

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

**DURHAM TOWN COUNCIL
MONDAY, JUNE 2, 2008
DURHAM TOWN HALL – COUNCIL CHAMBERS
MINUTES**

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

MEMBERS ABSENT: Councilor Jerry Needell

OTHERS PRESENT: Town Administrator Todd Selig; Town Planner Jim Campbell; Police Chief David Kurz; Assessor Robb Dix

I. Call to Order

Chair Niman called the meeting to order at 7:01 PM.

II. Approval of Agenda

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

III. Special Announcements

Jen Kelly – New Police Officer

Police Chief Kurz introduced Ms. Kelly to the Council and Durham residents. He noted that she was a UNH graduate, and in fact had graduated summa cum laude and was a Presidential scholar, as well as being a graduate of the Police Academy. He spoke about the uniqueness of being a police officer in Durham, and said Ms. Kelley would undergo a 12-week training period.

IV. Approval of Minutes

None

V. Councilor and Town Administrator Roundtable

Councilor Clark said the Energy Committee and IWMAC had looked to see if there were synergies, and had concluded that although they had like mindsets, there were separate agendas, and it would not be a good idea to combine the two groups.

Councilor Julian Smith noted a message from Administrator Selig that there was a contract to do an architectural evaluation of the Evangelical Church as a potential site for relocating the Town

Hall and the Police Station. He encouraged the idea of a site walk by the entire Council, or at least for Councilors who were interested in this.

Councilor Henry Smith said he had attended the recent site walk of Emery Farm that the Conservation Commission had held, and got a great overview of the conservation easement parcel. He said about 35 people were there.

Administrator Selig noted that in March, he had brought forward a draft TIF agreement for Rockingham Properties, and at that time, the agreement utilized a combination of cash in escrow and real property as guarantee, in case of a worst case scenario, to cover the debt service. He said at that time, the Council had directed him to report back to the owner of the property that unless there was a surety in place, the Council was not interested in the offer.

He said the owner had come back and proposed to increase the cash deposit from \$102,000 to \$180,000. He said the question now was whether the Council had any interest in reviewing that proposal at the next Council meeting. He said he would not provide a revised draft agreement if the Council remained consistent with its prior directive.

Councilor Stanhope said he wished to reiterate what he'd said the last time, that when the Council voted to put the TIF in place, the Council indicated that it would be funded through a letter of credit or a bond. He said it wasn't appropriate to change the rules now, at the benefit of the developer. He said they could bring this forward for discussion, but said he would vote against any other than had been promised to the citizens of Durham.

Councilor Julian Smith agreed.

Councilor Leach asked for clarification of what Administrator Selig was asking from the Council concerning this.

Administrator Selig said he was asking if the Council wanted him to bring back a at the June 16th meeting a draft agreement in which the cash deposit would be increased. He said other financial assumptions in the document would be updated as well.

It was noted that the March draft included a letter of credit concerning the construction of a roadway.

Councilor Henry Smith read from the March 2007 TIF document, and said his perspective from the beginning was that it was critical that there would be a surety guarantee. He said he felt the Council should not revisit this, minus that. He said he thought the Town should be put at minimal or no risk at all, in case things didn't work out.

Councilor Clark said he didn't hear from the document that there actually had to be a surety or a letter of credit although there had to be some kind of guarantee. He said there were different ways to provide a guarantee, and said the word guarantee needed to be defined.

He said the bigger question was that the Town wouldn't take the bond without building the infrastructure, and said at point the value of the land would go up, and the Town would start collecting more taxes from it.

Administrator Selig said water and sewer infrastructure as well as the construction of the access road would increase the value of the lots, but not to the extent that it would produce additional tax increment to fully cover the debt service.

Councilor Clark received clarification that the \$180,000 would be in an escrow account the Town would collect interest from. He then said the question to him was whether the Town Council had committed to the residents of the Town that the TIF project wouldn't happen without a specific guarantee

Chair Niman said there was a difference of opinion on this. He said he believed the Council made a commitment to eliminate risk, but never committed that it had to be in the form of a surety or letter of credit. He said the question was whether it was possible to eliminate the risk without these things. He said if so, the next question was whether the Council wanted to pursue this.

Councilor Leach said she was stuck in the middle on this issue. She agreed that there were more ways to get protection than just a surety, and said she thought this was worth talking about on June 16th.

Councilor Sievert said he thought this matter was worth talking about. He said it was a good property to develop, and said to kill the project again, when it was killed years ago, would be a shame.

Councilor Van Asselt said there couldn't be a development project without negotiation, and said he had no problem with the idea of talking about this issue.

In summary, Councilors Julian Smith, Councilor Stanhope and Councilor Henry Smith said they did not want a Council discussion on this issue, and Chair Niman, Councilor Leach, Councilor Clark, Councilor Sievert, and Councilor Van Asselt said they would like to talk about this issue.

Chair Niman said this would be put on the Agenda for the June 16th meeting.

Councilor Julian Smith said the Planning Board had met the previous week, and had continued the conceptual consultation with the design team for the Bryant project, which was proposed on Mast Road, across from the Grant property. He noted that Perry Bryant had a purchase and sale agreement with the Grants to buy their property.

He said a 24 unit, 3-story building was planned, and said the concept included a barn to house small electric cars that would be recharged there, and could be used to drive to campus. He also said that because the development would be located across the road from the West Edge parking lot, it might be possible to have a bus stop there. He said the project was an innovative concept, and said he hoped to see more of it.

There was discussion about an idea suggested by Councilor Julian Smith, as a member of the Council. He said he had gone to EDC meetings that dealt with the issue of the Evangelical Church, but said he had not yet had a tour the facility. He noted that the Town was about to spend some money to do an assessment of the Church, and said he hoped that there would be an extensive discussion in the near future, involving the public, about the idea of moving to that location, away from the Town center.

Councilor Van Asselt said he had no problem with Councilor Smith's idea. But he noted that the Council had asked the EDC to look at this idea, and there had been EDC meetings and site walks that had addressed it. He said this hadn't been something where Administrator Selig had gone off on his own to pursue this idea. Councilor Smith said he agreed

Administrator Selig said the Town Clerk's office had begun performing its on-line automobile registrations utilizing the State of New Hampshire Division of Motor Vehicles motor vehicle database. He provided details on the need to balance the accounts every night, and the fact that this might create some scheduling issues for staff in the Town Clerk's office.

VI. Public Comments (NLT 7:30 PM)

Roger Speidel, 7 Nobel K. Peterson Drive, said he was there to keep the Council up-to-date concerning the School Board. He spoke in detail about the expected drop in the number of students in the school district between 2007 and 2017. He also spoke about the fact that the student to teacher was 1 to 12, which was too expensive to maintain. He noted that this ratio for Montgomery County, whose schools were some of the best in the country, was 1 to 23.

He said smaller class size had done nothing to do with improving education, and said when teachers left, they shouldn't be replaced. He said each teacher cost \$75,000 per year, and he said with enrollment declining, attrition was the way to keep things in line. He asked the Council to email everyone they knew and tell them to watch the School Board meeting on Wednesday night at 7 pm, when he would be speaking under Public Comments, on the School budget and taxes.

Bill Hall, Smith Park Lane, said he had recently met with Paul Currier and Tom Burack of NHDES, and said it was clear that Durham was not in a bargaining position regarding the Lamprey River. He said the restriction on the Lamprey was arbitrary, and said they gave no reason for it. He said they did say the federal government came to them and said it wanted the restriction. He provided some history on the restriction, and said Town staff had left Durham in a poor position to deal with DES on this issue.

He said DES had just tried to put through the legislation that would do to other NH towns what it had done to Durham, and this legislation had been gutted. Mr. Hall said it was time to go to court on this issue, and have DES tell the judge what the restriction was based on and how it was calculated.

Robin Mower, Faculty Road, said she thought the Council had a big job ahead convincing the public that it could protect it from risk, regarding the TIF proposal, if the terms involved were

not defined. She recommended that these terms be defined for the public, given the issue of the public trust, and said perhaps the Town attorney could be involved with this.

She noted that Councilor Sievert had referred to the Stone Quarry area as a good area of Town for development, but she noted that the developer for the Durham Business Park was having trouble filling it, in difficult economic times. She said this needed to be considered. She said Councilor Van Asselt talked about the need to negotiate with the developer, and she agreed. But so far, she didn't see what the development was giving the Town. She said they should make sure the Town got back what it wanted.

Ms. Mower said the EDC had brought the TIF proposal to the Council and advised that it be accepted in part based on the understanding that there would be a protection for the Town. She said if they were going to rely on the EDC's work, they needed to consider their advice on this. She suggested that new members of the Council look at the Minutes to get an idea of the thinking of the public on this issue.

Regarding the goals of the Council for 2008, she said some time should be spent defining what was meant by "maintaining Durham's character." She said to be an effective goal it must be well defined, agreed upon, and measurable. She said that otherwise, when talking about balance, how could they know when this balance was achieved.

Regarding the goal of cooperation between the different boards, Ms. Mower noted that the Conservation Commission to date had been actively seeking cooperation with the EDC and the Planning Board, and had been supportive of several development proposals before the Planning Board right now. She said that kind of cooperation would go long way toward developing a broad vision of planning for the Town.

Susan Fuller, 68 Bennett Road, said that concerning the tax abatement process, she wanted to assure the Council that the 25 Newmarket Road sale was an arms length transaction, and that the buyer and seller had no knowledge of each other. She noted that in the course of marketing the property, other offers were procured that were less than the final sale price. She also said that the previous owner, while satisfied with the lowered assessment, did feel that at the time the abatement application was made, the market value was truer to the eventual sale price.

Beth Olshansky, Packers Falls Road, spoke about the importance of clarifying what the balance would be between economic development and maintaining Durham's character. She said more attention needed to be paid to this, and to how to achieve this.

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

Shall the Town Council approve a special event permit application submitted by Mr. Joseph Sarno of Stoneham, MA to conduct a 5K charity road race, "Matt's Run" on Saturday, June 14, 2008 at the Oyster River High School?

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

VIII. Presentation Item

None

IX. Unfinished Business

- A. FIRST READING ON ORDINANCE #2008-04** initiated by the Town Council amending Chapter 175 “Zoning”, Section 175-7(A) “Definitions” of the Durham Town Code relating to the definition of “Wholesale Sales”

Councilor Clark MOVED on first reading ORDINANCE #2008-04 initiated by the Town Council amending Chapter 175 “Zoning”, Section 175-7(A) “Definitions” of the Durham Town Code relating to the definition of “Wholesale Sales” and schedule a Public Hearing for June 16, 2008. Councilor Sievert SECONDED the motion, and it PASSED 7-1 with Councilor Van Asselt voting against it.

- B. FIRST READING ON ORDINANCE #2008-07** initiated by the Town Council amending Chapter 175 “Zoning”, Article III, Section 175-9(A) of the Durham Town Code by striking paragraph 13 relating to the “most conservative or restrictive” provision

Councilor Van Asselt MOVED on first reading ORDINANCE #2008-07 initiated by the Town Council amending Chapter 175 “Zoning”, Article III, Section 175-9(A) of the Durham Town Code by striking paragraph 13 relating to the “most conservative or restrictive” provision. Councilor Sievert SECONDED the motion.

Administrator Selig said a legal opinion on this matter had been received from Attorney Mitchell, and said this could be made available to the public.

Councilor Henry Smith said he had not been opposed to striking the word “restrictive”, but was not in favor of striking all of paragraph 13.

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

- C. Continued discussion with Town Assessor Dix** relative to the 2007 property tax abatements and veterans’ credits, deferrals, and current use requests

Administrator Selig said the Council had previously talked in detail about Addendum A, which Mr. Dix had developed. He said Mr. Dix was now providing Addendum B as an alternative to Addendum A.

Mr. Dix said the discussion last time had pointed out that there was an outlier number that was skewing the results, so he re-did the analysis. He said he had come up with the discount rounding off to 8% rather than 15%, but said he still urged the Council to take seriously Addendum A. He noted that there were two sales in the outlier category, and in a sample of 10, that represented

20% of sales, a percentage that it wasn't always wise to throw out. He also said that two of those sales sold twice in the period, and the appreciation on them was about 18%, which corroborated with the 15%. He urged the Council to take these things into consideration.

Administrator Selig noted that the individual sheets and the spreadsheet had been revised to reflect Addendum B as well.

Councilor Van Asselt asked if the Council could deal only with those abatement requests that were controversial.

Administrator Selig said yes, and noted the comments Susan Fuller had made concerning one of the abatement requests. There was brief discussion on this abatement request, and on how to address the non waterfront properties.

Councilor Van Asselt MOVED to approve the abatement requests for all non-waterfront properties. The motion FAILED for lack of SECOND.

Councilor Stanhope asked what happened if the Council did nothing regarding the abatement requests.

Administrator Selig said the abatement requests would be denied, and the owners would have the option to appeal. He recommended that if Councilors felt the abatement was warranted, that they take action, noting that otherwise this was a burden on some of the property owners.

In answer to a question from Councilor Sievert, Administrator Selig said the Addendum A recommendation resulted in a total refund of \$54,782, and Addendum B resulted in a refund of \$28,335. He noted that the Town had carried \$75,000 this year in anticipation of the abatement requests.

Councilor Sievert asked if it would cost more to go to court, if the Town didn't give the abatements. He said his confusion at the last Council meeting when this matter was discussed had been about the difference between what a property sold for, its market value, and its replacement cost. He said he didn't understand the law on this, but said it didn't seem worth fighting this battle, even though he wasn't sure he necessarily agreed with Addendum A.

Administrator Selig said the goal should be equity and fairness in assessments in the abatement process, not granting refunds. He said the cost wasn't astronomical, and said he wouldn't consider that a primary motivation.

Councilor Stanhope said the law was pretty clear that the assessment should be based on the fair market value, adjusted for the equalization ratio. He said the replacement cost was not relevant unless it could be shown that market values were consistently the replacement cost. He said at this time, that was not the case. Regarding Addendum A and B, statistically, B had more validity, and was probably better supported by regional data. But he said applying it to all parts of markets and sub-markets might not be applicable. He provided details on this.

He said in reading over the write-ups to support either granting or denying the abatement requests, he still found them unsatisfactory relative to what he saw coming out of other municipalities. He said he was not in a position to be able to vote to support or deny the abatement requests, because he didn't have enough information, and didn't have the time to do the work the Town was supposed to do.

Councilor Leach asked Mr. Dix whether, after the discussion at the last meeting, and with Addendum B, he felt the abatement requests numbers were defensible now. She also asked whether Addendum A or Addendum B was closer to what other towns, regionally in Durham's situation were doing.

Mr. Dix said Addendum B was based on a statistical analysis and was a valid procedure. He said he didn't feel it was an arbitrary analysis, but acknowledged that the outliers did tend to skew the rest, especially with a smaller sample.

There was discussion on how indicative the two outliers were of the falling market. There was also discussion on the idea of making a regional comparison, and whether this really said much about what was happening in Durham.

Councilor Clark said the Council should take action, but said he was uncomfortable with finding one rate for all of the waterfront properties for which abatements were requested. He said it sounded like this needed to be done house by house, because they were all so different.

Mr. Dix said he though Durham was a unique market, regarding waterfront properties, and he provided details on this. He also said that with such a small sample of sales, comparisons were made between them over and over again in sales analyses, so it was fair to apply one discount to all of them.

Chair Niman said that in Addendum B, the Assessor was saying more credence should be given to the two properties that had sold twice in two years time, that this exemplified a declining market, and that it was a true picture of what was going on. But he said he was thinking that it might be saying something different.

He described a scenario where the property turned over because someone who worked for a big company bought it but then had to sell it because his/her job was transferred. He explained that in this kind of situation, the house might be sold at a loss but the company the person worked for would provide reimbursement for this loss. He said he didn't consider that kind of situation as being typical.

Councilor Stanhope said the data that had been provided didn't really tell what motivated the seller, and also said there wasn't enough data to be relevant, providing details on this.. He said there was no way to understand those two transactions, and relate them to what else was going on in Durham.

There was discussion that in some instances with the abatement requests, there was a difference between what was requested and what Mr. Dix was recommending.

Councilor Sievert asked Councilor Stanhope if there was a need to look for more numbers to justify the abatements being granted.

Councilor Stanhope said he was uncomfortable with the write-ups, and referred to the fact that the previous year, there had been discussion that the Council wanted to see what other municipalities did in this regard. He noted that in his practice, he saw the kinds of defenses assessors put forward, and said he didn't see enough pro or con here to allow him to vote intelligently.

Councilor Julian Smith said the Council was reviewing this information because it hadn't had the will to turn this over to an appointed Board of Assessors. He said perhaps the idea of an appointed board needed to be looked at again. But he said the Council had to make a decision that evening, to either go along with all of the recommendations, or start putting aside some of them for discussion. He said he thought the Council should trust the Assessor, and get this over with.

In response to previous comments from Councilor Sievert, Administrator Selig said the challenge was determining what fair market value was. He said in this instance there was a limited sample, and they were forced to extrapolate from this.

There was detailed discussion on this issue.

Councilor Clark asked if it would be reasonable to look at all the property sales in Durham in order to get an average in what the decrease in assessed value was overall for the real estate market.

Mr. Dix said they had that, which was equalized valuation. He said in 2003, when they did the revaluation, they were at 99% of market. He said by 2005-2006, they were at 87%, and in 2007, they were a little over 92% of market. He said from 2006-2007, the market decreased by 5%, but he said they were still 7-8% above 2003. But he said for waterfront properties, there was a decrease from 2003.

Councilor Leach MOVED that the Durham Town Council approves the recommended 2007 property tax abatements and current use applications using methodology of Addendum B totaling \$28,335.54 as referred to in the "Decision" column of the attached 2007 Property Tax Abatement Recommendations spreadsheet. The Durham Town Council hereby further authorizes the Town Administrator to sign the respective applications on its behalf. Councilor Henry Smith SECONDED the motion.

Councilor Stanhope said he would vote against the motion, and noted that this was the way things had ended last year, with a high degree of frustration on the Council, of not being able to fully understand the numbers.

Councilor Julian Smith said he would vote in favor of the motion. He requested that Mr. Dix no longer refer to houses as homes. He also noted the term "we feel" in the documentation, and asked that some words other than this be used.

Chair Niman said he would abstain, because he didn't have enough information, and wasn't comfortable with the methodology that was used.

It was clarified that this motion included all of the recommendations, including the denials.

Councilor Clark asked what happened if this motion didn't pass.

Chair Niman said this issue could be brought back at another meeting, or, if the Council did nothing more, all the abatement requests would be automatically denied.

Administrator Selig said if it didn't pass, the Assessor could bring back more detailed rationales for the recommendations, and could include what the applicants had actually submitted. He said the Council could have another conversation on the abatement requests. It was noted that July 1st was the deadline, so there would be enough time for another meeting to discuss this.

Councilor Clark said it seemed that the answer was somewhere in the middle. He said he had taken out the high end number and the low end number, and said that answer seemed more defensible. He said he was uncomfortable with either extreme.

Mr. Dix said he had looked at this, but the low number was close enough to the others that it didn't seem like an outlier. There was discussion on this with Councilor Clark.

Councilor Van Asselt said he would vote in favor of this motion, in order to move on to the next Agenda item. He also said that if the Council was dissatisfied with what came before it concerning abatement requests, it should either fix this process, or ask Administrator Selig to fix the process.

The motion PASSED 5-0-3, with Councilor Stanhope, Chair Niman, and Councilor Clark abstaining.

Councilor Stanhope said in abstaining, he had deferred to the wisdom of the Chair. Chair Niman noted had already indicated his reason for abstaining; Councilor Clark said he didn't have enough information.

The Town Council stood in recess from 8:35 – 8:45 pm

Councilor Van Asselt MOVED to amend the Agenda to have Item X A be the next item the Council will discuss. Councilor Sievert SECONDED the motion, and it PASSED unanimously 8-0.

X. New Business

- A.** Review proposed Council-initiated ordinance to amend Chapter 175 "Zoning", Section 175-7 "Definitions" by changing the definition of "habitable floor area" and amending Section 175-54, Dimensional Standards, Minimum Lot Area Per Dwelling Unit, in the Central Business District and the Church Hill District and refer to the Planning Board for review and study

Mr. Campbell provided a detailed history of these proposed changes, dating back to 2006. He said the Ad Hoc Housing Taskforce came into being in 2006, and after a series of meetings, reached consensus that encouraging increased density in multiunit dwellings in the downtown area as well as in other districts where it currently existed and was allowed would be a way to increase taxable value in certain zoning districts as well as promote redevelopment of existing properties.

He said in 2007, the Council discussed the draft ordinance proposed by the Taskforce, and then sent it back to the Taskforce for further discussion. He said the Taskforce was unable to reach consensus on the issue of providing bonus density associated with “professional property management”, and Administrator Selig ultimately sunsetted the group, and recommended that the EDC take up the charge on this issue.

Mr. Campbell said in the fall of 2007, the EDC took up the discussion on the work done by the Taskforce. He said at its May 9, 2008, EDC recommended that the Council move forward with the amendments that were now proposed. He said the rationale for the changes was:

- Revising the definition of habitable floor area to allow bathrooms and bedroom closets to be considered habitable floor area would remove the cloud perceived by landlords over their multi-unit buildings. Mr. Campbell noted that a number of landlords had letters from previous code enforcement officers that differed from the rules the current Code Enforcement Officer had to go by.
- Allowing greater density in the downtown area. He said this idea was all through the Master Plan, and said the EDC agreed that allowing another apartment in existing and future multiunit apartments there, as opposed to squeezing more tenants in each unit, was the better route to take.

Councilor Julian Smith MOVED to refer to the Durham Planning Board for its review and study a proposed ordinance to amend Chapter 175 “Zoning”, Section 175-7 “Definitions” by changing the definition of “habitable floor area” and amending Section 175-54, Dimensional Standards, Minimum Lot Area Per Dwelling Unit, in the Central Business District and the Church Hill District. Councilor Sievert SECONDED the motion.

Councilor Stanhope said the exclusion of stairways, corridors, and hallways from consideration as habitable floor area had always troubled him. He said it was heated, finished space, and was taxed as finished space. He noted that he had personal experience with this issue. He asked if gross floor area was defined as, in terms of how it was calculated.

He also asked who decided what “professionally” was, in terms of “floor plans drawn professionally”. He said he was concerned that the word “professionally” would present an unreasonable burden for a property owner, and involve more expense.

Mr. Campbell read the definition of gross floor area. Concerning the question of why stairways, corridors and hallways weren’t considered habitable floor area, he said he recalled that there had been consensus that these were not areas where people actually lived.

Councilor Sievert said he felt hallways should be included, because they provided egress to and from the other rooms.

Chair Niman provided clarification that the Council could modify the document that evening, and that a motion could be made to that effect.

Councilor Stanhope MOVED to amend habitable floor area to include stairways, hallways and corridors, and to delete the word “professional”. Councilor Van Asselt SECONDED the motion.

Councilor Leach said she would like more information on why these areas weren't previously included as habitable area. She noted that Mr. Campbell had said that the Housing Taskforce had made some concessions concerning this.

Chair Niman said in the old days, a building would be measured from the outside of the building, and then based on the occupancy requirements, one would come up with the number. He said at some point, a change was made to differentiate the types of areas within a structure, and then to exclude some of them. He said this was what had created the challenges with the landlords, because they had documents where the calculations were done by measuring the outside of a building, but the Zoning Ordinance then exclude some of this space.

Administrator Selig said in some cases, it appeared that no measurement had been done, and the Town had simply accepted the property owners at their word.

There was further discussion on what was considered habitable floor area, how this had evolved, and why certain areas had been excluded.

Chair Niman said the situation he had described created a problem financially for landlords, including when they tried to sell a property. He said the proposed change to the Zoning Ordinance was an attempt to clean some of this up. He said it was a compromise arrived at between the landlords, Town staff, etc., where bathrooms and bedroom closets would be considered habitable floor area, but stairways, hallways and corridors would not.

Councilor Clark said if the Council allowed additional livable floor area, the numbers that would be allowed would need to be determined. There was discussion.

Councilor Sievert said he had a problem with removing “professional” from the definition of habitable floor area. He said if an applicant needed a few extra square feet and was using a professional, the applicant would be less inclined to get the square footage if it wasn't really there. He also said there needed to be some kind of scaled standard for the floor plans, because otherwise, it would be Mr. Johnson's interpretation.

There was detailed discussion about how to word this part of the definition.

Councilor Sievert said he could live with “standard scale”.

Councilor Stanhope agreed to a friendly amendment, deleting the word “professionally”, and instead saying “drawn to a standard scale.”

Councilor Van Asselt agreed with this friendly amendment.

Councilor Van Asselt spoke about possible conflicts, in excluding hallways, stairways, and corridors, if the goal was to allow an owner more units in a building, and put more people in it.

There was discussion on this with Mr. Campbell. Mr. Campbell also noted that the change in habitable floor area would apply to the whole town. But he said the change in the Dimensional Standards was specific to the Central Business District and the Church Hill District.

Councilor Clark said he assumed the goal was to create density, but to do this in a reasonable way. He said if the consensus was to exclude these three areas, he believed there was a good rationale for doing so. He said it therefore didn’t seem right to go back and change what seven meetings of the Housing Taskforce had produced.

Councilor Leach agreed, and noted that there were many of the Council members who hadn’t been ready to make that leap yet, especially in the neighborhoods. She said what was proposed was a compromise.

Councilor Stanhope said there couldn’t be more than three unrelated, regardless of how much square footage there was. Mr. Campbell noted that the CB, ORLI, MUDOR, and OR 108 Districts were allowed more than three unrelated.

Councilor Stanhope said that regarding life safety, the Fire Department always came up with a higher occupancy level than what was calculated using the Zoning Ordinance. He said including stairways, hallways and corridors as habitable areas would therefore not result in a life safety issue.

Chair Niman said he agreed with Councilor Clark, that this was a compromise, and he said he would support it and would vote no on the amendment. He said if the motion failed, he would be happy to support the wording change Councilor Stanhope had recommended concerning “professionally”.

Councilor Van Asselt asked why the minimum lot area per dwelling was not being brought down further than 3000 sf for the Church Hill District. He said it seemed like a big jump from 900 sf for the CB District to 3,000 sf for the Church Hill District.

There was discussion about this, with Chair Niman saying the proportions were about the same for the CB District and the Church Hill District. He also said it had been thought that the districts should be treated somewhat differently, and that not as much density was wanted for Church Hill because it was a transitional district. He said there was general support for this approach in Town.

Councilor Sievert said it was hard to justify why hallways, corridors, and stairways were not habitable space. He noted that these kind of quirky things often showed up before the ZBA. But he said if the issues involved were already addressed in dropping down the minimum lot area per dwelling unit from 1200 to 900, so be it.

Chair Niman said Councilor Sievert was right, but he said he expected that at the public hearing there would be several people in the audience who would have a problem with not excluding these areas, because of density concerns. He said this why he preferred more of an incremental approach. He said this would legalize what people were already doing. He provided details on the possible positive implications of this, in terms of property management. He said perhaps in a few years, if things were calm, the Council could take the next step and get rid of the exclusion of the other areas.

Administrator Selig said he agreed with this approach.

The revised motion was:

Councilor Stanhope MOVED to amend habitable floor area to include stairways, hallways and corridors, and to delete the word “professionally” and replace it with “to a standard scale”. Councilor Van Asselt SECONDED the motion.

Administrator Selig said a better way to put this would be to say, “include all circulation areas”, rather than “include stairways, hallways, and corridors”. He said the definition for habitable floor area would then read “Heated areas used daily for living, eating, cooking or sleeping, including bathrooms, bedroom closets, and circulation areas, which would include stairways, hallways and corridors; but excluding garages, storage areas....”

There was agreement on this.

The motion FAILED 1-7 with Councilor Stanhope voting in favor of it.

Councilor Van Asselt MOVED to strike the word “professionally”, and replace it with “to a standard scale”. Councilor Leach SECONDED the motion.

Councilor Julian Smith said he didn’t like the word “standard”, but would vote for the motion.

The motion PASSED 8-0.

The original motion, as amended, PASSED unanimously 8-0.

D. Discuss and adopt the Town Council’s list of goals for 2008/09

Councilor Leach reviewed the process she had used to refine the Goals list further, based on input from Council members. She noted some additional comments from Councilor Needell that were in a separate document that had been provided to Councilors. She then went through the items on the list that might need further discussion:

Goal I – bullet for action plan for achieving a balance between economic development and preserving open spaces; also, the bullet on idea of holding a community-wide discussion regarding future planning

Goal II – bullet regarding idea of moving forward with recommendations for green development; also, the bullet on the Stone Quarry Drive and Durham Business Park projects

Councilor Leach asked if Councilors had any other items, other than those she had listed, that they wanted to discuss.

Councilor Julian Smith said he would like to drop the Core purpose and values language. There was discussion on this. Councilor Leach noted that two of the Councilors who had gotten back to her had deleted, one left it in, and two made no mention of it. She said she felt it should be taken out.

Councilor Henry Smith questioned the reasoning behind wanting to take the core purpose and values out, and Councilor Leach said she didn't think they meant anything. Councilor Van Asselt said he felt they didn't have anything to do with the Council's 2008-2009 work goals.

Councilor Stanhope MOVED to take the Core Purpose/Values language out. Councilor Julian Smith SECONDED the motion, and it PASSED 7-1, with Councilor Henry Smith voting against it.

Goal I “Create a vision for the Town that includes the following:

Councilor Leach said there was a suggestion that instead of the wording in the first bullet “...make Durham more affordable, and preserving open spaces that are important to the community”, it should say “..maintaining Durham's character.”

Councilor Clark said he thought “maintaining Durham's character” was a broader point of view than “preserving open space”. He said part of Durham was its rural character, but said he believed that the vision for Durham's downtown area and infrastructure was a bigger conversation than open space, and said these things were as vital to the identity of the community as the corridors were.

Councilor Leach said she very much agreed with this, and Councilor Van Asselt said he agreed as well.

Chair Niman asked if it therefore made sense to keep “maintain Durham's character”, and remove “preserving open spaces”, and Councilor Leach said yes. She asked if Councilors were ok with this.

Councilor Henry Smith said he would like to see something like “maintaining Durham's rural character”, or the wording that already existed: “preserving open spaces that are important to the community”.

Councilor Van Asselt said the issue of character related to the fact that Durham was a community that hosted the University, and had a lot of things that related to this other than rural, open space.

Councilor Clark said there had been a number of comments from Councilors that the word “character” needed to be defined better, and said he agreed with this. He said the Council needed to do a better job of articulating the vision it would like to achieve.

Councilor Leach agreed. She said Councilor Clark had kept the word “rural” in, but said she had taken it out. She said she personally didn’t feel that Durham was rural. She also said she felt these things needed to be defined more, and said the action plan process could address this.

Chair Niman said how to move forward with the Council goals would be an item on an upcoming agenda, and he said the Council would flesh out what these kinds of things meant as the process moved forward. He said he didn’t want to give anyone the impression that they were adopting this language and they were done. He said it was just the beginning, and the Council as a whole would decide how to move forward.

Councilor Leach noted general comments received under this goal, and said these things would be considered as the action plans moved forward.

There was discussion about whether Durham was rural, with Councilor Julian Smith and Councilor Leach stating that it was suburban.

Administrator Selig stated that Durham’s character was a number of things: its historic character, the variety of waterfront areas, the downtown area, the rural areas, etc.

Councilor Leach said the word “character” could encompass a variety of things, and said “rural character” was too narrow.

Councilor Julian Smith said he thought a number of people would be bothered by the idea of removing “preserving open spaces that are important to the community.” He suggested it might be put in a separate section of the goals document, perhaps to include expanding recreational opportunities.

Councilor Stanhope said there was a large constituency in Durham that was concerned about protecting the Town’s gateways and scenic vistas, and he said the Council had some obligation to acknowledge this in the goals. He said the goals should say the Council wanted economic development, but not at the expense of these things. He agreed with Councilor Julian Smith that it should be put in as a bullet later on.

Councilor Leach said she disagreed. She said the Council had never had a discussion on gateways, and hadn’t come to any kind of consensus on this. She said if they wanted to put the wording in about preserving open spaces, it should go back where in Goal I where it had been. She said she did not feel it should be combined with recreation goals, and also said it shouldn’t be a separate goal.

Councilor Julian Smith suggested the language “maintaining Durham’s character, by preserving open spaces”.

Chair Niman said that wording defined character solely in terms of buying undeveloped pieces of land.

Councilor Clark suggested that the wording should be “maintaining Durham’s character, to include preserving open spaces...”.

Councilor Leach said the definition of character could be developed as part of the action plan.

Councilor Clark said the question was whether to define it here, or define it more broadly and assume that it would be defined further as they went along

Councilor Henry Smith said the Council might not have defined gateways, but he said the Master Plan spoke about them as something to pay attention to. He said he agreed with Councilor Stanhope that credence should be given to this.

Councilor Stanhope said that perhaps the Council needed to look at the scenic vista issue, so various boards and committees would have some direction concerning it.

Councilor Van Asselt said what Councilor Clark had come up with regarding character was enough. He asked why open space should be singled out over other things Administrator Selig had listed regarding Durham’s character. He said open space would be considered when they discussed this issue.

Councilor Sievert said the action plan should address this issue, and said that was what the Council’s responsibility was.

Councilor Clark said the way the bullets were laid out under Goal I was unbalanced, and said there should be a third bullet under Goal I about defining Durham’s character and preserving it.

Councilor Leach said for the last 50 years, the balance had been the other way toward preserving open spaces. She said she had no problem with the Council now looking at other things. She said she thought things had been totally unbalanced up to this point.

Councilor Clark said he couldn’t disagree with that, but said he didn’t think they should therefore overcompensate.

Councilor Van Asselt said if the Council really wanted to overcompensate, it could simply say “an action plan to make Durham more affordable”, and forget about “character”. He said no one was arguing that they do this. He said he felt Councilor Clark’s words were totally adequate to develop the action plan.

Chair Niman said there was still a fundamental problem in Town, in that there was a group that wanted to talk about gateways, and another that wanted to talk about economic development. He

said the Zoning Ordinance put all of the commercial zones into the gateways, so there was conflict. He said if all the gateways were protected, the question was where the Town would do economic development.

Councilor Stanhope said he disagreed, and he noted the attention paid to gateways as part of commercial development in Greenwich, CT. He said these developments looked like country clubs, and said as a consequence, Fortune 500 companies were attracted to locate there, because of the attention paid to gateways. He said he recognized what Councilor Leach had said, but said he thought Durham's gateways were a critical part of development in the Town. He said the kind of development that this would attract would save the Town's tax base over time.

Chair Niman asked Councilor Stanhope if he was saying that building attractive buildings in the gateways would be fine.

Councilor Stanhope said people driving by such developments in Greenwich couldn't even see them. He said he realized the challenges to achieving that kind of thing in Durham. He said perhaps they needed to go back to square one and identify where they really wanted to put nonresidential development. He said there was a bigger question here, and said the attention being paid to it necessitated not just burying it.

Councilor Van Asselt said he didn't think that using Councilor Clark's words concerning character was burying it.

Councilor Van Asselt MOVED to include the following language in Goal I "An action plan to achieve help economic development to make Durham more affordable and maintain Durham's character". Councilor Stanhope SECONDED the motion.

Councilor Henry Smith said while what Councilor Leach had said about the last 50 years in Durham had been partially true, there had been development in Durham right and left. He said he felt the balance had been in favor of development over that time. He said these developments had been good, and the Town had maintained some of its gateways and open spaces, which was crucial. He said he was not opposed to keeping "preserving open spaces that are important to the community."

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

Councilor Van Asselt MOVED to delete bullet 3 under Goal I, "Consider holding a community-wide discussion, including all boards and committees, to come to some agreement on future planning and to determine how the ideas and goal can best be accomplished. Councilor Stanhope SECONDED the motion, and it PASSED 8-0.

Goal II – Support Economic Development Initiatives

There was discussion about the 4th bullet under this Goal regarding green development, and what exactly the Council had agreed on concerning this at the previous meeting.

Chair Niman asked if this was what the Energy Committee was tasked with, and whether perhaps the Council would be duplicating their efforts,

Councilor Clark said he had only sat in at one Energy Committee meeting, and said the Committee had a lot of work to do in order to get where the EDC was. He said his sense was that they needed some support and advocacy from the Council, and said a Council goal to encourage their agenda would be very useful.

Councilor Leach said perhaps the goal needed to be changed along those lines. She said at present, it sounded like the Council would be doing the work.

There was discussion on what the wording should be.

Councilor Leach said her concern was that the Council would have the Energy Committee spend a lot of time on this, and the Council would then be expected to support the recommendations the Committee brought forward.

There was further discussion on this, with Councilor Stanhope noting that the goal didn't say that the Council would approve what came forward.

Chair Niman said he felt that what would move this forward was Perry Bryant's business model, which would show the payback for using green technologies. He said this would then get other developers to expand upon business model

Councilor Clark said this was a win-win situation, in terms of what the work of the Energy Committee could potentially do for Durham, for businesses, and for the earth. He said it involved energy for profit, solving the Town's transportation issues, connecting the neighborhoods to the downtown without everyone having to get into a car, etc. He said this was the unifying thing that could bring all of the factions in Durham together, and said it was an issue that was emerging so fast that they were going to have a hard time getting out in front of it.

Chair Niman said the question was how to come up with concrete approaches, such as bike paths, so that people in Durham would use bikes instead of cars. He said with something like this, the Council could then set it as a goal and work on it. He said the question was how to do define these energy issues in a way that the Council could get its hands on them and could move forward with them. He said this was the kind of thing they needed in order to make this a Council goal.

Councilor Clark said that was the kind of direction the Energy Committee needed.

Councilor Leach asked if they were going to change this bullet to say the Council should support the Energy Committee, how would the Council support the Committee?

Administrator Selig suggested the following wording: "encourage and support the energy committee in the formulation of recommendations for green development, and potential incentives for the use of green technologies".

Chair Niman said that would be a good first step. He said at some point, it would be useful to have a Council discussion on a broader vision, and tangible things that could be done. Councilor Leach said she thought this was something the Energy Committee should do.

He said this goal could be a placeholder/action plan kind of thing, like the action plan bullet under Goal I. He said the Council would then have to put some effort into shaping it.

There was Council consensus concerning the wording Administrator Selig had developed.

There was discussion on the last bullet under Goal II: “Address the Stone Quarry and Durham Business Park.”

Councilor Van Asselt said his suggestion had been regarding completion of these projects. He said there should be a goal to get them done.

Chair Niman said there was a misperception that progress wasn’t being made on the Business Park because of the lousy economy. He said the reason they weren’t making progress on the Business Park was that they were waiting for resolution from DOT regarding how many cars could be put there, so it would be known how big a building could be built. He said he didn’t know what the Council could do, either than wait.

Councilor Van Asselt said the wording should still say the goal was to complete these projects, and Councilors agreed the wording should be changed to express that.

There was discussion on the last bullet under Goal III: “Continue discussion on the role of the Council and the structure of the ORCSD.”

Councilor Leach noted that Councilor Needell was the Councilor who wanted it to be removed, and that another Councilor would like it to be the focus of the entire goal. She said she felt it should be left in.

The Council agreed to leave it as it was.

Administrator Selig suggested that under Goal IV, for the 4th bullet, a period should be put after Store 24, and the wording after that should be taken out. This was agreed on.

Regarding Goal VI, “Determine the future of the Town Hall”, it was agreed to keep all of the bullets.

Regarding Goal VII, “Review Management and Organizational Structures”, there was discussion on the last goal. Councilor Leach said it was there to encourage the efficiency methods that Jerry Gottsacker had discussed regarding continuous process improvement, and Councilor Van Asselt said he was fine with that.

Councilor Clark suggested that there should be some kind of mechanism where the Chairs of the committees got together to see if their agendas aligned, and if there could be some synergies.

Councilor Leach and Chair Niman agreed, and he said this should fall under ways to strengthen communication and collaboration.

Concerning Goal VIII, there was discussion about the wording “continue to explore cooperative efforts”, and whether more details should be provided concerning this. It was agreed to leave this general.

There was discussion on Councilor Julian Smith’s language concerning open space, and that this issue would be addressed as part of the action plan.

Councilor Van Asselt MOVED to adopt the Town Council’s List of Goals for 2008/2009, as amended this evening. Councilor Stanhope SECONDED the motion, and it PASSED 7-1, with Councilor Julian Smith voting against it.

E. Continued discussion on reconstituting the Durham Apportionment Committee as the Tri Town Education Committee

Administrator Selig said he called the Town Administrator of Newmarket to see if there was interest in the governing body of that town meeting with the Durham Town Council, or as part of some other process. He said his sense was that Newmarket would probably be willing to talk with Durham.

Councilor Leach asked for clarification concerning this, and Administrator Selig provided further details.

Chair Niman said the Council needed to decide if it would be interested in talking with Newmarket. He said another issue was that he and Councilor Clark had moved forward with contacting individuals and groups to see if they were interested in participating on the committee, and said there had been a very positive response from everyone he had talked to.

He said they were planning to convene a meeting, and to see what kinds of things the committee would be interested in working on. He said he and Councilor Clark would report back to the Council to see if there should be official Council representation on the committee, or if the Council should stay out of it and let the committee function on its own. He said a challenge was when to schedule this, given that summertime was near.

Councilor Stanhope asked if the Council was being asked for its blessing on this, and there was discussion.

Councilor Van Asselt said he didn’t recall if it had been made clear that the Council wanted Chair Niman and Councilor Clark to move in this direction. He said he was prepared to support this idea publicly.

Administrator Selig said if Newmarket had an interest in working with Durham, they could meet with the committee as well.

There was discussion on what the scope of this effort would be.

Councilor Van Asselt MOVED to make Chair Niman and Councilor Clark the representatives of the Town Council with respect to School issues. Councilor Stanhope SECONDED the motion, and it PASSED unanimously 8-0.

X. New Business

B. Other business

There was brief discussion on information sent to the Council regarding EMS services, and approaches that might be more cost-effective for Durham.

XI. Nonpublic Session

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

XIII. Adjourn (NLT 10:30 PM)

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

Adjournment at 10:15 pm.

Victoria Parmele, Minutes taker