricultural commission on the ORLI and MUDOR District, he said that agricultural uses were allowed there, but he said a developer who wanted to develop an office park there would be free to propose that. He said the Planning Board would probably look favorably upon this.

Councilor Van Asselt said if the EDC was looking at a piece of land to possibly see development on, Councilor Julian Smith had said an agricultural commission would give voice to an alternative use, or a sharing of that land. He said he was not opposed to that, and said he understood the issue of working farms. But he said he wasn't sure why this commission was needed to give voice to issues that other local committees would most likely speak about.

Chair Niman said Mr. LaRoche had made a very convincing case concerning the needs of working farmers. He said he would love to see that family farm in future generations, and said they needed to be supported, But he said he wasn't sure they were going to get what they wanted. He said he was very aware of the dilemma of working farms, noting that his wife came from a farming family. He said he understood the challenges that were faced by farming families.

He said he also shared the concerns that had been expressed concerning having an agricultural commission in Durham. He said even it was started with the best of intentions, it could be a vehicle that might turn out to be of no use to working farms, and would be used to stop development.

He noted that he had asked Eric Sawtelle if the field on the Stone Quarry Drive property could be farmed, and Mr. Sawtelle said he didn't think it could in fact be a viable farm.

He said he was more than happy to create an agricultural commission or something else to help working farmers stay farmers, and he offered his personal services if there was anything he could do. But said he was not in favor of creating something that could take on a life of its own and have unintended consequences. He said unless there was a proposal that assured that such an organization was going to support real farmers, and wouldn't become a vehicle to attempt to save every piece of undeveloped land in Town, he couldn't support this.

Councilor Leach said if the consensus was that such an organization would be intended to support working farms, she wondered if it could be a subset of the Conservation Commission. She provided details on this, and asked if this perhaps could be discussed at the upcoming workshop with the Conservation Commission.

Chair Niman said there could be discussion with the Commission about this. But he said the challenge was that those who were interested in land protection would not necessarily be interested in preserving working farms.

Administrator Selig said there was a financial side of this. He said if the Town voted to support the idea of an agricultural commission, money could be put into a fund for the commission, including gifts. He said if the Town was interested in moving down this path, his preference would be a Town of Durham committee with a narrow focus on working farms, and they could then see if this was a useful effort.

He also noted that as part of the development of the State legislation on agricultural

commissions, there had been discussion on the need to protect agricultural lands because of the issue of peak oil, which would increase the cost of agricultural products. He said this might mean that there was a need to preserve local agricultural soils so Durham could some day return in some part to a more agriculturally based society. He said the Council shouldn't lose sight of this.

Chair Niman asked Councilors how they would like to proceed.

Councilor Stanhope said he thought there should be an organization that was totally focused on working farmers, and supporting them in any way possible. But he said he was very concerned about the idea of a broad, new organization that would not necessarily be focused on working family farms, and instead would be interested in protecting all lands as potential farms.

Councilor Needell said he thought the Council should move ahead with creating an agricultural commission, as per the RSA.

Councilor Morong said he would like to see an organization that protected working farms. He said hopefully, some of the things that Lee was doing could be undertaken by this organization.

Councilor Carroll said one of the hottest issues these days was food, and food that was available locally. She said as Administrator Selig had noted, there was the issue of peak oil, and she said there couldn't be food unless there was oil. She said her first choice would be to have Councilor Julian Smith charge ahead concerning the development of an agricultural commission. She said her second choice would be to have agricultural committee.

Councilor Van Asselt said he liked Administrator Selig's idea.

Councilor Leach said she was more comfortable with this idea as well.

Councilor Julian Smith said he supported the creation of an agricultural commission.

Chair Niman said he would like to see a committee that focused almost exclusively on assisting working farms. He said the consensus of the Council was to go forward with a local agricultural committee.

Councilor Julian Smith said he would work with Administrator Selig to craft language concerning this.

Chair Niman noted that it was 9:45 pm., and he suggested that Agenda Items XI A and B should be postponed, and the Town Administrator's annual evaluation should be completed.

Councilor Leach recommended that the meeting should be adjourned instead, and other Councilors agreed.

XI. New Business

- A. Discuss 2008/09 Town Council goal setting process
Postponed
- B. Discuss and evaluate the existing Town-wide regulation process
Postponed
- C. Other business
Postponed

XII. Nonpublic Session (if required)

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

XIV. Adjourn (NLT 10:00 PM)

Councilor Leach MOVED to adjourn the meeting. Councilor Stanhope SECONDED the motion, and it PASSED 5-3, with Councilor Needell, Councilor Carroll, and Councilor Julian Smith voting against it.

Adjournment at 9:45 pm

Victoria Parmele, Minutes taker