

This set of minutes was approved at the Town Council meeting on September 8, 2008

**DURHAM TOWN COUNCIL
MONDAY, JULY 21, 2008
DURHAM TOWN HALL – COUNCIL CHAMBERS
MINUTES**

MEMBERS PRESENT: Councilor Cathy Leach; Councilor Jerry Needell; Councilor Peter Stanhope (arrived at 7:08 PM); Councilor Henry Smith; Councilor Mike Sievert; Councilor Doug Clark; Councilor Karl Van Asselt

MEMBERS ABSENT: Chair Neil Niman; Councilor Julian Smith

OTHERS PRESENT: Town Administrator Todd Selig; Fire Chief Peter O’Leary; Town Clerk Lorrie Pitt

I. Call to Order

Chair Pro Tem Leach said she would be serving as Chair for this meeting, in Chair Niman’s absence. She called the meeting to order at 7:02 PM.

II. Approval of Agenda

Councilor Van Asselt MOVED to approve the Agenda as submitted. Councilor Henry Smith SECONDED the motion, and it PASSED unanimously, 7-0 (Councilor Stanhope had not yet arrived).

III. Special Announcements

Introduction of newly promoted Fire Captain - Paul Marcoux
Swearing in of new Firefighter – Nathan Katz

Administrator Selig noted the retirement over the past few months of three fire department captains, and said Paul Marcoux had been promoted to one of these positions.

Chief O’Leary thanked those who had made the hiring process run so smoothly, especially Corey Landry, who had worked to get the department the very best candidates. He said Mr. Marcoux was the guy to go to when something needed to get done, said he was well supported by his colleagues, and that the Town was lucky to have him.

He said Mr. Katz had graduated from UNH with a degree in psychology, and had been an EMT in South Berwick. He said he was a high caliber employee, and would be a good fit for Durham.

Town Clerk Lorrie Pitt swore in both Captain Marcoux and Mr. Katz.

IV. Approval of Minutes

Page 10, 2nd full paragraph, should say "...a hypothetical 0% Budget increase would be developed."
Also last paragraph on that page, should read "...implications of a 0% Budget increase...".

Councilor Clark MOVED to approve the June 9, 2008 Work session Minutes as amended. Councilor Needell SECONDED the motion, and it PASSED 5-0-3, with Councilor Peter Stanhope, Councilor Van Asselt and Councilor Sievert abstaining because of their absence from the meeting.

V. Councilor and Town Administrator Roundtable

It was noted that Nicole Moore wanted to remind everyone that Durham Day would take place on Sunday, September 14, 2008 from 12:30-4:30 PM at Wagon Hill Farm, and that residents interested in assisting with this event should contact her at 868-6775 or at durhamday3@yahoo.com.

Councilor Clark said the recent Energy Commission had discussed the idea of providing some relief to fixed income residents, given the price of oil. He asked if the Town had any plans concerning this.

Administrator Selig provided details on current programs available to address this, and Councilor Clark asked that this information be put on the Friday Update.

Councilor Henry Smith said he believed that increased money would be available through the State Fuel Assistance program, and said the Friday Update could inform people about this.

Councilor Stanhope asked if it would be appropriate to consider freezing capital expenditures on improvements to the Town Hall until the issue of possible relocation of the Town Hall and the Police Department were resolved. He said the Town would be better served spending such funds on lowering the tax rate. He also noted that during the last election season, much had been said about the University paying its fair share, but said that since that time, there had been discussion but no solutions. He asked why this issue couldn't be resolved in a more timely fashion, and asked that Administrator Selig get back to the Council with some resolution and not just reports.

Councilor Sievert said the Parks and Recreation Committee had met recently. He said goals were set, and said the Committee would be moving forward on various initiatives. He said one of these was to starting to look at making plans for some of the other Town park properties.

Administrator Selig said there had been a number of inquiries regarding the current Zoning initiatives before the Council, and the process by which Zoning changes could be initiated. He provided details on the three methods by which a Zoning proposal could come forward. He also said that typically, if the Council felt that a proposed Zoning change didn't have merit, it would vote against it on first reading. But he said if the Council wanted further feedback before making up its mind, it would typically pass it on first reading, and then allow the process to continue, and later decide if it wanted to pass the proposed Zoning change.

There was detailed discussion on how proposed Council-initiated Zoning changes could be refined, during this process, and if any changes would then have to go back to the Planning Board.

Councilor Needell said this process had not been used often. He noted that he had heard a lot of concern expressed about it, and said people appeared to be uncomfortable with it. But he said this was the way the Ordinance had been written, and said the Council had not been circumventing the rules. He said the comments on the process were welcome, and said it was within the Council's purview to change this process in the future if it decided to do so. He said he felt people should respect the current process.

Councilor Julian Smith noted the Zoning proposal regarding the Church Hill lots, and that the Planning Board had voted to recommend that the Council not go forward with that change. He spoke about the idea of reducing the scope of the proposed change to include just the two parcels on Main Street, which would represent about a 2/3 decrease in the total area involved. He asked if such a proposal would have to go back to the Planning Board, and also asked how the Council would go about proposing this kind of change.

Administrator Selig said he felt that as long as the proposal represented a reduction in what was proposed, it would be safe for the Council to go forward with it. But he said the Council might want to send the revised proposal to the Planning Board anyway, since the Board had voted against the original proposal. He noted that right now, the Ordinance Resolution included a statement that the Planning Board was against it, and said perhaps if it was sent back to the Planning Board, it would vote in favor of it, and this could then be included in the Resolution.

Administrator Selig told Council members that the agreements with the University concerning the Strafford Avenue parking lot and the Pettee Brook parking lot had both been extended by 6 months to allow the Town and the University time to continue negotiations. He provided details on this. He also said there was active discussion with the University regarding the impact to the Town of policing services, and the issue of whether Durham would be paying less for these services if the University were not in Town. He said the answer to this question was yes, but said the goal was to find amenable ways to address this, including cash as well as possible private/public partnerships.

VI. Public Comments (NLT 7:30 PM)

Barbara Wright, Pendexter Road, said she was speaking as a representative of residents of Pendexter Road. She made several point in reference to the proposed rezoning of RB land to MUDOR.

- She said the MUDOR proposal involved re-characterizing an existing neighborhood, causing existing single-family homes to become non-compliant. She said this would change the rural quality of the area, and potentially force out homeowners there.
- She said the area under consideration for rezoning was being considered as a bundle, but said there were actually two sections there that were entirely different in character. She provided details on this.
- She said adding more units to the existing Madbury Road complex could currently be handled by a variance, and said she considered that preferable to rezoning.
- She said changing Pendexter Road to accommodate student housing or office research could increase the density there, and would also increase traffic. She provided details on how this would have tax implications for the Town.
- She said increasing the number of rental units would increase the transient population, and she spoke in detail about the possible negative consequences of this.

- She provided details on the unfairness of a zoning change that would make the homes of existing residents non-compliant. She said student housing was important in Durham, but said making that a higher priority than existing residents, who were a net gain economically to the Town, seems inadvisable for social and economic reasons.
- She strongly encouraged the Council to work with UNH to explore the idea of developing some UNH land for student housing, and she provided details on this.
- She said the meetings on this proposed zoning change had been heavily attended, and said all input received was negative. She also noted that the Planning Board had voted 6-1 not to recommend to the Council that this go forward. She provided details on how the voting had gone.

Hans Heilbronner, 51 Mill Pond Lane, said that for 40 years, he had fought encroachment on the Town's green belt area from Chesley Drive up to Church Hill. He said he thought the idea of rezoning Church Hill, and the idea of student housing there was one of the most atrocious he had heard. He said this would desecrate the small piece of greenery that protected the residential area, and said the degree of harm to the community, as a result of student housing, was beyond reckoning. He urged the Council to not allow this proposal to go any further.

Phyllis Heilbronner, 51 Mill Pond Road, asked the Council to think very seriously about going ahead with the Zoning change to Church Hill, stating that she and several other people she represented were very much opposed to this. She said she didn't know who would benefit from this in the long run. She said she realized that the Town and the University wanted to work together, and said she support these efforts. But she said she didn't know why the Town was in the business of providing student housing, and said the University should take on these burdens. She also said she wondered who would benefit from student housing at Spruce Wood.

Roger Speidel, Noble K Peterson Drive, said that at the most recent ORSD Board meeting, the Chair Pro Tem had reduced public comments from 5 to 2 minutes. He also said that at the last meeting, the Chair Pro Tem had said the reasons for rises in the tax rate was the fact that there was so much nontaxable property because of the University, and also the fact that there was very little commercial development. Mr. Speidel said he agreed that there was very little commercial development, but said using UNH as a tax rate whipping boy didn't fit with the facts. He said he had told the School Board that the total tax rate was high because the Board had increased the School Budget 39% between 2003 and 2008, which was almost 3 times the rate of inflation.

Mr. Speidel reviewed the Tri-town School Board Committee report, concerning increases in the number of faculty, decrease in the number of students and increases in the cost per student, over the past several years. He said this money that had been poured in hadn't impacted college admissions, and had not increased testing scores. He said the information in this report was a textbook on overspending, and said he had asked the School Board why it didn't put a stop to this. He also said he had suggested that the Board make a motion that there would be a 0% increase in this year's School Budget. Mr. Speidel said Durham taxpayers needed the Town Council's help with this issue.

David Sietz, 37 Mill Pond Road, spoke in detail about the existing buffer zone between businesses and residents on Church Hill, and about the importance of buffer zones in general. He said the Council's job was to see things through other peoples' eyes, and he asked Council members to do this.

Tim Horrigan, Faculty Road, noted two issues key to the Church Hill rezoning proposal were workforce housing and educational funding, couldn't be solved that evening. He said it was important to find a way to fund education that didn't penalize families, and he also spoke about the importance of making the downtown more vibrant. He said not all young, single people were necessarily students, and said they needed to live somewhere. He also noted that in some cases when there were problems downtown, the instigators were not UNH students. He said the Town needed to do the best it could to keep students near campus.

Derek Sauers, 32 Oyster River Road, provided a map to Councilors developed by a working group at the State level that had come together to figure out how to better protect drinking water sources. He said the area of the RB district proposed for rezoning to ORLI was likely to be impacted negatively, even with careful development, and said he didn't see how the more intensive development that this proposal would allow made sense. He said the Town shouldn't be rushing to develop it, and instead, should be rushing to protect it. He noted that the existing Zoning required conservation subdivision in the RB district, but that this capability would be lost if the area was rezoned to ORLI.

He said this push to rezone was not coming out of a thoughtful dialogue about the kind of development the Town wanted, and instead was being driven by one development proposal. He urged that the conservation subdivision process be applied to commercial zones, as a proactive step that could be taken.

Bill Hall, Smith Park Lane, said Agenda Items X B and G concerning Church Hill were overlapping proposals. He said he was one of the only resident taxpayers in that area, and that only two of the lots fronted on Main Street. He noted that Councilor Van Asselt had said at an earlier meeting that a lot of people in Town worried about an investor buying a house and filling it up with students. He also said Councilor Stanhope had spoken about walking downtown and seeing things in a state of disrepair. Mr. Hall said he didn't want to see this move up Church Hill.

He spoke in detail about vandalism on Church Hill over the years, and said densifying that area wouldn't help the situation. He provided details on the crowding of people and cars that would result from this, stating that the green area between him and Red Tower served as a buffer now, and that he didn't want to see the parking lot area increase. He said he didn't think there had been good planning for these Zoning proposals, and said he hoped that neither X B or X G would get passed on for second reading.

Gail Carey, 49 Oyster River Road, said she had moved to the Faculty neighborhood 10 years ago, and said a big attraction at the time was the greenway off of Chesley Drive. She said her children loved it, and traveled through the area frequently. She said this area provided a wonderful, important buffer for the neighborhood, noting that her 91-year old dad walked the area as well, to go to the library. She spoke about the thoughtful study that had been done concerning the redevelopment of Mill Plaza, which involved a lot of public input, and said it appeared that the proposed Zoning change for Church Hill flew in the face of what that study had proposed. She asked that the Council look at this study before rushing to rezone an area that was such an important part of it.

Diana Carroll, 54 Canney Road, said she didn't live in any of the neighborhoods that would be impacted by the Zoning district proposals, but said she was there to speak because she was concerned about these neighborhoods, and the negative impacts these changes would have on them.

She said a primary job of the Council was to protect these neighborhoods, and said the Council didn't have the job of providing housing for students.

She said residents shouldn't have to worry about their properties becoming nonconforming, or about increasing density exacerbating existing problem situations. She said she hoped the Council would not pass these proposals on first reading, and that if it did decide to pass them, it would vote no on them. She noted that at a recent Conservation Commission meeting, Jack Farrell had said that he didn't need the whole Zoning change concerning the RB district, and that it could be reduced. She suggested that the Council read the minutes of that meeting.

Mark Henderson, 12 Pendexter Road, said he was beginning to question the RB to ORLI proposal, from an economic standpoint, stating that he wasn't sure that as an investor, he would want to put student housing there. He said he was a good friend of the owner of the property out there, but said he wasn't sure what the rezoning would accomplish. He questioned the idea of putting student housing at the end of a gateway to Durham, and also said it wouldn't be the most desirable place for students to live.

Mr. Henderson also questioned the idea of student housing as the place for Durham to get tax dollars, noting that the economic situation had changed in Durham, and that students were either trying to live on campus, downtown, out of town, or were living at home. In addition, he said Pendexter Road was a residential neighborhood, and said it didn't seem to be appropriate to have a multiunit development there.

Diane Woods, 21 Garden Lane, said she was there in support of everyone who had spoken about protecting Durham's rural, environmental, and historical character. She said the rezoning proposals didn't make sense for Durham, and said she would like to see more farms in Town, not more student housing. She said student housing could be built on the UNH campus, and said she was against these proposals.

Beth Olshanksy, Packers Falls Road first congratulated the Council for meeting goal #7, bullet #2 of its Goals/Action plan for 2008, to develop a strategy to increase citizen involvement, and said that hopefully, some residents would stay involved. She noted that several people now on the Council had become involved in Town when their neighborhoods were under fire. She then spoke about the letter she had provided to the Council.

Ms. Olshansky's letter to the Council provided comments on several issues:

- The sale of the Durham Town Hall
- The replacement of the Wiswall Bridge
- The proposed rezoning of Church Hill
- Conservation subdivisions for commercial zones

She said an original Council goal for this year talked about maintaining a balance between economic develop and preserving town character. She said this character could mean improving downtown character, protecting neighborhoods, preserving gateways, preserving the remaining character in the Historic district. She said she had been sorry to see that the word "balance" had been removed from the Goals list, after she had congratulated the Council for having a goal that reflected the sentiments of the citizens. She said these sentiments had been expressed at the present meeting.

She reminded the Council that when the platform the Durham Taxpayers had adopted for the last election spoke about preserving a balance between economic development and preserving Town character. She said the present wording in the Council Goals still reflected the fact that these two things needed to work together, and said as the Council discussed that action item, she hoped they would look at that. She said she supported economic development, but said it had to happen hand in hand with protecting Town character. She noted that the State Office of Energy and Planning supported this concept

Ms. Olshansky said she was especially concerned about the idea of selling the Town Hall, and said this and other items needed to be thought through. She said although a public hearing concerning the possible idea of selling the Town Hall wasn't required, she hoped the Council would consider having a hearing before going any further on this matter.

Chair Pro Tem Leach said there hadn't been any Council discussion yet on the possible selling of the Town Hall.

Joshua Meyrowitz, Chesley Drive, noted that he had spoken previously on the Church Hill Zoning proposal. He said that regarding all the Zoning changes proposed, putting in some students here and there wasn't a problem, but said the idea of putting a student housing structure in a neighborhood was a problem.

He said he was excited to hear about the plans for the Milne property, and noted that when there had previously been a threat to the greenway buffer, Ms. Milne had said the bequest would be withdrawn if the buffer was destroyed. Mr. Meyrowitz said there were some endangered species living in the greenway area, stating that it was a real treasure, and served in some ways as a public park. He asked that this buffer not be destroyed. He said he supported the redevelopment of Mill Plaza, as was open to some creative uses of Church Hill, as long as the buffer remained.

He said these were very unpopular Zoning proposals, and recommended that some planning should be done, to develop plans everyone could agree on, before rezoning that among other things would allow some horrific permitted uses.

Peter Andersen, Chesley Drive, said he had a protest petition regarding the Church Hill Zoning proposal. He said there had been significant discussion by residents regarding this proposal, and none of it had been positive. He provided details on this, and also said notice to residents who might be affected by zoning changes should be broader.

Dave Howland, Chesley Drive, former Chair Pro Tem of the Mill Plaza Committee, said he was there speaking for himself. He spoke about the importance of reaching consensus as part of the Mill Plaza process, and said the Committee had recognized the importance of buffering the neighborhood for a variety of reasons, as part of redevelopment of that area. He said it wasn't surprising that the buffer issue had come up as part of the Church Hill Zoning proposal.

He said it was fair to say that the proposed Zoning change had come out of left field, and said it was not surprising that it had been perceived by many in the neighborhood as a rudderless grab for commercial land. He said many of the residents who were present were fans for lowering taxes, and wanted some growth. He said he thought that if this Zoning proposal went forward, it would get things off on the wrong foot, and would put a big part of the Town on the defensive.

Mr. Howland suggested that everyone should take a breath, and said if rezoning sections of Church Hill closer to Main Street and into the Plaza property was something desirable, there could be a thorough conversation about it. He recommended that the Council take another look at the Mill Plaza report.

There was discussion between Chair Pro Tem Leach and Mr. Howland about the extent to which the buffer was addressed in the recommendations of the Mill Plaza report. Mr. Howland said the buffer, and the importance of respecting the neighborhood, had figured largely into discussions and the report. He said there had been a clear-eyed discussion about what development would work for the neighborhood and what wouldn't work.

Chair Pro Tem Leach asked Mr. Howland if he was saying that there might be opportunity to come to common ground.

Mr. Howland said that in the sensitive area, the closest the Committee had come to a heavy building footprint was a library, and said there wasn't much appetite for putting the Town Hall there as well. He said if some properties changed hands, that could change the situation, but he said the core issue of providing a buffer wouldn't change.

Peter Andersen noted that the area to be rezoned in Church Hill was within 100 feet of College Brook, and was within the floodplain.

Robin Mower, 11 Faculty Road, noted that the Town Council Zoning initiative had begun at the request of a single Councilor, and said that might be one of the reasons for concern about the process. She said at the last Council meeting, she'd suggested that a discussion needed to begin about how Durham wanted to see itself in the future, and she said the entire community should be invited to participate in this discussion. She said questions like where residents wanted to see change and what areas that historically had informed the town's character should be protected were questions that were typically raised during the development of a Master Plan.

She said she had heard many times over the past year that members of various town boards as well as residents thought that a revision of the Master Plan was long overdue. She said some also claimed that it was possible to quote the Master Plan to support whatever one's position was on an issue. She said that between five and ten years was a reasonable interval, according to the Southern New Hampshire Planning Commission, and she recommended that it was indeed time to revise the Master Plan.

She said it was only by doing so that they could all get a sense of what the community wished. She quoted from the handbook, *Preparing a Master Plan for Your Community*, concerning this process, and the fact that with the adoption of House Bill 650 in May 2002, RSA 674:2 [which states what Master Plans should cover], was amended to include references to smart growth and to include mandatory sections, a vision and a land use section."

Ms. Mower said a vision for the town and the future use of its lands was at the core of nearly every public meeting discussion, but she said right now people were talking around these issues, not focusing on them. She said while the idea of Planned Unit Developments, and significant rezoning

proposals might present appealing ideas for change, these should not be adopted without revisiting the Master Plan itself and engaging the community.

She said important issues had been raised at the July 7th Council meeting, and said it was impossible not to sense the frustration of those who participated in that meeting, regardless of the points they were making. She said if Durham ever needed a way to help the community cohere, it was now. She said just as the EDC was beginning to consider ways to create incentives for businesses to invest in Durham, the Planning Board and Town Council needed to consider ways to encourage people to accept changes that benefited the entire community.

She asked the Council to talk about revising the Master Plan, not just as a way of complaining about what wasn't working today, but as a way to start working together to create a future for Durham that all stakeholders could look forward to.

Councilor Mike Sievert said it wasn't right to say that the Zoning initiative was started by one Councilor, stating that the Rental Housing Commission, the EDC, businesses, etc. were involved as well.

There was discussion on this with Ms. Mower.

Beth Olshansky said she favored some kind of rezoning of RB to ORLI, but said this needed to be done as part of a sensitive plan, that included requiring conservation subdivision for commercial developments, which among other things would set aside acreage as a buffer for the Town water supply. She said the Council also needed to go back to look at the Table of Uses, as part of this. She suggested that perhaps just the 14 acres of Spruce Wood that were part of the Tecce proposal could be rezoned, which would allow more time to thoughtfully consider rezoning the larger area.

Peter Andersen said he was upset that there were two Zoning proposals concerning Church Hill, and said enough was enough.

Councilor Needell asked Administrator Selig to clarify what the situation was concerning the possible sale of the Town Hall.

Administrator Selig said Scott Mitchell, the owner of the Irving Station, had an interest in acquiring the parcel and constructing a drugstore there. He said Mr. Mitchell felt this was the highest and best use there, and was willing to offer the Town \$2 million for the property. He said a very public discussion would have to take place if this idea moved forward.

He said he planned to invite Mr. Mitchell to discuss the idea with the Council and to see if there was any interest in it. He said a drugstore in this location would be rather small and would have no drive-through, but said it would need variances from the ZBA, and also would need approvals from the HDC. He said the grade of the site would need to be raised, to be consistent with Irving so that people could drive through from one site to the other. He noted that he was also authorizing an appraisal of the property.

VII. Unanimous Consent Agenda (Requires unanimous approval. Individual items may be removed by any councilor for separate discussion and vote). No items

VIII. Committee Appointments

None

The Council stood in recess from 8:45 to 8:55 pm

IX. Presentation Item

A. Receive annual report of the Conservation Commission – Cynthia Belowski, Chair Pro Tem

- Ms. Belowski said that over the past year, the Commission had reviewed and updated its conservation priorities, and as part of this, had used 2 new science-based reports, the *Land Conservation Plan for NH Coastal Watersheds*, and the *NH Fish and Game's Wildlife Action Plan*. She said a workshop was held to identify these priorities, as well as to develop a map that indicated land targeted for natural resource protection in the Town.

She said water resources areas (land overlaying aquifers and buffering the Town's drinking water supply) were determined to be the top priority. She said other areas of concern were farms, large un-fragmented blocks of land in the Follets Brook and Crommet Creek areas, and scenic vistas identified in the Master Plan. She noted that the Commission had met with the EDC to discuss this analysis, as well as to discuss areas where the desire to expand economic development overlapped with areas targeted for conservation.

- She noted the purchase of the Roselawn Farm conservation easement, which was open to the public for passive recreation.
- She said that working with representatives of the Parks and Recreation Committee and Mike Lynch, the Commission had reached consensus regarding which group should take the lead in the management of each of the Town-owned parcels. She noted that this did not mean that the groups wouldn't work on each others' designated properties. She said the Commission had identified 7 properties that needed new or updated management plans. She said an RFP was being drafted to find a natural resources professional to help with this work.
- She said the Commission had hosted a site walk at the Emery Farm conservation easement property, along with the Land Protection Working Group, and said the event was well attended. She said similar walks on other conservation properties were planned.
- She spoke about the improvements that had been made to the trail network in the Longmarsh area, which culminated in the completion of a 4 mile trail connection the Longmarsh Preserve to Lubberland Creek in Newmarket.
- She spoke about Commission efforts in regard to the Zoning proposal to rezone a portion of the RB district to ORLI, and said that as part of this, the Commission had tried to become informed about the most recent scientific thinking regarding the protection of the Oyster River and the Spruce Hole aquifer. She noted that the findings from this had been presented to the Council.
- She noted that the Commission had been involved with several site plan applications involving wetland areas and conservation subdivisions, and she provided details on this.

- She noted a discussion the Commission had had with Town Planner Jim Campbell at a Commission meeting regarding the changes to the State Shoreland Protection Act.
- She said the Commission, Administrator Selig, Jim Campbell, and Tom Johnson were working on the question of whether the development, maintenance, and upgrading of trails, on both privately and public owned property, should be subject to site plan or conditional use review. She said the Commission had sent a memo in June stating that the Commission believed that passive recreation trails were a Conservation Activity, as defined in the Zoning Ordinance, and were thus an allowed use, in all Zoning districts that allowed Conservation Activities.
- She said the Commission had learned last fall that the Army Reserves would not be helping the Town dredge Mill Pond. She said they were waiting for a report regarding the condition of the Oyster River dam, which was cracked, and said they would then determine where to go from there. She also noted that there had been discussion as to whether the planned improvements to the Milne property were something that the Commission should be involved with.
- She spoke about successful efforts to secure funding to mitigate erosion issues at Jackson's Landing, and said Mike Lynch was now in the process of securing the needed permits. She said it was hoped that the work would begin in 2008.

Ms. Belowski outlined the Commission's goals for the coming year:

- Work with partners, the Town Administrator, and Town Council to identify and advance land conservation initiatives
- Continue to work to establish and implement plans for management and stewardship of Town-owned lands and conservation easements
- Participate in rezoning discussions in areas of Town that involve sensitive natural resources
- Participate as needed in site development proposals
- Continue to actively research and respond to all wetland permit requests
- Participate in efforts to improve Jackson's Landing, Mill Pond, and the Milne site.
- Host at least 2 nature walks.

There was discussion with Ms. Belowski about upcoming site walks that would be done of Town conservation lands. She said she would provide information on this.

Councilor Henry Smith received clarification that the wetlands issues with the various agencies concerning Jackson's Landing had been addressed. Ms. Belowski said Councilor Sievert had convinced the agencies that the Town would be making improvements to the wetlands as part of the Jackson's Landing project, not making things worse.

Councilor Van Asselt said the Conservation Commission's goals for the coming year were interesting, but he noted some reactivity to some of the proposed Zoning changes. He said it was interesting that the Commission wanted to be involved in the rezoning discussions, and said he hadn't heard the Commission speak about the idea of allowing increased density in some areas so there could be open space in other areas, which reflected smart growth. He said this was a criticism of the Conservation Commission and the Council.

He said it was fine if the Commission wanted to get involved in zoning changes and land use issues. But he said he wished the Commission could say that as part of the conservation land it wanted, that

it also supported high-density development in certain areas. He said there needed to be a broader policy, if Durham wanted open space and development.

There was discussion on this with Ms. Belowski.

Councilor Needell said if the idea of transfer of development rights was pursued, all the players should be involved.

Ms. Belowski said it was the Conservation Commission's job to look out for natural resources, and said she didn't know that Commission members had the expertise to comment on where in Town density should be increasing. She said she did believe in the concept of urban infill, and increasing density in areas where this made sense. She said that in terms of whether it made sense to do it where the Council was currently thinking of doing it, she didn't have the time or the inclination to figure this out.

B. Receive annual report of the Durham Energy Committee – Toby Ball, Chair Pro Tem

Mr. Ball said in its first year, the Energy Committee had made progress on several fronts.

He said an energy inspection process for Town buildings had been instituted, which would be performed along with the safety inspection of these buildings. He also said a greenhouse gas inventory of the Town had been performed, which had identified the proportion of greenhouse gas emissions and energy use by sector. He said Durham generated mostly CO₂, and also methane and nitrous oxide. He said most of the emissions came from transportation sources, at 42%, and said 33% came from residential uses, and the Town's contribution was about 3%. He said these percentages would serve as a benchmark, which would be referred back to in the future, to measure improvements.

Mr. Ball noted that there had been several meetings with the Planning Board, one of which had resulted in the Board's allowing the Energy Committee to draft an energy chapter for the Master Plan. He said the Committee was currently working on defining the scope of this chapter and developing a work plan. He said members of the public would be encouraged to participate in this project.

He said the Committee had begun to investigate potential municipal projects to address Durham's energy use, including more diverse transportation options, such as bike paths; opportunities to generate power locally, through hydropower, solar, etc; and thoughtful development involving energy conservation. He also said the Committee had met with a couple of developers about their plans and the energy efficiencies proposed in them.

He said the Committee had also engaged the School District regarding the idea of doing an energy audit, and the idea of taking up the Carbon Challenge.

He reinforced what Councilor Clark had said, that the Town needed to think about the high energy costs this winter, and the strain this would place on local families.

Councilor Henry Smith noted that there was no reference to UNH, and the Town's relationship to the University concerning energy issues in Mr. Ball's report.

Mr. Ball said the Committee had talked about this relationship, but said so far, they had focused on the Town. He said they had talked about the transportation issue as it related to UNH, as well as the methane that was supplied to the University.

Councilor Peter Stanhope asked if someone on the Energy Committee would be willing to fill a vacancy on the Strafford Regional Planning Commission. He said the Energy Committee had enormous resources to bring to the energy topic, and could provide significant value to the region as a whole. He said the Committee was taking a lot of the steps other communities would have to take as things moved forward.

Mr. Ball said that was a good point, and said he would bring it up at the next Energy Committee meeting.

X. Unfinished Business

A. Develop an action plan to begin implementing the 2008/09 list of Town Council goals adopted on June 2, 2008

Administrator Selig said he had gone through the list of action items that the Council had provided, and had noted who might work on these to start the discussion.

Chair Pro Tem Leach said she had suggested to the Conservation Commission at its last meeting, and was now suggesting to the Council, that the Commission be included as part of goal #1 “Create a vision for the Town.....”, in order to provide some balance.

Concerning the last bullet in goal #3, “Continue discussion on the role of the Council and the structure of the ORCSD, she recommended having Town Council representatives, rather than the Council as a whole, work on this action item. Council members agreed that this was what they had previously come up with.

Chair Pro Tem Leach said goal #V concerning the development of a new library should be the responsibility of Staff/Town Council/and also the Library Board of Trustees.

She said goal #VII, “Encourage town administrator and Town staff to increase efficiencies in process/organization”, should include the fact that the Town Council should receive periodic updates on these efforts.

Chair Pro Tem Leach said goals V through VIII were fairly specific, as compared to goals I through IV, which played more of a visionary role, except for III regarding providing clear direction on the Budget process. She suggested that the way to move forward with goals V-VIII would be to have one or two Councilors agree to take each of them on, and to take a first stab at coming up with an action plan concerning them (issues involved, organizations, staff members and others who might participate). She said these could then be brought back to the Council to decide whether or not to move a specific goal forward.

Durham Town Council Meeting Minutes

Monday, July 21, 2008 – Page 14

Councilor Van Asselt said he liked this idea, stating that he didn't think that goals V-VIII would otherwise go anywhere. He said he'd be happy to take the lead on goal #VI (Determine the future of the Town Hall).

Councilor Needell said Chair Pro Tem Leach's approach was a really good idea, and suggested that over the next few weeks, Councilors could consider which goals they'd like to work on. He said the goals could then be doled out at the next meeting.

Chair Pro Tem Leach said she would like Councilors to identify the goals they'd be willing to work on, at the present meeting.

Councilor Needell said his only objection was that there had been no time to think about this, and said he personally wasn't ready to make a decision.

There was further discussion by the Council on the approach recommended by Chair Pro Tem Leach.

Councilor Sievert said he was ok with this strategy, and said he would be willing to work on goal #VI concerning the future of the Town Hall, if someone was needed for this. He said he could also work on another goal.

Councilor Henry Smith said he would be happy to work on goal V concerning a new library.

Councilor Stanhope said he would be willing to work on goal #VII regarding reviewing management and organizational structures.

Councilor Julian Smith said he would be willing to work on goal #V concerning a new library.

Councilor Van Asselt repeated that he would take on goal #VI regarding the future of the Town Hall.

It was noted that Councilor Sievert had said he'd be willing to take on goal #VI. Chair Pro Tem Leach asked Councilor Sievert if he would be willing to work on goal #VIII, "Expand recreational opportunities", and Councilor Sievert said yes.

It was agreed that Councilor Stanhope and Councilor Leach would work on goal #VII regarding reviewing management and organizational structures.

Chair Pro Tem Leach said that along with Councilor Van Asselt, perhaps Chair Pro Tem Niman as well as Town staff would work on goal #VI regarding determining the future of the Town Hall.

Chair Pro Tem Leach asked Councilors to try to have a draft plan on how to move forward with the goals they had chosen by the next Council meeting. She then asked if Councilors had any ideas on how to move forward with goals I through IV.

Councilor Clark spoke concerning goal #I, and said the planning process was out of balance. He provided details on this, and said he felt the most successful approach would be for key committee heads, including the Energy committee, to oversee the idea of creating a vision for the Town.

Durham Town Council Meeting Minutes

Monday, July 21, 2008 – Page 15

Councilor Needell said in an early draft of the action plan, there was discussion about the idea of revisiting the Master Plan. He asked if it was a conscious decision to not include this in the goals now, stating that it seemed to be a natural part of goal #I.

Councilor Van Asselt said he recalled that this idea had come up briefly, and the concern was that if it was a made a specific goal here, the world would stop for three years while this process was carried out.

Councilor Needell asked if there was the potential of incorporating that into this vision. He said it was something worth considering.

Chair Pro Tem Leach said she felt it could be incorporated, noting that this goal had been left very broad.

Councilor Clark said creating a vision would be very useful as part of updating the Master Plan. He noted the issues that were converging right now, including global warming, energy issues, and the need to find a balance between economic development and the environment. He said a vision that included these things would lead directly into a revision of the Master Plan.

Councilor Van Asselt noted that under goal #II, regarding supporting economic development initiatives, there was an action item that there should be discussion on the viability of affordable housing. He said if the Council was serious about addressing this issue, the question was how it could do something about it. He said the way it was included right now, nothing would really happen concerning it.

He also said the Rental Housing Commission wanted to look at the action item under goal #IV regarding reconsideration of what constituted an appropriate balance of on campus vs. off campus student housing. He noted that the Commission had a good relationship with UNH.

There was discussion about who would tackle goal #I regarding creating a vision for the Town, and there was also discussion about whether the affordable housing issue could be covered under goal # I.

Chair Pro Tem Leach said the Council had talked about the issue of affordable housing, but no specific action item had been brought forward. She said it seemed like someone, or some group should start working on it, and the Council could then see if there was something to move forward with. She said that she personally would need to receive more information on this issue in order to be able to respond to ideas/plans concerning it.

Councilor Peter Stanhope said communities that had developed affordable housing achieved this through a housing authority. He said that absent the establishment of such an entity in Durham, he felt that this idea wouldn't go anywhere, and said putting it on the list of goals seemed somewhat hypocritical. He said he thought the Town needed to acknowledge that it was too small for this kind of thing, but he said if a developer were to comes forward with a plan that included affordable housing, he would certainly be willing to listen to it.

Councilor Van Asselt said Durham was not too small to be engaged in the issue of affordable housing. He noted that some of the people who couldn't afford to live in Town worked for its largest

employer. He said affordable housing could be provided through a municipal authority, noting that this would be a serious business, involving changing ordinances and procedures. He said if the Council wasn't interested in doing this, that was ok, but he said if that was the case, the Council should stop listing affordable housing as an issue to be dealt with.

Councilor Stanhope said if the University put up some of its land, a developer could be found to do something with affordable housing. But he said it was disingenuous to put it on this list now, when UNH was not involved.

Councilor Van Asselt said if affordable housing was left on the list now, and UNH was added as a possible source, he could take this back to the EDC, which could then discuss this issue with the University.

Councilor Julian Smith said if the Council was serious about the issue of affordable housing, it should let the Energy Committee and the Planning Board get involved. He spoke about the need for smaller houses in Durham, the high price of land, and, and the requirement that a property in the Rural zone needed to have 3 buildable acres in order to have a new house built on it. He said he would like to see something done concerning affordable housing, whether in terms of owner-occupied housing or rental properties.

Councilor Needell said he understood Councilor Van Asselt's frustration concerning this issue, and said he personally would need someone to explain to him more about the municipal housing idea as something that was workable. He said such a discussion should include the University, and perhaps Goss International as well, as a major player in Town in terms of its workforce. He said the EDC could be involved, although he said it was not clear that this issue was necessarily tied to economic development.

Councilor Sievert said he echoed Councilor Julian Smith's comments, regarding the need for 3 buildable acres. He noted that in some cases, that lot size was appropriate, but said in general, soils issues had made it impossible to develop land in Town. He noted that Conservation Commission Chair Pro Tem Cynthia Belowski had spoken in favor of infill development, but said he had brought forward such a development to the Planning Board, and it was shot down because of soils issues. He questioned whether people in Durham really did want infill development.

Councilor Julian Smith suggested that the Energy Committee should be looking at innovative technologies like alternative energy sources, composting toilets, etc., to make housing more affordable. He noted, however, that this might wind up putting children in the school system.

Councilor Sievert noted that the residents of Pendexter Road had expressed concern that multiunit housing there might wind up attracting low-income residents.

Councilor Van Asselt said he would be happy to take up the issue of affordable housing. He also agreed with Councilor Clark that there should be a working group made up of committee Chair Pro Tem to talk about goal # I, and said maybe they could come up with something.

Councilor Clark said perhaps there could be a Council representative on this working group.

Chair Pro Tem Leach said the Council could bring this idea forward to the Town committees, they could appoint a person to serve on the working group, and the Council could perhaps provide some more direction to the group that was formed.

Councilor Henry Smith said affordable housing was a very laudable goal to pursue. He also said it would be a really good idea to have the EDC make use of the Seacoast Coalition in tackling the affordable housing issue. He said it was a good resource.

Chair Pro Tem Leach said Councilor Van Asselt would try to move the affordable housing issue forward, and said the Council hadn't necessarily given it to the EDC.

Councilor Clark noted the passage of Senate bill 342, regarding mandating workforce housing, and the Town should get in front of this issue before July 1, 2009, when the new law went into effect.

Chair Pro Tem Leach asked Councilors to try to get together to discuss the goals they would be working on developing plans for.

Councilor Sievert said that regarding a vision for economic development, a question was when to involve the public once the committee was formed.

Chair Pro Tem Leach said that was something to ask the committee to think about.

Councilor Clark said he saw this committee/working group as being an equivalent of the Mill Plaza Study Committee, which had engaged the public throughout the process it had gone through.

Chair Pro Tem Leach said engagement was definitely one of the key things that the Council had talked about.

Councilor Sievert said the Council had heard that evening that a lot of people were feeling like they had been being left out of the current planning process, and said perhaps they could be involved sooner in future planning processes.

Administrator Selig said that concerning the Council's goals, over the last few years there had been fairly concise items, but this year there was really a multiyear plan. He agreed that the Town was due for an update of the Master Plan, and said the first Council goal would lead to that naturally.

B. FIRST READING ON ORDINANCE #2008-10, a Council-initiated ordinance to amend Chapter 175 "Zoning", Section 175-32, Zoning Map, of the Durham Town Code to expand the Central Business (CB) district into the Church Hill (CH) district to Smith Park Lane with a potential Public Hearing on August 4, 2008

Councilor Van Asselt MOVED on First Reading Ordinance #2008-10, a Council-initiated ordinance to amend Chapter 175 "Zoning", Section 175-32, Zoning Map, of the Durham Town Code to expand the Central Business (CB) district into the Church Hill (CH) district to Smith Park Lane with a potential Public Hearing on August 4, 2008. Councilor Stanhope SECONDED the motion.

Councilor Van Asselt said he felt this needed to move forward on first reading now in order to have a public hearing, where there could be discussion on the proposed change. He said that for this hearing, he would like to have better information on a variety of things, including student housing plans for that area. He said he wasn't aware of such plans. He also said there was more to this Zoning change than student housing issues, and he noted the Mill Plaza redevelopment plans as they related to it.

Councilor Stanhope said he was sensitive to the concerns of the immediate neighborhoods about the need for a buffer. He said the Town would grow, but said it needed to decide where to concentrate the growth that would occur. He said he hoped there would be discussion on what the Town could live with that would protect neighborhoods while also encouraging smart growth and economic development in the Central Business District. He said two of the three Zoning district changes proposed involved sprawl, but this one didn't seem to, and said he felt it had more merit than the other two.

Councilor Needell said this was the only proposed Zoning district change he had supported sending to the Planning Board, although he had had some concerns about it. He said he had more concerns now, stating that the plan for this area was incomplete, and that better information was needed on what the potential impacts of the change were.

He said there had already been a tremendous amount of input that said this was a bad idea, and said he was concerned about this proposal going on to a Council public hearing now. He said there had been comments that this proposal had come out of left field, and he said this perception was part of the problem. He noted that a lot of concern had been expressed about the Zoning change process itself, and noted that while it was allowed, he questioned the use of it to exercise this kind of zoning change. He said he felt the Council need to have further discussion, in order to bring this proposed change forward, and said he understood that this would take time.

He noted that the Zoning Rewrite process, through the Planning Board, was an open process, and said through it, a proposal could be brought forward that had some background to it. He said Chair Pro Tem Niman had explained the vision he was trying to bring forward with this proposal, but he said the Council needed to discuss this outside of the hearing process, because the process was too accelerated. He said he would prefer to drop this proposal now, and bring back a proposal the Council could sell and rally the community behind, or not bring forward a proposal at all. He suggested that either the Planning Board or some other group could develop the proposal further.

Councilor Julian Smith said he originally supported this proposed Zoning change for a number of reasons, and largely because as a member of the Mill Plaza committee, he had heard much support for the idea of the Kyreages property being part of the redevelopment of Mill Plaza. He said he had also supported it because of the hope that a combined library/ town hall could be built on the southwestern corner of the Kyeages property. He said he had supported the proposal even after hearing objections at the Planning Board meeting on June 18th, and had voted against the Board's motion to not recommend this Zoning change.

He spoke about the property owners in Church Hill who would be impacted by this change, and suggested at least taking out of the proposed Zoning district change the two properties to the east of the Kyreages property. He also recommended taking the baby step of rezoning the two parcels on Main Street, which represented a little more than an acre of land. He provided details on this, and

noted that the Mill Plaza Committee had recommended that any student housing be up by Main Street. Councilor Smith said he hoped that the Council would endorse this more limited Zoning district change.

Councilor Clark said he was frustrated by the process itself, stating that it made it very hard for the Council to do the right thing. He said there needed to be a conversation about student housing, whether more of it was wanted, and if so, where. He said this Zoning proposal had accomplished the mission of getting a discussion going on this issue, and said the Council should take advantage of this, in order to develop a more thoughtful proposal.

Chair Pro Tem Leach said she didn't disagree with what Councilor Clark had said, but said she felt this could be passed on first reading, and that there could then be more discussion by members of the public and the Council. She also said she didn't disagree with Councilor Julian Smith's proposed amendment to the proposal.

Councilor Sievert asked whether, if this was passed on first reading, the Council could take the time to look at the proposal further. He expressed frustration that the Council couldn't even get to this discussion because of all the public comments at this stage of the process. He then spoke about how he thought moving this on first reading could work.

Councilor Needell said public comments were an important part of the process, and said this was the only way people had been able to react because of the way this proposal had been brought forward. He said a Council-initiated Zoning change was a process that was rarely used in Durham, and said the Council didn't own the Zoning Ordinance. He said as compared to most first readings, there was a more elaborate process involved in this instance. He also said the Planning Board had recommended that the Council not pursue this Zoning change, and said he felt this should be given significant weight. He said it was legitimate for a Councilor to say this proposal was not ready for prime time.

Councilor Julian Smith said if this did go to public hearing, there would be no limitation on the time the public would have to make comments. He said the Council could simply vote to continue the public hearing over several meetings. He said this process could trigger an important conversation about student housing, including the idea of a student housing overlay district. He spoke in detail about this, and said for all kinds of reasons, Church Hill was a good place to do this. But he said he sympathized with the people who didn't want this change.

Councilor Clark said there seemed to be a communication problem, in that a number of residents thought the Council was bringing this proposal forward in order to allow more student housing. He said he thought the idea was to maximize the economic viability of the Plaza, and have a connector road so Chesley Drive wouldn't be impacted. He said the conversation on this hadn't been clear.

Chair Pro Tem Leach noted that on May 5th, Chair Pro Tem Niman had provided details on how the proposed Zoning district changes fit with the Master Plan, and she said he had spoken of the ideas Councilor Clark had just spoken of. She agreed that this was not what had been heard concerning the Church Hill proposal.

Councilor Clark said the reason he would like to see a discussion, rather than moving this on to public hearing, was to make this clear. He also said if they had a public hearing on something they

already knew needed to be amended, this created a messy situation. He said it would be a lot cleaner to get clear on what the issues were, and what the intent was, so the Ordinance change could address these things.

Chair Pro Tem Leach said she agreed to a certain extent. She said the Council had communicated fairly well, but said some people needed to listen a little better.

Councilor Henry Smith said he was not ready to send this on to public hearing. He said he had read the Planning Board minutes, and was struck by the overwhelming opposition to this proposal by the public, and that the Planning Board had not recommended that the proposal go forward. He said that given these things, it would be precipitous and untimely to move forward with it.

Councilor Needell MOVED to suspend the adjournment time and to adjourn at 11:00 pm. Councilor Van Asselt SECONDED the motion, and it PASSED 6-2, with Councilor Sievert and Councilor Stanhope voting against it.

Councilor Van Asselt said people who were not affected by a zoning change didn't show up, and said if decisions were based on who did show up, nothing would ever change. He said there had been some inference that this process was being done without regard for the public interest, and through backroom deals, and he said nothing could be further from the truth.

He said the goal was to do downtown economic development to enhance Mill Plaza, and asked why people were jumping to the conclusion that this would include student housing. He said he wasn't sure that a developer would want to build student housing there. He said there should be a conversation about what this Zoning change would mean, and said the Council should move this on to the public hearing. He said if the Council said now that it wasn't ready to do this, the proposal would be killed, and said this was what had happened in Durham for years. He said it was time for a serious discussion, and said the way to do this was through the public hearing process.

Councilor Stanhope said he expected that there would be a 4-4 tie when the Council voted on the motion, and said he would therefore vote against it now, and would then move to reconsider it at the next meeting, when he suspected there would be 5 votes to bring it to public hearing.

Councilor Stanhope MOVED to call the question. Councilor Sievert, Councilor Henry Smith, Councilor Julian Smith and Councilor Van Asselt voted in favor of the motion, and Chair Pro Tem Leach, Councilor Needell and Councilor Clark voted against it (5-3).

A five-minute recess was called to check on whether a 2/3 vote was needed on the motion to call the question, which would mean that more than 5 votes were needed to stop the discussion.

When the meeting came back to order, Chair Pro Tem Leach said it was believed that a 2/3 vote was required, so the motion to call the question had failed.

Chair Pro Tem Leach said she thought that some of the reason for this Zoning proposal had to do with the idea of a new library, and she asked what would happen regarding the library if this Zoning change didn't happen.

Durham Town Council Meeting Minutes

Monday, July 21, 2008 – Page 21

Councilor Julian Smith said one of the purposes of the Zoning proposal was to make the Kyreages more attractive to a developer. He said that also meant it might be harder for the Town to acquire some of the lower portion. He said that was a reason he had suggested the amendment to the proposal, but said he was not suggesting that the Council take this up that evening.

Administrator Selig confirmed that a 2/3 vote had been required to call the question.

Chair Pro Tem Leach said she would like more clarification on why the Planning Board had voted not to recommend that the Council go forward with this Zoning proposal.

Councilor Needell said there had been an overwhelming negative response from the public at the Planning Board's public hearing. He said there had also been a lack of a compelling argument to go forward with it, noting that there wasn't a lot of discussion about this by the Board. He said at first, the Board had discussed not recommending any Zoning change like this, but after further discussion, had said it would consider allowing some kind of Zoning change in this area, and that the Board would be willing to take this on.

Planning Board Bill McGowan, spoke about the process that had been involved, which had allowed limited time once the public hearing process had begun for the Planning Board to review this proposal and after considering public comments, to perhaps come up with something that made more sense. He said the reason behind the proposed change was clear to the Board, but said an issue whether this was presented to the public.

Chair Pro Tem Leach said it sounded like the Board had concerns with the process more than the proposal itself, and said this was useful to know.

Councilor Clark noted that there were houses in Church Hill district that were in the historic overlay district, and said he assumed that on one would be allowed to change those buildings dramatically. There was discussion that a property owner could in fact tear down an historic building. Councilor Needell said this Zoning proposal wouldn't change the rules concerning properties in the historic overlay district.

Councilor Clark said he was convinced that the proposal as written needed to be modified, and said he was concerned that after the hearing closed, this would move on to a vote. He said there should be some amendments to it, regarding the idea of explicitly identifying the buffer and perhaps including only portion of the properties in the Zoning change.

There was then detailed discussion on how much flexibility there was to the process, in terms of allowing public input, and making amendments to the proposal, if it passed now on first reading.

Administrator Selig provided details on this. He said if the goal was to have a conversation, he wasn't sure the Council would get there by moving this to public hearing now. He said he thought they would get there by stopping the current process now, and killing the proposal, and then starting a dialogue. He said the Council could make a motion to amend the Zoning proposal, but he said if the Council agreed to make an amendment, he would recommend sending this back to the Planning Board, given the feedback from the public so far. He said involving the Board would allow for additional public input.

Chair Pro Tem Leach asked if sending the original proposal back to the Zoning Rewrite committee would start the process over.

Administrator Selig said the Council would need to kill the proposal now, and start the process anew. He also said making an amendment to the current proposal wouldn't allow the kind of dialogue he thought was needed.

Councilor Needell said the Council could amend the proposal now, but he said he thought the better approach was to kill the current proposal, and to then reframe it. He said how this was done was up to the Council. He said the Council could do it, or it could be sent to the Zoning Rewrite committee.

Councilor Sievert said he didn't think the proposal should be killed and that they would therefore have to start all over again. He said a lot of ground would be lost if this was done, and said perhaps an amendment was the way to go. He said there could be further public comment as part of this.

Administrator Selig said that was a viable process, but he said again that if the Council wanted to have a dialogue, and not just feedback, it made more sense to kill the proposal and start over again.

Councilor Stanhope asked if anyone was opposed to voting at this point.

Councilor Van Asselt asked Administrator Selig whether, if the Council passed this on first reading, it could have a discussion on it prior to the public hearing.

Administrator Selig said the Council could certainly do this, but he questioned how there could be a dialogue as part of that process.

Councilor Clark said he thought they had already heard enough that some amendments to this proposal were needed.

Councilor Van Asselt said he didn't disagree, but asked why this could be addressed as part of the present process, to keep it alive.

Chair Pro Tem Leach said the discussion had indicated that the Council was open to making some changes to the Zoning proposal, and she noted that Councilor Julian Smith has brought a possible amendment forward.

Councilor Needell MOVED to suspend the 11:00 adjournment time, and to adjourn the meeting at 11:15. Councilor Sievert SECONDED the motion, and it PASSED unanimously 8-0.

There was further detailed discussion on how to proceed.

Councilor Needell said if this process continued, the public wouldn't know what they were coming to a public hearing for. He also said any amendments would require additional hearings. He said if the proposal wasn't complete, and the Council wasn't behind it, it didn't make sense to move it forward.

Councilor Van Asselt said if this was killed now, it would be months before it appeared at the table. He said this issue had to be dealt with, and said if it was killed, the Council would be doing what this Town had done for years, to take something under consideration.

Councilor Clark said it felt like the right thing to do now was to make an amendment to the proposal, and not after a public hearing.

Councilor Julian Smith MOVED to amend the proposal to expand the Central Business District into the Church Hill District, to include only the two properties on Main Street, between the Central Business District and Smith Park Lane (Lots 1-9 and 1-10 on Map 5), and to move this proposal to public hearing. Councilor Sievert SECONDED the motion.

Councilor Smith said he had said all he needed to say about this.

Councilor Sievert asked about lot 1-15, and Councilor Julian Smith said in developing this amendment, he had drawn a line that was a continuation of the Varsity Durham property.

Councilor Sievert noted that the Council had heard from Mill Plaza Committee Chair Pro Tem Dave Howland that the Zoning district proposal didn't fit what the Mill Plaza Committee wanted. He asked how including just these two properties fit with this.

Councilor Julian Smith said the reason for suggesting only these two properties was that later on, there would be discussion about the Zoning proposals to change the density allowed for both the Church Hill District and the Central Business District. He said if those two lots were included in the CB District and the density allowed was increased, this would make those two lots more valuable for development purposes. He said he would hope that this would result in the sale of the entire Kyreages properties.

He also said he hoped that lot 1-16 might eventually be purchased by the Town for a library or a combined town hall/library. He provided details on the reason for not including lots 1-15 and 1-16 in the proposed amendment now, and other reasons behind the inclusion of the entire group of parcels in the original proposal. As part of this, he spoke about the possible idea of trading the Grange, noting Varsity Capital owned everything east of it in the Central Business district, as a way to have a possible second entrance to Mill Plaza. He said these were the reasons he had initially supported rezoning all of those properties, but said he now suggested taking this step of rezoning the two properties on Main Street.

Chair Pro Tem Leach said this amendment would allow the buffer for the neighborhood to be retained, and Councilor Julian Smith noted that a library/town hall would provide a wonderful buffer.

Chair Pro Tem Leach asked how this amendment impacted the economic development potential of Mill Plaza.

Administrator Selig said this wasn't known, and said the owner of Mill Plaza might or might not want this. He said he imagined that Mr. Kyreages would be favorable inclined. But he said there wasn't information on all of this, and he wasn't sure that it could be obtained.

Councilor Henry Smith said while the Town could change the Zoning, it didn't know if Mr. Kyreages would sell the properties.

Administrator Selig said the Town had learned that M. Kyreages did have an interest in selling all of his properties to a single buyer, and had engaged an attorney to approach some of the larger landlords in Town.

Councilor Henry Smith said he wouldn't be opposed to this amendment to the Zoning proposal, but said he would want to send it back to the Planning Board.

Councilor Stanhope said he was opposed to this proposal. He said although he understood the need to appease the neighbors, this proposed amendment was contrary to smart growth. He also said it was a significant change, at this point in the process.

Councilor Clark said it sounded like there were three objectives to the Zoning change: to increase the value of the properties in question; to accommodate more flexibility as to where a connector might go; and to potentially be a home for a library Town Hall. He asked if the Zoning that was in place would be all right for a Library/Town Hall.

There was discussion that the Town was exempt from its own land use regulations.

Administrator Selig said Chair Pro Tem Niman felt these parcels were more likely to be redeveloped if they were rezoned for additional density, and if so, there would be more opportunity to talk with the owners about what would be beneficial to the Plaza and to the Town. He said it was an entrepreneurial way of looking at these parcels, and said it was likely that student housing would be a major use, above the first floor.

The motion to amend the original motion FAILED 3-5, with Councilor Julian Smith, Councilor Clark, and Councilor Sievert voting in favor of it.

Councilor Needell MOVED to extend the meeting for 5 minutes. Councilor Stanhope SECONDED the motion, and it PASSED 7-1, with Councilor Sievert voting against it.

There was discussion on how to proceed, and on whether Councilors wanted to have more discussion on the original motion.

Councilor Clark said something that would make this proposal more palatable would be something that said there needed to be a buffer. He said an amendment could say something specific about the size of a buffer.

Administrator Selig said in order to do this, the buffers for the CB District would have to be increased, and said it would be somewhat problematic to do this.

Councilor Needell said the way to do this would be to first kill this current proposal. He said what Councilor Clark was looking at was something that would require more than an amendment, and he provided details on this. He said it was a good idea, but said it needed to be done deliberately and carefully.

Councilor Julian Smith asked that the Council move ahead to Item X A under New Business, concerning stables.

Councilors decided that they would not be addressing this that evening.

After further discussion, Council members agreed to take the Zoning proposal concerning the Church Hill District up again at the next meeting.

- C. FIRST READING ON ORDINANCE #2008-11**, a Council-initiated ordinance to amend Chapter 175 “Zoning”, Section 175-32, Zoning Map, of the Durham Town Code to expand the Multi-Unit Dwelling/Office Research (MUDOR) district into the Residence B (RB) district to include land north of Route 4 and east of Madbury Road with a potential Public Hearing on September 8, 2008 (Postponed)
- D. FIRST READING ON ORDINANCE #2008-12**, a Council-initiated ordinance to amend Chapter 175 “Zoning”, Section 175-32, Zoning Map, of the Durham Town Code to expand the Office and Research & Light Industry (ORLI) district into the Residence B (RB) district to include the remaining land of Sprucewood to the Lee Town line with a potential Public Hearing on August 18, 2008 (Postponed)
- E. FIRST READING ON ORDINANCE #2008-13**, a Council-initiated ordinance to amend Chapter 175 “Zoning”, Section 175-7 “Definitions” of the Durham Zoning Ordinance relative to “habitable floor area” with a potential Public Hearing on August 4, 2008 (Postponed)
- F. FIRST READING ON ORDINANCE #2008-14**, a Council-initiated ordinance to amend Chapter 175 “Zoning”, Section 175-54 “Table of Dimensional Standards” to lower the minimum lot area per dwelling unit in the Central Business (CB) district with a potential Public Hearing on August 4, 2008 (Postponed)
- G. FIRST READING ON ORDINANCE #2008-15**, a Council-initiated ordinance to amend Chapter 175 “Zoning”, Section 175-54 “Table of Dimensional Standards” to lower the minimum lot area per dwelling unit in the Church Hill (CH) district with a potential Public Hearing on August 4, 2008 (Postponed)

X. New Business

- A. FIRST READING ON ORDINANCE #2008-16** amending Chapter 175 “Zoning”, Section 175-53(A) “Table of Uses” to allow stables as a Conditional Use in the Multi-Unit Dwelling/Office Research (MUDOR) district with a potential Public Hearing on September 8, 2008 (Postponed)

B. Other Business (None)

XII. Nonpublic Session

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

XIV. Adjourn (NLT 10:30 PM)

Durham Town Council Meeting Minutes

Monday, July 21, 2008 – Page 26

Councilor Peter Stanhope MOVED to adjourn the meeting. Councilor Van Asselt SECONDED the motion, and it PASSED 6-2, with Councilor Needell and Councilor Julian Smith voting against it.

Adjournment at 11:20 pm

Victoria Parmele, Minutes taker