

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

**DURHAM TOWN COUNCIL MEETING MINUTES  
MONDAY, AUGUST 4, 2008  
DURHAM TOWN HALL – COUNCIL CHAMBERS  
7:00 PM**

**MEMBERS PRESENT:** Chair Neil Niman; Councilor Karl Van Asselt; Councilor Jerry Needell; Councilor Julian Smith; Councilor Peter Stanhope (arrived at 7:09 PM); Councilor Henry Smith; Councilor Cathy Leach; Councilor Mike Sievert (arrived at 8:27 PM); Councilor Doug Clark

**MEMBERS ABSENT:**

**OTHERS PRESENT:** Town Administrator Todd Selig; Town Planner Jim Campbell; Town Engineer David Cedarholm

**I. Call to Order**

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

*Councilor Van Asselt MOVED to approve the Agenda as submitted. Councilor Leach SECONDED the motion, and it PASSED unanimously 7-0.*

**II. Approval of Agenda**

**III. Special Announcements**

Chair Niman thanked Councilor Leach for serving as Chair at the last Council meeting.

**IV. Approval of Minutes**

June 16, 2008

Page 4, 2<sup>nd</sup> paragraph, should read “..on the most recent ORCSD Board meeting.”

Page 8, bottom paragraph, should read “..development of Leewood orchards.”

*Councilor Van Asselt MOVED to adopt the June 16, 2008 Minutes as amended. Councilor Henry Smith SECONDED the motion, and it PASSED 6-0-1, with Councilor Clark abstaining because of his absence from that meeting.*

June 16, 2008 (Nonpublic Session)

***Councilor Van Asselt MOVED to adopt the June 16, 2008 Nonpublic Session Minutes. Councilor Leach SECONDED the motion, and it PASSED 6-0-1, with Councilor Clark abstaining because of his absence from that meeting..***

## **V. Councilor and Town Administrator Roundtable**

Chair Niman said the Council had received a draft option agreement from Scott Mitchell to purchase the Town Hall property, and also said a lot of letters had been received concerning this issue. He noted that Administrator Selig had previously said he would like to have Mr. Mitchell come to a Council meeting. But he said he thought it would make more sense to have a work session dedicated to this issue, and said that at such a meeting, Administrator Selig could talk about the inefficiencies of the Town Hall building. He said Mr. Mitchell could also explain what he had in mind for the property, and could answer questions. He said there could also be discussion on the appraisal and the evaluation of the Evangelical Church.

Chair Niman also noted to Administrator Selig that it wouldn't be wise to put forward the idea of moving the Town Hall unless there was another option of where it could be moved to. He said he would like to have an option of moving the Town Hall some place in the downtown area, and said this approach would allow a better understanding of what the Town's options were, including the costs involved with each of them.

He said it would also be a good idea to put information on this process on the Town web site, so residents could be well informed and could provide comments. He said unless he heard objections to this approach, the workshop would be scheduled for the end of September or early October.

Councilor Stanhope arrived at the meeting at approximately 7:09 pm.

Councilor Needell said he had no problem with this approach. He also recommended that when the time came to draw all of this information together, there should be a public hearing.

Councilor Julian Smith suggested that it was important to help the public understand some of the problems with the current Town Hall. He said perhaps there could be an open house so that residents could see some of these problems.

There was discussion on the order in which the different parts of this process would occur.

Councilor Stanhope noted that he had testified at a tax hearing at the Londonderry Town hall. He said Durham asked its employees to function in a nonprofessional setting, and said the reality was that the Council was faced with looking at other options, in order to improve efficiencies, etc. He asked that they all keep an open mind, and allow the public to be fully informed about the issues with this building, and the economics for the Town.

Councilor Clark said the EDC had recently had a similar discussion. He suggested that it could perhaps serve as a venue to get public input on this issue before it got to the Council, and he provided details on this. He said this process could perhaps also work regarding

Zoning Ordinance proposals. He said the list should include what happens with this property if a decision is made to relocate the Town Hall.

Administrator Selig said Scott Mitchell had approached the Town about the Town Hall property, and had provided a boiler plate draft option agreement. He said the estimate of what the property would be worth, as a drug store location, was \$2 million, while the value for something else would be about \$1 million. He said the venue Chair Niman had described was a good one, but he noted that no one was poised to make a decision on this matter, and said they were in the process of gathering information.

He said the report on the evaluation of space needs for a town hall would be put on the Town website again, to outline the challenges with the Town Hall building. He noted that a study of what would be involved with retrofitting the building had not been done, and he also said Town staff were not pushing hard to find a new location.

Councilor Henry Smith said that at the recent EDC meeting, there had been significant testimony regarding the issue of the Town Hall. He said he thought a work session on this issue would be a good idea, and suggested that it should be done in October, since there were already three Council meetings scheduled in September.

Administrator Selig said it was not a requirement to hold a public hearing on this issue, but said he couldn't envision selling the Town Hall without doing so. He also said a question was whether, if it was decided that the Town Hall property should be sold, the Town should speak only with Mr. Mitchell, or instead should put out an RFP. He said this question had been raised at the EDC meeting.

Councilor Leach said that at the last Council meeting, Chair Niman and Councilor Van Asselt were assigned to set up a plan for a workshop on the issue of selling the Town Hall property.

Councilor Julian Smith said he had spent the last few days at the Milne preserve area, and he thanked members of the public for their interest in the project, especially Bill Hall, who had helped out there over the weekend. He said the Public Works Department was preparing to install a large granite monument there with an inscription honoring the Milnes. He said the project was moving forward.

Councilor Henry Smith noted the Council goal concerning a new library, and the importance of cooperating with the Library Board of Trustees concerning this. He said he and Councilor Julian Smith had recently met with Board of Trustees Chair Doug Bencks, and drew up three recommendations: that the Council shouldn't try to micromanage the Board of Trustees in finding a site for the library; that the Trustees felt there should be no major fundraising until a site is chosen; and that the Trustees' #1 site for a new library was Mill Plaza, and the #2 site was the rental property on Mill Pond Road next to Ocean National Bank. He said there were several other possibilities for sites, and said a report would come forward on this.

Councilor Leach noted that the Council's subgroups would be discussing these kinds of issues at an upcoming meeting.

Councilor Stanhope asked for clarification concerning the library fundraising issue, and there was discussion.

Councilor Leach suggested that more detail on the library issue be brought forward at the meeting when this issue would be discussed.

Councilor Henry Smith said that possibly could happen, but said it depended on the Library Board of Trustees.

Councilor Van Asselt passed out some articles on a variety of creative things that cities had done with their downtowns. He said the only way this happened was when Towns decided that the public sector needed to get involved with the private sector, to make it happen. He spoke in some detail concerning this.

Administrator Selig provided a number of updates:

- He said information had been put on the Town website concerning the fuel assistance issue. He said the Town was evaluating a number of approaches, including the use of a revolving loan fund.
- He noted the link concerning the work on the Milne site at the Town website.
- Administrator Selig said recent discussions with John Pinto had been encouraging, and said a report would be provided to the EDC and the Council. He said the credit crunch had affected Mr. Pinto, but he remained interested in moving forward with redeveloping the site. He said Mr. Pinto had been meeting with a number of developers, who had expressed a lot of interest in this, including the idea of a new library, and staying away from Chesley Drive.
- He said appraisals for the Evangelical Church, the Police Department property, the potential library site on Mill Pond Road, the Town Hall property, and the Grange would be available for discussion, so the Town would be prepared if it wanted to bring them into play. He also spoke about property owned by Perry Bryant, and said the cost of the appraisal would be split with the property owner.
- He said a zero increase budget was being worked on, and said he was about to get proposals from the Town departments.
- He provided details on the financial struggles the Mill Pond Center for the Arts was going through, and said there had been discussion about the potential for partnerships.
- He said he would soon be discussing with the Council the impact and cost of policing.
- He noted that some changes had been made to the Right to Know law, most of which didn't impact Durham. He said someone from the Municipal Association would come to Durham to discuss these changes.
- He told Councilors that the State historic preservation people had said the Town would be able to provide the historic stones from the old Wiswall Road bridge on only one of the abutments, the one that was visible from the Town park.
- He said the Spangs had arranged for a conservation easement on 95 or so acres they own adjacent to the Wiswall Dam.

## **VI. Public Comments (NLT 7:30 PM)**

Chair Niman asked to have public comments for hour at most. Those new, please go first.

**Michael Castagna**, Co-chair of the AIA 150 Mill Plaza Redevelopment project, said he was present to provide an update to the Council, and to offer a few comments. He said he was currently leading a group including John Pinto to negotiate with four out of state developers regarding moving forward with the redevelopment of Mill Plaza, based on the last concept developed, which would involve a mixed use project that included a new library at the southeast corner of the property. He said it was a plan that worked financially, and that everyone could buy into, to make the downtown better, and make Durham as a whole a better place.

He said he had shared the names of the developers with Administrator Selig but not with the public. He said there were about a quarter of the way through the negotiations, and things were moving smoothly.

Concerning the Zoning proposals, Mr. Castagna applauded the Council for wanting to change the dynamic of development in Durham. But he said they seemed to be putting the cart before the horse. He said a consensus building process was needed, and would allow everyone to have a say in the process.

He noted that the Mill Plaza redevelopment would come before the Council. He said the work of the Mill Plaza committee showed the Town how the consensus-building process could work, and said it could be a model for any development project, going forward. He said the Town had the power to change the current dynamic, and to foster a strong cooperative relationship with all stakeholders

**Dick Lord, Bennett Road**, said he had some procedural concerns about the proposed Zoning change for Church Hill. He said there was a reason why, when the Zoning district changes were made a few years back, Church Hill District was set aside, because of the history in that area.

He said this proposal had gone to the Planning Board, but said that Board had only a short time to comment on it. He said the HDC, as well as the Town's new Heritage Commission, had no chance to weigh in on this proposal, and said it seemed wrong to plow ahead with this Zoning change without bringing them in. He said he realized that some people weren't as concerned about the historical issues as they were about economic development. But he said he felt this proposal shouldn't move forward until the HDC had a chance to weigh in on it.

**Amy Peterson, 5 Pendexter Road**, said she didn't understand why the Council was continuing to pursue the proposal to change RB in the area of Pendexter Road into MUDOR. She asked why the Council had taken this matter up instead of the Planning Board, and against the recommendation of the Planning Board. She said the community had spoken resoundingly against this.

She also noted that while she had come to the Council meeting because of her concerns about this Zoning proposal, she realized that none of the Zoning district proposals were in the best interest of the Town. She said the Council didn't have a clear vision, stating that Church Hill proposal hadn't been worked out in relation to the Mill Plaza redevelopment plan. She asked who had brought these forward, and asked what the goal was.

Chair Niman said he hoped the Council would be able to approve the proposals on first reading, so he could answer some of these questions.

**Nick Isaak, 35 Oyster River Road**, said he agreed that the cart had been put before the horse with the Church Hill proposal. He said he was an advocate for economic development, but said he would be interested to know what this proposal was predicated on. He noted the large amount of work that had been done on the Master Plan, including the section on Church Hill. He said for the Zoning to change now, the Master Plan had to be changed first.

**Dick Houghton, Pendexter Road**, explained that Pendexter Road resident Barbara Wright couldn't be at the meeting. He first said that the process so far had been difficult, in part because residents had to make their comments as part of the public comment period. He noted Chair Niman's comment that it seemed that no one in Town wanted student housing in the neighborhoods, but said there was an apartment building in the Pendexter neighborhood, and said if the owner wanted to expand it, he could go for a variance rather than going for a Zoning change that would rezone the whole neighborhood. Mr. Houghton said he would like to reinforce what the neighbors had already said, that the process should be stopped, and the proposal should be sent back to the Planning Board.

**David Potter** spoke about his family's plans to relocate to Durham and have a breeding and training facility, and explained that it had been determined that stables were not a permitted use in the MUDOR district. He said the Planning Board had recommended this change, and also said the use would be in keeping with other uses in the district, including the UNH equestrian facility.

**Nancy Lambert, 17 Faculty Road**, noted the terrific process the Town had just gone through regarding the redevelopment of Mill Plaza, where residents were listened to, and their ideas were incorporated into the plan. She said she wondered why the idea of rezoning Church Hill wasn't brought up then, but said she hoped everyone had learned from that process.

She said she was concerned that the Church Hill rezoning could undermine the Mill Plaza redevelopment. She also noted the Chesley Drive was an important buffer, and said the walkability of that area was an important part of the quality of life in Town. She said she was not anti-development, and would love to see more businesses and services in Town. But she said she hoped this could be done in a thoughtful way, without impacting the quality of life of the adjacent neighborhood.

**Maura Slavin, 10 Burnham Avenue**, said she loved living in the Faculty neighborhood. She said her kids walked to the library and to the market, and needed to be able to feel safe, cutting through Chesley Drive.

**Peter Andersen, 6 Chesley Drive**, said that he owned a third of the houses on Chesley Drive, and he noted a protest petition that had been developed. He said he wasn't excited about any of the Zoning district proposals, and provided details on this. He agreed with others who had said there should be a complete plan for the downtown area, before moving forward, and said the community needed to be included.

He discussed the possible motives of Councilors regarding the proposed changes to the Church Hill Zoning district change, and said if Chesley Drive and Church Hill were going to be part of the expansion of Mill Plaza, this should be on the table. He said it seemed like this proposal must have been put forward for a developer, and noted that it coincided with an offer on his properties.

Chair Niman said he would explain the thought process involved when these proposals got to first reading.

Councilor Julian Smith provided clarification that the rezoning proposals were in regard to a small portion of the Church Hill District, perhaps about 10% of it.

**Robin Mower, Faculty Road**, said she echoed Nancy Lambert comments, that there was an enormous discrepancy between the way the Mill Plaza Committee process worked the current process with the rezoning proposals. She said people felt they were not being consulted early enough in processes that could have a significant impact on their way of life. She said people living outside the downtown were protected from the impacts of students. She said she believed the Council had an obligation to consider the quality of life of the people living in downtown, as it weighed these Zoning proposals, and she recommended that they also look at the processes by which these proposals had been developed.

**Bill Hall, Smith Park Lane**, said the process undergone for these rezoning proposals was nonsense, and he provided details on this.

Mr. Hall also spoke about infrastructure improvements needed on Woodman Road, stating that it made sense to dig the road up once and fix the water and sewer piping there. He said if a bond was needed to do this work, the Town should look at the allocation of funds for University projects.

**Joshua Meyrowitz, 7 Chesley Drive**, spoke about the process where the public had been involved in the development of a plan for the redevelopment of Mill Plaza. He said it was an unusual coalition, and involved a lot of consensus building. He said the current process with the rezoning proposals was back to the bad old days, and noted that there was a lot of mystery as to what the proposals were about, and there were a lot of rumors flying around.

He said the community was generally excited about a significant redevelopment of the downtown area, as long as it was well thought out. He said if there wasn't a plan for this yet, it made sense to hold off, because otherwise some horrific uses could come forward. He asked the Council to remember that many people had worked on the Master Plan. He read from it, and said the Church Hill rezoning proposal worked against it.

**Deborah Hirsch Mayer, 19 Garden Lane**, said she had served on the Mill Plaza Committee for 15 months because the committee was dedicated to having an open, transparent process, which involved the citizenry. She noted in taking the extra time, they had applied for a grant, which brought valuable expertise to the process. She urged the Council not to rush through the Church Hill zoning change, and instead to take time to involve people in a thoughtful way.

She said she didn't understand why the proposal wasn't brought up when the Mill Plaza Committee had met, and said bringing it up now rather than waiting to see how the redevelopment proposal unfolded didn't make sense to her. She said she was in favor of economic development as long as it was well planned and involves the citizenry. She said economic development included improving the life of the Town, and was not just about tax bills.

Ms. Hirsch Mayer said she was concerned about how changing the Zoning on Church Hill would impact Mill Pond, the lifestyle of the neighborhood, including young people and elderly citizens, the gateway, and the morale of citizens. She said it was crucial that this proposal be stopped at first reading.

**Beth Olshansky, Packers Falls Road**, encouraged the Council to consider moving into a different mode, and creating a vision, through a visioning committee, rather than doing a piecemeal approach. She said members of various committees and citizens could come together to discuss what they all wanted Durham to look like. She said they all knew that they needed to make some changes, and said a process parallel to the Mill Plaza process could be developed. She said she hoped Councilor Clark would continue to encourage the Council to start that committee.

Councilor Leach noted that at the last meeting, the Council had agreed on the idea of a committee, with representatives from various groups, which among other things would determine how best to get input from the public.

**Frank Pilar, Newmarket Road**, spoke in detail about his concern that there seemed to be so little concern for those people living along Chesley Drive.

Councilor Sievert arrived at 8:22 PM.

- VII. Unanimous Consent Agenda** (Requires unanimous approval. Individual items may be removed by any councilor for separate discussion and vote).
- A. Receive written quarterly Financial Report through June 30, 2008 prepared by Business Manager Gail Jablonski



- B. Shall the Town Council approve a non-industrial sewer connection permit application submitted by the University of New Hampshire for the Southeast Community Hall Building C as recommended by the Durham Water, Wastewater, and Solid Waste Committee?

Councilor Van Asselt asked if Item VII B would have any impact at all on the other proposed development for the west end of Town, and Administrator Selig said no.

***Councilor Van Asselt MOVED to approve Unanimous Consent Agenda Items A and B. Councilor Leach SECONDED the motion, and it PASSED unanimously 9-0.***

The Council stood in recess from 8:23 to 8:35 pm

**VIII. Committee Appointments**

None

**IX. Presentation Items**

None

**X. Unfinished Business**

- A. **CONTINUED 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 date to be determined

Chair Niman noted that he had not been at the previous Council meeting, but said he had watched the discussion on DCAT. Regarding where these proposed Zoning changes had come from, he had determined that the process started around the time of a March 2008 meeting, when members of the Mill Plaza Committee met with John Pinto, and had revealed the final hybrid design. He said he and Administrator Selig had had a meeting with Mr. Pinto around that time.

He said that was the last time he had spoken to Mr. Pinto, and said he had never spoken to any other developers about this property. He spoke in detail about his thinking after this meeting, concerning the redevelopment possibilities for Mill Plaza. He noted among other things that Mr. Pinto hadn’t been interested in the idea of a hotel or inn at the Plaza; was not willing to commit 12000 sf to a library although he was possibly interested in a smaller library; and was interested in having an expanded grocery store at the Plaza.

Chair Niman said he had come away from that meeting, thinking about finding a home for the library, and realizing that with an expanded grocery store, the area would get crowded, and another access point would be needed to deal with increased traffic. He said he had also thought about how to create enough economic development to support infrastructure improvements that were needed in order to benefit the Plaza as well as the rest of the Town. He noted that if the Town could at least partially fund a parking structure, this would help what he felt was a failing downtown.

He said that perhaps the hybrid design met the needs of the Mill Plaza committee, but said he felt the needs of the Town extended beyond Mill Plaza. He said a question was how to support infrastructure improvements and not open up Chesley Drive. He said it had occurred to him that if the Zoning on some of the properties in Church Hill was changed, this could make a second entrance to the Plaza worthwhile. He said would make sense to put an access road on the property line between the Pinto and Kyreages property, which would potentially make the Kyreages property developable. He provided details on this

He said a question had come up as to why the process of a Council initiated Zoning change was being used. He said his concern was the Library Board of Trustees' timeline, and that if things dragged, on, the Town could be forced to precipitously trade away the Grange. He said there had also been Mr. Pinto's timeframe to consider, as well as the concessions he would request from the Town. Chair Niman noted that he was glad to hear Mr. Castagna's comments on a possible deal with Mr. Pinto.

He said he thought it was important for the Council to be involved in this process, and to see whether there was some flexibility in creating economic value for the Town. He also said he had thought this would put things on a faster timeline, and would avoid the difficult position of negotiating without knowing what could and could not be done.

He said what had been learned from this process was the importance of the buffer, and he also said the student housing issue was one that he had not thought about, in developing this Zoning proposal. He said he had been focusing on maximizing retail space and maximizing road frontage, along with spin-off effects. He said he didn't think the whole proposal needed to be thrown out, and said if it was the will of the Council, it could be modified.

He said this was a process, and said he didn't think that a proposal that came to the table had to have every single possibility and ramification figured out before bringing it forward. He said as part of this process, they all had learned that buffers were important downtown, and that people were terrified of student housing. He also noted that this was the same Town where he had been hearing about sprawl in Durham, and that development needed to go downtown.

He spoke about possible ways to proceed. He noted that there were a number of things in flux right now, and that it might not make sense to move forward precipitously. He said that at the Agenda setting meeting, a solution that was discussed was to schedule the public hearing for Jan 5<sup>th</sup>, 2009. He also said Administrator Selig had met with Pat Sherman, who had said there were other ways to accomplish things by changing the Zoning Ordinance in a different way. He said he was open to this, and said the Council could table this now and wait to hear back from Pat Sherman.

He said an additional possibility was a possible amendment to the Zoning proposal, based on his discussion with Councilor Clark about the buffer issue. He distributed and read his proposed amendment, and said he didn't expect to fully explain this and have the Council vote on it. But he said if other Councilors were interested in it, a Councilor could move it,

and it could then be sent to the Planning Board. He said the Board would be asked whether they thought the buffer idea was a good one, and also whether the size of the buffer should be flexible, depending on the size of a particular property. He said this would add 2-3 months to the process, but would insure that there would be a discussion on the buffer issue.

Councilor Needell said he appreciated what Chair Niman had said. But he said the problem was that they were in the middle of the current process. He suggested killing that process and then invigorating a new process, with much better proposals.

Chair Niman said he was simply responding to Councilors who said they didn't want to kill the current process. But he said the possible ways to proceed including killing the present process.

Councilor Clark asked what the timeframe was for hearing other options from Ms. Sherman, and Administrator Selig said there about a two-month turnaround.

Councilor Leach noted the possibility of sending amendments to the proposal back to the Planning Board, and also said the Council would be waiting to hear back concerning Mr. Pinto. She asked whether, if the Council passed this on first reading, additional data could be included in it. She also asked what would happen if it was killed now and later brought back.

Councilor Sievert said he would prefer not to kill the current proposal, and would like to move forward, at a slower pace. He noted that the buffer amendment idea might be a great change, but that this wasn't clear right now.

Councilor Henry Smith said given the swirl of comments, the possibility of Pat Sherman investigating alternative zoning approaches, and Chair Niman's propose amendment, it made sense to kill this proposal, and go back to the drawing board.

Councilor Stanhope said he liked the idea of allowing 120 days to entertain alternative ideas, and said this would be a good opportunity for the public to participate. He said there had been enough effort up to this point so that stopping the process would not be good planning.

Councilor Van Asselt said it was important that Chair Niman had made his speech, and said he hoped that people had listened to it. He said what he had done was in the interest of the Town, and said he was prepared to support moving the public hearing forward to Jan 5<sup>th</sup>, 2009.

***Councilor Stanhope MOVED to amend the motion, to change the date of the public hearing from August 4, 2008 to January 5, 2009. Councilor Van Asselt SECONDED the motion.***

There was discussion that the motion to move Ordinance #2008-10 on first reading had already been made at the previous meeting, and that this present motion was to amend the public hearing date. It was noted that Councilors could vote to change the date, and yet still vote against passing the Ordinance on first reading.

Councilor Julian Smith said he felt it made more sense to vote on moving the Ordinance to first reading first, and then voting on the date change.

Councilor Needell said he was opposed to moving the public hearing date to 2009, stating that this circumvented the whole purpose of the process. He said if the hearing date was set, the language of the Zoning proposal was fixed, and said at that hearing, the existing language was supposed to be discussed. But he said it was clear that no one wanted to approve the wording that was proposed.

Chair Niman said this was a valid point, but he asked what should be done to accommodate members of the Council who felt there were potential negative implications from killing the proposal. He asked if there was some middle ground that everyone could agree on.

There was further detailed discussion by Councilors and Administrator Selig on what approach made the most sense.

***The motion PASSED 7-2, with Councilor Needell and Councilor Henry Smith voting against it.***

Discussion continued on the original motion.

Councilor Van Asselt asked Administrator Selig to speak about what the Council should do with this.

Administrator Selig said this process has been terribly frustrating for everyone. He said it was clear that the initiative had been brought forward with the best of intentions, and said the goal was one of common interest to everyone, to invigorate the downtown. He said this was why the Mill Plaza process had been set in motion.

He said this Zoning proposal was meant to support that, but said it had instead started to pull people apart. He said people didn't like this particular proposal, but they did want to move the Mill Plaza process forward. He said he recommended stopping this current process, and said he didn't see any benefit to prolonging the frustration of the neighborhood over several months. He said it was hard to create a community dialogue with this hanging out there.

He recommended voting against the motion, while recognizing that the planning process wouldn't end that evening. He said it might be better to go in the direction that Patricia Sherman was going in with the Zoning Ordinance. He also said it was important that the public knew that their input would be welcome.

He noted comments made by resident Peter Andersen earlier at the meeting, and said the Town's interest in the Nielson property was prior to Mr. Anderson's ownership of that property. He also said the Town had been interested in the Kyreages property concerning the library, but that this didn't get anywhere. He said over the last two weeks, the Kyreages'

family had said they would be interested in selling all of their properties for \$10 million, and he said the Town had no involvement with this.

Chair Niman said he agreed with Administrator Selig, and would vote no on first reading.

Councilor Julian Smith said he had voted to change the public hearing date to January 5, 2009, but said his intention was to vote against moving the proposal on first reading. He said he had gone into this process with the best of intentions, but said he and Councilor Needell had been surprised by the great amount of opposition to this Zoning change at a Planning Board public hearing. He also said he had been surprised to hear Chair Niman say that he had not considered the issue of student housing relative to this proposal.

He noted that at the Mill Plaza Committee meetings, there had been a great deal of discussion that any redevelopment of the Plaza would probably require some student rentals, especially along Main Street, and he said this pattern had been recognized as economically viable. He said they had heard from the public that if there was going to be student housing, it should be up by Main Street, and said he had entered into this current process with that in mind.

But he said a great number of people had expressed their reservations and doubts about this approach. He said the intelligent thing would be to not pass this on first reading, because the many reasons why members of the public would be worried about this change had not been anticipated. He said the Council had received good advice from Mr. Castagna to not go forward with this.

Councilor Van Asselt said the process the Council had used here was provided for in the Zoning Ordinance, and he said it was followed to the letter. He said the intent of those who wanted to pass this in some form was to help the Plaza in some way. He said the Council had heard from the public that it didn't want the Zoning Ordinance to change, but he said these kinds of changes didn't bring people out who supported it. He said all possible changes would fall into this category.

He said he was willing to set this proposal aside now because John Pinto and the other developers would be coming forward with a design that involved this area. But he said objections from the public, and questions about the process itself were not reasons to set the proposal aside.

Councilor Leach said she didn't see why putting the hearing off to January 2009 would cause more stress, and said it would allow more information to come in. She also noted that passing this on first reading did not mean that the proposal would pass at the end. She asked what the plan was, if this proposal didn't move forward, and said whatever the Council did, this needed to be made clear.

Councilor Stanhope said he disagreed with Councilor Van Asselt that undue weight should be given to one landowner in this process. He said in the end, the question was what was in the best interest of Durham, in its entirety. He said it wasn't likely that those people in favor of expanding the downtown would show up during this process, but he said he wanted that

process to go forward, while allowing the opportunity for dialogue. He said he didn't want to go back to square one, and would be disappointed if this did not pass on first reading.

Chair Niman said he didn't feel they would lose what they had if this process stopped, and said he couldn't get past the idea of passing something that no one wanted. He said he thought the Council would need to have a discussion to lay the groundwork so it would be ready when John Pinto came forward. He said there could be public discussion then, and noted that the discussion so far had raised awareness. He said he felt they all needed to regroup and approach the planning issues in a different way.

Councilor Henry Smith agreed that the process should go forward, but that this proposal should not go forward. He said with further work, it could move forward in a changed form.

Councilor Julian Smith said the process would continue to go forward, and he noted that the Town and the University needed to have a discussion about what the University could do to make College students better neighbors in the community. He said one of the best places for student housing and shops, which would be beneficial to students and the community, was along Main Street, north of the Plaza.

He said whether or not the Zoning was changed, the Varsity Durham property along Main Street was underutilized, and was ripe for redevelopment. He noted that he had previously spoken about the idea of a student housing overlay district, and he said a discussion was needed on this. He said it made sense for students to live within walking distance of the University. Councilor Smith said he knew how bad the behavior issues could be, but said universities could help to make students better neighbors. He said as part of the redevelopment of the Plaza, the University should be brought into the discussion.

Chair Niman said the Town had done this.

Councilor Needell said he had supported bringing this proposal to the Planning Board, but said it had become clear to him that this needed more work. He said there was no reason to stop the planning process, but said this specific proposal had run its course.

***The motion FAILED 2-7, with Councilor Stanhope and Councilor Leach voting in favor of it.***

***Councilor Julian Smith MOVED to amend the Agenda to address Item XI A. next on the Agenda. Councilor Stanhope SECONDED the motion, and it PASSED 7-1, with Councilor Leach voting against it*** ( Councilor Van Asselt was not in the room for the vote)

## **XI. 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

22, 2008

***Councilor Stanhope MOVED on First Reading 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 22, 2008. Councilor Julian Smith SECONDED the motion.***

Councilor Leach asked for details on the plan. She noted that the Planning Board had approved this amendment, and felt that there had been an error in the Table of Uses concerning this use.

Councilor Needell said when this was brought forward to the Planning Board, it was clear that it was not a permitted use. He said during the discussion, the Planning Board felt this should be changed. He said he didn’t know that the term error had been used, but said the Board felt there wasn’t sufficient reason to not allow this use in the MUDOR district, given the historical uses there, and the present use of surrounding properties.

Councilor Leach asked if there had been discussion about the impact of this change on the MUDOR zone, and also asked if the Board felt it was better to change the Ordinance, rather than say the variance process could address the issue.

Councilor Needell said this was simply a proposal to restore a use. He also said the Planning Board did feel it was better to change the Ordinance, in that this was currently an inappropriate restriction on the property. He said at the hearing, there was no compelling reason brought up as to why the Board shouldn’t make this change.

Councilor Van Asselt said he was looking for a reason for the change of use, and Councilor Needell said the Planning Board discussion was that the Board couldn’t justify why the Table of Uses was the way it was, and why this wasn’t a permitted use.

Mr. Campbell said this probably should have been permitted or at least should have been a conditional use. He said the Planning Board didn’t go the variance route because it felt it made no sense not to allow the use.

Councilor Henry Smith noted that the Planning Board’s reasoning was in the Council Communication.

There was further discussion.

Administrator Selig said Councilor Van Asselt’s point was excellent, in that this change would apply to the entire district, not just the property in question. He said the broader question was whether this was a good use in the MUDOR district.

Councilor Leach said it was a good question, noting that the Council was being questioned about the process by which its Zoning proposals were coming forward, but that that this proposal had come forward in a similar way.

*The motion unanimously PASSED 9-0.*

**X. Unfinished Business (Continued)**

- B. 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 22, 2008

*Councilor Van Asselt MOVED on First Reading 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 22, 2008. Councilor Leach SECONDED the motion.*

Councilor Van Asselt said he didn’t want to pass this on first reading, and would vote no on his motion. He said he didn’t know Perry Bryant’s plans, but said he was one of the Town’s better landlords and was a responsible developer. He said he felt the Council should keep this on its list but set it aside for now, but he said discussions could continue.

Councilor Needell said he would vote against the motion. He also asked Councilor Van Asselt whether he was suggesting that continuing the discussion would include discussion on Pendexter Road.

Councilor Van Asselt said yes. He said this proposal started at the EDC, and made sense in terms of housing, and related to economic development. He said there needed to be discussion on that area, as well as on Beech Hill.

Councilor Needell said future discussion on this would have to come to the Council’s table.

Councilor Leach said that of the three Council initiated Zoning district proposals, she was the most uncomfortable with this proposal, and asked where it would go, if the process stopped now.

Councilor Van Asselt said he felt it would go back to the Planning Board anyway. But he said the EDC would address this, along with Beech Hill. He said Mr. Bryant had the right to develop his properties, and said he felt they could work with him to do something good for the community.

Councilor Clark said the EDC had the opportunity to vet this in a far more comprehensive way, and invite the public, before the proposal got to this stage. He said the process right now was so black and white, and he said the answer was usually gray. He said he thought the



Council should vote this down, send it back to the EDC, and get a more sophisticated answer in terms of what the opportunities were.

Councilor Stanhope said there was the opportunity to utilize the Town core before expanding aggressively out where this was proposed. He said he was opposed to this proposal.

Chair Niman said he would be more than happy to vote no on this motion, but said a discussion was needed on smart growth. Concerning why this proposal had come forward, he said the Master Plan had said to zone this area as office research. He said there was no conspiracy involved. He also said Perry Bryant was one of the most creative guys in Town, and giving him the opportunity to create something that would represent a new business model in Durham was a good thing.

He also said that students had to go somewhere, and said at some point, he would like the Planning Board to have a discussion on this. He said the Master Plan carefully skirted that whole issue, and he said rather than having a new Master Plan process, at least the Planning Board could have that conversation.

Councilor Needell agreed that these were good things to discuss, but he said the Council didn't know the plans of the property owner. He said if this came back, Mr. Bryant should be part of the discussion. He also said there didn't necessarily have to be rezoning because of one property owner.

Councilor Leach said she hoped the public realized that this was the first time the Council had been able to have a conversation about this proposal. She said none of them were trying to shut out the public, but she said there were times when the Council had to have a discussion among themselves, in public, before it could determine what it needed from the public.

There was discussion, in response to a question from a member of the public, that Chair Niman had initiated the processes with the three Zoning district proposals, but writing a letter to the EDC, the EDC had recommended them to the Council, and the Council had then moved forward with them.

***The motion FAILED 0-9.***

- C. 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 September 8, 2008

***Councilor Van Asselt MOVED to approve on First Reading 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 September 8, 2008. Councilor Leach SECONDED the motion.***

Councilor Van Asselt said he felt this should pass on first reading and go to public hearing. He also noted that the Council had discussed a piece of land that Mr. Chinburg wanted to exclude, for some kind of elderly housing. He asked if it would be a substantive change, if this piece of land was excluded from the Zoning district proposal.

Administrator Selig said the strict interpretation was that this would be a substantive change, but said since it would mean a lessening of the Zoning change, he didn't think it was in fact substantive. But he said the proposal would need to be amended.

Councilor Needell said a lot of what was driving this discussion was the JLB proposal. He said this Zoning change would help that proposal because they wanted to shift the project boundary into this zone. He said there were some very good reasons for this, but he noted that the area now proposed to be taken away impacted that. He said he had opposed this rezoning proposal before, because he felt it was not developed well enough. He said the uncertainty concerning this small piece of land pointed to that uncertainty.

Chair Niman said he disagreed with that characterization, and said the developers could do the development without it. He also spoke about the fact that Mr. Chinburg wanted to utilize the piece of land that had been spoken about. He agreed that the timeline for this Zoning proposal was to benefit the developer. But he said the environmental and other benefits were worth the Zoning change. He said he was also interested in the ability to commercially develop the other property, because of the limited amount of land in Durham to do commercial development. He spoke in detail about the limited options available in Durham to do this kind of development.

He said it was his understanding that there was discussion about developing a trail as part of the development, above the utilities. He noted that if Spruce Hole was developed, the easements developed would lead to a significant savings for the Town. He noted the distance of the proposed development to campus was only about a mile. He said he would like to see commercial development to support the research activities going on at UNH, and to provide jobs for students at the University, at locations they could walk to.

***Councilor Needell MOVED to extend the meeting beyond 10:30 pm. Councilor Julian Smith SECONDED the motion, and it PASSED 8-1, with Councilor Stanhope voting against it.***

Councilor Julian Smith said he would vote in favor of this motion, and said it was a good proposal.

Councilor Needell said the JLB proposal was an exciting concept, but said he didn't agree with the rezoning. He said what the developer wanted to do was to impose a conservation subdivision type of development in a commercial zone, which was appropriate here. He said Mr. Farrell had also authored the draft of the PUD ordinance, which was totally appropriate

to use here. But he said if they were going to rezone this, it should be done completely, as opposed to just rezoning the land to ORLI.

He said the proposal was fine if Mr. Farrell owned the property, but he said it wasn't known who would develop the property in the future. He said there was no specific development proposal, so to rezone this in part to accommodate his vision was premature. He said this didn't protect the Town.

Chair Niman noted the concerns of the Conservation Commission about water supply issues, and issues Councilor Needell had spoken about. He said he and Administrator Selig had met with the developers to see if they could make commitments that would offer some of the protections that people wanted. He spoke in detail about this, and said he hoped these discussions would be wrapped up in time for the public hearing.

Councilor Leach noted that a consultant had been hired in regard to the aquifer, and asked whether a report on this was expected, and whether Administrator Selig felt it would address the Commission's concerns.

Administrator Selig said the Council could get professional guidance on the impacts of the Zoning change on the aquifer but said he had held off on having this work done in order to see first if the Council was interested in moving this Zoning proposal forward.

Councilor Leach noted concerns about stormwater management issues in regard to this Zoning proposal, and she determined from Administrator Selig that there was no firm date when the stormwater ordinance would be ready. She then said she felt more comfortable passing this proposal on first reading than she had for the other proposals. She said she had spoken with Mr. Farrell, and had seen that he had done due diligence. She provided details on this, and noted that there hadn't been a lot of people who had come forward against this change. She said she felt this was something that a lot of people in Town had endorsed, and said she felt comfortable that the Council was representing something that people could live with.

Councilor Henry Smith noted Councilor Needell's concerns, and the concerns of the Conservation Commission. He said he felt this proposal was worthy of consideration, but was not ready to go forward. He said Mr. Farrell had done a good job, but it was not quite ready because of these concerns.

Councilor Sievert said he felt that this was one of the Zoning changes that had been done from the development side. He said information had been coming forward, and there was more to come. He said he believed this Zoning process could go forward and allow this information to come out, as the developer moved his own process forward.

Councilor Clark said the Town had a chance for a better use of this land, with or without the Zoning change. He also said the conditional use process allowed more protections. He said having student housing within walking distance was one of his criteria, in terms of whether this Zoning proposal made sense or not.

Councilor Needell said most of the meetings with Mr. Farrell had been regarding the JLB project. He said if the Zoning didn't change, there were still other options. He said the student housing project was not dependent on this vote, and also noted that Mr. Farrell's ideas didn't involve student housing at all. He said he was not convinced that the rezoning would provide better options.

Councilor Van Asselt asked whether, if an amendment was made to take the piece of land out, it was better to do that now. The Council agreed that the amendment should be made now.

***Councilor Van Asselt MOVED to remove the northern part of lot 14-14, located on map 13. Councilor Sievert SECONDED the motion. PASSED unanimously 9-0.***

Councilor Leach asked if the information on the aquifer would be available for the public hearing, and if not, if the public hearing should be moved further out in time. There was discussion.

***The motion as amended PASSED 6-3, with Councilor Needell, Councilor Henry Smith and Councilor Stanhope voting against it.***

- D. 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 18, 2008

***Councilor Van Asselt MOVED on First Reading 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 18, 2008. Councilor Sievert SECONDED the motion.***

Councilor Van Asselt said this has been in the works for 2 ½ years, and it was time to take it to first reading and have the public hearing.

Councilor Julian Smith passed out what he said were some non-substantive corrections to the Ordinance, except for four added words, which he offered to remove.

Councilor Needell urged that no new wording be added at this time.

Chair Niman said the wording "shared by separate apartments" would not be included with this motion. He asked the Council to read over the rest of the proposed changes to see if they were comfortable with them. He said the proposal could be amended later, to use the revised wording.

Councilor Stanhope said he would vote against the motion even though he would benefit personally from the proposed changes. He also noted that a variance would accomplish more than the proposed ordinance change.

***The motion PASSED 8-1 with Councilor Stanhope voting against it.***

- E. 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 18, 2008

***Councilor Van Asselt MOVED on First Reading 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 18, 2008. Councilor Sievert SECONDED the motion.***

Councilor Needell said he had tried to find other ordinances to see how the numbers in this proposal compared to them, and whether a 25% increase was a significant change.

Mr. Campbell said he could research this for Councilor Needell, and there was discussion.

***The motion PASSED 8-1, with Councilor Needell voting against it.***

- F. 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 18, 2008

***Councilor Van Asselt MOVED on First Reading 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 18, 2008. Councilor Sievert SECONDED the motion.***

Councilor Needell said this proposal, as compared to the last one, did trouble him, because of all the things that had been discussed regarding Church Hill. He said Bill Hall had explained very well that over the years, this area had been transformed. He said areas of Town that were not suitable for non-student residential living were being created. He said the reason for this proposal was to encourage redevelopment of the properties involved, but said he saw this as increasing the pressures on residents. He said he was not comfortable with the proposal, but was ready to have the conversation on where student housing should go.

Councilor Van Asselt asked how much single family residential housing was left in the Church Hill District.

Councilor Needell said this change would encroach into the surrounding residential zones.

Councilor Henry Smith said the Planning Board had some legitimate concerns regarding increasing the density in this district. He said there was a lot of discussion, and the vote was close. He said he shared these concerns, and was not comfortable with moving this forward.

Councilor Julian Smith said he would vote against passing this on first reading, and said if Councilors wanted to know why, they would need to go into nonpublic session.

Councilor Leach asked if there was any benefit in bringing this back to the Planning Board.

Administrator Selig said he recommended moving this proposal on first reading, where there could be further discussion on it.

Councilor Clark said he had more reservations about this proposal, and said he would like to think that the historic houses in that area would be preserved to look more closely . He said this proposal looked like it would provide the incentives that would mean this would always be high-density student housing.

Chair Niman said that was a very good point.

Councilor Leach said it was important to pass this on first reading in order to hear more questions, and get answers to those questions.

***The motion PASSED 6-3, with Councilor Needell, Councilor Julian Smith, and Councilor Henry Smith voting against it.***

**B. Other business (None)**

**XII. Nonpublic Session**

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

**XIV. Adjourn (NLT 10:30 PM)**

***Councilor Van Asselt MOVED to adjourn the meeting. Councilor Stanhope SECONDED the motion, and it PASSED unanimously 9-0.***

Adjournment at 11:05 pm

Victoria Parmele