

**This set of minutes was approved at the Town Council meeting on September 22,
2008**

**DURHAM TOWN COUNCIL MEETING MINUTES
MONDAY, AUGUST 18, 2008
7:00 PM
DURHAM TOWN HALL – COUNCIL CHAMBERS**

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

MEMBERS ABSENT: Councilor Peter Stanhope

OTHERS PRESENT: Town Administrator Todd Selig; Town Planner Jim Campbell; Town Engineer David Cedarholm; Police Chief David Kurz

I. Call to Order

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

II. Approval of Agenda

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

III. Special Announcements

None

IV. Approval of Minutes

None

V. Councilor and Town Administrator Roundtable

- Administrator Selig noted that Durham Day would be held on Sept 14th, and said he would appreciate it if Councilors would let him know if they could make it, and if they could bring a grill.
- He said the Budget review was in full swing. He said he had met with the Library Board of Trustees, and also said Councilors were welcome to attend meetings with Town departments on their budgets.

- He said at the EDC meeting on August 8th, there had been discussion on the issue of a new site for the Town offices. He said it was a good discussion, and noted that the EDC had asked that their meetings be taped for future broadcast on DCAT. He said a possible date for a special Town Council session on this issue was October 27th.
- Administrator Selig noted that he, Chair Niman, and Mr. Campbell had recently met with the head of Goss International, and were told that if the Town had economic proposals involving the Goss property, he would be open to considering them. Administrator Selig said there had also been discussion about some international trade issues involving Goss, and said he had written to the trade delegation and the Governor asking them to intervene on Goss's behalf. He said Senator Sununu had called back, and noted that Goss was the Town's largest taxpayer and employer, so it was important to be supportive.
- Administrator Selig said Councilors were invited to attend an upcoming meeting of the Durham Business Association.
- He said the Town had received a protest position regarding the Zoning proposal to lower the minimum lot area per dwelling unit in the Church Hill district, and explained that this meant that a 2/3 vote of the Council would be needed in order to pass that measure.
- He said the Mill Pond Center was most likely looking for a new location, and noted that he had toured some of the Wagon Hill farm property with them. He provided details on this, and said they seemed to be interested. He said this idea would be fleshed out, and said there might be discussion on it with the Parks and Recreation Committee.
- Administrator Selig updated the Council on the fact that the Durham Police Officers Association labor contract expired this year, and that he was in the process of securing Attorney McKittrick, regarding this. He said as the negotiations moved forward, the Council would need to have a non-meeting session to strategize on this issue. He said the other three labor contracts expired in 2009.
- He said that appraisals on various properties under consideration by the Town were in Councilors' boxes.
- Administrator Selig said he would like feedback on whether it was worth continuing to pursue the idea of having a statue of the Milnes put in place near the Milne pond. He explained that situations like this were generally handled by the Public Works Department, but said he was hesitant to go further in this instance without at least a brief conversation with the Council on it.

He explained his perspective as to why this project was a good idea, given the generosity of the Milnes, and the fact that this statue would be both a tribute to the Milnes as well as a whimsical piece of art in a beautiful location in Town. He noted that there wasn't really much in the way of public art in Durham, and that this kind of thing hadn't been done in the past for other notable people in Town.

Councilor Needell asked if perhaps Councilors could tour the property where the statue was to be placed. There was discussion.

Administrator Selig said a cardboard model of the proposed statue could be placed there to get a better idea of what the statue would look like there.

Councilor Leach said she didn't have a problem with the concept itself, but said she thought this would be getting into treacherous territory to talk about using Town funds for this. She said fundraising was the way to go, and Councilor Henry Smith agreed.

Councilor Julian Smith asked if the Council would have to officially accept this art work, and Administrator Selig said there would be a Resolution that would authorize the placement of the statue on the property.

Chair Niman noted the pedestal with a painting of John Hatch the Town had put in place that looked out over the Oyster River, and Administrator Selig said he had authorized this on his own. But he said in this present situation, there was more involved. He noted that some residents donate benches in memory of people, but he said in this situation, there would be an obvious site in Town involved. He said his wish was that residents would rejoice in having the statue placed there.

Councilor Clark said he thought this was a great idea, and said there should be a hearing on it. He also said it was smarter to go with fundraising than to use Town funds

Councilor Van Asselt spoke about the status of the non-taxpaying entity that had filed the protest petition in regard to the proposed change in density on Church Hill and Administrator Selig said the Durham Community Church was the landowner involved. Councilor Van Asselt said that in accepting this as a legitimate protest petition, he thought this opened up interesting possibilities of nonprofit groups who didn't pay taxes having a fairly significant voice as to what happened in their district.

Administrator Selig noted that what happened around them had implications for their land. He said the Church owned 35% of the land area involved, so qualified as being able to make the petition.

Councilor Needell noted that in the MUDOR district, the University owned most of the land there. He said he assumed that if it should it wish to challenge something, it would have the same right to do so.

Councilor Van Asselt said he thought the issue he had raised was a concern, but said if he was the only Councilor who felt that way, they shouldn't worry about it.

Councilor Julian Smith said the Planning Board had met the previous Wednesday, and had deliberated on the Caldarola conservation subdivision, but had not yet voted. He said the Board had also done a design review for a new site plan concerning the Perry Bryant Multi-unit

development planned for Mast Road, in the MUDOR district. He noted that the Grant property across the street was now University property.

Councilor Sievert said he had talked with a landowner, a member of the Durham Landlords' Association, who had some recent conflicts with the Fire Department, the Building Department, etc. He said it was important to look at this, and Administrator Selig suggested that this person talk with him about the issues involved.

VI. Public Comments

Chair Niman asked to hold comments on ordinance items to those agenda items.

Roger Speidel, Noble K. Petersen Drive, said that at the August 6th School Board meeting, he was cut from 5 to 2 minutes of time to speak, making it impossible to say what he had prepared in that amount of time. He said this demonstrated how little the School Board cared about what citizens had to say. He noted that the Town Council's public comments portion was much longer, and he said the public's comment should be heard, and welcomed. He also said he recommended that the School Board call this "public comments", not "visitor comments."

Robin Mower, 11 Faculty Road, said regarding the scheduling of the public hearings that evening, that those speaking that evening were speaking for many others who could not be present, for various reasons. She noted Agenda item XI regarding the proposed reduction in the speed limit, and said she and others in the Faculty neighborhood supported it. She provided details on this, and spoke about drivers speeding on those roads and ignoring stop signs. But she said she and others questioned the limiting of the speed limit reduction to a single street, and said it made more sense to have 25 mph speed limit sign at the entrance to the Faculty neighborhood. She said the Town could probably expect a request for such a sign in the near future.

She also spoke about the Zoning proposals before the Council, and noted that several residents said they seemed to be coming out of left field. She also said residents were stunned to hear about the potential sale of the Town Hall. She said she had been pleased to see that the recent EDC meeting that discussed this potential sale had been taped for broadcast on DCAT, and said if earlier EDC meetings this year had been similarly taped, or if minutes had been made available on a more timely basis, perhaps residents wouldn't have been taken as much off guard, since these ideas were discussed briefly at some of these meetings.

She also said that if Chair Niman had provided the same arguments to the Planning Board at its public hearing in July on the Zoning changes that he had recently provided at the Council meeting, he would have made more open what instead appeared to be a closed process. She said it was human nature to respond to bits and pieces of information, and provided details on this. She said if information wasn't provided in an open process, the Council could count on a challenge from the voters.

She said there needed to be a discussion on whether and where the Town wanted to house students, and whether it was time to revise the Master Plan. She said otherwise, it was important to dismiss comments that the Master Plan was irrelevant. She said the Town needed to persuade

UNH to more fully cooperate with the Town's goals, and needed to talk about what they wanted for the town in 30 years. She asked if the Council would schedule a participatory discussion on the big issues for the Town.

Chair Niman said he didn't know the answer, but said they would be discussing it under X D. on the Agenda that evening.

Tom Young, 13 Thompson Lane, said the proposal to amend the speed limit on Thompson Lane had been initiated by several families who lived there. He said they felt that a 30 mph speed limit was too fast, and said while it was understood that 25 mph was the lowest speed limit allowed by State law, they actually felt that the speed limit should be 20 mph. He noted that while residents who lived in that area walked a lot, there were no sidewalks on that street. He also said there were two disabled residents living on each end of the street. Mr. Young also said he couldn't agree more that the 25 mph speed limit being requested was probably appropriate for many residential areas in Durham.

Hillary Scott, 20 Davis Avenue, said she respected the efforts of Town Council members, and she asked that the Council also respect the efforts made by members of the public in attending Council meetings to make their comments. She said people did tend to come out when they were passionate about a particular issue, but she said this didn't mean that their opinions should therefore be dismissed. She also said those people who did show up most likely represented several others who for various reasons didn't get to the meeting.

Ms. Scott noted that some members of the Council had been personally impacted by threats to their own neighborhoods, so should appreciate it when this happened to others.

She asked that Chair Niman request that Councilors not speak on behalf of entire neighborhoods unless they actually had data to back up their statement. She provided details on this. She said she supported the redevelopment of Mill Plaza in a way that maintained adequate buffers and the quality of life for abutting neighbors.

She said if information to make thoughtful decisions on rezoning was needed, it made sense to stop and gather more information, and perhaps have a site walk. She said she felt that recent Zoning proposals could lead to a significant change to the character of the Town. She said such decisions deserved careful attention, taking into consideration the Master Plan, understanding affected areas, and public input. She also said there had been a clear message from citizens on the value of Town greenways and the importance of preserving them.

She said she supported the proposed decrease of the speed limit on Thompson Lane, as well as the idea of decreasing the speed limit for the entire neighborhood, and all of Durham. She noted that the speed limit in her neighborhood was 25 mph, but many people went way beyond that.

Andy Colby, 11 Thompson Lane, said any reduction of the speed limit on Thompson Lane would be very much appreciated.

Katie Ellis, 26 Coe Drive, noted that the posted speed limit on Coe Drive was 20 mph, although this was not enforced. She said most people went 30 mph or more on that street, and said she

thought it was wrong to have a speed limit so low that everyone drove faster than that, and that was not enforced. Ms. Ellis also spoke about the stop sign that had been installed on an island, at the corner of Woodman and Dennison. She said it was a mistake to have the island there, and said she didn't see how snowplows would function there.

She said the island made the road into the neighborhood narrower, and said it actually pushed traffic closer to the sidewalk and therefore didn't enhance safety. She also said the stop sign was more than a full car length behind the stop line, and said she hoped that it would be removed. She said she realized there was concern about getting people to slow down at that intersection, but said this wasn't the correct way to handle the situation.

Pam Weeks, 12 Woodman Road, also spoke against the stop sign at the corner of Woodman and Dennison, and said it had already been knocked over twice. She said she would like to see a police presence there occasionally, and noted that it wasn't the students who were the least likely to stop, it was the women on cell phones, with their children in the car. She said about 1 out of 6 cars didn't stop at the stop sign.

Administrator Selig acknowledged that this intersection had been problematic, and said the Traffic Safety Committee had tried a number of strategies. He provided details on this, and said among other things that the Town didn't have the resources to park an officer at this intersection on a regular basis.

He said it was, in fact, parents bringing kids to the schools that were the worst offenders, and he also spoke about the bus pickup issue. He said it had been thought that if an island were put in, with a breakaway sign, this would narrow the roadway and encourage a slower traffic speed. He also said it was hoped that the island would eliminate the need for the stop sign. He said they were monitoring the situation, and said the Traffic Safety Committee agreed that this was a test to see if it worked. He said they were open to feedback, and said the goal was to find something that was acceptable to everyone. He noted that this was a low cost, low manpower solution.

Ms. Weeks said the island did force traffic closer to the sidewalk, and said she would call Administrator Selig to speak further about this issue.

Bill Hall, Smith Park Lane, said the traffic problems in downtown Durham was the traffic generated by the University. He said the only way to deal with this was to use the Northern Connector, and said this would decrease the traffic downtown significantly, allowing the Town to, among other things, block off Madbury Road. He said this was the only viable, economical way to solve the traffic problem.

Mr. Hall also spoke about the fact that he had gotten a copy of the water management plan. He said there was no data on the Lamprey River, and said this was why the Town was not getting anywhere on the 401 permit. He noted the January 2007 letter to Paul Currier of NHDES regarding the idea of getting relief from the 401 permit requirements, but said Durham wasn't going to get that relief from the State. He said the Town should go to court over this, to ask for the information that backed up the 401 permit requirements. He said the Town currently didn't have the data that NHDES's limits were valid.

Robin Mower asked if the Council had discussed the issue of getting a representative to the Strafford Regional Planning Commission, to address some of the concerns about traffic, the Northern Connector concept, etc. She said many people in Town were not aware of this issue, and she asked whether this perhaps should be on the table for discussions with UNH. She suggested that perhaps the Council could discuss this as part of its goal setting discussions.

VII. Unanimous Consent Agenda *(Requires unanimous approval. Individual items may be removed by any councilor for separate discussion and vote)*
None

VIII. Committee Appointments

Shall the Town Council confirm the Oyster River Cooperative School Board's appointment of Kathleen Young as its representative to the DCAT Governance Committee for a term of one year?

Councilor Leach said her understanding was that Ms. Young, if appointed to DCAT, would be replacing Paul Gasowski, formerly the IT person for the School District. She said Ms. Young was very interested in the DCAT position.

Councilor Julian Smith MOVED to appoint Kathleen Young as its representative to the DCAT Governance Committee for a term of one year. Councilor Sievert SECONDED the motion, and it PASSED 7-1, with Councilor Van Asselt voting against it.

IX. Presentation Items

A. Receive annual report from the Planning Board – William McGowan, Chair

Mr. McGowan said it had been a busy year for the Planning Board, and he reviewed the various boundary line adjustment, site plan, subdivision and conditional use applications reviewed over the past 12 months. He also spoke about conceptual consultations and design reviews held with prospective applicants regarding their development proposals. Concerning the Caldarola conservation subdivision application specifically, he said the lengthy process the Board had gone through concerning this application had given it the opportunity to provide a lot of input, and to make it a better project.

Mr. McGowan spoke at length concerning the recent Zoning proposals, and said the Board, as part of the process concerning these proposals, hadn't really had the opportunity to look at the Master Plan as part of its review of them. He said Durham's boards seemed to sometimes work in isolation from one another, and said an important question was what the best way was to do some strategic Town planning together. He also said that having listened to public comments as part of the current process with the Zoning proposals, another question was how to amend that process to allow for better communication. He said he didn't have the answer to that question.

Mr. McGowan reviewed the list of Zoning amendments the Planning Board was working off of, and noted the Zoning changes from this list that had been made. He said it was a dynamic list, which was ever changing.

Councilor Henry Smith asked about the change made to the definition of “convenience store”, and there was discussion.

Councilor Van Asselt said the Planning Board owned the Master Plan, and asked if the Board had discussed where it would start, if it decided to update the Master Plan.

Mr. McGowan said the Board had gone through the Master Plan chapters and had talked about developing a matrix for the various chapters. But he said it wasn't clear what the best process would be to update it. He also said there never seemed to be enough time to do the work required at regular Board meetings.

Councilor Needell said a real effort had been put forth by the Planning Board to do an inventory and develop the status report of what parts of the Master Plan had actually been implemented.

Mr. McGowan said the Planning Board and the Town Council heard people talk about possibly making changes to the Master Plan and the Zoning Ordinance, but he said the question remained what the best way was to accomplish this.

Councilor Clark said that answers were needed on how to prioritize Town planning needs. He asked how the Zoning issues on the Board's list had gotten on this list, and Mr. McGowan said this had been based on feedback received from the public, input from the ZBA, etc. He also said there were some Zoning issues that had not previously been finished up.

Councilor Clark said he saw a lot of little things to be addressed on the Planning Board's list of Zoning issues, but he said he thought there were some bigger issues that should be on this list.

Councilor Leach said that Administrator Selig has some ideas concerning this, for the Council's goals discussion.

Councilor Van Asselt said that at an EDC meeting, he had said it was important that the Planning Board plan, but he noted that Mr. McGowan had said it was hard for the Planning Board to find the time to plan. He asked if this was a staffing issue, a lack of direction from the Council, too much public participation, or something else.

Mr. McGowan said it was a combination of everything. He noted how long it had taken for the Caldarola conservation subdivision application process, and the Irving station process. He said given the Town's high standards, and the Board's flexibility in working with the developer and the public, there had been numerous revisions. He said the question was always how to move forward with development while maintaining the Town's character.

It was noted that the Conservation Commission had had significant involvement in the Caldarola conservation subdivision application process.

Councilor Clark said his instincts told him that it was applications that were addressed, rather than opportunities. He suggested that if there were design standards already in place when

applications came before the Board, this might end a lot of the debate. There was discussion on this.

Councilor Needell noted that there had been a real effort over the last few years to encourage developers to use the conceptual review process, so that when the application for a project came before the Planning Board, it was ready. He provided details on this.

Chair Niman noted that a member of the public had said during Public Comments that he should have come to the Planning Board regarding the proposed Zoning changes. He explained that he hadn't done this because he didn't want to give the impression that he was forcing something through. But he said if his attendance at a Board meeting in the future would be helpful, he would be more than happy to do this.

B. Receive annual report from the Zoning Board of Adjustment – Jay Gooze, Chair
Jay Gooze, ZBA Chair

Mr. Gooze said there was a great group of people on the ZBA, and he reviewed some recent cases. He spoke in some detail about the ongoing issue of how to evaluate the spirit and intent of the Durham Zoning Ordinance, in reviewing variance applications. He said that when the Ordinance got too far away from the Master Plan, it was perhaps time to think about changing it, because otherwise, this put the ZBA in a difficult position. He provided details on this.

There was detailed discussion between Councilor Van Asselt and Mr. Gooze concerning to what extent the ZBA paid attention to the fact that an owner asking for relief from the ZBA would possibly sell the property in question, and that a new owner might do something different with the property. Mr. Gooze said the Board did take into consideration the fact that a variance ran with the property, and that some things were therefore not a good idea

Councilor Van Asselt asked him if that was fair to the current property owner, and Mr. Gooze asked for an example of what Councilor Van Asselt was referring to. He said he would need to look at a specific case to answer this question.

Councilor Needell said it was an important point that the ZBA was not a policy board. He said that while it was appropriate for the ZBA to make note of problems it perceived in the Zoning Ordinance, the ZBA needed to stand apart from specific discussions by Town boards to change the Ordinance.

Councilor Sievert said he disagreed, and said the ZBA should be invited to a meeting where this kind of discussion would be held, to help get out there what the problems with the Ordinance were.

Mr. Gooze said he did in fact go to the Planning Board when there were issues with the Zoning Ordinance.

Councilor Needell said he agreed with the idea of this kind of communication, but not the idea of the ZBA being involved with actually crafting the Zoning Ordinance.

Mr. Gooze said the last point he wanted to make was that he saw some things the ZBA had voted on which, down the road, weren't being adhered to. He said a question was whether there was some way to encourage greater enforcement of decisions the Board made.

Councilor Julian Smith noted a reference made by Mr. Gooze to newer technologies for septic systems, and said this was an area that would be addressed by the Planning Board. He asked if these systems had come before the ZBA, and Mr. Gooze said they had. He said in these instances, the Board had to decide whether the systems were good enough to allow a change in the setback requirement, and noted that variances had been given for applications that included these systems.

Councilor Henry Smith noted the updated State Shoreland Protect Act, and asked if Durham needed to do anything to bring the Zoning Ordinance into conformance with it. There was discussion, and Mr. Gooze said that it was for someone other than the ZBA to do this.

- C. Receive presentation on draft Water Conservation Plan for the Town of Durham and introduction of a plan to update the Town's Water Ordinance – David Cedarholm, Town Engineer and Brian Goetz, Weston & Sampson Companies

Mr. Cedarholm provided a slide presentation on the Draft Water Conservation Plan. As part of this presentation, he noted that residents on the Town water system used 59 gallons per day per person. He said this number would be fleshed out further, but said it spoke well of residents in terms of water usage. He said the average person at UNH used 38 gallons per day, and said this number would be broken out further, in terms residents, staff, academics, etc. He said Durham's water use was not excessive, but he said there was always room for improvement.

Mr. Cedarholm introduced Brian Goetz of Weston and Sampson, Inc. to speak further on the draft plan and about water conservation issues.

Administrator Selig noted that among other things, Mr. Goetz would help the Town assess the propose Zoning change regarding Spruce Wood, relative to the Spruce Hole aquifer.

Mr. Goetz first noted that the water conservation plan was not related to the 401 permit for the Lamprey River. He then provided details on water usage in Durham, using slides. He explained that a water conservation ordinance had to address what future water use was going to be. He agreed with Mr. Cedarholm that Durham was looking pretty good in terms of water usage, but said there were opportunities for further conservation of water. He said that was what this plan was all about, and noted that the State asked NH towns to implement their water conservation plans.

He described the Town's water cycles over the past few years, and then reviewed the key points and recommendations of the water conservation plan.

- Every system needs to have metering and billing
- The State requires quarterly billing, to get feedback on water use.

- The Town's water audit and leak detection is ongoing. He said the water audit done in 2007, involving testing on the bigger meters, found that 6% of water was unaccounted for. He said this was quite good by industry standards. He also said leak detection was being performed, and said only one major leak had been detected. He said there was a response plan for when water loss was greater than 15%
- He said that concerning the water use rate structure, the shift was away from having to pay less if a resident used more water, and he provided details on this.
- He spoke about water conservation outreach being done now and planned for the future, including providing residents with toilet tank displacement devices, leak detection tablets, and water saving tips.
- He said a new initiative concerning water conservation was EPA's Water Sense program. He said only two NH towns had signed up for this so far, and said EPA would be providing towns that had public water systems with outreach information on this. He said the program would be similar to EPA's Energy Star program, involving labels on particular appliances and fixtures that met EPA's standards.
- He spoke in detail about the fact that the Durham/UNH Water System was establishing a Water Supply and Demand Status to graphically describe the status of water availability with the system, and the four stages of water conservation measures needed to ensure adequate water capacity for domestic/commercial uses and public safety.

After Mr. Goetz had finished speaking, Chair Niman asked Mr. Cedarholm if he needed something from the Council at this point.

Mr. Cedarholm said they were looking for some feedback on what had been presented, either at the Council meeting itself or afterward. It was noted that Councilors could provide this feedback to Mr. Cedarholm by email, and Councilors said they would do this.

Councilor Leach noted the inclusion of the Meredith Water Use Ordinance in Councilors' packets, and asked Mr. Cedarholm if he was thinking that Durham's ordinance would come from this. There was discussion.

Councilor Needell asked if the document provided to the Council needed to be approved, and Administrator Selig first explained that this document was part of the application submitted to the State to bring the Spruce Hole aquifer on line. He said if the Council chose to bring Spruce Hole online, this would be required. He noted that the Council had already authorized an analysis of the Spruce Hole property.

He said he was comfortable with the plan, and with moving forward on his own with it, but said he had wanted to know if the Council had any concerns about it. He said it was consistent with what he, the Council and the Public Works Department had talked about. He said it defined what needed to be done during drought periods, and helped Durham stay in compliance with the 401 Certificate.

Councilor Clark said the data he was waiting for was what the Town's watery supply was, and how this related to how much water was used.

Administrator Selig said there had been a specific Council work session on this topic.

Mr. Cedarholm said Underwood Engineering had just finished the preliminary engineering report on the Spruce Hole aquifer. He also said the water conservation plan actually would become a chapter of the Water Resource Management Plan, which addressed the questions Councilor Clark had raised. He said he could get a copy of this to Councilor Clark.

Administrator Selig spoke about the fact that when he and others had sat down to talk with NHDES about the 401 permit, the people who were concerned about the Lamprey River had raised questions as to whether Durham had done a leak detection audit, a water conservation plan, and whether it had developed threshold levels at which people were notified concerning water usage. He said the Town had committed at that time to do these things. He said this report addressed these issues, and would strengthen Durham's arguments with the State regarding the Lamprey River.

Mr. Cedarholm said the conservation plan was a guidance document in order for the water system to be efficient. But he said it was also a public information document that could be handed to residents to show them what they could do to conserve water.

Administrator Selig said the document contained a number of recommendations, including a tiered rate system, and triggers for water usage during water shortages.

Mr. Cedarholm next outlined in detail the reasons for having a Water Ordinance:

- To define basic system requirements for new connections, expansions, and improvements.
- To define use regulations
- To define the authority to impose penalties
- To establish a fee structure to encourage efficient water use

Councilor Leach summarized that were sections of the Meredith Water Use Ordinance that Mr. Cedarholm wanted the Council to look at.

Chair Niman summarized that Councilors would provide their input, and if needed, this issue would be put on a future agenda.

Councilor Julian Smith said the Council was looking at going from 4 ½ page ordinance to something like Meredith's ordinance, which was 32 pages long. He said he thought the Council should consider giving Mr. Cedarholm some direction regarding keeping the revised ordinance as simple and short as possible.

Mr. Cedarholm said he would see what he could do about the length of the document, but said this might be a challenge.

Councilor Needell said the message the Council had previously been given was that the existing ordinance was woefully inadequate to do what needed to be done, and said Mr. Cedarholm should therefore bring the Council what was needed to deal with this issue.

The Council stood in recess from 9:18 to 9:26 PM.

X. Unfinished Business

- A. **PUBLIC HEARING AND ACTION 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”

Chair Niman noted that some grammatical, non-substantive changes to the wording of the proposed Zoning change had been provided by Councilor Julian Smith.

Councilor Needell recommended that Councilors address this after the public hearing.

Councilor Van Asselt MOVED to open the public hearing 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”. Councilor Sievert SECONDED the motion, and it PASSED unanimously 8-0

Peter Andersen, Chesley Drive said this was a great idea, and made sense.

Pam Weeks said she agreed that the proposed Zoning change made sense.

Councilor Henry Smith MOVED to close the public hearing. Councilor Leach SECONDED the motion, and it PASSED unanimously 8-0.

Councilor Leach MOVED to adopt 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”. Councilor Sievert SECONDED the motion.

Councilor Van Asselt said there had been 27 months to discuss this idea. He said Councilor Stanhope had made a valid point that with this Zoning change, areas of buildings that people paid taxes on would still be excluded. But he said this was a compromise, arrived at as a result of several meetings.

There was discussion on how to address Councilor Julian Smith’s recommended non-substantive changes.

Councilor Julian Smith MOVED to amend the revised definition of “habitable floor area” to include these non-substantive grammatical changes provided on the sheet provided to the Town Council this evening. Councilor Leach SECONDED the motion.

There was further discussion on whether Councilor Julian Smith’s changes would change the meaning of the Ordinance change.

The motion to amend PASSED unanimously 8-0.

Councilor Sievert said he still didn't understand why circulation areas weren't included in this Zoning change, but said he was in favor of this proposed amendment.

The motion as amended PASSED unanimously 8-0.

- B. **PUBLIC HEARING AND ACTION 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

Councilor Van Asselt MOVED to open the public hearing 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. Councilor Clark SECONDED the motion, and it PASSED unanimously 8-0.

Peter Andersen, Chesley Drive said this Zoning change could be great idea if it occurred in conjunction with the redevelopment of Mill Plaza, and a TIF district for a new parking garage, but he said that right now, it was premature.

Joshua Meyrowtiz, Chesley Drive, said he thought density downtown was a good idea, but said he was concerned about making piecemeal Zoning changes apart from a larger plan for the downtown area that was in the works. He said he therefore was speaking in temporary opposition to this proposal until it was conceived in a larger context, for creating a real town center, which also protected adjacent residential areas.

Councilor Leach MOVED to close the public hearing. Councilor Sievert SECONDED the motion, and it PASSED unanimously 8-0.

Councilor Van Asselt MOVED to adopt 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. Councilor Julian Smith SECONDED the motion.

Chair Niman said there was some confusion about what this proposed Zoning change was trying to accomplish. He said the idea was to motivate landlords to redevelop their properties, and create a better downtown with less student turmoil associated with it. He said the rationale behind this proposal was that if students were in better living situations, and felt they were getting more value for their dollar, they would perhaps be better behaved. He said the rationale for this was not how to get more tax dollars, although he said he thought that would happen as well.

He said he and Administrator Selig had met with Mark Rubenstein, UNH Vice President, Student & Academic Services, who had said the University had data that there was less property damage with the new dorms. He said a question posed by the Ad Hoc Housing Taskforce had been how to create better living situations for students. He noted that with this change, the

owner of a new development or redevelopment would be allowed a few more units, but said this wouldn't make a difference in the number of people living there. He said the Taskforce felt that the bigger the area of an apartment, the more mischief residents got into, and that with smaller apartments, there be less in the way of places to congregate. He also noted that taxes were assessed based on the number of beds, not on square footage.

Chair Niman said another element of addressing student behavior that was not part of this Zoning change proposal was the idea of professional property management, and said the Town was still trying to figure out how to make this happen. He said a next step would also be to have a social occupancy rule, which would limit the number of students who could have parties in the units themselves. He said the Town needed to find a legal way to do this.

Councilor Needell said he agreed that this Zoning proposal didn't impact density in this district, but he said the density issue was different for Church Hill because the more than three unrelated rule didn't apply. He asked what the carrot would be in the future to encourage professional property management, citing density bonuses as an example of something that could be used.

Administrator Selig said this would be above and beyond what was involved with this Zoning proposal.

Councilor Julian Smith said one of the benefits of this Zoning change was that it made it more economically more attractive for property owners to redevelop their property, and do developments where there was housing above shops or offices or parking, as in the Henderson plan. He noted that this change would make it more attractive for Mr. Henderson to add more residential units.

He said Peter Andersen was right that there wasn't enough parking downtown, and a parking structure was needed. He said this Zoning change would make it attractive for someone, perhaps the owner of Mill Plaza or properties adjacent to it, to build a parking structure, with shops and residences above it. He said he felt this modest proposed increase would work with other changes that were proposed.

Administrator Selig encouraged the Council to approve this Zoning change. He said it was a modest but positive step to bring more density to the downtown area and encourage development.

Councilor Henry Smith said he agreed that this proposal would encourage positive development downtown, and said he was in favor of it.

Councilor Needell asked how the numbers in this proposal compared with those in other towns like Dover and Portsmouth.

Mr. Campbell said he had been unable to find standards like this in other NH ordinances, and noted that a lot of towns went with what the fire codes would allow.

Councilor Sievert said he thought they were confusing the inside of the building with the lot area, and provided details on this. He said this was saying there only needed to be 900 sf of lot area per unit, and said he thought it could work if it was even smaller.

There was discussion on this with Councilor Needell. He also noted that the downtown area was way underdeveloped, even given the present density requirements.

The motion PASSED unanimously 8-0.

- C. PUBLIC HEARING AND ACTION 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

Councilor Van Asselt MOVED to open the public hearing 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 Councilor Leach SECONDED the motion, and it PASSED unanimously 8-0.

Peter Andersen, Chesley Drive, said the Master Plan addressed goals for the Church Hill District, and said the vision there was to maintain the area’s historic character while encouraging adaptive reuse of buildings, and to move away from apartment rentals. He noted that the Historic District portion of Church Hill had become mostly student housing. But he said this current proposal increased the density that was allowed and codified the fact that Church Hill would stay a student slum forever.

He noted that the Master Plan talked about adaptive reuse for things like attorneys’ offices as well, and said it was important to consider what kind of Historic District Durham wanted. He noted that the Historic District Association Chair couldn’t be present, but said Mr. Isaak felt the same way that he did.

He said Councilor Van Asselt had tried to dismiss the relevance of the petition that had been created, because the church didn’t pay taxes. But he said the church had taken this matter under consideration and didn’t consider it lightly, and noted that most members were Durham taxpayers. He said there had been a debate at the church regarding some of the issues discussed by and with the Council, in terms of where students should go in Durham.

He said the downtown had been well planned out to be denser than it was now, but he said the Master Plan couldn’t be ignored. He said the plans for Church Hill needed to be done as part of a cohesive plan, and said the Master Plan therefore should be addressed first.

Councilor Sievert asked Mr. Andersen if he had put this before the Church committee, and Mr. Andersen said he had stood up in church concerning the Church Hill proposal, which had started the debate on this issue.

There was discussion on Mr. Andersen's comments that this had been a flawed process. Mr. Andersen said he had been upset because there had been no notice two years ago when the Zoning had changed in this area, and he had recently had to look at another possible change. He said he was not opposed to higher density on Church Hill, but was opposed to the lack of an overall plan for this area. He said this should be done with everyone coming together to do something great, with a vision that included Mill Plaza, and the bypass.

Councilor Julian Smith asked if there had been discussion of a potential benefit to the Church, in terms of building more senior citizen housing on the Church property.

Mr. Andersen said he had not been part of the Church's final discussion on this matter.

Joshua Meyrowitz, Chesley Drive, said he appreciated the efforts of the Council to do some good things. He said it was simply hard to know what was going on with the process. He said he appreciated the explanations provided regarding the intent of the Central Business District change, and said perhaps there was a mechanism to provide this intent to the public earlier in the process.

He said that in general, increased density in the downtown area was a good thing, with environmental and economic benefits, and the potential improvement of nonconforming buildings. But he said beyond the Church Hill boundary was one of the largest neighborhoods in Town. He noted some recent incidents downtown that had created some issues for this neighborhood, and provided details on this, and on how increasing density could make the situation worse. He encouraged the Council to look at what the Master Plan said about the history of Church Hill, and the goal of moving away from student housing.

Bill Hall said the density that was proposed would probably be a problem. He said he didn't want to see in Church Hill a development like the one that didn't happen on Madbury Road. He also said it was what went on outside of student apartments that was the problem. He said there had been three acts of vandalism at the Church this summer, and he urged the Council not to approve this Zoning change.

Councilor Van Asselt MOVED to close the public hearing. Councilor Leach SECONDED the motion, and it PASSED unanimously 8-0.

There was discussion on whether to extend the meeting to 11:00 pm

Councilor Leach MOVED to extend the meeting until 11:00 pm. Councilor Julian Smith SECONDED the motion, and it PASSED 7-1, with Councilor Sievert voting against it.

Councilor Van Asselt MOVED to adopt 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. Councilor Sievert SECONDED the motion.

Councilor Leach asked Administrator Selig what the Church's specific reasons were for submitting the petition, and he said no specific reasons had been offered. He said they were concerned about the impact of additional student housing on the Church, but said they didn't give any details on this.

Chair Niman said he felt the Church was entitled to file the petition, but said it would have been a courtesy to attend the public hearing.

Councilor Leach said what had been provided didn't help her to understand where they were coming from.

Mr. Andersen said two members of the Church council had been at the Council meetings.

Councilor Needell questioned the reason for this discussion, unless Councilors were challenging the petition.

Administrator Selig said the Church's petition was consistent with the feedback that had been received at the present meeting, that there were concerns that additional student housing would have a negative impact on properties and the quality of life, and that the Zoning proposal was inconsistent with the Master Plan.

Chair Niman noted that the Master Plan said the Church Hill district was a transitional zone, and he said he didn't think the numbers proposed were inconsistent with this. But he said he was also hearing that the students downtown were disruptive, and that residents didn't want greater density in their backyards unless this was part of a comprehensive plan for the area.

But he said on the other hand, there was a problem on Cowell Drive, where single-family homes were being rented to students. He said the good intention of this Zoning proposal was to increase the student housing stock so parents didn't wind up buying properties in order to give their kids a place to live in Durham. He said whether this would help solve the larger issue, or created more pain than benefit, was what needed to be discussed. But he said Durham needed to put students somewhere, to solve the problem of parents buying houses in the neighborhoods.

Councilor Leach asked how many non-student residential homes there were in the Church Hill District, and Councilor Van Asselt said there were five.

Councilor Henry Smith said there were already students in Church Hill, and he said the issue was whether they wanted to increase this existing density. He said with the problems that already existed downtown, he didn't think this Zoning proposal made sense, although it did make sense in the Central Business District.

Councilor Sievert said he disagreed with what Nick Isaak had said, and said he wasn't sure how this Zoning proposal would impact the Historic District. He said even if the houses there were torn down, the buildings that were built would still have to meet the requirements of the Historic District.

He said he agreed with Bill Hall regarding the impact of what went on outside the buildings on the surrounding area. But he said everyone who was against this presumed a worst-case scenario, that the properties would be used for student housing. Regarding the Master Plan, he said he didn't see how this Zoning proposal went against it. He said the first floors could be restaurants, offices, etc, and said there could be apartments above this. He said he presumed that this was what the proposal was trying to get at, to make mixed-use development viable. Concerning the policing issue, he also said that if there were something like an attorney's office on the first floor, they wouldn't tolerate negative student behavior.

Councilor Clark said he agreed that Church Hill was a transition district, but he said it wasn't a typical transition district. He said it had originally been built up as an area of high profile residential homes, and was one of the most defining aspects of Durham's character. He expressed his concern that a developer might chop these buildings into little apartments, and that once the renovation was done, the Town would have conceded the district to student housing.

He said he agreed with the Master Plan that the grandeur of these buildings should be restored, and that they should not contain 100% student housing. He said if this Zoning proposal were passed, student housing would be all through the district. Councilor Clark said his preference was to put off voting on this, and to come up with a better plan for Church Hill.

Councilor Needell said Councilor Clark had stated his own concerns very well. He said he also thought that this was not the place to put non-student residential housing. He said this Zoning proposal, unlike the previous one, would in fact increase the density. He said he thought it was a mistake to pass this proposal without a far more comprehensive plan. He said he was not questioning the intention of the proposal, but said more thought needed to be given to it, before moving ahead.

Councilor Van Asselt noted that the EDC, the Housing Taskforce, the Durham Landlords' Association, etc., had worked on this Zoning proposal for many months, and said the issues that had been brought up at the present meeting had been thought through. He said that developers simply would not be turning this area into single-family homes, and said instead of calling it an area of possible student slums, why not work with the district and take advantage of what it was. He asked where people wanted students in Durham to live.

Councilor Van Asselt also said that while people said this seemed to be doing things in a piecemeal fashion, this was the way policy was made. He said that instead of saying this idea needed to be studied, more it made sense to move ahead on it.

Councilor Needell said Councilor Van Asselt may have worked on this for 27 months, but he personally had not done so. He said it was the Council that needed to vote on the Zoning proposal, and said from the information he had seen on it, the case for voting in favor of it had not been made.

Councilor Van Asselt said if there were specific concerns and questions, answers to them could be provided, and the vote could be rescheduled.

Councilor Julian Smith said it was clear that there were three Councilors who were prepared to vote against the motion, and since there were only 8 members present, there would not be a 2/3 majority. He said he personally was prepared to vote in favor of the Zoning proposal, although he had heard objections from people whose opinions he respected. He said he sympathized with Councilor Van Asselt's frustration, and said the Council should either vote now, or table the motion.

Councilor Henry Smith said he thought the Council should vote on the motion that evening.

Chair Niman said it was a supply and demand issue, and said that as the supply went up, rents would come down, and perhaps they could think of creative ways to make the properties work as something other than student rentals. He provided details on this, and said the issue was how to increase the supply. He asked Councilor Van Asselt if there was perhaps another way around this, to make the numbers work so the historic nature of Church Hill could be preserved, and that rather than having student housing there, there would be moderate or low income housing, to solve the neighborhood issue.

Councilor Van Asselt said he didn't have an answer for this. He said working people might desire to live adjacent to the Central Business district, but he said the trend was what it was on Church Hill, and said a question was how this could be reversed. He said the Council could perhaps take some bold actions concerning this.

He also said he respected what Peter Andersen and Josh Meyrowitz had said, and noted that they were ok with the idea of increasing density, but had concerns about possible impacts on their neighborhood. He said he would be glad to continue the discussion on this Zoning proposal, and see what information could be found, if people could be more specific as to what information they were looking for.

Councilor Clark said he didn't expect to see single-family housing on Church Hill. But he said his concern was that approving this Zoning change would result in the carving up of the houses there into apartments. He said he was willing to listen to information that showed there was a plan for Church Hill that made sense.

Councilor Julian Smith MOVED to table the original motion. Councilor Sievert SECONDED the motion.

It was agreed that this would be put on the Agenda for the next Council meeting.

Councilor Van Asselt said he thought this motion should be tabled because there was interest in seeing what could be done with the Church Hill district. He said if there was confusion on this, more discussion was needed.

Councilor Needell said he didn't think this issue could be solved in two weeks. He said he thought the Council should go back to the drawing board with this proposal. He said he didn't care if the vote on the original motion was postponed, and said he was comfortable with not supporting it.

Chair Niman said the Council would talk more, to see if consensus could be reached on this proposal.

The motion to table PASSED 6-2 with Councilor Henry Smith and Councilor Leach voting against it.

- D. Update from Councilors on progress of implementing the 2008/09 list of Town Council goals adopted on June 2, 2008

Councilor Julian Smith MOVED to amend the Agenda to skip Agenda Item X D and skip to XI A. Councilor Needell SECONDED the motion, and it PASSED unanimously 8-0.

XI. New Business

- A. **FIRST READING ON ORDINANCE #2008-17** amending Chapter 153 “Vehicles and Traffic”, Section 153-34 “Schedule II: Speed Limits” of the Durham Town Code to reduce the speed limit on Thompson Lane from 30 MPH to 25 MPH

Police Chief Dave Kurz provided details on the proposed Ordinance. He first noted the 20 mph speed limit on Coe Drive, and said that there was nothing on the books in Durham regarding this. He said one had to petition the Attorney General’s office to get that speed put in place. He also noted that Durham did not receive the money that came in for speeding tickets.

Councilor Leach asked Chief Kurz if he was comfortable with the idea, suggested during the public hearing, that a 25 mph sign should also be placed at the beginning of the neighborhood.

Chief Kurz said his department would address this if he saw a petition requesting it.

Councilor Henry Smith MOVED to pass on FIRST READING ON ORDINANCE #2008-17 amending Chapter 153 “Vehicles and Traffic”, Section 153-34 “Schedule II: Speed Limits” of the Durham Town Code to reduce the speed limit on Thompson Lane from 30 MPH to 25 MPH Councilor Julian Smith SECONDED the motion, and it PASSED unanimously 8-0.

- B. Other business (None)

XII. Nonpublic Session (if required)

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

XIV. Adjourn (NLT 10:30 PM)

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

Adjournment at 11:03 pm.

Victoria Parmele, Minutes taker