

This set of minutes was approved at the Town Council meeting on October 6, 2008

**DURHAM TOWN COUNCIL
MONDAY, September 8, 2008
DURHAM TOWN HALL – COUNCIL CHAMBERS
7:00 PM**

MEMBERS PRESENT: Chair Neil Niman; Councilor Julian Smith; Councilor Peter Stanhope (arrived at 7:12 PM); Councilor Henry Smith; Councilor Cathy Leach; Councilor Mike Sievert; Councilor Douglas Clark; Councilor Karl Van Asselt

MEMBERS ABSENT: Councilor Jerry Needell

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

I. Call to Order

II. Approval of Agenda

Councilor Van Asselt MOVED to approve the Agenda, with the amendment to include VII D, and to amend VII A, regarding the timing of the event being moved up to 10 am. Councilor Leach SECONDED the motion, and it PASSED unanimously 7-0.

III. Special Announcements
None

IV. Approval of Minutes

May 6, 2008

Councilor Van Asselt MOVED to adopt the May 6, 2008 Minutes. Councilor Leach SECONDED the motion, and it PASSED 6-0-1, with Councilor Henry Smith abstaining because of his absence from the meeting.

July 7, 2008

Page 3, bottom paragraph, should read “..representative to the Main Street West Improvements Committee.”

Councilor Van Asselt MOVED to adopt the July 7, 2008 Minutes as amended. Councilor Leach SECONDED the motion, and PASSED unanimously 7-0.

July 7, 2008 (Nonpublic Session);

Councilor Van Asselt MOVED to approve the July 7, 2008 Nonpublic Session Minutes. Councilor Leach SECONDED the motion.

Councilor Julian Smith said he was listed as being present at that meeting, but was absent, also noting that he had not been listed as absent.

The motion PASSED unanimously 6-0-1, with Councilor Julian Smith voting abstaining because of his absence from the meeting.

July 21, 2008

Councilor Van Asselt MOVED to adopt the July 21, 2008 Minutes. Councilor Leach SECONDED the motion.

Page 11 or 12 (depends on which copy of the Minutes people had), in the paragraph that starts with “Councilor Henry Smith received clarification that the wetlands issues...”, the next sentence, should read: “ Mr. Lynch had convinced the agencies that the Town would be making improvements to the wetlands as part...”

The motion PASSED 6-0-1, with Chair Niman abstaining because of his absence from that meeting.

August 4, 2008

Councilor Van Asselt MOVED to approve the August 4, 2008 Minutes. Councilor Leach SECONDED the motion, and it PASSED unanimously 7-0.

Councilor Stanhope arrived at the meeting, at 7:12 PM.

V. Councilor and Town Administrator Roundtable

Councilor Leach received clarification that Councilors would get information before the Budget workshop meeting

Councilor Julian Smith noted that there would be a presentation on the CIP by Administrator Selig and Business Manager Gail Jablonski at the Planning Board meeting on Wednesday.

Administrator Selig noted that the projects requested for the CIP were not necessarily moving forward at the present time. He said he was planning to get feedback from the Planning Board, and said the Board’s priorities would be brought back to the Council.

Councilor Clark said the Energy Committee had met a few times in recent weeks, and he also noted that there was a vacancy on the Committee. He said they were meeting every other Monday at 4 pm. He said they were developing an Energy chapter for the Master Plan, and said there would be a meeting to get public input on this issue. He said the deadline for their report on a proposed Energy chapter for the Master Plan was early December.

Councilor Henry Smith said the Main Street West Committee had recently met, and interviewed four applicants. He said the McGuire Group was chosen to do the design review, and said the deadline for their report was early December.

Administrator Selig noted that Philip Davis, Packers Falls Road, had dropped off a letter regarding the proposed ORLI Zoning change.

Administrator Selig said he had scheduled a telephone call with DES Commissioner Tom Burack to discuss both the Lamprey River 401 certificate issue, as well as the idea of enrolling the Oyster River into the Protected Rivers program. He provided details on this, and said he would urge him strongly to move forward in revisiting the 401 certificate. He noted that the Town had not made headway with the DES bureau that was responsible for addressing this issue.

He also said a phone call had been arranged with Governor Lynch to discuss the importance of Goss Manufacturing to Durham, and to urge him to do what he could at the State level to encourage companies like Goss in their dealings on trade issues. Administrator Selig said he would also be inviting Governor Lynch to Durham's 30 year celebration as a Tree City.

He said primary elections would be held on September 9th, at the Oyster River High School. He asked that at least one Councilor be present just prior to opening the polls at 7 am, and at the closing of the polls at 7 pm. Councilor Henry Smith volunteered for morning duty.

Administrator Selig noted that his recent Friday Update had provided information on a grant the Town had just received for the Wiswall Dam fish passage project. He said before going ahead with this, he wanted to be sure the Council was comfortable with the project.

Councilors indicated they were comfortable with this.

Chair Niman asked if additional Councilors could step forward to help out on Durham Day.

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

Chair Niman said if people were present to speak at one of the public hearings scheduled that evening, it would be appreciated if they would wait to speak at the hearing itself.

Bill Hall, 1 Smith Park Lane, spoke about the water line repairs on Mill Pond Road that were going out to bid. He said this line was about 50 years old, and said the problems with it were readily dealt with. He said the Woodman Road line on the other hand was 75 years old, and did need work. He said there would be more breaks there than would be the case with the rest of the system, and also said the sewer line needed work. He said these lines should be repaired, and the road should be repaved, instead of the work planned on Mill Pond Road.

Mr. Hall also said that through all the meetings where Zoning changes for Church Hill were proposed, not one person had supported those changes. He noted that the people who owned the properties there generally didn't live there anymore, and he described the noise there just about every night. He also spoke about how some students had set fire to the barn across the street from the Post Office. He referred to previous comments made by Councilor Stanhope about trash downtown, and said he didn't want to see that move further up the hill on Church Hill. He said he didn't believe that densification would help Church Hill, and said that among other things, there were already access and parking issues.

Mark Chutter, 7 Orchard Drive, said he had signed the Durham Community Church protest petition from the Church and had been out of Town at the time of the previous Council meeting. He said he didn't claim to speak for the entire church. He said those who had signed the petition were worried about the proposed Zoning change, and said a concern of his was vandalism, which

had already occurred at the church. He provided details on this, and noted that he was on the board of stewards.

He spoke about how disturbances in the area had impacted the caretaker of the church who lived on site. He also said parking spaces for the elderly were sometimes filled with cars that did not belong to the congregation. He said the Church wanted to be a good neighbor, but said there was concern about the increase in density that was proposed, and that this could make these issues worse. He also said having higher density student housing near existing elderly housing didn't seem to be a good idea.

Phyllis Heilbronner, 51 Mill Pond Road, asked the Council to support the reduction in the speed limit on several roads in Durham, as proposed on the Agenda that evening. She provided details of her experience with speed and traffic problems in that area, and said reducing the speed limit was an appropriate thing to do, and would increase safety in that area. Among other things, she said cars had gone off the road on her lot, and said she was almost hit by one of those cars.

Mrs. Heilbronner also said she would like to urge the Council to delay having a public hearing on the proposed Zoning change for the Sprucewood area, stating that she didn't think there were presently enough answers to many of the questions.

Chair Niman explained for other members of the public who might wish to speak on the speed limit change that this item was on the Unanimous Consent Agenda because no one could think of a good reason to vote against it. He also said no one had asked to take it off the Unanimous Consent Agenda, and assured everyone that this would move forward as expeditiously as possible.

John Mayer, 19 Garden Lane, said it would be great to see the reduction in the speed limit. He also said he would like to keep the density on Church Hill as it presently was.

Carol Birch, 17 Garden Lane, said it was good to hear about the speed limit reduction. She said she agreed that Church Hill should be less dense than was proposed. Regarding the Zoning proposal in the area of Spruce Hole, she noted that a rare butterfly was an inhabitant of this area. She said the Town shouldn't mess with this, and the water supply, when there wasn't sufficient information.

Hillary Scott, Davis Avenue, said she supported the comments made by others concerning the proposed density change for Church Hill. She noted comments previously made regarding what the Master Plan said about Church Hill, and said she hoped the Council would take this into consideration. She spoke about an application within the past 18 months where the owner wanted to change an existing property into a 10 room boarding house, and said she hoped a zoning change like what was proposed wouldn't allow that, or change the more than 3 unrelated rule. Referring to comments recently made by resident Robin Mower, Ms. Scott asked the Council to consider what it wanted Durham to look like in 30 years, in considering the Zoning proposals.

Ms. Scott also noted that Durham had a noise ordinance, and said if people were disturbed by students on Church Hill after 10 pm, they should call the police and ask them to take action to address the noise problem. Ms. Scott noted comments recently made by the Chairs of the

Planning Board and the ZBA concerning applications before those respective Boards over the past few years.

She said from the applications she had followed, she knew that checklists were used, but said she had observed that these checklists were not necessarily known about or made available. She said making them available would help ensure that applications were complete, and would therefore expedite the process. She said if they were in Planning Board members' packets, they would know if something was missing, and could note this. She said this would improve the overall process.

Robin Mower, Faculty Road, said the Town's noise ordinance required people to stop making noise at 11 pm, and she urged the Council to consider changing that time. She said noise was an issue for some Durham residents, and put demands on the Police Department. She also suggested that the Town should push for greater participation of the UNH Police Force concerning this issue, to help with student/resident relationships.

Ed Villinghouse Mill Pond Road, said he hope the Council didn't pass the proposed Zoning changes to lower the minimum lot area per dwelling unit in the Church Hill district.

Doug Bencks, 7 York Drive, said he was there to speak as a member of the Library Board of Trustees regarding the Council's planned discussion on Goals that evening. He said Councilor Julian Smith and Councilor Henry Smith would be updating the Council on specifics, but said he wanted to add the sense of urgency the Trustees had at this point concerning a new library. He said it was appreciated that this goal of working with the Trustees had been established, and said the Trustees felt a great sense of momentum building over this issue.

He said the Trustees hoped that over the next six months, they could work in partnership with the Council to establish a specific site for the library. He said this meant that there would need to be some discussions to figure out how to make this happen. He said the Trustees were ready to put the energy that was required, into this effort.

Councilor Stanhope left the table at this point.

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

- A. Shall the Town Council approve the special event permit application submitted by the UNH office of Public Programs and Events to close a portion of Main Street between Edgewood Road and Garrison Avenue on Tuesday, September 16, 2008 for the annual University Day Picnic between the hours of 11:00 AM and 7:00 PM?
- B. Shall the Town Council correct a procedural oversight made at the July 7, 2008 Town Council meeting relating to the adoption of Ordinance#2008-09, an ordinance amending Chapter 175 "Zoning", Article XXIII "Signs and Utility Structures", Sections 175-126 to 175-137 of the Durham Town Code to make overall content updates?
- C. **FIRST READING ON ORDINANCE #2008-18** amending Chapter 153 "Vehicles and Traffic", Section 153-34 "Schedule II: Speed Limits" of the Durham Town Code to reduce the speed limit

from 30 MPH to 25 MPH on Faculty Road, Oyster River Road, Hoitt Drive, Garden Lane, Croghan Lane, McGrath Road, Valentine Hill Road, Burnham Avenue, Chesley Drive, and Mill Pond Road and scheduling a Public Hearing for September 22, 2008

- D. Shall the Town Council Approve a Special Event Application Request from The UNH Marching Band and the UNH President's Office to Close a Portion of Main Street For the Marching Band to March From the Area in Front of Thompson Hall to Cowell Stadium for UNH Football Home Games?

Councilor Van Asselt MOVED to approve Unanimous Consent Agenda Items A, C, and D. Councilor Julian Smith SECONDED the motion, and it PASSED 7-0. (Councilor Stanhope was not in the room for this vote.).

VIII. Committee Appointment

Shall the Town Council appoint James Houle, 95 Mill Road, to fill an alternate member vacancy on the Conservation Commission?

Mr. Houle said he had lived in Durham for about 2 ½ years, and had been employed as a research scientist at the UNH Stormwater Center for 5 years. He said he had a master's degree in sustainable development, and over 10 years of water resources experience, especially regarding the Seacoast region.

Administrator Selig noted that Mr. Houle had been one of the authorities quoted in the Spruce Hole aquifer analysis.

Councilor Van Asselt spoke about the bonding the Town had done to pay for the various conservation easements over the past few years, and about his concerns as to how this impacted peoples' taxes. He asked if perhaps it was time to think about a moratorium on bonds, for 2-3 years.

Mr. Houle said he would advocate weighing the impacts of conservation easements against taxes. He said that literature indicated that conservation of land over time would lessen the tax burden, and said he recommended a long term approach.

Councilor Van Asselt said when the Town spent millions of dollars buying land, it did this so people could do more than just look at it. He said public use of conservation land makes a lot of sense, and said although perhaps public access was not a good idea for some conservation land, he didn't think the land the Town had recently bought fit that category. He said he hoped that Mr. Houle would think about this, as a member of the Conservation Commission.

Mr. Houle said he agreed that public lands should afford public access, but noted that he didn't know the specifics of the properties the Town had bought.

Councilor Van Asselt said he hoped Mr. Houle would encourage the Conservation Commission to make the maximum amount of participation possible on the Town's conservation lands.

Councilor Van Asselt MOVED to appoint James Houle, 95 Mill Road, to fill an alternate member vacancy on the Conservation Commission. Councilor Julian Smith SECONDED the motion, and it PASSED unanimously 7-0 (Councilor Stanhope was not at the table).

IX. Presentation Item

Receive annual report of the Historic District Commission – Nicholas Isaak, Chair

Mr. Isaak reviewed activities of the HDC over the past year:

- He said the HDC had reviewed and approved various certificates of approval
- He said there had been a repainting of the exteriors of two buildings in the Historic District on Main Street that were owned by Varsity Durham.
- He said GIS software had been used to see how historic properties in Durham might be mapped. He said Planning Department employee Karen Edwards had helped the HDC significantly with this, and said GIS would allow people to see visually how Durham began, and how it had grown. He noted that photos and other data could be linked geographically, in the GIS database, and said this information could be useful to property owners and others.
- He said Ms. Edwards had been a great help in consolidating State and Federal information regarding Durham properties that were listed in the Historic Register.
- He said Ms. Edwards had also helped the HDC draft a welcome letter for people buying property in the Historic District, to help them realize what their role could be in preserving the historic nature of their property.
- He noted that at Durham Day, there would be a display board, with maps, and said it was hoped these could be used each year to educate the public.
- He said it was hoped that in 2009, the HDC could work with other Town boards regarding property and Zoning matters involving the Historic District. He said thought had been given to using the Heritage Commission to educate people about their properties.

Councilor Leach asked if the creation of a Heritage Commission had had any impact in Durham.

Mr. Isaak said the Commission hadn't been utilized that much yet, but noted that the Wiswall Bridge had been listed as an historic place in Durham. He also said that perhaps even Durham Day could fall under the Heritage Commission umbrella.

Councilor Leach noted that the HDC sometimes had trouble getting a quorum for meetings, and said one of the goals of the Council was currently to see if some existing committees could possibly be combined. There was discussion that perhaps the Heritage Commission could be more of an umbrella committee that consolidated some other committees.

Councilor Clark asked if the HDC had had a discussion on the Church Hill Zoning proposal.

Mr. Isaak said the proposal had not been brought to the HDC's attention, but said the Committee had discussed it. He said the sentiment was toward preserving the aesthetic there, but he said the Committee hadn't gotten into how the increase in density that was proposed would affect the Historic District, and whether this would force improvement of the properties there.

Councilor Julian Smith asked what the HDC's response would be if the Council changed the minimum lot area per dwelling unit in Church Hill from 4200 to 3000, and a developer wanted to tear down the Red Tower property and the old building next to it, in order to build shops, etc.

Mr. Isaak said the HDC would have to research the historic value of the properties involved. He said the Red Tower building was one of the few buildings in Town that had a unique character. He said there would be a lot of deliberation on this, and said the public would have to be involved. He said it was a tough question, and said one issue was whether a change in density would push this kind of change.

There was discussion, and Councilor Julian Smith asked if the HDC would say there were ways to keep the building and still get the benefits desired.

Mr. Isaak said an architect would say there could be some kind of compromise, but he said a question was whether a developer would want to take that kind of risk.

Councilor Julian Smith asked whether a threat to a major building downtown would perhaps result in an increase in attendance at the HDC meeting, and Mr. Isaak said it probably would.

Councilor Stanhope returned to the table at this point (8:02 PM).

X. Unfinished Business

- A. **PUBLIC HEARING AND ACTION 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

Councilor Julian Smith MOVED to open the public hearing 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. Councilor Van Asselt SECONDED the motion.

Administrator Selig provided details on this proposed Zoning change, and as part of this, noted that a piece of land that was to be a part of this change had been dropped from the proposed change in zoning.

The motion PASSED unanimously 8-0.

Derrick Sowers, Oyster River Road, said everyone needed to be very clear on what was at stake in the area being talked about. He said the area proposed for rezoning included an aquifer that the Town would need for its future drinking water supplies; wellhead areas for existing drinking water wells; and extensive direct frontage on the main stem of the Oyster River, which was a current drinking water supply for UNH and Durham. He said the Town's draft Water Resources Management Plan talked extensively about the Town's current and future reliance on the Oyster River and Spruce Hole aquifer for the UNH/Durham drinking water supply. Mr.

Sowers said that if there was one area Durham should conserve in order to protect the Town's drinking water, this was it.

He said the land proposed for rezoning was mapped as a top priority conservation area in the *Land Conservation Plan for New Hampshire's Coastal Watershed* – a plan that utilized the best available science to identify the highest priority areas to protect wildlife habitat and water resources. He also said the Spruce Hole bog was one of the only remaining “kettle hole” bogs in southeast New Hampshire, and had been declared a National Natural landmark by the National Park Service.

Mr. Sowers next said he would also like to articulate why this Zoning change threatened the sensitive water resources at the site, and why it was the wrong choice for the community. He first said that the Zoning change would allow an almost 10-fold increase in dwelling unit density, and said this didn't make sense. He said this proposal was for an area that was the most sensitive place in Town, in terms of the need to protect the quality of drinking water.

He said the proposed Zoning change would also allow up to 50% of each lot to be paved over, and noted that one acre of parking lot generated 19 times more runoff than an acre of mature forest. He asked the Council to consider how this level of development would affect downstream flooding, and how quickly pollution could wash into the Oyster River.

Mr. Sowers said the proposed Zoning change would allow uses such as convenience/gas stores. He also noted that the existing Residential B zoning on the land in question required a conservation subdivision – which meant that if the land was approved for development for housing, about half the land would be permanently protected from further development. He said if the Zoning was changed to ORLI, there was currently no requirement to set aside any of the land area in a conservation easement.

He stated that a UNH 1993 Masters thesis entitled “*A Detailed Seismic Refraction Survey of, and a Ground Water Model For, the Spruce Hole Aquifer, Durham, NH*” delineated an “area of influence” around the Spruce Hole bog, and said that any recharge additions or withdrawals within this area were predicted to affect the water level in the bog. He said it would already be complex enough to figure out how to utilize the aquifer for the Town's drinking water needs while protecting the bog ecosystem, and said allowing intensive development would present a whole host of other challenges (especially stormwater pollution) that should be avoided.

Mr. Sowers said Durham had enough challenges to the safety and reliability of its drinking water sources from droughts, floods, existing development impacts, etc., and didn't need to further jeopardize its water source areas with the problems that came with intensive development. He noted that even under existing conditions, with the area in question in relatively pristine condition, turbidity levels at the water treatment plant for the month of July were exceeded due to heavy rain with associated stormwater runoff and very poor water quality in the Oyster River. He said the rezoning proposal would only make the situation worse.

He noted a recent study of 10 sites in the NH Seacoast area, including 2 sites in Durham, which examined the effects of urbanization on surface water quality, and concluded that when a watershed was developed to a level where between 7-14% of it is land area was developed as impervious surfaces (buildings, parking lots, roads, etc.) water quality in streams became

significantly impaired. He said that in 2005, the Oyster River watershed was at 7.7%, so the threshold was already being pushed. He said the study also noted that where development occurred relative to wetlands, streams, and rivers was important, and that the more development adjacent to these sensitive areas could have a disproportionate impact on water quality.

Mr. Sowers also spoke about a 2007 study conducted by Stone Environmental for the town of Durham that analyzed how impervious surfaces were currently affected by zoning, and how zoning would shape future impervious surface percentages. He said the current zoning of the area in question in Residential B allowed 30% of a lot to be developed with impervious surfaces, but said in practice, most people only developed those lots to 11% impervious.

But he said the ORLI zone allowed 50% of a lot to be developed with impervious surfaces, and said the study's authors found that development that had occurred within this type of zoning category typically had developed up to that limit. He said that in practice, this Zoning change was likely to result in the Spruce Woods area being much more intensively paved and built over than what would result from the existing Zoning.

Mr. Sowers said the Weston and Sampson report that the Town paid for, to review potential impacts of the rezoning on Durham's water resources, had said that "if development occurred on this site, the current method of handling stormwater might cause a reduction in the amount of water recharging the aquifer and potentially increase stormwater flows to the Oyster River." He noted that the NE Water Works Association had presented findings in 2008 that "land cover in a watershed source area dominated by intact forest yielded the most reliable and highest quality water". He said that was what the Town had now, and said this rezoning change would gamble Durham's water quality away, with up to 50% of its water source areas being paved over.

He said Durham didn't currently have the tools in place to really protect the sensitive resources in the Sprucewood area. He said the Town currently lacked strong specific standards for erosion and sediment control, stormwater management, and limiting impervious surface cover on developing lots. He said the current rezoning proposal included no provisions to limit impervious surfaces, require conservation subdivisions, or utilize currently available Low Impact Development standards or best available stormwater treatment technologies. He said until the Town did have the regulatory tools to really minimize the negative impacts of large developments, it should not be rezoning a sensitive area for much more intensive development and exposing the Town to the associated high risks to its water quality.

Mr. Sowers concluded by saying that this rezoning proposal would direct intensive development pressure at the Town's most sensitive areas, and would permanently jeopardize the community's prime drinking water sources without identifying a true need or benefit. He said he therefore recommended that the Town Council drop this proposal, and work with groups on land protection options for the land in question.

He said intensive development should be directed towards less ecologically-sensitive areas, stating that there were areas already zoned for commercial uses that were now vacant, and that there was no pressing need for the re-zoning. He said that at a minimum, the Town should keep open the public hearing process until the results of the Spruce Hole aquifer pump tests were completed so that the sensitivity of the site could be better understood, and informed decisions

could be made about how best to protect Durham's drinking water supply and the existing rare bog ecosystem.

Mr. Sowers asked that the Table of Uses for any area that includes our water supply be revised in a way that better protected the Town's water supplies from degradation.

Beryl Harper noted that she was a member of the Conservation Commission and said she was delighted that Mr. Houle had joined the Commission. She said the Conservation Commission would like to thank the Town Council for addressing several points in its July 7, 2008 letter about the proposed re-zoning. She said the Weston & Sampson report dated September 3, 2008 clearly outlined the potential effects of increased impervious surfaces on both ground water in the Spruce Hole Bog and surface water in the Oyster River.

Ms. Harper said that the following issues noted on pages 8 and 9 of that report must be addressed by the Council in considering this re-zoning issue:

1. The disconnect between runoff and aquifer recharge.
2. The possibility of a newly defined ORLI zone with limitations.
3. The impact on shoreland buffers.
4. The reduction and alternatives to impervious surfaces.
5. The adoption of a stormwater ordinance.

She said the re-zoning from RB to ORLI changed more than the increase of impervious surface; it changed the future use of the land in many significant ways. She said examples from the Table of Uses of either permitted or conditional uses in ORLI but not in RB included: research facilities and labs, hospitals, veterinary clinics, hotels and convenience stores with gasoline sales. She said many of these uses allowed in an ORLI District could have a detrimental impact on nearby drinking water supplies.

Ms. Harper said both Durham and UNH had investigated the Spruce Hole aquifer for decades as a future drinking water source (Underwood Engineers presentation, March 10, 2008). But she said many issues still needed to be addressed when considering this re-zoning proposal, including:

1. The precise boundaries of the Spruce Hole aquifer.
2. The impact of withdrawal of a large volume of ground water on the Oyster River and adjacent wetlands.
3. The rate of recharge of the aquifer.
4. The mitigating effect of artificial recharge on the aquifer.
5. The accuracy of the Aquifer Overlay Protection District.

She said that concerns about water quality deterioration and inadequate quantity had been growing regionally and at the national level, and said it was vitally important that Durham focus on this issue and use its Zoning regulations and Master Plan to protect and even improve its water resources. She said to move ahead and implement this proposed re-zoning to ORLI without reviewing and implementing steps recommended by recent engineering studies seemed irrational at best.

Ms. Harper said that instead, the Conservation Commission recommended that this public hearing be kept open until field tests had taken place, reports had been delivered and

studied, possible impacts on the surface water quality and quantity in the Oyster River had been addressed, and all relevant questions had been answered. She said this gathering of information depended on tests of the Spruce Hole aquifer that were scheduled for early winter 2009, specifically the 7-day pump test and the test of artificial recharge from the Lamprey River.

Ms. Harper said the members of the Conservation Commission looked forward to informed presentations and discussion on these important water quality issues at the continuation of this public hearing and other venues. She said that most importantly, they looked forward to working collectively with Council members and others to ultimately arrive at consensus that was in the best interest of their Town.

Joanna Wicklein, 240 Packers Falls Road, thanked the Council for all the hours of work they put in. She asked that each Council member be careful in rezoning a future water source for Durham, and said bring tax relief could come at a considerable cost. She said each NH town had the responsibility to keep its water sources clean, and to seek informed advice that was readily available on how to do this. She said it was important to have the best information available, even if this meant waiting for the pump test results.

James Houle 95 Mill Road, said that while he understood that the report submitted to the Town of Durham by Brian Goetz of Weston & Sampson was a “desktop analysis”, it should be noted that simplistic analyses lead to simplistic conclusions that did not necessarily cover the most important issues.

Regarding Mr. Goetz’ analysis of the potential impact of a development of this nature, Mr. Houle said that in the water resource and engineering field, they did not typically assess a development’s impact on a watershed wide scale, because this approach did not accurately reflect a site’s potential impact on critical water resources. He said this approach could also potentially lead to litigation, since the development of a watershed would then be assessed on a first come first served basis.

Mr. Houle said that instead, water resource professionals generally assessed the impact on a site by site basis. He noted that the State Comprehensive Shoreland Protection Act relegated impervious cover to a maximum of 20% in sensitive 4th order streams such as the Oyster River, regardless of reliance on the surface water from a drinking water resource prospective. He said that within the micro watershed that encompassed the prospective development, this had a potential to threaten both the river and the aquifer adjacent to it.

He said that although he was quoted in this report concerning the effectiveness of stormwater management practices, the most effective approach was always to conserve lands adjacent to valuable water resources. He said while minimization of impact was always a goal when parcels were developed, there was no such thing as no impact, once the land use was changed.

Speaking further about the report, Mr. Houle said he believed that the wetland assessment of this parcel was inaccurate, and would benefit from an actual assessment by an independent wetland scientist. He said he recommended at the very least a consultation of updated wetland assessments such as the National Wetlands Inventory conducted by the U.S. Fish & Wildlife Service.

He said he would also consider wetlands to be hydrologically valuable units, and suggested amending the introduction of the report to include these in the potential impact statement. He noted that wetland areas naturally treated and detained/stored water, and both facilitated aquifer recharge and sustained base flow in the river.

Mr. Houle also suggested that the Town look to regionally-specific data sources to assess potential impacts of developed areas such as those outlined in the study referenced in the 2005 report from Deacon, et al. He noted a figure from the study that showed a decline in aquatic habitat as a function of increasing impervious coverage percentage, explaining that water quality started to decline well before 14% of impervious cover. He said a decline was evident even at less than 5% impervious cover.

He said the 10% guideline that had been advocated for so long by Schueler, et al, and the Center for Watershed Protection, was only a guide, and was far less quantitative than the results from Durham's own backyard. Mr. Houle asked that with respect to the location and the potential impact on so many valuable water resources, the Council please consider the proposed development with respect to the micro-watershed it threatened, as opposed to the entire Oyster River watershed.

Hillary Scott, Davis Avenue, said she supported the comments made so far regarding the idea of continuing the public hearing on this issue until more information was brought forward concerning this sensitive area. She said the RB district allowed for conservation subdivision, which was appropriate. She said the Zoning change threatened the concept expressed in the Master Plan that Durham valued is rural environment and rich natural resources. She also noted concerns about traffic in this area, and asked the Council to gather more recent information on traffic counts before considering making this Zoning change.

Ms. Scott then read a letter from **Phillip Davis, Packers Falls Road**. In the letter, Mr. Davis said he had moved to this address in 2007, and as an abutter to the proposed area to be rezoned, was against this change. He said this proposed Zoning change would threaten the benefits if living in this rural area. He said Packers Falls Road was already a heavily used rural road, which was not safe, and would change drastically with the apartment complex that was proposed. He said if the Town went forward with this, sidewalks and additional police patrols would be needed.

Mr. Davis said he had put his house on the market, but said prospective buyers were already impacted by this possible Zoning change. He questioned why 700 additional beds were needed, and said Durham residents would not benefit from this. He asked that the Town Council not allow this Zoning change.

Dwight Baldwin, Fairchild Drive, noted that he was on the Conservation Commission, and had taught hydrology for 30 years. He said he commended the speakers who had come before him, and warned against moving ahead with this Zoning change without having looked at all of the engineering and hydrology reports the Town had paid for. He said one couldn't understand the 3 dimensional hydrologic environment, including how the aquifer would respond to storm events, and whether the overlay district had been set properly, without aquifer testing. Mr. Baldwin said to rezone this area at this point would be irresponsible.

Peter Smith, Piscataqua Road, said that Mr. Baldwin was one of the leading academic experts one could find on the subject under consideration. He said the Conservation Commission had submitted two detailed letters, and said it was concerned about the possibility of a devastating impact on the Spruce Hole aquifer. He said there was an overwhelming case for the need to get more information, and to turn down this proposed ordinance because of this. Mr. Smith said an alternative was to keep this public hearing open until the factual information was available. He urged the Council to obtain this additional information before moving forward.

Margaret Bogle, Croghan Lane, said she would like to add her own request to that of Conservation Commission members, to wait concerning this Zoning proposal until the data came in.

Beth Olshansky, Packers Falls Road, said they were all fortunate to have scientists in the audience that evening who were also residents of Durham. She said she hadn't realized the potential impact that 5% impervious surface could have on the aquifer, and said she was concerned that even the RB district didn't adequately protect that resource. She said she hoped the Council would continue the public hearing with due diligence in order to review the scientific evidence.

Matt Davis, 2 Maple Street, said he was a hydrologist, and concurred with the statements made by the Conservation Commission and others. He noted that another issue in terms of water resources was how increasing demand for water would impact the water treatment plant more and more. He said developing the area in question might eventually be possible, but said right now, not enough was known to be able to do this wisely without incurring additional costs down the road.

Councilor Van Asselt MOVED to close the public hearing. Councilor Leach SECONDED the motion.

Councilor Sievert said he thought the Council would want to keep the hearing open, in order to continue the discussion, including hearing from other experts, and responding to issues as they were brought up.

Administrator Selig said the Council could certainly keep the hearing open, but should indicate when it would plan to discuss this issue again.

There was detailed discussion on how to proceed, including about whether information could still be gathered if the hearing was closed.

Councilor Sievert said he wanted to provide the opportunity to keep talking with the public about this issue.

Chair Niman said the Council could close the hearing, allowing the Council to discuss the issue, and could then reopen the hearing later.

Councilor Clark said if the hearing was closed, he wanted to be clear that the hearing could be reopened.

Administrator Selig said the Council would be able to reopen the hearing. He said the Council could act on the proposal after the hearing closed, but was not required to do this.

There was discussion on whether, if the hearing was still open, it would be appropriate for the Council to deliberate on the proposal. Chair Niman said again that if the Council closed the hearing, it could discuss the proposal and gather more information, and then reopen the hearing later.

Councilor Henry Smith said he thought it made sense to keep the hearing open.

Councilor Julian Smith agreed that the hearing should stay open. He said if it were closed, he would argue strongly that the Council not adopt this Zoning amendment. He noted that he had originally voted in favor of sending it to the Planning Board, and had voted for it as a member of the Board. But he said in recent weeks, he had thought a lot more about it and had walked the area in question. He said a key thing that had helped change his mind was reading the Goetz report.

Councilor Smith said it made sense to redefine the zone in this area to something that would provide more protection to the watershed above the UNH reservoir and in the vicinity of the aquifer. He also said it might be appropriate to create an Oyster River ORLI district for the existing ORLI area on the north side of the Oyster River.

He said he thought of the Council would be in a better position to vote against this proposed Zoning change, with more information, and said if the hearing were left open, the Council could get this information and also hear more from the public.

Councilor Stanhope said he didn't see the need to keep the hearing open, and said he had enough information to vote not to amend the Zoning Ordinance. He said that philosophically, this change would be contrary to the concept of smart growth.

Chair Niman described further the options the Council had in terms of moving forward. He noted that if the Council might change the proposed Zoning amendment, it didn't make sense to keep the hearing open.

Councilor Julian Smith asked that a poll be taken of Councilors, but Councilor Henry Smith noted that there was a motion on the floor.

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

Chair Niman asked Councilors how they wished to proceed, and it was agreed that after the break, they would continue to talk about this.

The Council stood in recess from 8:55 to 9:05 PM.

Chair Niman said the options as this point were for the Council to vote the proposed Zoning change up or down, or to table it and then, based on additional information, see how they wanted to proceed with it. He asked Councilors to speak on these options.

Councilor Sievert said he didn't feel that the Zoning proposal should be killed, because this would mean that all the work that had been done, and all of the information coming out of this process would die. He said by keeping the proposal on the Council's agenda and setting a date certain, this would force the information to come in. He said if they didn't have the answers needed at that point, they could of course push off the decision further. He said his fear was that if this kind of process wasn't followed, there would be a lot of misinformation, and he provided details on this.

He said he thought it would be great to work with the Conservation Commission, to come up with a Zoning change if this was warranted, perhaps a different type of zone that might have commercial uses and might not. But he said he didn't think the Council shouldn't stop the process that evening.

Councilor Stanhope asked how much time would be needed before addressing this issue further.

Councilor Sievert said a huge piece of information would come from the pump test, stating that they already had the information needed on stormwater management issues, buffer systems, etc., and just had to put this information together. He spoke about the idea of allowing conditional uses, and said the focus shouldn't be on the worst possible uses.

Councilor Leach noted the recommendations in the report, and said the Town was already doing some of these things. She said she therefore wasn't convinced to say no to this proposal right now. She asked whether the only way to get answers to issues 2, 3 and 4 in the Conservation Commission's letter was with the pump test, and if it was of the utmost importance in moving forward.

Chair Niman said he would like to provide an articulation of the other side of the Zoning change argument. He said a question was who was going to pay for the development of an alternative water source for Durham, and said an advantage of increasing density was to bring more users on line in order to share fixed costs. He said it was important to be sensitive to financial issues.

He said he was disappointed that he hadn't heard anyone speak about the opportunity to acquire 40 acres of land adjacent to College Wood, given the interest in contiguous areas, and habitat next to the river. He said he didn't know what it would cost to buy those acres. He also said that while this might be an important watershed piece of land, he hadn't heard the Conservation Commission say that Durham had to conserve the land in question.

Chair Niman said he had attempted to figure out how much usable land there would be, for the JLB project, and had determined that there would be 14 acres, which was only .07% of the watershed. He asked whether that would really destroy anything. He also noted that Jack Farrell had wanted town water and sewer for a possible development in this area five years ago, and said he hadn't heard Peter Smith, who was on the Council at that time, say the area couldn't be developed. He said he had therefore been wondering why people were having problems with this now.

He spoke about the information Mr. Sowers had provided on impervious coverage, and how this related to residential or commercial development that took place. He said he would like more information on this. He also noted previous discussion on the idea of creating a pathway to the

University, and said a development in this area would be about 1½ miles from Holloway Commons. He said there wasn't really much in the way of properties of this size that were adjacent to the University, and where water and sewer could be expanded to help pay for infrastructure improvements. He noted efforts to expand the Town's infrastructure over the past few years.

Chair Niman said the Council would have to look at the advantages as well as the disadvantages of this Zoning proposal. He noted that landlords were concerned that this kind of development would destroy rents downtown. But he said he felt that options for housing needed to be increased, in order to push prices down, so that parents wouldn't wind up buying houses for their kids who went to UNH. He said the neighborhoods would benefit from this, so this was another side of things to keep in mind, in looking at this Zoning proposal.

Councilor Peter Stanhope asked Chair Niman what he proposed to do at this point.

Chair Niman said he would like to table the Zoning proposal, see what information the Council wanted, and then collect this information. He said he didn't think there was currently the basis for the Council to say it was comfortable that there wouldn't be any impacts from approving the proposal. He said he didn't think the Council was saying it liked the proposal as it was, or that it had an alternate proposal so should vote the original proposal down and start the process all over. He said he thought the Council needed to talk some more.

Councilor Henry Smith said Jack Farrell had proposed this idea with some integrity, and he said a positive aspect of it would be the 40 acres abutting College Woods. He noted that he had voted against closing the public hearing, but said he thought it was a good idea to table this now, gather the data that was needed, and come back to this at a future date.

Councilor Henry Smith MOVED to Table the Zoning Proposal 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 Councilor Julian Smith SECONDED the motion.

Councilor Van Asselt said Chair Niman's comments made sense and reflected looking at a much bigger issue than the Farrell project. He said he felt it would be irresponsible to kill this Zoning proposal. He said he was concerned that it might get to the point where the only way to be able to afford to live in Durham would be to rent out an apartment in one's house. He said economic development translated into tax revenues, and said Durham didn't have anything on the table that would move it in this direction.

He said the Council was told it was being irresponsible, but he asked someone to tell him where development could possibly be done. He said 50% of the Town was zoned rural, and said maybe it was time to change this, and do some development somewhere else. He said right now, Durham was out of space. He said that in the past 18 months, 5 ideas had come to this table, and now the Council was ready to table this one too. He said if residents didn't want development in Durham, they should stand up and say so.

Councilor Van Asselt said that with all of the engineering studies done, there would still be people filling the room saying that it wouldn't work. He also said if people were worried about water, the 401 certificate should be fixed. He said he thought the Zoning proposal should be tabled right now, and a date certain to bring it back should be set, and in the interim, the answers to questions from the Council and from the public could be obtained.

Administrator Selig said many of the answers were predicated on the pump tests. He said the plan was to do this in the January-February time frame, and said this data would then need to be analyzed. He said there wouldn't be a fast turnaround, and said additional tests might then be needed. He said this could take 5-6 months.

Councilor Van Asselt asked if the Council could perhaps get the non-pump test data within 90 days.

Administrator Selig said some of this information could be available, especially stormwater related information. He provided details on how this information was to be incorporated into the site plan and subdivision regulations. He then handed out a map put together by Town Planner Jim Campbell on the areas under consideration, including the aquifer area, and noted that there were already a great number of protections in place, both from the aquifer protection district and the setbacks from the Oyster River.

He noted that the properties to the north were already in ORLI. There was discussion that given the aquifer district, the Planning Board would not be in a position to approve the construction of a gas station on top of the aquifer. But it was noted that theoretically, a gas station could be put on the north side. Administrator Selig said it was not likely that someone would put a gas station there, although it was allowable through a conditional use permit.

He also said that over the past few years, a lot of time had been spent trying to promote sensitive economic development, and said this was one of the areas in Town that had been focused on concerning this. He said that right now, the 700 unit development could be placed in this location, but he explained that as result of discussion with the Conservation Commission, an idea had been developed with them to locate part of the development on land that was currently zoned RB. He said a question was whether the Commission in fact like to see that kind of development on the RB land, and under what circumstances.

He said the main parcel Jack Farrell owned was within the aquifer protection district, and said he had discussed with him the idea of putting some municipal ball fields on some of this land.

Administrator Selig spoke about water supply issues, including outstanding questions concerning the Lamprey River 401 certificate. He said a big issue with Spruce Hole was how to connect it into the water system, when it was time to bring it online. He said his feeling was that in order to allow the kind if intensive development that 700 beds would represent, Spruce Hole would need to come on line within the next 5-10 years.

He said a benefit of the Zoning change was that Jack Farrell would be willing to work with the Town to connect the aquifer into the municipal water system at the most affordable cost. He said Mr. Farrell would be willing to reserve a part of his property for this, and to participate in paying for the installation, and said this would benefit the rate payers.

Administrator Selig said one of Mr. Farrell's goals was to make this area of town walkable for UNH students. He said the path created by utility installation for the JLB development would provide part of the corridor for a multi-use path, and said Mr. Farrell had been in touch with UNH about gaining access through some of the College Woods area, to be used for a portion of the path as well.

He said the Town-owned lots encompassing Spruce Hole didn't have to be rezoned as part of this current Zoning proposal, so could potentially be dropped from the proposal at a future time. He also said there could be discussion with Mr. Farrell regarding concerns about the Town's future water supply, and about what voluntary concessions he would be willing to make in conjunction with the Zoning change, such as additional buffers and stormwater techniques that would allow things to move forward in a way that met people's needs. He said Mr. Farrell's main parcel might be the one to focus on concerning this, noting that this was the land that part of the JLB project was being targeted for.

Administrator Selig spoke about Mr. Farrell's desire to take better advantage of UNH's research capacities and the development of new technologies by UNH professors, by providing a location where spinoff businesses could be developed. He said Mr. Farrell thought that doing this would make UNH more of a benefit to the Town's tax base.

Mr. Sievert noted that there was property on Route 108 that was available for this kind of development.

Administrator Selig suggested that the land uses the Conservation Commission had raised questions about should be discussed, in terms of whether they would really be compatible in this area. He said the Planning Board could look at this as well. He said he hoped his words had painted a better picture of what the EDC was trying to accomplish with this Zoning change: finding a balance between broadening the tax base and protecting this integral part of the Town's water system and future water supply.

Councilor Clark said Jack Farrell had brought forward a compelling plan, which met a lot of the criteria for economic development, including catering to the Town's #1 industry, student housing. He said this would be a walkable development, which wouldn't impact residential areas. He said he had come to believe that every property was unique, and needed a plan. He said he struggled with the possibility that if the Zoning change was made, Mr. Farrell might later walk away from the property.

He said this had led him to think that this current effort should be customized in order to make possible what people truly wanted. He said he could support tabling the Zoning proposal as long as the negotiations were moved along, or he could support killing the proposal to make sure a future project reflected what people truly wanted.

Councilor Stanhope said if they waited for the pump test, the proposal would be in the hands of a new Town Council, and the process would have to be started over again. He said there needed to be closure, one way or the other.

Councilor Julian Smith said he had been supportive of the JLB project, although there were traffic issues. He also said he personally had nothing against spot zoning, and said although he

didn't know what would happen if Mr. Farrell and JLB went before the ZBA, he would hope the ZBA would be receptive.

He said he agreed that a lot of work had already been done, but that there was more work to do. He said they could start with the Table of Uses, and noted a 3 page chart that had been developed by resident Robin Mower, concerning the uses listed in the Table. He spoke again about the idea of combining a portion of ORLI district with a portion of RB lands, to create a new Oyster River ORLI zone. He said a lot of work would be required in order to do this, and said the Planning Board would need to be involved. But he said he thought this would be worth doing.

Councilor Leach said it sounded like Councilors were ok with the idea of tabling the Zoning proposal, and coming up with a list of issues, questions, and a timeline.

Chair Niman agreed, but said he would also like to suggest an alternate Zoning approach. He said the Zoning Ordinance said that if a property bordered another zone, it could bleed into that other zone. He said the Town wanted the 40 acres but didn't want to pay for them, and Mr. Farrell had offered to give the Town the right of ways to run a straight shot of the water line to the water treatment plant, which would reduce the cost by about \$1 million. He said there had also been discussion with JLB about getting the utility lines run without the existing users having to pay anything for this.

He said a different approach would be for the JLB project to "bleed" into the Sprucewood property, get the density from ORLI, move the project forward, and give concessions to the Town in exchange. He said this would allow the preservation of the aquifer on the Teece land, would keep the project moving forward, and would also allow the Town to get the conservation land. He asked if Councilors were amendable to looking at this approach to see if it could possibly happen.

Several Councilors indicated that in addition to agreeing that the current Zoning proposal should be tabled, they were amenable to looking to see if the approach Chair Niman had described could happen.

Councilor Sievert asked if there would be a date certain by which the information needed would be cleaned up, other than the pump test data. In response, Chair Niman asked Councilor Sievert if he would be willing to meet with himself and Administrator Selig to create a doable time frame. Councilor Sievert agreed to work on this.

The motion PASSED unanimously 8-0.

- B. Public Hearing and Action 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 Van Asselt left the table before the next four motions were made.

Councilor Sievert MOVED to open the public hearing 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 MP. Councilor Julian Smith SECONDED the motion, and it PASSED unanimously 7-0,

No members of the public spoke at the public hearing.

Councilor Leach MOVED to close the public hearing. Councilor Stanhope SECONDED the motion, and it PASSED unanimously 7-0.

Councilor Julian Smith MOVED to approve 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 Clark SECONDED the motion, and it PASSED 6-1, with Councilor Stanhope voting against it.

- C. **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 Julian Smith noted that motion as stated in the Council Communication was incorrect.

Councilor Julian Smith MOVED to take Ordinance #2008-15 of the table. Councilor Henry Smith SECONDED the motion, and it PASSED unanimously 7-0.

Councilor Van Asselt returned to the table after the vote.

Councilor Peter Stanhope said this Zoning proposal supported smart growth, and created an incentive to preserve buildings in this area of Town. He said if the productivity of these buildings could be increased, owners would be able to invest in them, and said this was an appropriate way to increase the tax base while preserving the buildings. He said this might mean a slight increase in occupancy, but said he didn’t feel this would change the character of the area substantially.

Administrator Selig said there had been a lot of discussion as to what the Master Plan said about Church Hill, and he asked Mr. Campbell to touch on this.

Mr. Campbell said that people hadn’t really talked about the vision statement for Church Hill, which talked about mixed use, with commercial uses below and apartments above. He said the vision was not to keep the buildings as they currently were.

Administrator Selig said there had been a lot of discussion on the turnover of single family homes. He said this area had evolved into student housing, and was likely to stay that way. He noted that many of the apartments were owned by a landlord who hadn’t allowed the Code Enforcement Officer in, so it was likely that the conditions were not what might be hoped for. He said in this kind of situation, these young people were more likely to behave in a way that was not beneficial to the community. He said the hope was that upgrades to the apartments would change this behavior, and would also result in safer conditions in these buildings.

He also spoke about the fact that a goal of this Zoning proposal was to promote redevelopment of properties in order to broaden the tax base. He said it could be argued that Church Hill was an area to encourage student housing. He noted that while owners of properties in the Historic

District, which overlapped some of Church Hill, were required to come before the HDC, in the end, a property owner would be able to move ahead and tear an historic property down. But he said there was a lot of encouragement in the Ordinance to preserve those historic buildings. He said encouraging student housing in this compact area promoted smart growth, and said he felt this Zoning proposal was a good idea, although he had been against the other Zoning proposal concerning Church Hill.

Councilor Henry Smith said from what he had heard regarding the problems that existed currently with student housing, one would not want to intensify these problems. He said he didn't feel that this Zoning change would be a change for the better of the character of the neighborhood, and said he was not in favor of going forward with it.

Administrator Selig said professionally-run student housing developments, an infusion of capital, and redevelopment of properties on Church Hill would force landlords to take more interest in their own properties. He said he thought there would be fewer problems than there were now, because there would be better property management.

Councilor Henry Smith said this involved an assumption that there would in fact be better property management.

Administrator Selig noted the vacancy signs one could currently see in Durham. He said part of this was the economy, and part was that more students wanted to have their own private rooms in apartments. He said redevelopment on Church Hill would be able to create accommodations that students wanted.

Councilor Stanhope said an important aspect of this Zoning change was that creating the incentive for property owners to make changes to their properties would lead to greater code enforcement. He said while there would be greater occupancy, the likelihood was that the people living in the apartments would be safer. He said it was a tradeoff.

Councilor Clark said he had some concerns about the proposal. He said voting in favor of it forced him to approve more student housing, but voting no perpetuated the idea that Durham always voted no. He noted that he had owned some houses on Main Street, and understood student housing issues. He said he worried that increasing the density would accelerate the wear and tear on these buildings, and would make the demise of the properties happen even faster.

He said he was in favor of trying to find ways to reinvest in this area of Town, but said he didn't like the process involved here, which didn't allow them to find a solution that made everyone happy. He said the question was how to make mixed use happen here, and said he didn't think this proposal would make that happen. He said the answer was for the Town to get its arms around the student housing issue, find a solution that made prices come down, and make the landlords want to do mixed use.

Chair Niman said this proposal incrementally seemed to address the issue of students wandering around downtown. He noted that the proposal was not solely the idea of the Housing Task Force, and also pointed out that the Chair of the previous Chair of the HDC had been on the Housing Task Force. He said the Task Force had tried to be as inclusive as possible.

He said what had motivated him was the compelling argument that as things now stood, the Town didn't have access to these buildings and apartments, and that the health and safety of all Durham residents should be a priority. He also said he thought that if they looked 10 years out, the University would be a lot bigger. He provided details on this, and said the Town should take advantage of the opportunities right now, with the credit crunch, to come up with some plans, so that 5 years from now, parents weren't against buying up single family homes for their college kids to live in. He said this proposal didn't solve everything, but said if it got more kids off the street, it might be worth it.

Councilor Clark said he would rather see this kind of effort for the CB district, and repeated his concerns about what might happen to Church Hill as a result of the Zoning proposal.

Administrator Selig said the Town hadn't seen the transition it had hoped for, with the Zoning changes made a few years ago. He said that by allowing addition density, this would provide a developer with enough student housing to support the commercial development downstairs. He said if the Town did nothing here, and the University population continued to grow further, there would be continued bleeding into the neighborhoods. He said he would rather see a consolidation of where the students lived.

Councilor Henry Smith said he didn't think it was realistic to have commercial uses below, and student housing above, in the Church Hill district.

Administrator Selig noted that there was a protest petition concerning this Zoning proposal, so a 2/3 vote was needed in order to pass it.

The motion FAILED 5-3, with Councilor Henry Smith, Councilor Julian Smith, and Councilor Clark 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 Leach said the Council would address this Agenda item at its next regular meeting on September 22nd, and said it should be up front in the Agenda for that meeting.

XI. New Business

There was no other business.

XII. Nonpublic Session

None

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

None

XIV. Adjourn (NLT 10:30 PM)

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

The meeting ADJOURNED at 10:30 PM.

Victoria Parmele, Minutes Taker