

This set of minutes was approved at the Town Council meeting on March 2, 2009

**DURHAM TOWN COUNCIL AGENDA
MONDAY FEBRUARY 2, 2009
DURHAM TOWN HALL - COUNCIL CHAMBERS
MINUTES**

MEMBERS PRESENT: Chair Neil Niman; Councilor Jerry Needell; Councilor Karl Van Asselt; Councilor Julian Smith; Councilor Cathy Leach; Councilor Mike Sievert; Councilor Henry Smith; Councilor Peter Stanhope; Councilor Doug Clark (arrived at 7:06 PM)

MEMBERS ABSENT: None

OTHERS PRESENT: Town Administrator Todd Selig; Town Clerk Lorrie Pitt; Town Moderator Chris Regan

I. Call to Order

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

II. Approval of Agenda

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

III. Special Announcements

Drawing of candidate names running for elected offices to establish order of listing on the March 10, 2009 Town Election ballot – Christopher Regan, Town Moderator; Lorrie Pitt, Town Clerk-Tax Collector

Candidates for the Town Council were drawn in the following order:

Michael Skubisz
Neil Niman
Richard Kelley
Diana Carroll
Chris Mueller
Robin Mower

Candidates for Library Board Trustees were drawn in the following order:

Douglas Bencks
Robin Balducci

IV. Approval of Minutes

None

V. Councilor and Town Administrator Roundtable

Administrator Selig noted that less salt and more sand was being used on local roads than in the past, to address the snow and ice.

He said the School District deliberative session on the School Budget would be held the following evening at Oyster River High School.

Councilor Clark arrived at the meeting at 7:06 pm.

Administrator Selig noted that the 2008 gross wages for Town employees and elected officers who received a stipend had been posted on the website.

Administrator Selig spoke about the comments made by resident Bill Hall about the interaction between himself, the State electrical inspector, and Code Enforcement Officer Tom Johnson regarding a 2006-2007 electrical inspection regarding an arc fault circuit interrupter. He said he had provided the Council with an overview of this concern, and said he had found it to be without merit. He said unless Councilors had additional questions or concerns, they could move on.

Councilor Julian Smith said he had read the attached letter from Mr. Johnson and the email attachment from the former state electrical inspector, and they seemed to be a bit of overkill. He spoke in some detail on an issue similar to this that he had gone through with Mr. Johnson, involving having to change an entire system when one thing changed, and said he could appreciate why Mr. Hall didn't want to do what a recent code change insisted upon.

He said the email from Mr. Johnson could have been much shorter, and said the email comments from the electrical inspector weren't needed. Councilor Smith noted that this was a comment, not a concern, that he was expressing.

Councilor Clark said that on February 18th, the Energy Committee would be holding a second public forum to get input concerning the development of the Energy vision for the Master Plan chapter.

There was discussion on the scheduling of the public hearings for the West Main improvements.

Councilor Needell asked if Resolution #2009-01 under the Unanimous Consent Agenda, which recognized members of the Kaizen Payroll Team, would be read out loud, and Chair Niman said he would do so.

Councilor Henry Smith left the table at 7:14 pm.

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

Robin Mower, Faculty Road, introduced herself to members of the public, and explained that

she was running for the Town Council. She said she would like to hear from residents, and also said she would look forward to working with members of the Council if she won.

Councilor Henry Smith returned to the table at 7:15 pm.

Roger Speidell, 7 Nobel K. Peterson Drive, said he needed the Council's help concerning the School Budget, stating that what was proposed for 2009 represented an 8.6% tax increase over the past year, and would mean his taxes would increase by \$857. He said he could not afford this, and said the situation made him angry.

He said he agreed that children were the future, but said spending exorbitant amounts of money didn't make the School system better. He said the number of ORHS graduates going on to college was not increasing. He said not one of the Oyster River High School's top twenty seniors went to a top college this year, and he also said marijuana use at the High school was over 50% higher than the State average.

Mr. Speidell said the School Board election was coming up on March 10th, and he said there must be a change. He handed out an MS26 form to Councilors that showed an 8.6% increase in the estimated amount of local taxes to be used for education.

Councilor Julian Smith noted that three of the candidates for the Town Council were in the room and that all of the candidates for the Library Board of Trustees were present. He said this was a good showing, and he wished everyone good luck.

Bill Hall, Smith Park Lane, spoke in detail about the comments made by Code Enforcement Officer Tom Johnson regarding an electrical wiring project he had been part of. He said he was not impressed by the letter, and said it appeared to be an obfuscation. He also spoke in further detail about his disagreement with the Woodman Road project.

Administrator Selig said he did not think this was the forum to read or discuss the email from the former State electrical inspector. He noted that the Town Engineer was present to provide factual data on the Woodman Road project if needed. He said he was concerned that the Council and members of the public were not getting accurate information on these issues.

Diana Carroll, 54 Canney Road, said she was a candidate for the Town Council. She noted that she had served previously on the Council and had also been a Council representative to the Planning Board, and said she would look forward to returning to the Council.

Ms. Carroll spoke about the fact that at the meeting the previous week, she had encouraged the Council to give serious thought to the Mill Pond Center property, and she thanked them for doing so. She said residents looked forward to getting more information on the possible purchase of the property, and to looking at the pluses and minuses of doing this.

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, upon the recommendation of the Town Administrator, a non-industrial wastewater discharge permit application submitted by Mark Henderson for a proposed mixed use building at 1 Madbury Road (Tax Map 4, Lot 1) known as the Ballard Building Extension?
- B. **RESOLUTION #2009-01** recognizing members of the Kaizen Payroll Team for their efforts in improving upon and streamlining the process for completing the Town's biweekly payroll process.

Chair Niman read Resolution #2009-01, which recognized Lisa Beaudoin, Business Office; Janice Hoglund, Department of Public Works; Jennifer Johnson, Police Department; and Melissa Perusse, Fire Department for their efforts as members of the Kaizen Payroll team in improving upon and streamlining the process for completing the town's bi-weekly payroll process.

Councilor Leach MOVED to approve Unanimous Consent Agenda Items A and B. Councilor Sievert SECONDED the motion, and it PASSED 8-0-1, with Councilor Sievert recusing himself.

VIII. Committee Appointments

None

IX. Presentation Items

None

X. Unfinished Business

Receive update from Library Board of Trustees Chair Douglas Bencks regarding property located at 2 Mill Pond Road as possible library site

Administrator Selig said he and Mr. Bencks had met with David Arthur of Varsity Capital LLC concerning the 2 Mill Pond Road property, and had talked with him at some length. He said Mr. Bencks would provide an overview of the current situation.

Mr. Bencks said the last time he had been at a Council meeting, he had been urged to have further discussion with Varsity Capital on the 2 Mill Pond property to see how everyone might come to terms on the idea of using that property for the new Library. He said they had started with a very broad set of possibilities.

He said the reality was that for Varsity Capital, the value of that property in their portfolio as part of a whole set of properties was more than what the appraised value was (\$900,000). He also said they were currently not able to break the 2 Mill Pond Road property out from the whole set of properties at a value less than \$1.2 million.

He said it was not clear whether there were mechanisms for Varsity Capital to be able to get out from under that burden. But he said they had been very firm regarding this, and he said he and Administrator Selig were also very firm that paying more than the appraised value at this time

didn't seem realistic.

Mr. Bencks said there had been discussion about the idea of subdividing the property, which had been felt might be a way to move forward to achieve some goals and objectives in the short term, and then get the whole site over the long term. But he said further analysis had determined that the property owners were not able to subdivide any of their parcels, given their financing.

He said the next idea was to consider a long term lease, for the open part of the land. He said with this approach, Varsity Capital would continue to own, occupy, and rent out the student apartments on the property, and the library with parking would be built on the open part of the property. He said the goal would be to own the part of the property with the library on it, and perhaps the entire property, in the future.

Mr. Bencks said the Trustees had discussed the options, and had had held a special meeting as information was coming in on them. He said the direction he had received from the Trustees was that there were compelling characteristics about the site that made it attractive, and that they wanted to continue to pursue the property.

He spoke about the idea of attaining a ground lease for the open part of the site, and said this would minimize the cost upfront, and would provide long term flexibility toward obtaining the entire site. He said the Trustees believed they could move forward with fundraising and a bond issue for the open part of the site. He said they felt \$1.2 million was more than the property was worth, but still felt they should look for ways to get the site.

Mr. Bencks said the Trustees had talked about other possible locations to put the library, including the Mill Plaza property and other properties downtown. He said the reality was that the 2 Mill Pond Road site was as low cost a property as could be expected downtown. He stressed that the Trustees wanted a downtown property, and felt such a location had long term value for the Town.

Councilor Stanhope asked if Varsity Capital had provided a sense of what they might expect for annual rent if the property were leased. He also asked what the Trustees felt would be a reasonable amount for rent.

Mr. Bencks said the Trustees hadn't given this a lot of thought, and he said there were some things they needed to explore. He said it wasn't clear how this kind of thing would be structured, and said it was hoped that the rental amount would go toward the ultimate purchase, as part of a lease with option to buy arrangement.

Councilor Stanhope said he would think the rent per month for the entire property would be somewhere between \$7,000 and \$9,000.

There was discussion, and Mr. Bencks noted that they were only talking about leasing the open land portion of the property.

Administrator Selig said the focus of conversation the previous week had been acquiring the

entire parcel. He said the Trustees had then raised the idea of the lease in the short term and acquiring the site in the future, and said further discussion was therefore needed.

Councilor Henry Smith asked if there were any other options, and Mr. Bencks said if there were, the Trustees were open to considering them.

Administrator Selig explained that with the financial vehicle that Varsity Capital utilized, there would be a charge for pulling the 2 Mill Road property out of the portfolio while there was still indebtedness. He said in future conversations, it would need to be considered how the equation would change if the property was pulled out 30 years from now as compared to today, when there was still indebtedness.

Councilor Henry Smith asked if there had been any discussion about a possible exchange with regard to the Grange.

Mr. Bencks said there was discussion on this, and while there was some interest in this, Mr. Arthur had said that at the present time, they were not in a position to pursue the acquisition, so it couldn't be part of the discussion.

Councilor Needell asked what was meant by a ground lease.

Mr. Bencks said the idea was to lease the ground in order to build a building that would be owned. He noted that UNH had at least three ground leases.

Councilor Needell asked where the subdivision issue fit into this, if only a portion of the property was leased.

Administrator Selig noted that the Town was exempt from local zoning for the most part, and said this applied to municipal use of a property owned by someone else.

Councilor Clark asked if the Trustees had discussed the possibility of using the Mill Pond Center site, noting that the property was two tenths of a mile from the 2 Mill Pond Road property. He said he realized it wasn't in the downtown area, but asked if there had been conversations on ways to access it other than from Route 108.

Mr. Bencks said the Trustees hadn't come up with a solution for access, and said this was a key issue. He said if there was access to the property that was closer to the downtown area, this would potentially make it more attractive.

He also said that while there were some special historic buildings on the Mill Pond Center site, they would be a liability to the Trustees. He explained that the Library structure would need to be constructed in a way that was far beyond the construction of the existing buildings because of the weight of books they would have to be able to hold. He said the current buildings needed a steward, and said this was beyond what the Trustees had been thinking about. But he said perhaps there was a way to work with the Town to package something on the site.

He said the Mill Pond Center site was just a little further from the downtown area than the 2 Mill Pond Road site, and said it became a question of how far one could go before losing the essence of being in the downtown area. He said this was essentially a subjective discussion.

Administrator Selig noted that the price for the Mill Pond Center was currently \$650,000.

Councilor Sievert asked if the land portion of the Varsity Capital site would be big enough for the new Library.

Mr. Bencks said a very preliminary analysis had determined that a proposed 12,000 sf two story building that would face on Mill Pond and would have some parking behind it could fit on the site. He provided details on possible options for shared parking available in the area, and noted that there had been informal discussion about this with the Durham Community Church and the bank. He said the Trustees felt sufficient parking could be carved out. He said shared parking represented a sustainable approach, and could work out quite well.

Councilor Sievert said if the property was currently undervalued and a multi-million dollar building was built on it, this would increase the value of the whole property tremendously. He said he was having a hard time figuring out how the Town would get a good deal later, in buying it out.

Mr. Bencks said the Town would own the building, and said this would not increase the property value for Varsity Capital.

Mr. Sievert questioned this, and there was further discussion. Mr. Sievert said he was having a hard time seeing how it worked out economically, but noted he had nothing against the site itself.

Councilor Julian Smith said the value of the building wouldn't belong to the owners of the land.

Councilor Stanhope said land leases were used with some regularity by Home Depot, etc. But he said his concern was that the financing on the Varsity Capital portfolio had a penalty clause. He said if there was going to be a land lease on the property, the Town would want the lien holder to be subordinate to the lease. He said that otherwise, if Varsity Capital defaulted, the Town would lose the library. He suggested that this needed to be looked at before further effort was put into the land lease idea.

He also said the Town would protect itself by being in a primary position on the lease. He said a long term lease would encumber the property for a hundred years, and said there could be another 100 year option after that.

Chair Niman said there had been discussion in years past about the Grange as a possible site for the Library, but a key issue had always been parking. He suggested that Varsity Capital might perhaps be willing to lease parking for the Library on the 2 Mill Pond Road property, and said if this were possible, the Library could be built where the Grange now was, and the Grange building could be moved. He said he realized this would reduce the rents Varsity Capital got from students, but said perhaps there could be compensation for this. He said this would mean

there would be a Library right on Main Street, with parking next door.

Mr. Bencks said the Trustees would be happy to discuss this idea with Mr. Arthur.

Chair Niman said this would get the new Library right downtown, on land the Town owned. He then asked if the Trustees had a time frame in mind for completing this process.

Mr. Bencks said the Trustees had been working with a high sense of urgency to get an agreement by February, but he said that clearly would not be happening. He said the Trustees still wanted to pursue the 2 Mill Road site, but didn't want this process to go on and on.

He noted that part of what had been driving the February deadline was that an anonymous donor had said that \$200,000-250,000 would be donated for the new Library if there was real progress in establishing a site for the new Library by that deadline. He said the current situation had been explained to the donor, who was very appreciative of what the Trustees had accomplished so far and was comfortable with where they were going. He said the donor was very interested in the 2 Mill Pond Road site, but realized that it might turn out to be another one. He said the Trustees had been given another 6 months.

Councilor Julian Smith said Chair Niman had raised an interesting question about the property to the east of the Grange. He noted that the property had recently been rezoned to the Central Business district, and no parking was required there. He also said it would be possible to build out the entire Grange site with a 2 story library if some parking for it could be acquired elsewhere.

Councilor Smith provided some history on the Mill Plaza parking area, and noted that because there were more spaces there than were needed by the businesses, some of the spaces were leased out. He said it could still be demonstrated that there were more spaces there than were needed.

He said there were some opportunities, if the goal was to have a Library on Town-owned land in the downtown area and next to the Plaza. He noted that there was a slope area right behind the Grange that Mill Plaza owner John Pinto owned, and said perhaps some of the airspace over that could be acquired for parking or the building. He said if the negotiation with Varsity Capital didn't work out, the Trustees might want to consider other options.

Mr. Bencks said this was certainly worth talking about.

Councilor Van Asselt asked what the yearly rent was for the present Library, and was told it was \$56,000 per year. Councilor Van Asselt said if the 2 Mill Pond Road was such an important property to the Trustees, a difference of \$150,000 in the negotiations would even out after 3 years. He said he was providing a rationale for perhaps spending more money than the 2 Mill Pond Road property was assessed at.

Councilor Stanhope noted that the bond payment of a similar amount per year would still have to be paid.

Councilor Van Asselt asked what Varsity Capital paid now for taxes on that property, and there was discussion. He noted that if the land lease approach was used, that land would come off the tax rolls. There was discussion that the amount of tax involved would be insignificant.

Mr. Bencks said the Trustees had felt it was important to report back to the Council, given new information that was coming to light. He asked if there was a special message the Council wanted the Trustees to hear.

Administrator Selig asked Councilors if they were open to the idea of a land lease.

Councilor Needell said he was open to hearing about it, but said from what he had heard so far, there were a lot of questions, and more information would be needed. He said it was important to understand the risks, liabilities and overall costs, and to do more homework before bringing this back to the Council.

Councilor Julian Smith asked if Varsity Capital would be able to get out from under the limitations of its financial arrangements if the Town exercised eminent domain to acquire a portion of the property.

Administrator Selig said he would not recommend the eminent domain approach on this site at this time, when there were other possible sites to put the Library.

Councilor Henry Smith said he felt strongly that it was desirable for the Town to own the land that the Library was put on.

Mr. Bencks said the Trustees felt the same way, but he said a question was whether there was a willingness to have less than full ownership for a period of time. He said the Trustees agreed that if there was anything less than that, it would have to be clear that the eventual outcome would be ownership of the land.

Councilor Stanhope said a land lease would make a lot of sense for a lot of reasons. He said the term of such a lease was typically 100 years, and said this approach would avoid the upfront cost of \$1.2 million. He also said the annual cost of rent would be relatively consistent with the cost of borrowing money. He said he thought the Council should encourage the Trustees to come back with what they felt was the most appropriate way to proceed regarding this property.

Councilor Leach agreed, and said she thought the Trustees should come back with more information. She also said that perhaps Administrator Selig could investigate the ideas discussed regarding the Grange property.

Administrator Selig said the idea of obtaining parking near the Grange was a great idea, and he said David Arthur was open to discussing these kinds of ideas.

Mr. Bencks asked the Council to let the Trustees know if there were any other creative ideas.

Councilor Van Asselt asked if the Trustees had the expertise they needed to look at these things,

noting that it was a complex situation.

There was discussion, and Administrator Selig said if one particular approach got some traction, someone would be brought in to provide the expertise that was needed.

B. Continued discussion on proposal presented by Councilor Van Asselt regarding the possible creation of a Durham Housing Authority

Councilor Van Asselt explained that he had compiled questions from Councilors regarding the housing authority concept, and had provided answers to the questions in the document he had emailed.

He said Councilor Julian Smith had asked how a housing authority project impacted the tax base, and said a payment in lieu of taxes was made to the Town. He said it usually ended up being 60-70% of what property taxes would be.

He said most housing authorities were in the business of rental properties, not home ownership, but said they could be in the business of home ownership. There was discussion on the potential tax impact of a housing authority project. Councilor Van Asselt said taxes would be paid, but said they would be less than for a non-housing authority project.

Councilor Julian Smith said this would tend to put a greater tax burden on “selfish” single family homeowners.

Councilor Van Asselt said affordable housing was generally considered one of the attributes in a community by investors looking to engage in economic development projects. He said there were tax and job creation benefits from such investments that were undertaken because of the availability of affordable housing. He noted that the biggest hindrance to the Pease Development Authority was the lack of affordable housing. He said he wasn’t sure how this applied in Durham.

He said the advantage of a housing authority was that it was autonomous, and could move forward with projects. He said one had to make the assumption that commissioners would be local residents, and had the best interests of the community at large as their priority. He said if down the road there was disagreement between the Council and the housing authority, this could be addressed, as would be the case if there was disagreement with any other Town board or commission.

Councilor Van Asselt said he was not aware of other arrangements with the legal authority of a housing authority that could move ahead with housing related projects.

He said the same interests could be addressed without a housing authority. He said if the Council was interested in creating a 40-unit complex of affordable housing, this could be accomplished through a variety of special arrangements by the Council with a private developer. But he said he thought this would be highly unlikely, and said the housing authority had a big funding advantage. He provided details on this.

Councilor Van Asselt said he didn't see any great downside to a housing authority, and noted that there were about 3800 housing authorities in the country. Concerning the eminent domain power, that was a fact, but said he didn't see this as a downside.

Councilor Van Asselt said it was highly unlikely that a housing authority in Durham would do what a housing authority traditionally did, including the creation of public housing. He noted that there was already some Section 8 housing in Durham, and said an additional concentration of public housing in Town wasn't likely.

He said it was important to ask whether Durham needed affordable housing. He said he supported the idea because there were a lot of people who worked in Durham who might like to live there. He said he thought a housing authority in Durham did make sense to promote affordable housing.

Councilor Stanhope said he hoped they could explore the fact that well-meaning housing authorities sometimes created attractive housing for low income families that over time declined because of membership or administration deficiencies. He noted that since the housing authority would be an autonomous body, the Council would have no control over it. He asked how it could be guaranteed that the Town wouldn't be faced with this kind of development.

Councilor Van Asselt said there were no guarantees, and he spoke in some detail on this. He said there was no good answer as to how the Council could exert control so problems could be avoided. But he said an affordable housing project was less likely to go bad than public housing.

Councilor Needell said most of them agreed that there was a need for affordable housing in Durham, and that it would be nice to find a solution. But he said RSA 203.26 seemed to be targeted to correcting a blighted area of a city. He said granting authority to a housing authority in that kind of situation was one thing. But he that wasn't the situation in Durham, and he said he was nervous about the idea of creating this kind of autonomous structure. He said now that legal advice had been provided to the Council on this, he was even more concerned. He said he would like to discuss this further.

Councilor Van Asselt said that regarding what Councilor Stanhope had said, it was true that some housing authorities were created to do a project, and then went on to do other things. He noted that this had happened in Rochester.

Councilor Clark said it seemed that the University would be the biggest beneficiary of affordable housing in Durham, for junior faculty without families as well as and young faculty with families. He asked if the University was therefore a possible partner in providing affordable housing. He noted faculty housing that had been provided by the University in the past.

Councilor Van Asselt said that was true, and said the University was interested in creating some kind of housing for junior faculty and administrative staff. He said UNH could do this without a housing authority, but he said it was easier to do if there was such an entity.

Councilor Clark said he remembered when buildings like Red Tower were the kind of place

junior faculty without families rented. He asked if this kind of affordable housing was feasible in Durham, or whether such housing would wind up being used by students.

There was discussion on this, with Councilor Van Asselt stating that private landlords in Durham wouldn't be threatened by affordable housing because they wouldn't be renting 3 bedroom apartments for \$800/month. He also said that with some kinds of affordable housing, students wouldn't be eligible for it. He said he didn't see affordable housing as a threat to the existing student housing stock.

Councilor Clark said he was thinking about it the other way around, and whether students were a threat in terms of who the affordable housing was intended for.

Councilor Van Asselt said students weren't eligible to live in publicly subsidized housing.

Chair Niman spoke about the quandary of wanting affordable housing in Durham, but not being sure about a housing authority, and not being sure where such housing could actually be put in Durham.

He then spoke about the fact that he had watched the Planning Board meeting the previous week, where developer Eric Chinburg had spoken about doing some affordable units as part of a residential development approach he had in mind for the Durham Business Park. He said this kind of development would be good to see in Durham in the future, and said perhaps the Council should talk with Mr. Chinburg about what he had in mind.

He said if the Council was then interested in moving forward with the project at the Business Park, it could learn more about this kind of residential community, which would have condo type units and various "green" components. He said they could learn from Mr. Chinburg how to make this kind of development affordable as well, and if there were people in Town who wanted these kinds of units.

Councilor Van Asselt said a housing authority could be used to do a specific project like this, but he said this begged the question of what to do with it after that.

Chair Niman said Mr. Chinburg thought he could develop the Business Park without a housing authority. He suggested that the Council should wait to see if this could be done, and then could decide if it wanted to see those kinds of projects elsewhere in Town, and if a housing authority could facilitate making this happen. He said the challenge he had was that he didn't know if a housing authority would work for Durham, and would like to have a better understanding of this before making a commitment to having one.

Councilor Van Asselt said he was happy not to adopt the idea of a housing authority. But he said he was trying to address an issue the Council had talked about for more than 4 years. He agreed that working with Chinburg Builders was a possibility, but he said by not going ahead with a housing authority, the potential was probably lost to do something with UNH.

Councilor Van Asselt also said there was a current and expanding need for a variety of types of

assisted living projects.

He provided details on the fact that the Town of Madbury didn't have a housing authority, but the selectmen had made a decision that they wanted to see 15 units of affordable housing.

Councilor Sievert asked if affordable housing could be set up in a mixed use situation.

Councilor Van Asselt said yes, and said it could involve even more than that. He provided details on this, and said this kind of development could work in the downtown area.

There was discussion about this, and about how a housing authority could work with a project involving the University.

Councilor Julian Smith noted that at the Planning Board meeting Chair Niman had referred to, there was also discussion of the possibility of development along Old Piscataqua Road. He noted current limitations on the size of development possible at the Business Park because of current access available on Route 4. He said DOT would like to see Old Piscataqua Road extended from the skating rink to the Business Park, and would like to see the private drives on Route 4 abandoned.

Councilor Smith noted that the Town as well as UNH owned land in that area, and that if this land was put together, there might be enough land to have some fairly intense residential development, along with a small commercial component. He said this could be a small community within walking distance of the University and the downtown, and said there might be enough residents living there to justify having Wildcat Transit stop there.

Councilor Smith also noted that the land downtown was very expensive, but he said there was land the Town owned in other parts of Durham that might be suitable for affordable housing, including land near the transfer station.

Councilor Henry Smith stated his concerns about the autonomous nature of a housing authority, and the fact that it didn't have to be answerable to the Council. He also said he thought the emphasis of a housing authority should be workforce housing. He said perhaps the Council should look at an alternative approach, like a Housing Commission, which would be advisory, and would work with the Council and the Planning Board.

Councilor Needell said he would like to know a lot more about housing authorities before proceeding. He noted that legal counsel had said the Town Administrator, not the Council, appointed members, and said this troubled him. He said the Town Council had no say in what the housing authority did.

He said it was clear that a housing authority had the same powers regarding eminent domain that the Council had, and he said he thought this was a tremendous amount of power to give to an appointed body.

He said he agreed that RSA 203.26 said a Housing Authority could be created by resolution of

the Town Council. He said it looked like there wouldn't have to be public hearing concerning this, but said he hoped that there would in fact be a hearing if a housing authority were proposed.

Councilor Van Asselt said in his role as Executive Director of the Rochester Housing Authority, he was as responsive to the City Council as he was to his 5 member commission. He said there was generally a lot of communication between councils and housing authorities.

Councilor Needell said it was interesting to hear that there was this kind of close working relationship.

Councilor Van Asselt suggested that the Council not vote one way or another yet on whether to go forward with a housing authority. He suggested instead that it remain on the Council's plate as a possible approach. He said he liked the idea of seeing what developed first with Chinburg Builders, and with UNH.

Administrator Selig agreed that a housing authority in certain circumstances had tremendous benefits. He said he didn't think the Council was ready to move ahead with this concept now, but said it had been time well spent educating the community on it.

He said he would like to see some time spent on looking at how the Zoning Ordinance currently limited affordable housing, and how including density bonuses could encourage including it as part of the mix in a housing development.

Councilor Needell asked who Administrator Selig would like to take this challenge on regarding the Zoning Ordinance.

Administrator Selig noted that in the self-evaluation he had done, he had suggested the idea of bringing in a consultant with zoning expertise to focus on the downtown area. He said this person among other things could look at the affordable housing issue and the possibility of increasing the density allowed there.

Councilor Needell agreed that professional help was needed for this kind of work, and said it could be determined later what would be done with the information that was gathered. He said he assumed that the Planning department would be involved in this process as well.

Administrator Selig said what he was taking from this discussion was that there was interest on the Council in moving ahead with exploring affordable housing, and that zoning was one way to accomplish this.

Councilor Henry Smith said he appreciated the fact that Councilor Van Asselt had brought forward information on housing authorities. He said he was in favor of leaving it on the table, and said the Council should look at the Housing Commission concept as well, down the road.

Councilor Sievert thanked Councilor Van Asselt for bring this information forward, and agreed that the concept should be left on the Council's table. He also said he thought that whoever wanted to bring zoning changes forward should be able to do so, and if this was not the Planning

Board, it could be the Council. He said there was already a development ball rolling downtown, and said the fear was that it would come to a screeching halt because of a lengthy planning stage.

Councilor Clark recommended that at a future Council meeting, there should be a comparison made between housing authorities and housing commissions.

The Council stood in recess from 8:50 to 8:59 PM.

Councilor Henry Smith left the meeting during the recess and did not return.

C. Continued discussion on development in the Central Business District (CBD)

Chair Niman said he and Administrator Selig had talked with developers who were interested in changing the downtown, but said he had come to the conclusion after these discussions that the existing Zoning Ordinance wouldn't provide the kind of downtown they would all want to live in. He said the outline he had now provided was the result of conversation with Councilor Sievert and Councilor Stanhope on some possible solutions.

He said he had laid out in the Council Communication the challenges with the current zoning in the Central Business District, along with some of these possible solutions. He said he didn't have a formal proposal because he wasn't sure how far the Council was interested in going with these ideas. He said he wanted to get some parameters in terms of what kinds of changes to the Zoning Ordinance that the Council would like to see.

He said the way the Ordinance was currently structured, the numbers didn't seem to work, and said this was more of a challenge to redevelopment of the downtown than the lending institutions.

Chair Niman said he hadn't realized until recently that there were two things driving the size of properties in the CB district, the square footage per unit and square footage required per person. He said he had decided to go through the numbers with Mathew Crape, the new owner of the Houghton's Hardware property, for that property.

He said if the required square footage per unit was changed from 900 sf to 600 sf, this wouldn't change how many residents there could be in a new building there, but it would change the number of units. He said with a requirement of 600 sf per unit, Mr. Crape could have 15 units, and could have 4 residents per unit rather than 6 residents per unit and still maintain the same number of residents in the building. He said this would represent less risk for him in terms of being able to rent the units, and he also said it would be better for the Town to have students living in somewhat smaller concentrations.

Chair Niman noted that another idea he had been looking at was how to make the downtown a more desirable place to hang out, so people there were more likely to visit and spend money at local businesses. He said the current Zoning Ordinance didn't provide an incentive for developers to create outdoor spaces downtown where people could enjoy hanging out.

He said if instead of having one commercial floor and two residential floors in a new building downtown, there could be one commercial floor and three residential floors, Mr. Crape Had said he could shrink the building footprint. He said this would mean there would be less commercial space on the first floor that needed to be rented, which would mean less risk and a greater ability to redevelop a property.

Chair Niman said changing these floor requirements did not lead to more students, and just meant that the students would be spread over three stories instead of two stories. He said this would free up the area not needed for the footprint for use as part of some kind of public space.

He stressed that if both the Zoning changes he had described were made, this would not mean that more students would be crowded onto the property. But he said there would be fewer students per unit, and the ability to create some public space. He noted that if an extra floor or residential space was allowed by the Zoning Ordinance, there would also be a requirement that the developer had to contribute to the public space.

Chair Niman said he thought these changes would result in some desirable things, and would begin to create the downtown that residents wanted. He noted that it wouldn't mean that a developer couldn't do two floors of commercial development, or only two floors of residential development. But he said right now developers didn't want to go first because it wasn't clear that there was enough demand. He said it was important to get the ball rolling, and said if there was enough activity, the market could then decide what use of the spaces would work.

He said if they could get to the point where they could make commercial uses work downtown, perhaps there could be affordable housing.

Chair Niman said when he, Councilor Stanhope and Councilor Sievert had gotten together, they had said that even if these Zoning changes occurred, Durham would still have the situation of having student housing downtown that supported commercial development, although hopefully the commercial space would be successful.

He said it would be nice to have a mix of housing types and a mix of occupants downtown, including condos with family size units for UNH faculty and staff who wanted to live downtown and be able to walk to stores, etc. He said he wanted to make the downtown a place that was desirable for everyone, and he noted that there had been discussion about this as part of the Mill Plaza study.

He said another idea for a Zoning change was therefore only requiring that 50% of the first floor be commercial in exchange for the construction of condominium units of at least 1200 sf, which would be limited to a maximum of three unrelated individuals.

Chair Niman said another issue was that there had been discussion with the University regarding the creation of a performing arts center that would be located downtown. He said a question was how to make the numbers work to draw people downtown to make Durham a more desirable place.

He said the larger question continued to be why Durham had a university, but wasn't a university town, and said the administration at UNH wanted to support the Town's efforts to change this. But he said as long as rent downtown was so high for student housing, it made it very difficult to make the property affordable for alternative uses.

Chair Niman asked Councilors if there was any interest in allowing landowners to transfer housing densities within the Central Business district. He said the idea was that if a developer could buy the land, and sell off the housing density, this would significantly reduce the land cost, which could potentially make a project work.

He said with this approach, the Town could sell the densities at the Pettee Brook lot and the triangle of land across the street from it, and could then use the money from this to partially fund a parking structure. He said this might help make the numbers work downtown, and said more analysis on this was needed.

He said the question was whether these or other ideas made sense to Councilors, and if they were willing to make some changes to the Zoning Ordinance.

Councilor Stanhope said the only thing that hadn't been mentioned was that if there were buildings with three floors of residential space and one floor of commercial space, along with lower vacancy rates in student rentals with 4 residents per unit rather than 6 residents per unit, these buildings would have a greater value. He said this would increase the Town's tax base, while also creating more open space downtown and reducing animal house behavior in student rentals.

Regarding the proposal to require that only 50% of the first floor be commercial in exchange for the construction of condominium units of at least 1200 sf, he said he would love to see retirees, young professionals and other residents besides students living downtown. He also said he would love to see good restaurants and other businesses that these residents could frequent, and said all of these things were possible.

Councilor Julian Smith said he basically agreed with Councilor Stanhope. He asked about the numbers Mr. Crape had provided, noting that they indicated that his property had 9000 sf, but the proposed building footprint was 6000 sf.

There was discussion on this, with Chair Niman stating that his guess was that Mr. Crape was concerned about the risk involved in a larger building than 6000 sf.

Councilor Sievert said this also reflected providing parking and open space on the property.

Councilor Leach asked if downtown businesses had been asked about the open space idea, and what their vision was concerning this.

Chair Niman said he had asked Administrator Selig to contact the Durham Business Association to schedule a meeting to discuss these ideas, and to see if they would be supportive of the idea of creating public spaces that would provide additional value for everyone. He said it wouldn't cost

a developer anything to do this, and would make a project more doable, while also creating the public bonus of providing places for people to hang out.

Councilor Leach said she was all for that, but said it was important for the business owners to be able to articulate their vision on this.

Councilor Needell said Chair Niman had presented a compelling argument. He said with all do respect, at this stage it didn't matter where these Zoning change ideas had come from. He said the real question for the Council was what it should do with these recommendations.

He said he had been very opposed to and frustrated by the Council's recent proposed changes to the Zoning Ordinance. He said he thought these recommendations needed to go to the Planning Department and to Administrator Selig in order to determine if they were reasonable, and said he personally didn't feel capable of vetting these types of changes. He said discussion on them by the Council was fine, but said any action on them at this point would be out of line.

Councilor Clark agreed. He said the open space idea would only work if it was contiguous, and would not work if there were only isolated patches. He said there might need to be some kind of innovative way to get some property owners to give something up. He agreed that it was time to let the planners take the concept and do something with it.

Councilor Stanhope provided clarification on his perspective that decreasing the number of residents per unit and increasing the number of floors in a building would result in lowered vacancy rates and an increase in the value of those kinds of buildings.

He also said he disagreed with what Councilor Needell had said. He said he felt the Council should put the ideas out there for people to respond to for a reasonable period of time. He said he was open to suggestions from the public, the Planning Department, and Administrator Selig. But he said he didn't want to study this in perpetuity, because that had been a practice in Town for far too long. He said Durham had some of the highest taxes in the State, and had a depressed downtown, and said the existing model hadn't worked.

Councilor Van Asselt asked for more details on how the transfer of residential density approach would work.

Administrator Selig described a hypothetical scenario where he and Chair Niman each owned a property downtown, and Chair Niman wanted a low profile building although he had the potential to do 4 floors, while he (Administrator Selig) wanted to purchase the extra density Chair Niman had, so he could have 70 residents in his building rather than 60 residents. He said the net number of residents for the two buildings would be the same, and would allow the development of the buildings to be tailored to the desires of each of the owners. He noted that the Planning Board hadn't yet worked through the details of a transfer of development rights approach yet.

Councilor Van Asselt said he thought Mill Plaza owner John Pinto would love these ideas that were being talked about, and he provided details on this. He said with these approaches, a

developer could more on the same footprint and also do some things that were of interest to the community.

Chair Niman said one of the next steps after firming up some ideas, would be to call Mr. Pinto and ask for his reaction to them. He said perhaps some math could also be done on his property, and he could be asked what it would take for him to do something like this.

Councilor Clark Doug asked whether with the density transfer approach, this would mean that the person who bought the additional density would be able to put up two more floors, or would squeeze the density into the existing floors.

Administrator Selig said this would depend on how the Zoning provision was written.

Chair Niman said some of the ideas that had been presented were simpler than others. He said the public space concept and the ordinance changes regarding it would have to be thought through carefully, and to ensure the Town got the green space it wanted, professional help would be needed. He also said the transfer of density idea was not a simple approach, and that professional help would be needed in order to work on it.

He said he hadn't felt comfortable saying professionals should be brought in before determining that the Council was receptive to these ideas.

Councilor Sievert said the density transfer approach would not work for all parcels downtown, in answer to the question from Councilor Clark. He said he thought the only way it would work was if the change in density and the increase in the number of floors was permitted in the Ordinance, so that a reduced footprint and a higher building was possible. He said the benefit of these two pieces was that there could then be more open space.

Councilor Leach said she felt comfortable with proposal #3 but not as comfortable with #5, perhaps because she didn't understand it as well. She asked if #3 would make commercial space more affordable for small business owners.

Councilor Clark said if people simply rebuilt what they had on smaller footprints, there would be less commercial space, which would reduce supply and raise prices. But he said if the vision of building a downtown with a perimeter that included all of the Pettee Brook Lane area and around Madbury Road became a reality, there would be more commercial space, so it would be more affordable.

Chair Niman said his vision was also that where the Store 24 lot was would be a green space, with commercial spaces opening onto that courtyard. He said a building owner could have half of the commercial space opening to Main Street and half opening to the courtyard, and said that might create some additional opportunities as well.

Councilor Leach said a mix of housing would be great, but said she had a hard time imagining how people other than students would want to live downtown. She said she wasn't convinced that there would be a huge market for this. She also said that while the idea of contiguous public

space was ideal, she wouldn't want this to be a deal breaker in terms of all of these ideas. She also said that if they were to give this to the Planning Department, a question was whether this was something it could handle given the existing workload.

Administrator Selig said if they wanted to move any of these proposals forward with deliberate speed, they would need to bring in additional resources. He said the Planning Board and the Planner had a full plate. He said the short term and longer term could both be looked at, and said this would allow them to look into the future without stymieing making some improvements now.

Councilor Leach said a question was where the money for this would come from and if it would be well spent. She also said that perhaps it could be determined if the priorities of the Planning Department could shift in order to accommodate this work.

Administrator Selig recommended instead that a professional planner be brought in, noting that having such a person would make it easier to avoid being trapped in preconceived notions as to how Durham could evolve.

Councilor Needell said what he was afraid he was hearing was a rush to get something done that could have a tremendous impact on long term planning, which he felt was being given lip service. He said if they were trying to change the long term plan for the downtown, they should do so. But he said he was not hearing that proposal. He said maybe the existing plan for the downtown was old and needed to be revised. But he said it was inappropriate to start tweaking it before having a conversation on what the goal was.

Administrator Selig explained that the Budget drove a lot of what they did. He said he had thought it made sense to put money in the Budget for planning initiatives, but in the end, these were dropped in favor of nuts and bolts projects the Town had to get done. He said this had been to the detriment of the long term vision for the Town.

He said there was some money, although limited, to address long term visioning, and said he thought this should be done. He said the last Master Plan process had occurred 10 years ago, and said while there was still tremendous validity to it, as ordinance changes had been created, some consensus had developed about what worked and what didn't work.

Administrator Selig said he thought it was ok to move ahead to address perceived shortcomings while looking to the future. He said he didn't see these two things as separate, and said there could be targeted improvements made where problems were seen, while continuing to look ahead.

Regarding the public space idea, he said an issue was whether the Town could get each landowner to have a consistent dedication of that space, to avoid having just pockets of open space. He noted that there was a limited footprint downtown, and said if they wanted to maximizing potential development, he didn't know if setting aside public space would do that. He noted that there might be other ways to create the green space, by narrowing public road ways, widening sidewalks, or transitioning paved areas to green space.

He said a challenge was that there had been such a growth of the University that it had outpaced the ability of the Town to provide housing for the students. He said most of the housing downtown was therefore dedicated to them and was old. He said because there was a lack of housing there, it tended to seep out into the surrounding neighborhoods, and to have a detrimental impact on them.

Administrator Selig said a solution that made sense was to focus on downtown, to create additional density to draw students out of traditional neighborhoods, and to allow families to live in these neighborhoods again. He said the houses there would become more affordable because the highest and best use would no longer be student housing.

He said proposals such as Chair Niman had brought forward had a tremendous amount of merit. He noted that a possible backlash would be that neighbors of the Plaza would be terribly concerned that additional density would mean more headaches for them. But he said this would be losing sight of the fact that a neighbor across the street might be a family again.

He said he was sufficiently motivated to move ahead with some of these ideas, some of which the Town couldn't afford to wait on, but he said existing staff was maxed out, so that this work would typically go into the queue and would be prioritized along with other projects.

Councilor Needell said he didn't think the staffing problem could be fixed by saying the Council would provide the staffing. He said that was what he saw was happening, and said it concerned him.

Administrator Selig said the ability of the Council to make Zoning changes had a positive purpose, but said it tended to short-circuit the ability of other town boards to have input into the process, and tended to cause hurt feelings. He recommended that these proposals should be developed and then brought to the Planning Board instead of asking them to develop them.

He noted that the Planning Board, especially Steve Roberts, and had been saying that someone needed to be hired who had a vision and could work with the Board to move forward on planning issues. He said there was some money available, which could be supplemented with contingency fund money. He said he would work with the Planning Board to select the consultant, and said the work to be done would be clearly assigned.

He said the charge would be to bring forward completed proposals that the Planning Board could respond to. He said this would take 4-6 months, and perhaps longer when public hearings were factored in.

Councilor Van Asselt first said he had accepted the fact that students would live downtown, but said there could also be non-students there as well. He said he believed that \$125,000 3rd floor condominiums would sell to non-students if they were done right, and Councilor Julian Smith agreed. He then said it was important to respond to opportunities when they existed. He said it couldn't get much worse downtown, and said if there was the opportunity to fix this, he wasn't too worried about the 10 and 20 year plans

He said would love to see a new plan, but asked why the plan couldn't evolve from the opportunities that existed, working with incremental changes to the Zoning Ordinance. He said developers wanted to do the kinds of things that it was thought the community wanted.

He said there was the opportunity for the Council to do something about the downtown, and said if there was interest in this on the Council, it should be at the top of the goals list. He said the Planning Board and the public should be involved in this process, which would in part address Councilor Needell's concerns.

He said there were a number of people who were willing to take a shot at developing the downtown, and said they should be listened to, along with the public, and some incremental steps should be taken. He said in the end, these steps might lead to the plan, instead of the other way around.

Councilor Sievert said he didn't see downtown development planning going any differently than how the Mill Plaza development planning process had evolved. He said he agreed with Administrator Selig that the opportunity was definitely on the doorstep, and that it needed to be moved forward now. He said there was the EDC, the Energy Committee and the Planning Board to help put the pieces together. He recommended getting them all involved, having joint meetings, and getting these ideas on the Council agenda every other week. He said the Council needed to keep this effort going, and should let the Planning Board help it do so.

Councilor Stanhope said he supported the idea of bringing in professional help. He noted that in the current economic climate, they might be able to spend less to get highly competent planning assistance. He said this person would be especially useful in making sure that the open space approach was properly configured, and that the language concerning transfer of density was right. He said he thought a six month time frame was doable, but said this would require an action plan with reasonable deadlines. He also said there needed to be general agreement on the Council about taking this approach.

Councilor Julian Smith said opportunity was knocking, and said they should move forward to open the door.

Councilor Clark said it was sensible to make this a priority, but he said it didn't make sense to do things in a piecemeal fashion. He said they needed a comprehensive plan, and said they needed someone with the expertise to do it right. He said he hoped the zoning ideas would get combined with conversations on other issues, like buffers, design codes, traffic patterns and parking. He said he thought there would be a better reception from the community if this were done. He also said an approach similar to what was done by the Mill Plaza Committee would make the plan easier to understand and to sell.

Administrator Selig said it would be important to develop a longer range vision, for 3-5 years, and then to see it through. He said if the Council wanted things to move forward, it needed to focus resources on this, and as part of this needed to ensure that staff focused on it as well.

Councilor Needell said Administrator Selig's vision made sense to him, but he said he wanted the plans to be thoroughly vetted. He also said he agreed with what Councilor Clark had said. He said he didn't agree with dumping this on the Planning Board, noting that they were not professional planners either. He said someone was needed who could look at the broader picture and possible pitfalls. He said then, the appropriate body should work with what was developed.

Councilor Leach said she didn't think that Chair Niman had suggested that the Council wanted to do it all of this work themselves, and said he had simply wanted to know at this point if the Council wanted to go forward with the ideas he had presented. She said she felt Councilor Needell needed to be really careful with the words he chose, stating that she didn't think they helped the situation, and didn't help to garner support for community projects.

Chair Niman said he agreed with those who said that this was a unique point in time. He also said he didn't think everyone realized how much time he and Administrator Selig spent on this work. He noted that it had taken two years to get John Pinto to consider redeveloping his property.

He also said hours had been spent talking with the University, and said progress had been made with this relationship, so that they were now becoming partners in considering development for the downtown. He noted as an aside that he thought the contiguous green space approach could happen if the University sold Store 24.

Chair Niman said he and Administrator Selig had discussed at length the idea of getting planning assistance from someone who was familiar with college towns, and saw an opportunity in Durham.

He said it was important for the Council to decide where the redevelopment of the downtown was on its priority list, and said to him it was a number one priority, given the uniqueness of the moment. He said the Council had to help set the limits and provide some of the vision, and said he had been trying to present some concepts and see what the level of interest was.

He said he hoped he was hearing around the table that Councilors agreed that this was a priority, and that they wanted to move forward to see what could be accomplished. He said he liked the idea of a deadline, and getting something done in 6 months, in order to keep the doors open.

Councilor Needell asked what direction was being given to Administrator Selig on this. He said the discussion had been very good, and said it was important for the Council to speak.

It was agreed that a motion should be made.

Councilor Sievert MOVED to identify and possibly implement incentives for new development in the downtown area. Councilor Julian Smith SECONDED the motion.

Councilor Sievert said this came directly from the Council Goals.

Councilor Leach recommended an amendment concerning the hiring of a professional planner.

Administrator Selig said he hoped that what had been learned from talking with downtown property owners could be translated into some new ordinance proposals to consider. He said the long term vision related to the Master Plan, which was a Planning Board document. He said the consultant who was brought in would therefore also have to work with the Planning Board to develop the Zoning changes that would need to be made to move things forward.

He said he believed that what Councilor Needell had been trying to say was that it was challenging for the Council to be the committee to bring Zoning changes forward, and that the Council was better at responding to specific proposals. He said he wanted to move a process forward that could bring the Council some legislation that it could act on.

Administrator Selig said regardless of the motion that was what he had been planning to do.

Councilor Leach said she didn't think any of the Councilors had been suggesting anything different than the process Administrator Selig had described.

After further discussion, the motion and the amendment were withdrawn, given that Administrator Selig had said he was planning to do what the motion contained.

XI. New Business

Other business

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 Stanhope SECONDED the motion, and it PASSED unanimously 8-0.

Adjournment at 10:19 pm

Victoria Parmele, Minutes taker