

This set of minutes was approved at the Town Council meeting on July 7, 2008

**AGENDA
DURHAM TOWN COUNCIL
MONDAY, MAY 5, 2008
DURHAM TOWN HALL – COUNCIL CHAMBERS
7:00 PM**

MEMBERS PRESENT: Chair Neil Niman; Councilor Jerry Needell; Councilor Julian Smith; Councilor Peter Stanhope; Councilor Cathy Leach; Councilor Doug Clark; Councilor Mike Sievert; Councilor Karl Van Asselt

MEMBERS ABSENT: Councilor Henry Smith

OTHERS PRESENT: Town Administrator Todd Selig; Town Engineer David Cedarholm; Business Manager Gail Jablonski

I. Call to Order

II. Approval of Agenda

Councilor Van Asselt MOVED to approve the Agenda. Councilor Clark SECONDED the motion, and it PASSED unanimously 8-0.

III. Special Announcements

None

IV. Approval of Minutes

April 7, 2008

Page 16, 2nd paragraph from bottom, should read "...that person would not speak for the Town Council on that committee." Also, remove final sentence, starting with "He said he didn't...."

Councilor Van Asselt MOVED to approve the April 7, 2008 Minutes as amended. Councilor Julian Smith SECONDED the motion, and it PASSED unanimously 8-0.

April 7, 2008 (Nonpublic Session)

Page 1, under Members Present, add Councilor Sievert and Councilor Clark, and delete Councilor Carroll and Councilor Morong

Page 3, roll call vote, indicate *Yes* after Councilor Henry Smith's name.

Councilor Van Asselt MOVED to approve the April 7, 2008 Nonpublic Session

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

V. Councilor and Town Administrator Roundtable

Chair Niman said there would be a Council Goal Session the following evening, and it would be televised live on DCAT.

Administrator Selig noted that Town staff had been working for some time on the idea of creating a digital format for Council meeting packets, and said the past week, had put out a scanned, digitized packet He asked Councilors if they had found this to be helpful.

Councilor Needell said it was very useful, especially the fact that he received it ahead of the printed packet. He recommended that specific note be made of items that were not included in the scanned version of the packet.

Councilor Leach said she like it, and preferred receiving it that way. She suggested keeping the Agenda and Council Communication documents close together, and then providing the other information after that. She also said that perhaps printed copies of the Agenda and Council Communications could be provided at the Table, and Councilors could decide if they needed copies of the other information.

Councilor Needell said he was willing to move to not get a printed copy of documents other than those that didn't scan well.

Councilor Julian Smith said he was an old timer, and preferred to get a paper packet. He suggested that Councilors should indicate which method they each would like to use.

Administrator Selig said Town staff would continue to hone this process.

He then provided the following updates on Town matters:

- He recommended that residents go to the Town website concerning the issue of mosquitoes, and the Town's strategy for addressing this problem.
- He noted that the map coordinates of bear sitings in Durham would be put up on the Town website.
- He provided details on lighting retrofitting of municipal buildings, and said when implemented this would save about \$8,000 per year, and would reduce CO₂ emissions by about 25.5 metric tons.
- He said the report on the recent Durham Police accreditation process was received the previous week, and said the report was good.
- He provided an update on issues involved with the transition of the Dispatch center to the Strafford County facility. He noted that it cost \$25,000 per month to remain with UNH, as these issues were worked out. Among other things, he said the FCC licensing process was a slow one, and he also noted that new radio equipment was needed to allow the communications to take place. He also said research was being done on an enhanced fire alert system. He said there had been a dispatch meeting that day, and said if the FCC license came through, the earliest transition date was June 16th.

Councilor Julian Smith provided a brief summary of the April 23rd Planning Board meeting.

- He said there was a public hearing on the Henderson multiuse application, and said the application was approved that evening.
- He said the public hearing on the site plan application/conditional use application for Jackson's Landing was continued and then closed after the Board received additional comments. He said a letter would be sent to Public Works Director Mike Lynch from the Planning Board concerning the application.
- He said the conceptual consultation on the JLB Partners multiunit development project near Sprucewood continued at that meeting.

VI. Public Comments (NLT 7:30 PM)

Maggie Moore, 138 Lee Road, thanked all the people who had worked so hard on the Mill Plaza redevelopment project, and said she really respected the work they had done.

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

- A. RESOLUTION #2008-12** establishing the compensation for non-bargaining unit employees for Fiscal Year 2008
- B. RESOLUTION #2008-13** recognizing outgoing citizens who have served on various Town boards, commissions, and committees

On behalf of the Town of Durham, Chair Niman thanked the following outgoing members of Town boards, commissions and committees.

Library Board of Trustees alternates - Renee Capicchioni Vannata and Susan Roman
Conservation Commission - James Hellen

DCAT - Carol Camp, Paul Gasowski, Thomas Merrick

Historic District Commission - Roger Jacques

Integrated Waste Management Advisory Committee - Shelley Mitchell

Parks and Recreation Committee - Kenneth Anderson, Jane Crooks, George Lamb

Planning Board - Annmarie Harris

Zoning Board of Adjustment - Edward McNitt, Michael Sievert

- C. RESOLUTION #2008-14** authorizing the Town Administrator to sign the Application and Participation Agreement with the Local Government Center (LGC) HealthTrust, LLC and authorizing the Town Administrator to notify the LGC of the Town's intent to withdraw from the combined health insurance pool with the ORCSD and join the "Under 100 Pool", effective July 1, 2009
- D. RESOLUTION #2008-15** authorizing the Town of Durham to open an Additional Three Million Dollar (\$3,000,000) TAN line of credit through Citizens Bank

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

VIII. Presentation Items

- A. Receive final report and recommendations from the Mill Plaza Study Committee titled “A New Village Center: Durham’s Vision for a Redeveloped Mill Plaza”

Dave Howland, the Chair of the Mill Plaza Study Committee, spoke before the Board. He noted that the Co-Chair of the AIA150 Program, Patricia Sherman, was present, along with some members of the Committee. He said the Committee’s full report was available online, and said the opening 42 pages of this report had been provided to the Town Council.

Mr. Howland said the Committee’s work had been boiled down to seven recommendations, and were forged out of dozens of meetings that generated bright ideas as well as strong consensus about the approach to redevelop Mill Plaza. He said this approach had the potential to revitalize Durham’s downtown as well as provide an economic return to the property owner. He also said it was reflective of community needs and concerns.

He listed the various members of the Committee, and noted that it wasn’t always easy to reach consensus. He said the Committee had worked with some of the best architects and land planners in the State, and listed them by name, including Durham’s own Midnight Oil team, made up of Bill Schoonmaker, Robbi Woodburn, Walter Rous, and Nick Isaak. He said approximately 4000 hours of pro bono work had been provided for this project.

Mr. Howland explained that there were two important developments in 2006 that had sparked the current study process:

- the space-needs assessment undertaken by the Town for both the town hall and the library;
- and the fact that some members of the Town Council and the Library Board of Trustees became interested in the possibility of locating a new town center at or next to a redeveloped Mill Plaza.

He said as a result of this, Council Chair Neil Niman and Town Administrator Selig had met with John Pinto, the owner of the Plaza, to discuss that possibility. He said Mr. Pinto had the vision at that time to ask the Town to create its own vision for the redevelopment of the Plaza, and he said the Town was grateful to him for this, for his visits to Durham, and for the feedback he had provided on the work being done by the Committee.

Mr. Howland said several conceptual plans were subsequently developed, including the most recent, the “hybrid” plan. He explained that this plan was not intended to be the design, but to demonstrate how Durham’s goals could be met with a single approach.

He then went through the recommendations from the plan: (See the Town website for more details on these recommendations)

- Create a Village Center with Quality Design
- Promote a Balanced Mix of Uses
- Balance Site Access and Flow
- Include a New Town Library

- Respect the Neighborhood
- Protect College Brook and Its Buffer
- Work Together for Success

Mr. Howland said the timeliest of these recommendations was the last one. He said the Committee had done its very best to assimilate the developer's priorities, but said the details of these priorities had yet to emerge. He said the Committee recommended that Town staff and their AIA150 design partners work with the owner and the developer to align their interests with the community's, before the formal Town planning approval process began. He said this approach was critical to maintaining the positive momentum that had been generated for this project.

He thanked the Town Council for the privilege and challenge of taking on this task, and said the Committee was thrilled to pass on its report, which included the community's vision for the project. He said he hoped the Council would embrace it, and said there was reason to be optimistic about a new village center that everyone could be proud of.

Patricia Sherman spoke before the Council. She said this was her last official trip to Durham, and she thanked the Town on behalf of the New Hampshire AIA150 and its partners for sharing this process with them. She said Durham couldn't have been a more gracious host for this ambitious program, and said the Town Council, Town administration, the Mill Plaza Committee and most of all, the citizens of Durham had welcomed the design team, had treated them with ultimate respect, and had truly listened to what they had to say.

She said more important was the fact that the design team had listened to and learned from Durham, through all of the meetings, workshops and other connections where residents had shared their ideas. She said this had enabled their architects to visually express those ideas in site plans and sketches to further ignite residents' imaginations.

Ms. Sherman said the goal of the NHAIA 150 process was to demonstrate that a collaboration of all interested parties in the development of such a crucial site as the Mill Plaza was not only possible, but could and would result in a better product. She said that not surprisingly, the prime recommendation from the Mill Plaza Study committee was to "collaborate for success".

She said the experience in Durham had determined that the recipe for such "success" included:

- a healthy measure of trust from all parties
- a healthy bit of skepticism from all parties
- a lot of listening to others' points of view
- the belief that when collaborators honestly shared good information, they could make good decisions for the benefit of all.

Ms. Sherman said Durham as a community had proven that it wanted to "collaborate for success." She said from the very beginning, the design team knew that the property owner's participation was essential, and she said the team did in fact engage John Pinto in its work. She said he had seen the designs, and had graciously met with the team during the design process. She said the team believed it had caught his imagination, and said it

looked forward to his implementation of a well designed, sustainable, and profitably rejuvenated Mill Plaza.

She said she hoped the work of the Architectural Teams showed how flexible good design could be, and that it wasn't an "add on". She said good design started when the Architects received the requirements the owner established, and worked through those requirements until a quality product was completed.

Ms. Sherman said the task ahead was to be confident about encouraging Mr. Pinto to incorporate the Mill Plaza Study Group's seven recommendations into the requirements he gave his architects as they designed the Plaza. She said that like any design project, everything on the wish list might not be met, and said compromise was often required. But she said it was so much easier to evaluate all of the requirements at the same time and make rational decisions about what worked and didn't work, rather than trying to "add on" a request from the community as a compromise at the end of the design process. She said they had seen "collaborative for success" work in other communities, and said there was now hard evidence that it could work in Durham.

Ms. Sherman noted that the road to the creation of the spectacular cable Zakim Bridge in Boston was bumpy, but came about when the city and its populace would not accept the standard set of spaghetti ramps flying over the landscape as provided by the transportation engineers. She said the community got involved and there were many difficult meetings, political machinations and maybe even some hard feelings. But she said she doubted that there were many who were involved in that process that today did not have a sense of ownership of that remarkable structure.

She said the design team hoped for a remarkable Mill Plaza redevelopment, one that the community would indeed see as a collaborative product of their and John Pinto's efforts.

Ms. Sherman noted that what had been learned in Durham, as part of this process, had been documented in a video and a report to be shared with the rest of NH and the Country on how to "collaborate for success". She said they would be watching the Town's progress, and would be available when needed.

Chair Niman asked if Councilors had any questions for the Committee.

Councilor Needell asked what would happen next.

Administrator Selig said Mill Plaza Owner John Pinto had asked the Town for its vision, and the Council had established the Mill Plaza Study Committee, which had now concluded its work. He said a copy of the report had been forwarded to Mr. Pinto. He said a lot of work lay ahead, and said the Town was using the recommendations from the report as a guide for future discussions with Mr. Pinto, to come up with a project that worked for him as well as the Town.

He said the challenge was that the property was privately owned. He said the owner had indicated to date that he wanted to collaborate with the Town, and said the extent of this collaboration remained to be seen. He said the Town might have the opportunity to bargain with him, and hopefully would get as much of, and hopefully all of this vision in

place as possible. He said there was now a willing owner who was truly interested in moving ahead with a project, and the Town, which was willing to talk with him in an open and honest way about what it would like to see accomplished on the property.

He said the AIA150 team had extended a willingness to work with the Town on a modest fee for service basis to represent the interests of the Town, to help talk the language that ultimately had led to these recommendations, and to help pull as much of this into the final product as possible. He said to him, this served as the foundation that would guide discussions with the owner, moving forward.

1. Approve **RESOLUTION #2008-16** recognizing Mill Plaza Study Committee members and AIA150 volunteers, including Durham's architect, for their efforts in developing a vision for the redevelopment of the Mill Plaza

Councilor Julian Smith MOVED to accept the final report and recommendations prepared by the Mill Plaza Study Committee relative to the formulation of a vision for the redevelopment of Mill Plaza, to thank all committee members for their hard work and diligence in carrying out the charge of the Council, and to sunset the committee at this time. Councilor Peter Stanhope SECONDED the motion.

Councilor Clark said this process so far had been a spectacular example of public/private collaboration, and discovering synergies rather than conflicts. He said the Town would win, even if a small part of the vision were implemented. He also said it was important to make clear that the idea wasn't for the Town to design the project, but to find solutions that might benefit both the owner and Durham.

Administrator Selig said the Committee members, including Councilor Julian Smith, Dave Howland, and Pat Sherman, deserved tremendous credit for the work they had done as part of this process. He said the Committee's report was a wonderful document, and he said it would dramatically increase the odds of making this a document that transcended the action taken that evening.

Councilor Needell said the public process was not over. He said while there might be private negotiations as part of the process, nothing would be decided and nothing would be built other than as part of a public process. He said residents had a role in terms of the degree of acceptance of any project that came forward.

The motion PASSED unanimously 8-0.

Councilor Van Asselt MOVED to approve RESOLUTION #2008-16 recognizing Mill Plaza Study Committee members and AIA150 volunteers, including Durham's architects, for their efforts in developing a vision for the redevelopment of the Mill Plaza. Councilor Julian Smith SECONDED the motion, and it PASSED unanimously 8-0.

2. Present plaque to members of the American Institute of Architects (AIA) team in appreciation for their efforts in assisting the Town in developing a vision for the redevelopment of the Mill Plaza

Chair Niman presented plaques to Mill Plaza Study Committee Chair Dave Howland, Patricia Sherman, and AIA Executive Director Carolyn Isaak for all of their efforts as part of this process.

B. Quarterly Financial Report – Gail Jablonski, Business Manager

Ms. Jablonski said things were going along as they should be. She said 23% of the Total Budget had been expended so far. She said they were looking closely at the snow removal expense for the year, and also noted costs related to the Superbowl and the Dispatch Center transition. She said revenues were coming in slowly, and noted that the tax warrant was due on July 1st, and that water and sewer bills would also be coming out soon.

IX. Unfinished Business

- A. Review proposed Council-initiated Ordinance to Amend Section 175-32 “Zoning Map” of the Durham Town Code and refer said ordinance to the Durham Planning Board for review and study in accordance with Section 175-14 (B) of the Zoning Ordinance

Chair Niman said this Agenda item had been brought forward at the previous Council meeting. He reviewed the 3 proposed changes to the Zoning map in the Zoning Ordinance:

1. Extend the Central Business District up Church Hill to Smith Park Lane
2. Extend the MUDOR district to include land north of Route 4 and east of Madbury Road to include the Perry Bryant properties;
3. Extend the ORLI District to include the remaining land of Sprucewood to the Lee Town Line

He noted that Councilor Needell had previously expressed concerns that any changes to the Zoning Map should reflect the Master Plan. Chair Niman said he had volunteered to re-read the Master Plan to explain why to him all of these proposed changes were consistent with it. He noted that Councilor Needell had also asked if the three proposed changes could be considered separately, and he said this would be done.

He noted some differences in the proposal from the last Council meeting on this issue. He said one substantive change was regarding #2, the extension of the ORLI district. He said the new proposal included lot 14-14.

He also noted that Councilor Needell felt that the proposed change to the properties adjacent to Madbury Road north of Route 4 might be better served in the ORLI district rather than the MUDOR district, because these properties were identified in the Master Plan as ones that should be zoned office/research. He said the proposal coming forward therefore changed the Zoning to ORLI, not MUDOR.

Chair Niman said when he re-read the Master Plan, it said office research for this area. He also noted that Councilor Needell had suggested that it might be more desirable to go with ORLI because the Conditional Use process would apply, which would provide a little more control over what took place.

There was detailed discussion by the Council on the properties involved, including those owned by Perry Bryant. Chair Niman provided details on Mr. Bryant’s interest in the idea of rezoning

the properties near Madbury Road. Concerning this proposed change, Chair Niman said this related to the housing issue, and how to make things work better in Durham, especially given the threat of student rentals. He said the question was how to get better quality student housing, and a better mix of housing in Durham.

He said developer Perry Bryant had said a model that might work was a combination of affordable and student housing, where the student housing could subsidize the affordable housing. He said Mr. Bryant had been to the EDC concerning this, and he provided details on this. He said if the Zoning changed, perhaps there could be a new business model here, and said Mr. Bryant had a good track record of building quality development in Durham.

Councilor Van Asselt noted the proposal to make certain properties part of the ORLI district, and he asked for the rationale for this, rather than making them part of the MUDOR district. He asked if the purpose was to make it more difficult for multiunit developments to go in there, noting that such developments were a permitted use in the MUDOR district.

Chair Niman said the Planning Board could put conditions on an approval, if it was a conditional use rather than a permitted use, including a condition requiring professional management of a multiunit property.

Councilor Needell provided details on how this had been done for some recent applications before the Planning Board.

Councilor Van Asselt said he didn't have a problem with professionally managed properties, but said he found this proposed Zoning map change a bit contradictory. He asked whether, if the Council approved the draft PUD Ordinance, that would help Mr. Bryant.

Chair Niman said that would depend on how the ordinance was written. He noted that the draft said the property had to be at least 20 acres in size.

Councilor Van Asselt asked if a property owner would have the opportunity for increased density, whether the property was located in the ORLI or MUDOR district.

Chair Niman said under MUDOR, there was an opportunity for more density.

Councilor Van Asselt said given that, and given his concerns about the Conditional Use process, he would prefer that the Council think about making the properties in question part of the MUDOR district rather than the ORLI district.

Councilor Sievert asked why ORLI, which included light industry, would be appropriate for that location, and said this didn't make sense to him. He also said the conditional use process was a cumbersome permitting process, which might or might not be appropriate here. He said the properties would fit better as part of the MUDOR district, and noted that the office research part would still be there.

Councilor Stanhope said he felt the same way. He said one of the Council goals was to create a more efficient process for people to develop their land. He also said there were enough safeguards in place to ensure that whatever use occurred there was consistent with the Master Plan. Concerning the idea of imposing a condition regarding professional management, he said

he was confident that a developer would not leave a multi-unit property unmanaged. He said he was very comfortable with the idea of making these proposed properties part of the MUDOR district.

There was discussion that professional management of a property could not be required for a permitted use. Councilor Needell noted that this had come up in regard to the recent Henderson application.

Councilor Van Asselt MOVED that the Town Council, under the provisions of Section 175-14B, refer to the Planning Board for its review and study a proposed ordinance to amend Section 175-32, Zoning Map, of the Durham Zoning Ordinance, to extend the Multiple Unit Dwelling/ Office Research (MUDOR) District, as described in proposed Zoning change #3. Councilor Sievert SECONDED the motion.

Councilor Van Asselt said this approach would fit better with what the Council said it wanted, concerning density, etc., and said he wasn't concerned that the Perry property wouldn't be professionally managed.

Councilor Needell suggested closing the boundary off so as not to include Roselawn farm. There was detailed discussion on whether it was included, and whether it should be. Councilor Julian Smith consulted the tax map and determined that the property in question was not Roselawn Farm.

Councilor Needell said he appreciated the detail provided concerning the proposed Zoning district change, but said he wasn't quite sure they were there yet, for all three proposals, in terms of going forward with them. He said this was a fairly unusual situation, for the Council to be recommending these Zoning changes. He said if the Council was just referring these recommended changes to the Planning Board, he would have no problem with going ahead and asking the Planning Board to evaluate them fully. But he said the Council was asking the Planning Board to react to something the Council had concluded was in the best interest of the Town, and had provided a strong sense that this was what the Council wanted.

He said there had been a significant discussion that evening about making sure what was being proposed was what Councilors wanted. He spoke about how care needed to be taken concerning these kinds of details, and said this applied to all three proposals. He then said he didn't see a clear rationale for the proposed change involving the MUDOR district. He said the Master Plan spoke about this area as not being residential.

Councilor Needell said he respected the arguments that had been made about why MUDOR was a better choice than ORLI. But said he thought there was more work to do, in order to be confident this was what the Council wanted to do. He said if the Council was initiating this Zoning change, it should be a far more thorough process before moving forward.

Councilor Julian Smith said he preferred that the parcel next to Pendexter and Madbury Road be in the ORLI district. He said he appreciated what Councilor Sievert had said, that there wasn't that much space there for light industry, but he said the key thing was to have the conditional use process for multi-unit development, in order to avoid scaring the horses or the citizenry. He said it therefore would be more prudent to leave it as proposed.

Councilor Sievert said he had read the Master Plan, and it said the Council could bring these

proposed changes forward. He then spoke about the fact that the Mill Plaza presentation had talked about the idea of a public/private partnership, and said these proposals reflected that. He also said the review by the Planning Board of the recommended changes would take some time.

Councilor Needell spoke in detail about the Planning Board's role in this process now, and said the part that concerned him was that there was a very different threshold with this process, if a recommended Zoning change was coming from the Town Council. He also noted especially the issue of fiscal impact, and what a change to the Ordinance would get the Town in terms of this. He said the burden was on the Council to make the case that this was the best thing for the Town.

Chair Niman said that for the last five years, he had said that the people who worked in Durham should be able to live there, and said his rationale for the proposed change was to perhaps create an opportunity to create affordable housing.

Councilor Leach said she didn't have a problem with any of these proposed changes going to the Planning Board, and she provided details on this. She said there might never be a perfect time. She said she felt enough information had now been provided on this to allow the Council to make a recommendation to the Planning Board. She also said she had no strong opinion as to whether the properties in question should be part of the ORLI or the MUDOR district.

Councilor Clark said he had no problem with the Council being a leader on this, and also said the EDC had done much of the work that got the Council to this point. He said the issue of whether the property should be part of the MUDOR district or ORLI district was the hardest one to decide on. He said it looked like ORLI was more logical out there, if the Bryant piece was taken out, especially when a project would be allowed through conditional use. He said he wanted to be sure that they were not doing spot zoning.

Councilor Needell said he was not afraid to have the Council make these recommendations, but said if it was going to do this, it needed to lead. He noted that the EDC had done studies and had talked to developers before making its recommendations. But he said the recommendations needed to start with the Council. He said the process of dealing with this proposal didn't start until the first time it was on the Council's agenda. He said the EDC could have just as easily taken its recommendations to the Planning Board, which was a more normal approach.

Councilor Needell said he thought there should be explicitly reference to Section 175-14 B, that this was a Council initiated recommendation, and Chair Niman agreed. It was agreed that this would be a friendly amendment to the original motion.

Councilor Van Asselt said he thought the Zoning map change should be MUDOR rather than ORLI, stating that he wanted to see Mr. Bryant move as aggressively as possible with multiunit, affordable housing. He said Zoning the land as part of the MUDOR district allowed him more density, and made the review process easier because the conditional use process wasn't involved. He said he felt this met certain goals, and said the property would not be developed without including professional property management

Administrator Selig said he agreed with what Councilor Van Asselt had said.

The motion PASSED 6-2, with Councilor Needell and Councilor Julian Smith voting against it.

Concerning proposed Zoning map change #1, Chair Niman said that when the Mill Plaza redevelopment process started, there had been hope that the owner of some of these properties would sell them, and they would then become part of the mix, in terms of redeveloping Mill Plaza. But he said the owner had been reluctant to sell the properties, so part of the rationale for this proposed Zoning change was to make the property more valuable so he would be interested in selling the properties to someone else.

Chair Niman said there was also concern that if the redevelopment of Mill Plaza went forward, there was a parcel that would box the development in. He also said he would like to see access to Main Street from Mill Plaza, and said changing the Zoning might create greater incentive to do the access along the boundary at the edge of the Mill Plaza property, which among other things would open up some of the back lot for commercial development

He said he had gone through the Master Plan, and it talked about the idea of encouraging business expansion, and providing a wide range of retail opportunities, in the proposed redistricted area.

Councilor Julian Smith MOVED that the Durham Town Council, under the provisions of Section 175-14B, refer to the Planning Board for its review and study a proposed ordinance to amend Section 175-32, Zoning Map, of the Durham Zoning Ordinance, to extend the Central Business District as described in proposed Zoning change #1. Councilor Stanhope SECONDED the motion.

Chair Niman said he wanted to make this change now because this whole situation was in a state of flux. He said he would hate to see any permanent decisions or changes made before the Town had a chance to influence the process in a way that he thought was in the best interest of the Town.

Councilor Needell said Chair Niman had done a good job of crafting this proposal, and said he didn't have a problem with it. But he requested that abutters, for all of these proposed Zoning map changes, be notified prior to the public hearing. He also noted that this Zoning change had nothing to do with the buildings in the Historic District, and said the rules that applied concerning them would be unchanged.

Councilor Van Asselt MOVED that the Durham Town Council, under the provisions of Section 175-14B, refer to the Planning Board for its review and study a proposed ordinance to amend Section 175-32, Zoning Map, of the Durham Zoning Ordinance, to extend the Office Research/Light Industry (ORLI) District, as described in the proposed zoning change #2.

Councilor Stanhope SECONDED the motion.

Chair Niman said the Master Plan also talked about expanding the tax base and looking for places to develop additional commercial property. He said this was an opportunity to develop a commercial property that no one would see from the road. He said with a project coming before the Planning Board, this seemed like a perfect time to make this Zoning change.

There was discussion that the Council had previously discussed the idea of making this proposal in two parts.

Councilor Needell said much of what Chair Niman had said made a compelling argument for this Zoning change, at least in regard to the property involved with the JLB project, and said if adopted, it would enable the JLB project to be better. But he said there was another way to get that result, which was worth entertaining. He said they could consider looking at the language in the Ordinance, and finding a way to address a situation where a proposed development would occur in two abutting zones. He said perhaps there was a way to come to agreement to allow a use to cross over, when such a condition occurred. He said he therefore thought it was important not to bind this proposed Zoning change to that particular project.

He said he had met with developers Dave Garvey and Jack Farrell about their vision, and said it was a great idea. He said it was essential that if people were going to embrace what was going on, they needed to hear about it, but he said it was frustrating, although understandable, that part of this couldn't be openly discussed. He said the problem was that an Ordinance change was being proposed.

He noted that the gateway issue was involved with this project. He said the idea of extending the conservation subdivision to commercial development could be an important piece of this process, and said to move this Zoning change forward without that left a gaping hole in the vision for the project.

Councilor Needell said the Council didn't know what would happen once this Zoning change was made. He said properties would possibly be developed to the fullest extent the Ordinance allowed, and he said to make a piecemeal change, without looking at the whole picture, was unacceptable. He said there was a great vision, and some great plans, tying into the PUD concept, but said he felt it was not ready to go forward. He said if the Council agreed with him on this and didn't move this proposed Zoning change forward, he would like to work on the boundary issue, so the JLB plan could go forward.

Councilor Clark received confirmation that the Conditional Use process would be used for multiunit development, if the ORLI district was extended here.

Councilor Julian Smith said he was on the Planning Board when the ORLI and MUDOR district boundaries were established. He said the discussion on this had gone in all kinds of directions, and said it was not always clear why a particular property was put in one zone and not the other. He said this proposal made sense, and said he supported the reasons for the change.

Chair Niman said this change was not being done for Jack Farrell, it was being done because in the not too distant future, the Town needed to make some decisions about the Spruce Hole aquifer, in terms of who paid for what, and how this would be structured. He said he didn't think there could be an intelligent discussion on this if it wasn't clear what the economic potential was. He said this was why he thought it was an important Zoning change to make now.

Councilor Needell said a critical issue was water and sewer, and he said the JLB project wouldn't go forward without it. He said it was also true that if the infrastructure was put in this area, that would enable many other things to happen. He said it came back to his feeling that making this Zoning change was premature, unless there had been a decision on the water and sewer issue. He said the question of what could happen out there if the infrastructure was put in was a very important piece, and said this was a reason he felt going forward with this change was

premature.

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

The Council stood in recess from 8:42-8:50 PM.

- B. FIRST READING ON ORDINANCE #2008-06** amending the Durham Town Code to add a new chapter, Chapter 121 entitled “Stormwater” creating stormwater regulations to prevent illicit non stormwater-related discharges and establishing standards to control and manage stormwater runoff from construction sites and developments

Administrator Selig noted that this was the second time the Council was hearing about the proposed stormwater regulations.

Mr. Cedarholm said there had been some changes to the document since the last time he had spoken to the Council. He noted that it had previously been split into two documents, an ordinance as well as separate regulations. He said the Town’s had said it would be better if the documents were combined into one. He said there was now just a stormwater ordinance, noting that the intent as well as most of the text were essentially the same.

He said he had pulled out one piece that it was decided the Planning Board would have to wrestle with, regarding effective impervious surface. He said this was a complicated issue, and said putting it back in the Zoning Ordinance helped simplify things.

Councilor Sievert said they needed to be careful in saying that the ordinance didn’t necessarily require a developer to do more than had previously been the case with the existing stormwater provisions.. He said this ordinance did require more than was already required, and said this wasn’t necessarily a bad thing, noting that Durham had to meet federal requirements. He said he was not against the regulations and the design that would come out of them.

Mr. Cedarholm agreed, and noted that most developers were already doing what was required, although not all. He said with the existing ordinance, there was a lot of latitude, in that it simply indicated that stormwater management had to be “adequate“. He said that with this ordinance, the Town could define specifically what “adequate” was.

Councilor Sievert said this didn’t necessarily make Mr. Cedarholm’s job any easier. He then noted the definition of impervious surface, which include gravel and patios, and said he wasn’t sure he agreed with that. He provided details on this.

Mr. Cedarholm agreed that the terms impervious and pervious could be defined better.

Councilor Sievert asked if pervious pavement was going to be defined as impervious coverage, or as something else in the future.

Mr. Cedarholm said that was the issue he had been trying to address with the concept of effective impervious area. He said he would be meeting with the Planning Board as part of its quarterly planning meeting to see how this could perhaps be worked into the Zoning Ordinance.

Councilor Sievert said that concerning the protection of water quality, using best management practices, Mr. Cedarholm's job might become harder as a result of this Ordinance. He asked if the Town would have to test the existing water quality, or whether meeting best management practices would be enough to demonstrate that the requirements were met.

Mr. Cedarholm said stormwater quality monitoring wasn't required right now, but might be with the new permit. He said this might have to be addressed with this document.

Councilor Sievert asked how one would demonstrate that water quality was protected, without having a baseline for water quality. There was discussion on this.

There was discussion between Councilor Sievert and Mr. Cedarholm concerning the provision on page 8 that said cut and fill should be minimized, and that the maximum height of any fill or depth of any cut area should not be greater than 10 ft.

There was also discussion on 121-12 C 5, - that any contiguous area of disturbance not associated with the installation of a roadway shall be limited to 20,000 for residential development, and to 100,000 sf for other types of development.

Mr. Cedarholm said he would include something in the Ordinance regarding the fact that anything over 100,00 sf would require an alteration of terrain permit.

Councilor Sievert noted that there was a waiver section in the Ordinance, and said perhaps some issues like this could be addressed through the waiver process.

Councilor Sievert said under 121-21 C 7, d, the requirement concerning roads crossing surface waters was almost impossible to meet. He provided details on this.

Mr. Cedarholm said this was why the wording "...to the greatest extent practicable.." was included in section C.

Councilor Julian Smith suggested that the word "eliminated" in 121-21 C 7 d should be replaced with the word "avoided".

Councilor Van Asselt said that in the Council Communication, Mr. Cedarholm said that the proposed ordinance "...should give developers a clear understanding of what was expected...". But he asked whether the Town would be requiring more than it needed to, with this Ordinance.

Mr. Cedarholm answered no, and said the Town would be requiring what was consistently provided by developers. He also said the Ordinance would be in line with the NHDES' surface water rules, stormwater guidelines, and the Agency's Site specific Division's updated guidelines, which were coming out in July.

Councilor Van Asselt said he wanted to be sure that this Ordinance wouldn't come back as another reason why certain things couldn't be done in Durham, and that it wouldn't be another obstacle for developers. He asked Mr. Cedarholm if he thought this was an issue.

Mr. Cedarholm said he didn't believe the Town was creating a monster with this Ordinance, and he noted there was a waiver process. He said the biggest change with the Ordinance was the requirement that groundwater would be recharged on site, if the soils could handle it. He said if they couldn't, this would not be required.

Councilor Sievert said the Ordinance provisions were stringent because of where Durham was located. He also said developers would find similar requirements in other towns that discharged into federal waters. He said that luckily, there was a waiver process. He noted a requirement in the Ordinance that there be 3 ft for infiltrating of groundwater above the seasonal high water table and ledge, and said he couldn't remember where one might find that in Durham.

Mr. Cedarholm agreed this was a tough thing to find, and he noted that the Kimball development had encountered ledge. But he said a pervious pavement system had still been designed for this site, which included 3 ft of separation. He said this wasn't an easy thing to accomplish, but it was possible. He noted that if a development was being wrenched into a tough site, it was important to be able to manage the storm water on the site.

Councilor Stanhope asked if this Ordinance had come from the model storm water ordinance developed by the State.

Mr. Cedarholm said the groundwater recharge information had come from the model ordinance, and said other pieces of it had come from Manchester, Exeter, Seabrook, etc. But he said it wasn't a cut and paste document. He also said the Town Attorney had gone through the draft, and had gotten rid of some things that were impossible to do.

Councilor Stanhope asked if there was anything in the Ordinance that exceeded EPA's minimum requirements.

Mr. Cedarholm said the minimum requirement for construction sites was directed toward sites of greater than one acre of disturbance. He provided details on this, and noted that the Town had a federal discharge permit with a lot of language on protecting and improving water quality. He said a goal of the Ordinance was to protect downtown areas, where some of the biggest storm water problems occurred.

Councilor Stanhope asked whether, in its existing Zoning Ordinance and with the adoption of the Stormwater Ordinance, Durham set higher standards than many other communities, for the use of private property.

Mr. Cedarholm said yes.

Councilor Needell noted that he had asked for a waiver provision, the last time this draft had come forward to the Council. But he said he was a bit concerned with the way this section had been written, in that the burden fell on the Town Administrator to grant waivers. He asked if this was the best way to handle this.

Administrator Selig said he thought it was appropriate, noting that the Ordinance said

there would be consultation with “..qualified individuals versed in storm water management..” as part of this process.

Councilor Needell said he assumed it would be a public process to request a waiver.

Administrator Selig said this was not spelled out in the Ordinance, and said he envisioned this as a written request that he would receive, and would act on in writing, which would not be a public process.

Councilor Needell asked if there were other Durham ordinances where the Town Administrator had the purview to waive a requirement.

Administrator Selig noted as an example that he could waive a requirement concerning a peddler’s license. He said someone could then appeal this to the Town Council. He noted that with this Ordinance, the process was not spelled out.

Councilor Needell said there was no appeal process indicated here, and asked if there should be an appeal to the Town Council. He said he didn’t think waiver requests should come to the Council, but said there might be reason to have the appeal process come to the Council.

He said this Ordinance crossed the boundary in terms of being a land use ordinance as opposed to an administrative ordinance, and said that with a land use ordinance, an abutter would be notified about a waiver request. He said he was torn concerning this issue.

Administrator Selig said he was not sure abutters would necessarily have a concern about whether a waiver was granted or not. He said the Planning Board would likely approve a site plan with conditions, including meeting requirements in the Stormwater Ordinance. He said if there was a particular issue that seemed unusual, it might involve a waiver.

Councilor Needell noted the Caldarola conservation subdivision, and said this process had largely been driven by stormwater issues. He said if this Ordinance was in place, he wondered whether the same discussion now happening at the Planning Board level would be deferred to this Ordinance. He said the abutters were driving a lot of the issues, and noted that this was a very complicated site. He asked whether other Councilors were uncomfortable with the waiver provision.

Mr. Cedarholm said it might be useful to define the conditions under which a waiver would be granted. He suggested that there might be a waiver granted if a site didn’t generate stormwater, in that there would be no discharge, and no permit would be needed. But he said calculations would need to be provided to show this. He said this might be the only situation where the Town might consider granting a waiver.

Chair Niman asked whether, with the changes being suggested, the draft Ordinance would then have to come back to the Council, or if the Council could instead move the Ordinance on first reading at the present meeting.

Administrator Selig said the process would be better served if Mr. Cedarholm brought the

draft Ordinance back with revisions, so the public could then comment on the finished product.

Chair Niman asked if there were additional comments Councilors wanted to make on the document.

Councilor Needell noted 121-13-A on page 14, and asked when having an independent consultant review could be required.

There was discussion that this could be spelled out in the Ordinance.

Councilor Needell referred to 121-12 H “Parking Lot Controls”, and asked if these provisions applied to currently existing parking lots.

Mr. Cedarholm said they did not.

Councilor Julian Smith said a related issue was that there needed to be clarification in the Ordinance concerning new development, as compared to development. He also said he was hoping the things the Council had talked about were simple enough so that it could proceed moving the ordinance on first reading. He discussed his involvement in reviewing the wording of the draft Ordinance, and said the things that couldn’t be fixed, or clarified from the first two documents were taken out. He also said that while the Ordinance was now shorter than it had been, it was still too long.

Councilor Smith noted that the Purpose statement on page 1 made reference to “adverse effects”, and he asked if this just referred to post development.

Mr. Cedarholm said the Town Attorney had said that “development” and “post development” were the same.

Regarding applicability to all developments, in 121-3, Councilor Smith said he saw a possible conflict between A and B under that section. He said he wanted to be clear that existing developments wouldn’t have to be brought up to the standards in this Ordinance.

Mr. Cedarholm suggested combining A and B, to make this clear.

Chair Niman asked Councilor Needell and Councilor Sievert to pass any additional comments along, to Mr. Cedarholm. He said the Ordinance would then be brought back to the Council under the Unanimous Consent Agenda, and the Council could then move it on first reading.

Councilor Van Asselt asked if Mr. Cedarholm had shared the draft Ordinance with any developers, and Mr. Cedarholm said he had forwarded a copy to Jack Farrell. Councilor Van Asselt also said he trusted Councilor Sievert to share it with developers.

Administrator Selig noted that there had been some questions from the Town Council regarding the rigor of the Ordinance, and said he would like some guidance on whether the Council was comfortable with this, or would like Town staff to pull back on this a bit. Councilor Van Asselt said he wanted to hear that this wouldn’t get in the way of what he

would like to see done, and said he didn't know how to judge that.

Councilor Sievert said this Ordinance put another layer on the process, including taking it down to 2000 sf of disturbance requiring a utility connection permit, unless there was a waiver.

Mr. Cedarholm said the limits of a utility connection permit hadn't been defined yet.

There was discussion on this. Councilor Sievert asked whether, if a development discharged stormwater in sheet flow into the woods, it would still need a utility connection permit, according to this Ordinance

Mr. Cedarholm said not unless it discharged to a pipe.

Councilor Sievert noted the wording "...or other part..." in 121-9 "Utility Connection Permit", and there was discussion on this.

Administrator Selig said his own point was that this Ordinance was written with the goal of protecting natural resources and not with a development bias. He asked whether it was a goal of the Council to put more of a development bias into this.

Councilor Leach said perhaps this could be sent to a few more developers, to get their input on the question of whether the Ordinance was too rigorous. She said this didn't mean the Council would necessarily go with their perspective.

Councilor Stanhope said in order to support this Ordinance, he would need an affirmative answer to his question that it neither exceeded the existing Zoning Ordinance or the minimum EPA requirements, so would not be an additional burden on a developer.

Councilor Sievert said it exceeded the EPA requirements.

Mr. Cedarholm said it didn't exceed EPA regulations for water quality, and he noted that there was no policing of EPA requirements regarding water quality. He also noted that every one of Durham's water bodies was considered to be an impaired waterway, and said it was just a matter of time before EPA would enforce the federal regulations regarding water quality.

Councilor Needell said feedback from developers and others would be useful. He asked whether, if Councilors received the Ordinance as part of the next packet, it would be appropriate for it to be included under the Unanimous Consent Agenda. He said it would seem that would depend on what feedback they got on the Ordinance.

Chair Niman said he was looking for something reasonable. He said he wanted to be a good steward of the environment, but didn't want to create ridiculous standards to meet, where there was marginal benefit in relation to the cost. He noted the situation the Town was in with the State concerning the Lamprey River, and said he would hate to see the Town behaving like the State, when people just wanted reasonable use of their property. He said he didn't want to ratchet up the cost when the benefit was next to nothing, and said a reasonable, balanced approach was needed.

Mr. Cedarholm said he agreed

Councilor Needell said the de-facto requirements before developers now were that they must provide adequate stormwater management. He said this Ordinance put down on paper exactly what was required, so there would be no surprises. He said a question was whether the Council wanted to change that new approach, and he said he did not. He said this Ordinance took this decision-making out of the realm of the whim of the Town Engineer.

Councilor Leach said her understanding was that this was what developers were following anyway.

Mr. Cedarholm said it was, and noted that most developers far exceeded a lot of what was in the Ordinance. He noted as examples the Kimball, Bryant, and Rivers' Edge developments.

Councilor Julian Smith noted that Durham was one of the towns that was required to comply with the new federal Phase II Stormwater rules, and he asked if the Town couldn't simply hand out these rules to developers.

Mr. Cedarholm said other rules would have to be handed out as well, with this approach, including the NH State guidelines and 415 Surface Water rules. He said those rules were referenced in the document.

C. Appoint alternate Council representative to replace Councilor Peter Stanhope on the Durham Planning Board

Chair Niman noted that Councilor Needell had said he would serve if another Council member didn't step forward to take this position.

Councilor Needell noted that he would be delighted if someone else would step forward to take the position.

Councilor Clark said he would be willing to take Councilor Needell's place on the Energy Committee.

Councilor Leach agreed to take Councilor Needell's place on the DCAT committee.

Councilor Julian Smith said he felt that it was not fair to ask Councilor Needell to take the Planning Board position, noting that he had already been on the Planning Board for three years.

There was then detailed discussion about why there needed to be two Council representatives to the Planning Board.

Councilor Peter Stanhope suggested that the Council could recommend a change to the Town Charter concerning this requirement.

Administrator Selig provided some history on this issue, noting that until 2003, representation on the Planning Board was a more informal process. But he said at that

time, the Council felt it was important to have backup representation on the Board.

Chair Niman asked what happened if the Council didn't appoint an alternate.

Administrator Selig said the Town Charter required this, and said theoretically, a resident could bring litigation against the Town. He said while the alternate Council representative might only need to attend when the regular members couldn't be there, the challenge with this was that the alternate might not be adequately informed concerning issues and applications facing the Board.

Councilor Needell said he didn't feel that it was an option, and said it would not be acceptable to not have an alternate. He said he therefore had no choice but to take this position.

Councilor Mike Sievert MOVED to appoint Councilor Needell as the Council representative to the Planning Board, and to appoint Councilor Clark to the Energy Committee and Councilor Leach to DCAT, with terms to expire March 31, 2009. Councilor Julian Smith SECONDED the motion, and it PASSED 6-2, with Councilor Peter Stanhope and Councilor Van Asselt voting against it.

X. New Business

Other business

Councilor Van Asselt said there would be a Rental Housing Committee meeting the following day, at 4 pm. He said anyone with a neighborhood problem was welcome to attend the meeting.

XI. Nonpublic Session

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

XIII. Adjourn (NLT 10:30 PM)

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

Adjournment at 9:50 pm

Victoria Parmele, Minutes taker