

This set of minutes was approved at the July 26, 2010 Town Council meeting

**Durham Town Council
Monday June 21, 2010
Durham Town Hall - Council Chambers
7:00 P.M.**

MEMBERS PRESENT: Chair Diana Carroll; Councilor Neil Niman; Councilor Julian Smith; Councilor Doug Clark; Councilor Peter Stanhope; Councilor Mike Sievert; Councilor Robin Mower; Councilor Jay Gooze; Councilor Bill Cote

MEMBERS ABSENT: None

OTHERS PRESENT: Administrator Todd Selig; Police Chief David Kurz; Business Manager Gail Jablonski

I. Call to Order

Chair Carroll called the meeting to order at 7:06 pm.

II. Approval of Agenda

Councilor Smith MOVED to approve the Agenda. Councilor Cote SECONDED the motion.

Councilor Niman MOVED to amend the Agenda to take Item VII C regarding the disorderly house ordinance and create a new Item X E. Councilor Stanhope SECONDED the motion.

Councilor Niman said the Council hadn't really talked about the disorderly house ordinance yet, and said he had some questions and other things to discuss about it. He noted that at the Agenda setting meeting. He had requested that it be discussed under Other Business. He also said he didn't think it was fair to the people present for the public hearings to discuss the disorderly house ordinance before those hearings were held.

The motion to amend the Agenda PASSED 8-1, with Councilor Smith voting against it.

The motion as amended PASSED unanimously 9-0.

III. Special Announcements

Recognition of the Kaizen building permit review team for their efforts in consolidating and simplifying the Town's building permit application process.

Administrator Selig noted that resident Jerry Gottsacker had been working with the Town over the past few years to integrate the Kaizen approach into various Town processes. He said the most recent process that had been reworked was the building permit process, and said Mr. Gottsacker, Mr. Johnson, and administrative assistant Karen Edwards had been working together to simplify and standardize this process. Administrator Selig noted that while the building permit forms used to be 12 pages, there were now 4 pages and he provided details on this.

He said they had also put together a fact sheet to get at typical questions people had about the building permit process, so they didn't need to contact the staff. He said they had also reviewed the existing fee schedule, and determined that it was still appropriate. In addition, he said they had talked through present and future strategies for the web site, including plans to accept credit card payments online.

Administrator Selig said there was also a Kaizen process underway at the Police Department without Mr. Gottsacker, with the goal of improving the parking permit issuance process. In addition, he said Mr. Gottsacker would be working with the DPW on the driveway permit process and others processes.

Chair Carroll noted that Mr. Gottsacker was present, and said he had made a major contribution to the Town through these efforts.

Mr. Gottsacker said it had been a very productive process.

IV. Approval of Minutes

May 3, 2010

Councilor Smith MOVED to approve the May 3, 2010 Minutes as presented. Councilor Mower SECONDED the motion, and it PASSED unanimously 9-0.

V. Councilor and Town Administrator Roundtable

Councilor Gooze said the Rental Housing Commission would meet that week, and would discuss the results of the public hearing on the noise ordinance, the first reading of the disorderly house ordinance, as well as whether they wanted to go forward with the large assembly and rental licensing proposals. He noted that Attorney Laura Spector had reviewed the noise ordinance and disorderly house ordinance, and thought that they would hold up.

Councilor Smith said that at the Planning Board's quarterly planning meeting, it heard a presentation on the use of the traffic model to analyze traffic at Mill Plaza. He said the Board finished its discussion with Town Engineer Dave Cedarholm on the proposed stormwater management provisions for the site plan regulations and subdivision regulations, and set the public hearing date.

He said there was also a discussion on leased parking at the meeting, and said the Planning Board agreed to have Mr. Campbell come back with a proposal for some kind of ordinance change.

He said at the upcoming Planning Board meeting, there would be four public hearings. Councilor Smith then noted that he had voted against amending the Council Agenda in regard to the disorderly house ordinance because it was put at the end of the previous Council meeting. He said he would be happy to discuss it at the end of this meeting, and hoped it wouldn't get bumped again.

Councilor Clark said the RPF for the town-wide market analysis had gone out about a month ago, and said there were about 10 responses to it.

Administrator Selig said the EDC subcommittee would meet on Wednesday to review those submittals.

Councilor Mower said the bicycle rack for the Town Hall had been moved to a new location, which the Energy Committee and Administrator Selig had determined was an improvement. She said they would look for other locations in Town for bike racks, and noted that the fitness center and the Library shared one, but it needed to be replaced.

Administrator Selig said the grand opening for the newly refurbished Wiswall Bridge would be held the following day on the east side of the bridge, and said all were welcome to attend.

He said UNH pool vouchers were now available, for residents ages 2-7, and 62 or older.

He said the annual July 4th celebration put on by the Great Bay Rotary Club would be held at Cowell Stadium with a rain date of July 5th.

Administrator Selig noted that on June 30th, the New England Center would close, after 40 years of operation.

He said a ribbon-cutting ceremony would take place on Friday, June 25th at 2:00 PM at the Jackson Landing Playground to celebrate the Parks & Recreation Committee's creation of a new children's sensory garden at the playground. He noted that Committee members Jenna Roberts and Jean Olsen had planned this garden. He said three committees were formed, with one to help with the installation of the garden, one to do the maintenance of the garden beds, and one to provide educational tours each week to encourage participants to use their five senses to investigate the plants there.

Administrator Selig noted the recent ribbon cutting ceremony to open the Farmers Market, and said Chair Carroll was present for this ceremony.

He said the Durham Historic Association would hold its annual picnic on Tuesday, June 22, 2010 at 6:00 PM at the historic Sullivan House.

Administrator Selig said the Council needed to think about when to have a work session on the B Dennis Plan. He suggested that there could possibly be a joint meeting where Planning Board members were invited. He asked for feedback on this.

Administrator Selig said there would be a discussion on the tax abatement issue at the Council's first or second meeting in July. He also said Town staff was starting to map out the 2010 Budget work sessions. He said he had met with department heads last week on what had gone well and what hadn't last year with the budget process. He said there should be a similar meeting with the Council on this, and said it would probably take place in July or August.

He said he had recently met with a DCAT subcommittee and Attorney Ciandella for a strategy session regarding the Comcast cable franchise agreement negotiations. He said they were starting to map out how this process would look, and said as part of it, feedback would be solicited from various entities and would be used to focus negotiation efforts.

Administrator Selig noted that one of the Council's long range goals for 2010-2011 was sustainability. He said there had been internal discussion that the vehicles used by the Police Department and Town staff at the Town Hall could be more efficient.

He said there would be an evaluation as to whether there were alternatives for these vehicles, and noted that one idea was to approaching the University about the use of Zipcars. He said another possibility was to look at using more fuel-efficient vehicles. He said the current approach the Town took with its vehicles was the most cost-effective, but wasn't the most fuel-efficient and sustainable approach, and said they were trying to weigh all of these things.

Councilor Mower suggested talking with the Energy Committee, noting that one member was especially up on this issue.

Administrator Selig noted that this spring, a great deal of effort had been placed on enforcement concerning rental properties near neighborhoods. He said many violation notices were sent, and one of these had gone to court. He said the property owner had pled guilty and was now responsible to pay \$2500 in fines to the Town. He said this process had been a learning experience, and said the Town planned to be equally vigilant in the fall, concerning properties that were illegal because of occupancy, parking, etc.

Councilor Mower asked if there were plans to spread the word on this.

Administrator Selig said there were, and said there would be a report on this to the Rental Housing Commission at its meeting on Wednesday. He also said there were plans to engage with landlords on how to make these enforcement efforts known throughout the Town, and to let real estate agents know that the Town was serious about this, and that there had in fact been a conviction.

Councilor Clark noted the planned dedication concerning the sensory garden, and asked why there wouldn't be a dedication ceremony for the veterans' memorial garden on Main Street.

Administrator Selig explained that two years ago, there had been a simulated dedication as part of a Memorial Day event, but the plaques hadn't yet been installed. He said the feeling now was this was sufficient, but he said if the Council felt that more should be done, there could be discussion.

There was discussion about a possible meeting between the Council, the EDC, and the Planning Board in July. Chair Carroll asked that an email go out to the Council regarding this.

Administrator Selig said the thought was that this should take place on July 26th, and said a question was what the format would be. He said a possibility was that B Dennis could be the facilitator, and also suggested that the Council could put together a specific proposal for how the meeting should be organized.

Chair Carroll asked that Councilors to think about this and provide a response to Administrator Selig.

Chair Carroll said she had recently attended the Farmers Market ribbon cutting ceremony to open the market for the season, and noted that the market had moved to the Mill Plaza parking lot. She said several people were instrumental in making this happen, including EDC Chair Tom Elliot, Dan Sheehan, and Chuck Cressy. She said it was believed there would be a number of economic benefits from having the market there. She said there was a renaissance in local agriculture around the country, which would benefit everyone.

Administrator Selig noted the Unanimous Consent Agenda item on the Collective Bargaining Agreement that had been reached between the Town and the Professional Mid-Managers Association. He thanked members for the cordial bargaining process despite the fact that it had been a difficult one. He said there was a 4 year contract, with a no salary increase for 2010, and a 2% increase for the other 3 years.

VI. Public Comments (NLT 7:45 PM)

Roger Spiedel 7 Nobel K. Petersen Drive, noted that he had gone over a lot of numbers concerning the School District over the past few years. He said on March 9th, the public, which paid the bills, had voted for a new approach. He said it was important to establish a Budget committee to oversee the exploding budget bloat. He said the goal should be providing kids with a great education, at a reasonable cost.

He said 5 of 6 present School Board members were voted on to the Board over the last few years because they ran on a platform of fiscal responsibility. He said the public wanted the School Board to be accountable, and said residents were upset about the delay in creating the Budget committee.

Bill Hall, Smith Park Lane, questioned the numbers in the School Budget, and provided details on this. He said he hoped that the Council would act as advocates to get this Budget under control.

Yusi Wang Turrell, 5 Stevens Way, noted that she volunteered with the EDC, and Chaired the subcommittee on Business visitation and retention. She provided details on the work of this subcommittee. She first noted the brief questionnaire the EDC and the Durham Business Association had sent to 125 Durham business owners in March. She said seven were returned, which was not surprising, given that it had been noted that there would be follow-up interviews.

She said the objectives of these interviews included developing a deeper understanding of current business segments and their unique needs, in order to shape Town and economic development policies. She said they would work with the market analysis consultant to do a gap analysis between the current supply and forecasted demand for local goods and services.

She said they would also build relationships and trust between the Town, business community, and an engaged citizenry, as part of the interviews. She said a survey would be done to ensure that the business community's opinions and concerns were reflected in topical Town projects. In addition, she said useful resources would be provided to local business owners, including support around RSA 79-E, and the ERZ tax incentives. She thanked Mr. Campbell for his help concerning this.

She said the plan was to complete at least 110 of the interviews by September, and asked members of the Council and other citizens to help conduct this process. She provided details of what it would involve, including an anonymous survey that would be handed out at the end of the interview. She said this survey was still in draft form, and she asked that Councilors provide suggestions on useful questions by Thursday.

She asked each Councilor to commit to doing one interview between now and September. She said she believed there would be some very fruitful results from this process.

Administrator Selig noted that the list of 125 businesses had already been very helpful in that it had been used to put together a mailer to advise businesses of the pilot project to make Pettee Brook Lane into one lane.

Ms. Wang Turrell noted that Katy Muth of the Durham Business Association had put this list together, and had been an extraordinary partner.

Henry Brackett, Lee, noted that he was a Rotarian, and spoke about the July 4th celebration that the Great Bay Rotary Club had planned. He said it was also a fundraiser, and went to a lot of great causes in the community. He provided details on this.

Jenna Roberts, 15 Cowell Drive, noted that the Parks and Recreation Committee had recently installed a sensory garden for kids, but said it was also for residents of all ages. She said the grand opening and tour would be held that week.

Ms. Roberts said there were 14 homes in her neighborhood on Cowell Drive. She said she had chosen to live near the downtown five years ago so that she could walk to local businesses, and had done so. She said she had been aware of student housing in the neighborhood when she moved there, and said over time, more and more houses in her area had been converted to rentals. She provided details on the disrepair that houses had fallen into as a result of renting to students, and noted an \$80,000 drop in price for one house that recently sold, which was not based just on the downturn in the market. She said she and neighbors had formed a neighborhood association, and had tried many things to balance their needs with the needs of student renters. But she said she had realized over time that the problems were not about addressing individual student behavior, and were also about more than getting individual landlords to be better stewards of their properties. She said there was a conflict in lifestyle. She provided details on some of the student behaviors that were becoming more prevalent, and their impacts on the neighborhood.

Ms. Roberts asked Councilors how important it was to them, in setting priorities for the Town, to create incentives to get students to live elsewhere. She asked how important it was to protect landlords, or make money in her neighborhood at the expense of her family. She asked what direction the Town wanted to take concerning its downtown businesses and households.

She asked Councilors if they wanted a vibrant downtown with a mix of students and residents. She said 50% of the Town was not students, and asked what incentives were being provided to get residents to live and patronize the downtown. She said she was doing her part, and the Council needed to do its part.

She said protecting her neighborhood and others like it would require someone to provide housing that would directly compete with single family homes in her neighborhood and others. She said she was therefore in favor of the Zoning change proposed to the MUDOR AND ORLI districts. She said it would help to relieve the pressure on the neighborhoods, and spoke in some detail on this.

Ms. Roberts said she would concede defeat in her efforts to work with the existing situation if changes like this weren't made, and said she would sell her home. She questioned whether she would still go to local Durham businesses if she moved away. She said the question before the Council was a simple one, which was what kind of Town it wanted.

Diane Foster, Edgewood Road, said she had purchased her house last summer, and had become increasingly concerned about the traffic there, and the fact that the speed limit and stop sign were not obeyed. She noted that her kids walked to school. She said while she appreciated the idea of adding bus service on Edgewood road, she was concerned

about the impact of this. She also said she worried that it would increase the pressure for students to move further into the Edgewood Road area, and asked that the Council think about 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, upon recommendation of the Town Administrator, ratify the Collective Bargaining Agreement between the Town of Durham and the Durham Professional Mid-Managers Association (DPMMA) for the period January 1, 2010 through December 31, 2013?
- B. **RESOLUTION #2010-16** recognizing members of the Kaizen building permit review team for their efforts in consolidating and simplifying the Town's building permit application process
- C. **FIRST READING ON ORDINANCE #2010-08** amending Part II "General Legislation" of the Durham Town Code by creating a new chapter, Chapter 45, entitled "Disorderly House"

Chair Carroll noted that Item C had been taken off of the Unanimous Consent Agenda, and would be discussed under Unfinished Business.

Councilor Smith MOVED to approve Unanimous Consent Agenda Items A and B. Councilor Gooze SECONDED the motion, and it PASSED unanimously 9-0.

VIII. Committee Appointments

None

IX. Presentation Items

None

X. Unfinished Business

- A. Conversation with Jocelyn O'Quinn, Durham representative on the Oyster River Cooperative School Board, and possibly other representatives of the Board, to build a strong, positive working relationship between the Town of Durham and the School District

Chair Carroll said the Council hoped to create a positive relationship with the School Board, and she noted that the Chair and Vice Chair of the School Board as well as the Superintendent were present, in addition to Ms. O'Quinn.

Administrator Selig spoke briefly about the Council's goal of increasing communication with the School District.

Ms. O'Quinn said the School Board had decided to go forward with a Strategic Plan, and had created an oversight committee for this that was charged with creating a 5 year plan by July 2010. She said research for the plan would cover finance, student achievement

and community, and noted that a community survey had been done, and 515 responses were received. She also said 90 high school students were surveyed. She said the analysis phase would come next, and said the process was expected to be completed in the fall.

She said there had also been recent discussion on the idea of having an advisory Budget Committee and an Audit committee, and said there were two proposals concerning this at the last School Board meeting. She said it was determined that they wanted to complete discussion on the idea of an advisory Budget Committee after finishing the School Board goals, one of which was fiscal responsibility. She said the Board had also decided to create an audit committee, and as part of this had charged the current Operations committee to come up with details on this. She said this would come before the School Board on July 14th.

Ms. O'Quinn noted that the Madbury School Board representative had resigned, and said they were currently recruiting Madbury residents to fill this position.

Councilor Gooze noted that the Council had been hearing from citizens about the cost per student in the School District. He asked if the validity of this cost was being discussed at the School Board level, and also asked what the plans were to work on this.

Ms. O'Quinn said she assumed there would be discussed on this issue as part of the goals discussion the following day, concerning fiscal responsibility. She said the issue could also come up when the Budget Committee was created. She noted that she was speaking as a citizen right now, and could bring this question back to the School Board.

Councilor Sievert asked what the difference was between a budget committee and an advisory budget committee.

Ms. O'Quinn said her understanding was that the School Board could create an advisory budget committee, and that the Board could then make its own decision on the results that an advisory committee came up with.

Administrator Selig said a more formal committee would be a statutory budget committee. He said under this scenario, the committee would set the dollar amount on the warrant that the voters voted on. He said while the School Board could disagree with this, the voters would ultimately settle the issue.

Councilor Stanhope said there had been a substantial Budget surplus last year, and he asked how that amount of money could have been budgeted and then not spent on items a need had been anticipated for in the Budget.

Ms. O'Quinn said the School Board had done due diligence. She noted that it had been a complex \$39 million budget, and said there were always issues regarding it that needed to be clarified. She said if the Council wanted to talk more about this, there could be a meeting between them and School Board members.

Councilor Clark noted that the School District's business administrator was leaving, and asked if there would be a search committee to get the position filled quickly.

Ms. O'Quinn said no meeting on this had been announced, but said the issue would be discussed at the School Board meeting on Thursday.

Councilor Gooze noted that in the past, people were able to see the line by line items of the Budget. He urged the School Board to find a business administrator who would be willing to get information on the Budget out to the public in a better way.

Ms. O'Quinn said the business administrator had been looking at this issue over the past year.

Councilor Niman asked Ms. O'Quinn, as a private citizen, how the Council could develop a better relationship with School Board, based on trust, where ideas were shared, and people had good listening skills.

Ms. O'Quinn said she had given some thought to this, and also said the School Board was currently looking at this. She said relationships were important, and said the more she as a citizen could update the Council, the better.

Councilor Mower asked if the School Board's website could be a part of the improvement in communication.

Ms. O'Quinn said the website had already been improved, but said there was still room for improvement. She said hopefully there would be some recommendations coming forward concerning this, but noted that they also wanted to be fiscally responsible, so this was a balancing act.

Chair Carroll said the Council was certainly aware of Budgets, and struggled in developing them. She noted that the previous year, there was only a small increase in the Town Budget, and an actual decrease in spending two years ago. She provided details on what this meant for Town departments. She noted that Ms. O'Quinn had said that the School Board wanted to work through its goals before creating a budget committee, and asked if this would be settled in time for this committee to be appointed and work on the 2011 Budget.

Ms. O'Quinn said she assumed that over the next few weeks, the goals would be finalized, and there would then be enough time to decide about going forward with a budget committee.

Councilor Mower asked if it was true that the School Board would be doing contract negotiations with the teachers, and if so, what the timeline was on this.

Superintendent Howard Colter said negotiations would begin in the fall, and said the hope was to wrap things up in December.

Councilor Clark asked if the School Board's strategic plan would address strategies for labor contracts.

Ms. O'Quinn said they hadn't gotten that far yet. She noted that the strategic plan wouldn't impact this year's budget because the plan would be coming out in January.

Councilor Clark asked when there would be the opportunity for residents who didn't do the survey to weigh in with their thoughts and concerns.

Ms. O'Quinn said people could respond to the strategic planning committee at any time, on the School District website. She also noted that in the fall, the committee would test its findings, and would then hold forums on these.

Administrator Selig said it was appreciated that the School Board members and Mr. Colter were present. He then noted that since 2008, the Town had been in a recessionary environment, and said the recovery was still less than ideal. He said Durham had a fairly static tax base, although he noted that there were a number of projects coming on line that would enhance the tax base. He also noted that some projects had been mothballed for now, and said he hoped things would pick up.

He said developers were experiencing a more positive scenario in Durham when their projects were reviewed. But he also said there had been a loss in State revenue, which meant there was an increase in cost downshifting to the Town,. He provided details on this.

Administrator Selig said a new site had been identified for a new library, and said there would be a public hearing on this on July 12th. He said it was hoped that this project would proceed, and said if it did there would be an additional appropriation in the Budget for the expansion of local services. He said the Town was also looking at the idea of a new fire station, and also hoped to move forward with land conservation efforts

He said the Town was also looking at increasing the development of the downtown core, including the idea of having a structured parking area there. He said all of these things focused on the need for the School District to focus hard on the bottom line. He said he focused on the Town Budget, but said as a resident he also focused on the School District.

He said it was important that the School District focus on a Kaizen approach to look for savings, reorient the ways things were done, and do things in new ways with the same amount of money. He said if this meant that there would need to be an impact on services, they could all talk about this. He said it would be helpful to see the School District look at this.

Administrator Selig said relationships were very important, and noted that when the School District had spoken with the Town in the past, it was primarily about the funding formula. He said this wasn't what the Council was looking at now, and said it was

looking at the Town's high taxes. He said the Council was doing its part to mitigate impacts for residents, and said it was important that the School Board do the same.

He noted that he, Mr. Colter and the finance manager got together on a quarterly basis to discuss joint issues, and he said these conversations would continue. He thanked everyone for coming to the Council meeting.

School Board member Henry Brackett said that as a citizen, he wanted to thank the Durham Town Council for opening a dialogue. He said he believed that the more these issues were discussed, the more it was likely that the School District could go forward in a creative way to educate kids at a good cost. He said he hoped the discussions would continue.

The Council stood in recess from 8:28 to 8:44 PM.

B. PUBLIC HEARING AND ACTION ON ORDINANCE #2010-06 amending certain sections within Chapter 85 "Noise" of the Durham Town Code

Administrator Selig said the proposed ordinance had originated from the Rental Housing Commission, which had been meeting regularly over the last six months to address the impacts of student rentals on nearby neighborhoods. He said at the same time, the Police Department had been looking at ways to update the existing noise section of the Town Code. He noted the reference to a decibel meter in the code, but said for the last 14 years, there hadn't been one in operation, and the Police Department had instead utilized other portions of the code.

He said the proposal now was to eliminate the portion of the code regarding the decibel meter, and to have the noise ordinance go into effect at 10 pm. He noted that when this came to the Council on first reading at the previous meeting, some Councilors thought it made sense to add some definitions in order to provide a better description of what noise meant. He provided details on the definitions that had been developed.

He also noted that there had been some concern on the Council that it would make sense for the noise ordinance to be in effect from 10 pm to 7 am on all days.

Councilor Gooze MOVED to open the Public Hearing on Ordinance #2010-06 amending certain sections within Chapter 85 "Noise" of the Durham Town Code. Councilor Sievert SECONDED the motion, and it PASSED unanimously 9-0.

Marty Gooze, Meadow Road, read a letter from Warren Brown, which voiced support for the proposed 10 pm hour for the ordinance to be in effect. He said this would allow the Police to respond to the complaints of neighbors and intervene before parties got out of hand. He said with this, perhaps he would be able to get to sleep by 11 pm.

Richard Peyser, UNH Student Body President, said he understood why this ordinance was proposed, but said he thought there should first be a debate on the issues involved.

He said he didn't believe that lowering the time for the ordinance to be in effect to 10 pm would solve the noise problem.

He asked why there instead couldn't be a weekday ordinance where the time the noise ordinance was in effect was 9 pm, and then on the weekend the time could be 11 pm. He said 50% of Durham residents were students and did have a different lifestyle. He said he didn't think lowering the time was the solution, and said they should work together to find solutions to the noise problem.

Karen Mullaney, Davis Ave, thanked Jenna Roberts for her comments, and invited others in Town to address the Council with their concerns. She said people were thrilled with the new library site, but said it was important to remember why Dr. DiMambro had offered his house. She said he was surrounded by noise and trash in an unlivable situation, and said this ordinance was the first of many steps that needed to be taken. She asked the Council to consider the ordinance proposal carefully, and said for those who didn't live in Town, it was hard to understand how important this was.

Annmarie Harris, Oyster River Road, noted that she had been a resident of Durham for 40 years, and had had students live at her house. She said there had been a significant change in Durham, and said she agreed with Jenna Roberts that there was a conflict in lifestyles. She said most residents went to bed earlier than students, and said she hoped the Council would enact the noise ordinance.

Paul Berton, Durham landlord and member of the Rental Housing Commission, said he was supportive of the proposed ordinance, including lowering the time for the ordinance to go into effect to 10 pm, 7 days a week. He said he also supported the changes that would allow the Police Department to make a clearer call.

Diane Foster, Edgewood Road, said she had found that the noise level went up almost linearly with the hour, and also said it was a function of the degree of inebriation.

Administrator Selig noted an email received from resident Cathy Leach that spoke in favor of the originally proposed modifications to the ordinance, but was not in favor of the definitions and the earlier hour for the ordinance to be enforced.

Ray Celenato, 3 Davis Ave, said he had lived in Durham for over 20 years, and said it pained him that the Town had to resort to this ordinance. He said most of the time when there was excessive noise, it started at 5 pm and went on and on. He said the Police Department was incredibly responsive, but said if the ordinance took effect at 10 pm, it might help curtail the noise.

He said some landlords had done an incredible job, and should be role models for others. He said he thought the solution had more to do with holding landlords who didn't live in Town responsible. He said he supported making this ordinance change, and said he hoped the Council did too.

Beth Olshansky, Packers Falls Road, said she lived outside of Town, but thought this was an important ordinance. She said she understood the concerns of many of her friends who lived in Town, and also said she thought this was an issue that affected everyone. She noted a presentation by resident Sam Flanders a few months back that showed about how the student rental problems impacted resale values in Durham.

She said as the problems got more and more out of hand, this resulted in shrinking tax dollars, and the burden of these problems spread to all residents. She said Durham was once a very desirable place to move to, and said they needed to take steps to make sure the Town retained this reputation.

Administrator Selig noted an email from Jim and Joan Jelmborg, 29 Park Court that was in favor of the ordinance proposal as written.

Kitty Marple, 82 Madbury Road, said it was important to maintain the character of the downtown, and said she would appreciate the Council's support of the updated noise ordinance.

Chair Carroll asked Chief Kurz to speak a bit more about 10 pm vs. 11 pm as the time for the ordinance to be in effect.

Chief Kurz said being disturbed, or hearing a noise that bothered someone, was subjective, and said it was difficult to take that out of this law. He noted that citizens could call the Police Department at any time with noise complaints, and said they often did this. He explained that when this happened, the police would try to solve the problem, rather than immediately writing a ticket.

He said this proposed ordinance was an adjustment, and said it allowed the police to get a call, verify that there was noise, and employ the law if desired. He noted that less than half of the noise complaints in Durham resulted in a summons or an arrest, and said the department tried to resolve a noise problem in other ways.

He said it was important to remember that this law as written meant it could only be used to charge and arrest someone during the proposed times. But he said a person could call the department at any time of day and ask it to resolve a noise problem.

Councilor Niman asked whether with 11 pm currently in effect, if he called about a noise problem at 10:30 pm, a student could tell the police to go away until 11 pm.

Chief Kurz said there could also be disorderly conduct, alcohol, etc., involved, and said the reasonable and prudent standard was applied. He said this ordinance did however give the Council the ability to govern Durham a little more.

Councilor Gooze said when a police officer spoke to a person who was being noisy, being able to say there was an ordinance this person could be arrested for had more clout. He said it was another arrow in the quiver, to use if needed.

Chief Kurz said when his department employed the existing noise ordinance or the proposed ordinance, it would be employed against the person responsible for a particular property, to get them to address the situation.

Councilor Gooze said this ordinance was geared toward the people causing the problem, while the disorderly house ordinance went against the landlords.

Chair Carroll asked whether if someone was arrested for a noise problem, this information was provided to a landlord.

Chief Kurz said there was a process set up with the Durham Landlords Association, where the police would tell landlords when they had responded to their properties.

Councilor Clark said some people said the new ordinance was complicated and subjective. He asked Chief Kurz if he thought it was an improvement, and would make it easier for the Police Department to do what it needed to do.

Chief Kurz said yes.

Councilor Smith said the Council Communication said the goal of the Ordinance was to eliminate reference to specific measures that made prosecution in court difficult. He noted that he had previously asked how many times the Police Department had tried to prosecute based on the existing ordinance. He said the Council Communication said the decibel meter had not been used. He asked if the department had not looked for a more modern device that could be calibrated and would not be challenged.

Chief Kurz said no, because they were trying to simplify this law. He said the more complicated it was, the more difficult it was to succeed in court, and said he was trying to follow common sense with this ordinance.

Councilor Smith said he didn't understand why there couldn't be a measurable level of noise, and Chief Kurz said in policing, what was offensive to one person was not offensive to another. He said when a machine was introduced, the process became more complicated.

Councilor Stanhope spoke about his concern about the idea of having an anonymous complainant, especially when there was more subjectivity involved with this ordinance.

Chief Kurz said some people for a variety of reasons were anxious about identifying themselves when they made a complaint. But he said the police would not employ this ordinance unless there was a valid reason for the complaint. He noted that the department validated whether a complaint was real or false. He said he couldn't say that the department wouldn't respond if there was an anonymous complaint, and said they would investigate the situation.

Councilor Niman noted that there was a definition for "disturbing" but it wasn't found in the ordinance.

Councilor Smith said the word “disturb” was used in the ordinance, and said the definition should say “to disturb”, which would be a non-substantive change.

Marty Gooze said with a decibel meter, the police needed to be there when the noise happened. She said getting rid of the meter eliminated that step, and allowed the police to observe a situation, and possibly intervene.

Diane Foster said the decibel meter compromised everyone’s position, including students. She said something like radar was a discrete measurement, but noise was not, and was a function of perimeter as well as distance.

Ray Celantano said he knew noise when he heard it. He said when the noise level reached a point where one was awakened, it was pretty clear that there was a violation.

Councilor Smith MOVED to close the Public Hearing. Councilor Sievert SECONDED the motion, and it PASSED unanimously 9-0.

Chair Carroll thanked people for speaking out that evening.

Councilor Cote thanked the UNH student body President and Vice President for attending, and Chair Carroll agreed that it was important to hear their perspective.

Councilor Mower said she had spent a great deal of time looking at noise codes of some other NH towns and speaking with police department representatives. She said if other towns did have reference to noise meters in their town codes, they were almost never used, and said the concept that was generally applied was reasonableness and prudence. She also said definitions were not necessarily included in these ordinances, but said concepts might be included in other sections of an ordinance.

She reviewed the evening hours that noise ordinances were enforced in these other towns, including Manchester, Exeter, Hanover, Dartmouth and Keene, and also noted that Dover had nothing in writing concerning this and attempted to solve problems but not issue violations. She said Dover frequently used its limited noise ordinance in regard to UNH students living there, and said the students knew that Dover expected a quiet town.

Councilor Gooze provided some examples of noise problems he’d experienced living in his neighborhood, and said there were times one would call the police and times one would not. He said getting that extra chance with enforcement of the ordinance beginning at 10 pm was a good idea, and said if it turned out to be too early and wasn’t working right, he was willing to revisit this.

Councilor Mower said she had heard about situations where there was a noise problem, the police arrived, the problem went away and then started up again. She noted that sometimes the noise makers had scanners.

Councilor Gooze said the Rental Housing Commission had worked hard on these ordinances, and said while it was felt that none by itself was ideal, each one would help a little, and might save a night's sleep.

In response to a question from Councilor Stanhope, Councilor Mower said Plymouth had a disorderly actions ordinance. She noted that it included some time constraints but did not say anything regarding noise violations.

Councilor Stanhope noted that Hanover, by recognizing that part of the population of the Town was comprised of students, had made some reasonable exceptions for some days of the year. He said Chief Kurz had convinced him about the idea of retiring the decibel meter. But he said his concern was that the downtown wasn't excluded from the 10 pm limit. He said this could raise problems within the Business District, where there were entertainment venues close to apartments that might be inhabited by non-students.

He said he thought Councilor Gooze had make a persuasive argument that if the time limit were 10 pm, there would be results by 11 pm, but said he still thought 10 pm was unreasonable and was an overreaction. He noted that with the existing ordinance, there had been benign neglect concerning enforcement in past years in his neighborhood.

Councilor Gooze said Hanover had a 10 pm limit, and did make an exception for Friday and Saturday, while Keene had a 10 pm limit across the board. He said all those towns with 11 pm limits had night establishments, and were not having a problem. He said Chief Kurz wouldn't be shutting down an establishment if it was legally allowed to have a band, and said if someone complained, he expected that the police would say that the use was legal.

Councilor Stanhope said common sense said that, but said the Town would have an ordinance that said the music could be shut down.

Councilor Clark said he had had the same concerns, but said Chief Kurz had made a compelling case about the reasonableness standard that would be used for such situations.

Chief Kurz said there was a lot of common sense employed in Durham. He noted that the police could write tickets for drivers traveling at 26 mph in a 25 mph zone.

Councilor Smith said when he taught at the University of Florida, he lived in a student ghetto, so sympathized with those who experienced noise problems. He noted that there could be noise problems during the day, from things like boom boxes, and asked what the Police Department did in a situation like that if it didn't measure the sound.

Chief Kurz said the police would respond based on a call from someone who was being disturbed, and would ask the person(s) causing the noise to quiet down because they were disturbing the neighbors. He said if that wasn't enough, the officers would probably arrest the people for disorderly conduct.

Councilor Smith said the argument about 10 pm or 11 pm seemed largely irrelevant because there were other ordinances that could apply as well.

There was discussion.

Councilor Cote said he was ready to move this forward, because there were other issues for the Council to deal with. He said if 10 pm didn't work, it could always be changed.

Councilor Mower asked Councilors if they wanted to discuss the option of removing the definitions. After discussion, it was agreed that there would be a definition for the word "disturb" instead of "disturbing".

Chair Carroll said she had gone back and forth on 11 pm vs. 10 pm, and noted that she had thought that 11 pm was reasonable. But she said she had changed her thinking, stating that they were trying to protect the neighborhoods. She noted that students on campus could make as much noise as they wanted. She also said if 10 pm didn't work out, the Council could change it. She noted her concerns about the downtown, and said they had to make sure that the businesses there could continue. She said a lot of their business was driven by students.

Administrator Selig said he too had been reluctant to embrace 10 pm, but said on balance he supported it. He also agreed that there should be a definition for "disturb" and not "disturbing". He said his recommendation other than that this was to adopt the ordinance as proposed.

Councilor Mower MOVED to ADOPT Ordinance #2010-06 Amending Chapter 85 "Noise" of the Durham Town Code. Councilor Sievert SECONDED motion, and it PASSED 7-0-2 with Councilor Stanhope and Councilor Smith abstaining.

Councilor Stanhope said he had abstained because although he supported the idea of revising the noise ordinance, he was uncomfortable with subsections as proposed.

Councilor Smith said his reason for abstaining was that although he supported some of the proposed changes, he disliked sloppy ordinances. He described some of the problems he had with the wording. He also said he wished they could have kept mechanical measurement in the ordinance.

The Council stood in recess from 9:45 to 9: 51 PM.

- C. **PUBLIC HEARING** on an application submitted by the Sigma Beta Alumni Association for short-term property tax relief under the Community Revitalization Tax Relief Incentive Program (RSA 79-E) adopted by the Town Council on May 4, 2009

Jim Campbell, Durham's Director of Planning and Community Development, outlined the process so far. He then explained that the purpose of the public hearing was to determine whether the Sigma Beta structure qualified, whether the proposed

rehabilitation to it qualified as a substantial rehabilitation, and whether there was a public benefit to granting the requested tax relief, and if so, for what duration.

He noted that the Council was required to make a decision within 45 days of the public hearing, and reviewed the three criteria the Council needed to consider in determining whether to grant the tax relief:

- The Council finds a public benefit, as defined under RSA 79-E:7
- The specific public benefit is preserved through a covenant under RSA 79-E:8. He noted that the covenant documents reflected the Attorney's comments
- The Council finds that the proposed use is consistent with the municipality's master plan or development regulations

Mr. Campbell also explained that the rehabilitation must provide at least one of the public benefits defined under RSA 79-E:7, and reviewed what these were:

- Enhances the economic vitality of the downtown
- Enhances and improves a structure that is culturally or historically important on a local, state or national level, either independently or within the context of an historic district, town center, or village center in which the building is located
- Promotes development of municipal centers, providing for efficiency, safety, and a greater sense of community, consistent with RSA 9-B
- Increases residential housing in urban or town centers

He said the covenant would be put in place if the application was approved, in order to protect the public benefit. He also explained that if the Council denied an application through this program, there needed to be a written explanation for this. He reviewed how the process would work, and noted that there was a lot of latitude for the Council, if it did deny an application. He said as long as it wasn't found that the Council was acting in bad faith or discriminating, the board of tax and land appeals wouldn't go against its decision.

Councilor Clark, who had recused himself on this matter, left the Council table while Mr. Campbell was speaking.

Councilor Stanhope MOVED to open the Public Hearing on an application submitted by the Sigma Beta Alumni Association for short-term property tax relief under the Community Revitalization Tax Relief Incentive Program (RSA 79-E) adopted by the Town Council on May 4, 2009. Councilor Sievert SECONDED the motion, and it PASSED unanimously 8-0.

Doug Clark and John Parsons, representing the Sigma Beta Alumni Association, spoke before the Council. Mr. Clark, the president of the Association, provided a slide show on what was proposed. He first noted that the Association was a nonprofit organization, and that no individual would benefit financially from any of these efforts. He also said there was no pressure to generate profit from the property, but stressed that running student rentals was an incredible financial challenge.

He said Sigma Beta was a poster child for what happened when a property that housed students was allowed to fall into a state of disrepair. He said the bottom line was that when a property leased to students wasn't kept up, it attracted students who didn't care for or respect their home. He said there was a direct correlation between properties inhabited by occupants who didn't have a vested interest in them and the kind of behavior that made it challenging to live in Durham. He said that conversely, improved properties almost always lead to improved behavior, and noted the letter from Chief Kurz that reinforced this point.

Mr. Clark provided some history on Sigma Beta, noting that it was established in 1921, and a glorious fraternity house was built in a colonial revival style, an architectural style he said had helped to define New England college towns during that era. He noted that the house was located in Durham's commercial core, within what was now called the Professional Office and Multi-Unit District.

He quoted from the Master Plan concerning this area: "One of the characteristics of this section of Madbury Road is the existence of a group of handsome fraternity/sorority buildings set back from the road with large front lawns. The scale of these and other buildings provides a desirable transition between the Central Business District and the residential neighborhoods further down Madbury Road. It is important to preserve both the handsome buildings and their setting in the landscape."

Mr. Clark said for many decades, the Sigma Beta house was arguably the most recognizable and impressive property in the neighborhood, and attracted many of UNH's best and brightest undergraduates, who wanted more out of their college experience than just what the classroom had to offer. He said that during this entire time, Sigma Beta gave back to the community through a variety of service projects.

He then described the decline of the building over time for a number of reasons, and said ultimately the wear and tear of student tenants led to not only an erosion of the physical plant, but also an erosion of the culture, which created an irreversible spiral, and one that afflicted many properties in Durham. He also noted that the quality of life standards and expectations of college students had changed dramatically over the past twenty years, so that they were now demanding suites, yet all of Sigma Beta's "doubles" were rented as "singles", which cut the potential revenue in half.

Mr. Clark said this all culminated two years ago when the alumni were forced to deal with what was now known as an inevitable result, which was a property that no longer resembled their house, and was occupied by tenants who had strayed too far from the fraternity's original ideals. He said the choice at that point was to either abandon the fraternity or rebuild.

He said they quickly realized that rebuilding would involve the reclamation of a house but also the redefining of a culture, one that was not only aligned with Sigma Beta's original purpose but was also updated so that it could be relevant to the type of today's college student that the fraternity wanted to attract.

He said over the past 18 months, 200 of 800 alumni had rallied together in a sustained effort to transform the property from a liability into an asset. He said they raised over \$100,000 in donations last year, secured a mortgage, and hired an alumnus to perform the construction. He said the building was re-built, while preserving the historical significance of the building, and with an eye toward meeting the needs of all of the stakeholders, including future residents, the Town, and the University. He spoke in detail on the life safety and energy efficiency improvements that had been made.

Mr. Clark said they were determined to add value to the economic vitality of the Town as part of this project, and said this would be accomplished in a number of different ways. He said they would ensure that the property was an “appreciating asset” and not a deteriorating liability. He also said the renovation project prioritized the need to construct the building to last, and he spoke in detail on this.

He said probably the most important job would be to give fraternity members a purpose as part of an organization that contributed to their personal development and complemented their classroom experience, and that was an asset to the University and the Town. He noted that a Code of Conduct had been implemented, but said they would go well beyond that as they aspired to define a fraternity of the future.

Mr. Clark said it would take a few years to do this, and to re-colonize Sigma Beta, and said in the meantime, they would rent the house to Alpha Sigma Phi, the group they thought was best suited and worthy to live in the house. He said each fraternity member had signed a code of conduct and said there would also be a live-in property manager on site every day. He said their new strategy would include a mentoring program, leveraging the extensive expertise of alumni, teaching today’s students life lessons, and keeping the alumni involved in the house.

He said there were two critical aspects to making their plan succeed: securing the funds to do it right, and creating the revenue to keep it up. He said the RSA79-E tax relief would help on both fronts, allowing them to convert the construction loan into a permanent mortgage, creating some revenue to pay down the mortgage, establishing a capital improvement plan and maintenance fund, and employing a 24 hr/day live in property manager.

Mr. Clark said once other property owners saw that they could create more value and have fewer headaches by copying the model Sigma Beta had developed, this would go a long way towards fixing so much of what was broken with the current student housing model. He said RSA 79-E was probably the best tool the Town had to entice other property owners to do this.

Bill Hall, Smith Park Lane, said he was very impressed with what Mr. Clark had said. He said it was important to keep in mind the example that was being set with this project, and said the best thing the Town could do was to support it, with the hope that elements of it would be replicated in other structures.

Beth Olshansky, Packers Falls Road, said the slide show was very impressive, and said a lot of great work had been done on the property. She asked if it was known how much tax relief the Town would be providing for this property.

Administrator Selig said the Association had put about \$750,000 into the property. He said the likely tax benefit would be that the Association would continue to pay the existing \$32,000 in taxes for 5 years, as if no improvements had been made to the property. He said in the 6th year, the value of the improvements would then be factored into the taxes being paid.

Councilor Clark said the \$32,000 that the Association paid now would probably go up to \$45,000-50,000 in the 6th year.

Ms. Olshansky said a potential benefit besides the enhancement of the building was the change in student behavior. She asked how that would happen, and asked what would happen concerning the tax break if this wasn't successful.

Mr. Clark said about 16 Alumni had met every single week over the past two 2 years concerning this project. He provided details on why they thought it would work, in terms of the restructuring of the building, and property management. He said there was a comprehensive plan to change behavior, and said it came down to a lot of local alumni who were involved in this project and were committed to overseeing the whole operation.

Administrator Selig said the answer to Ms. Olshansky's question was that the exemption would be discontinued at such point in time when the public interest wasn't being maintained.

Mr. Campbell said it would be the Town Council that determined that, after a public hearing. He said if the covenant was then removed, the Association would have to pay all the back taxes with interest.

Councilor Gooze asked if this would hold if the covenant time period was doubled, and it was determined that it would.

Chair Carroll said the covenant had a lot to do with the building, but not the behavior. She asked if that meant the covenant would not be lost even if the behavior changes were not working.

Mr. Clark said behavior would have a big impact on the property, which was why they were committed to having the kind of behavior that was kind to the property.

There was discussion between Councilor Stanhope and Mr. Clark on the number of beds in the renovated building, which ultimately would be about the same as there was before. Councilor Stanhope noted that the value of the building related to the occupancy load, so the value of the building may not have gone up.

Councilor Clark said that was possible, but said they believed they would be able to charge more money, and would have fewer vacancies than was the case in the past.

John Parsons, member and officer of the Sigma Beta Alumni Association, said he had been a resident of Durham for 20 years. He said the effort going into this had been sustained, and had grown. He said now that the construction was done and they were redesigning the culture of the community, he expected to see the same amount of effort. He said in addition to rebuilding the fraternity structurally and culturally, they hoped that other Greek houses in Durham would look at the house and want to spruce their houses up as well.

Paul Berton said he had seen the SAE fraternity redo the inside of their building a few years ago, and asked what kind of results they had, after two years of operation.

Mr. Clark said not surprisingly, SAE went from close to the bottom of UNH's list to the top, and said he believed they had been able to hold onto a pretty good rating ever since then. He said this was more evidence that better properties created better behavior.

Yusi Wang Turrell, Stevens Way, said RSA79-E didn't just look at the landlord sector, and said the experience of Sigma Beta going through this process would create a model for retail and other commercial improvements the Town would like to see.

Bill Hall said the town would recover the money in spades, although it would take awhile. He said in the end, the Town would get more money but also a good example, and said he hoped it would incentivize other fraternities. He suggested that this tax benefit should also be extended to SAE.

Mr. Hall said he had had a front row seat since the 1940s on what went on, and spoke about the decline of the fraternity system in Durham over time. He said he had observed what worked and didn't work, and said what Paul Berton did worked. He also recommended that the accessibility to these fraternity buildings in case of emergency needed to be looked at.

Councilor Smith MOVED to close the Public Hearing. Councilor Stanhope SECONDED the motion, and it PASSED unanimously 8-0.

Chair Carroll said deliberation would take place at a future meeting, and said Councilors could ask questions at that time.

The Council stood in recess from 10:28 - 10:33 PM.

Councilor Clark returned to the table.

Councilor Smith MOVED to extend the meeting beyond the 10:30 adjournment time. Councilor Mower SECONDED the motion, and it PASSED unanimously 9-0.

D. PUBLIC HEARING AND ACTION ON ORDINANCE #2010-07 amending Chapter 175 “Zoning”, Article XII “Zone Requirements”, Section 175-53 “Table of Uses” to allow single-family homes and duplexes in the ORLI zone as a conditional use and to allow single-family homes in the MUDOR zone as a conditional use

Councilor Sievert recused himself.

Mr. Campbell provided a brief overview of the Zoning changes that were proposed. He said when the Planning Board had looked at this, they wanted these proposed uses to be allowed as a conditional use, which would give the Board a greater say on how things would be developed. He said a number of criteria would have to be met beyond what the site plan regulations required, and also noted that 5 of 7 members had to vote in favor of a conditional use permit application in order for it to pass.

He provided some history of this area of Town under consideration. He said before the Zoning rewrite in 2004, from 1978-2004, single family homes and duplexes were allowed in the Office Research zone by right. He said in 1990, the OR zone also started to allow multiunit buildings as a conditional use. He said retail was a conditional use in the OR district from 1990 on, and he said today, it wasn’t allowed in MUDOR or ORLI except as a mixed residential/commercial use.

He noted that that there was one resident in favor of the Zoning changes at the recent Planning Board public hearing, and said there was an email read at the hearing that spoke against the change. He said the Planning Board voted 6-1 to move the proposed Zoning change on to the Town Council, and he noted that the Council representative to the Planning Board had voted against the motion.

Councilor Gooze asked why single family dwellings and duplexes were taken out of the newly created ORLI and MUDOR districts in 2004.

Mr. Campbell said at the time of the Zoning rewrite, the Town didn’t want these kinds of dwellings unless they were for elderly housing, because they weren’t considered tax friendly. He said another reason was that at least one Planning Board member said this was a commercial zone so perhaps they didn’t want to have residential uses there and instead wanted to reserve it for commercial activity. He spoke in great detail on how the allowed uses had evolved.

Councilor Gooze asked how the tax implications had changed, if single family and duplexes were to be allowed here now.

Mr. Campbell said the State was waking up to the fact that making everything elderly housing wasn’t going to work, and could do harm to communities. He also said at the time MUDOR and ORLI were created, thought wasn’t being given to student housing as anything other than multi-unit developments, which was why this use was allowed out there, as a commercial activity. He said a student housing development that was a mix of housing types wasn’t envisioned, and said if it had been, perhaps the Planning Board would have come up with something else.

Councilor Gooze asked whether, if single family homes other than student rentals were put out there, it was now felt that this wouldn't increase the tax burden.

Mr. Campbell said the number of kids per household in Durham was less than had been thought, and he provided details on this. He also said since he had first worked in Durham almost nine years ago, there had been only one major subdivision.

Administrator Selig spoke about the time period in the 1990's when it was thought that cutting down on the number of kids in the schools would decrease the tax rate, and the consequent trend toward elderly housing. He said what had been found statewide was that the single family homes were not creating 2 children per household, and that instead it was 0.5 kids per household. He noted that school enrollment had dropped in the ORSD by 400 over the last 10 years. In addition, he said orienting the Town toward elderly housing had had some negative impacts, and he provided details on this.

He said in 2000 when the Master Plan was developed, people were thinking about student housing, which was recognized as a viable industry in Durham in terms of multiunit buildings. He also said there was limited space in Town for office research and light industry, and ORLI was seen as one area where ideally this could go, so the question had been why they would want to see single family homes take up that developable land.

Councilor Mower MOVED to open the Public Hearing on Ordinance #2010-07 amending Chapter 175 "Zoning", Article XII "Zone Requirements", Section 175-53 "Table of Uses" to allow single-family homes and duplexes in the ORLI zone as a conditional use and to allow single-family homes in the MUDOR zone as a conditional use. Councilor Gooze SECONDED the motion, and it PASSED unanimously 9-0.

Peter Loughlin, representing Capstone Development, spoke on behalf of the proposed Ordinance change. He said it wouldn't change the uses permitted there, but could change the form of these uses. He also said what was proposed if passed would apply regardless of Capstone. He said it was thought that the Capstone scenario would fit well into the district, and he showed slides photos of an existing Capstone development,.

He spoke about the wide variety of cottages Capstone built at various locations around the country. He showed the management facility of one development, noting there were two full time management and maintenance people, as well as student workers.

He said being able to have cottages and additional student housing in Durham would take some of the pressure off of the existing neighborhoods from student housing, in Durham as well as in some surrounding communities. He said a proposal like this would add to the tax base, and would be sensitive to Durham in terms of the location and models proposed.

Attorney Loughlin said the proposal would create a neighborhood, and one that had good proximity to the University. He said there were no restaurants or bars associated with the proposal. He said better properties attracted better behavior, and said this had been

Capstone's experience, and had resulted in a better experience for the students and the area.

Councilor Gooze said this proposed project would be done under conditional use, and noted that if a conditional use was not upheld, it could be pulled. He asked who would own these cottages, and who would be responsible if the conditions were not upheld.

John Acken of Capstone Development said the first two projects with cottages Capstone had done were condominiums. He said that model worked until about 2006, when the financing dried up, and said since that time, all of the properties Capstone had developed had been managed as apartment complexes.

Chair Carroll asked Mr. Campbell if something like the streetscapes shown on the slide could be built in the ORLI district, in terms of the density.

Mr. Campbell said 4200 sf of lot area would be required per dwelling unit, each of which would have a kitchen and bathroom. He said it was possible they could be built as close together as that. He noted that he hadn't seen an application from Capstone yet.

Administrator Selig said while the specific questions about the Capstone proposal were excellent, it was important to remember that this Zoning change would apply to the entire zones, and that there might be other property owners who wanted to do other things.

Mr. Campbell noted that the ORLI and MUDOR districts were not subject to the no more than three unrelated provision.

Councilor Smith noted the definition of multiunit development, and asked if it might be easier to change this definition to allow separate buildings under common ownership.

Mr. Campbell said he would have a hard time seeing three separate houses considered to be a multiunit, and said he thought the code enforcement officer would have a field day with it.

Councilor Smith said the other side of this was that the Council was being asked to make a change to allow single family residences, when they knew these would actually be residences for unrelated students. He said perhaps a different definition was needed that allowed free standing cottages, instead of calling them single family residences.

Mark Henderson, 12 Pendexter Road, said he was a local landlord. He said he also had a project that was fully approved about two years ago, for an approximately 30,000 sf building with underground parking, with about 9000 sf of commercial space and two floors of apartments. He said because of the bad economy, he had gotten cold feet.

He noted that a lot of people on local boards had supported the project, because of the goal to develop and push the density downtown. He noted other projects that were moving forward downtown. He said he was now concerned about the commercial spaces in his proposed building, and now was also concerned about the residential space.

Mr. Henderson said he was confused as to why the Planning Board was changing the zoning for a certain project. He asked if apartment houses were allowed in the Church Hill district, and was told yes by Mr. Campbell, as part of a mixed use development. He then noted that based on that, 80% of the downtown apartment buildings, including 8 that he owned, were not a permitted use, and were allowed as a conditional use as a result of the 2004 zoning changes.

He said the Zoning didn't make sense in any of these districts. He noted that he didn't understand why multiunits had been allowed in MUDOR and ORLI when the multiunit development was downtown. He said he understood that a developer could build apartment houses out there now, through conditional, use. But he said he questioned what the direction of the Council and Planning Board was.

Mr. Henderson said the landlords had been working very hard concerning solving the problem of student rentals of single family houses in Durham. He said a Capstone development out in MUDOR was not the answer to this problem, and said the reason kids lived there was because of absentee management.

He said perhaps Capstone would do a phenomenal job putting in a 600 bed neighborhood, but said he would rather manage a 20 unit apartment building. He said the students living in the neighborhoods wouldn't move out to a Capstone development, because it would mean they wouldn't be able to have parties. He said that problem would therefore still be in the neighborhoods, because of poor management.

He also said the Town had spent \$40,000 on the B Dennis study, which asked for downtown development. He said the rezoning of MUDOR and ORLI didn't jibe with that. He said now there was going to be a \$15,000 marketing study to determine what the Town actually needed, yet they were about to rezone two of the Town's biggest districts. He said it confused him as to what direction the Town wanted to go in.

Paul Berton, noted that he was a local landlord, said this issue had caused him to take a hard look at his 25 years in the rental community, and analyze the challenges they faced; why they were seeing high vacancy rates off campus; and what had happened off campus over the past twenty years and on campus over the past two years.

He said with over 2500 new beds on campus, UNH had reached its goal of housing 60% of their undergraduates. He said 65% of the new beds had come on line in the past 4 years, and 45% had come on line in the past 2 years. He said off campus, several projects had come on line, and said as of August 1st, there would be 330 new beds off campus, which was one of the biggest increases he had seen in his 25 years in the community.

Mr. Berton said there was currently a 15-20% vacancy town-wide, with an oversupply of beds in a soft market. He said an additional 600 beds was not the answer, and he called for a student housing summit, involving Town administration, UNH, Durham landlords, the Durham Business Association and the EDC to develop a clear understanding of where

they were now, and what the future should look like. He said they should take their foot off the Capstone accelerator, and get their ducks in a row.

He said about 250 private undergraduate beds were heading for the planning stage, as part of plans that coincided with the Master Plan and B Dennis Report, which viewed student housing as an important component to the commercial core strategic planning. He said building 600 beds in the Capstone location would not help the commercial core.

Mr. Berton noted a property of his near Stoke Hall where he could potentially build 60 apartments, but said he questioned how he and Capstone could view today's market so differently. He noted that there were different perspectives on student housing in Durham, but said a healthy downtown was going to be based on servicing students and non students.

He said the Town's desire to rebuild its existing housing stock was happening before their eyes, and said with every new bed, existing units were being remodeled, the number of people per unit was being lowered, and quality was being improved at a better rental rate.

He said Capstone's presentation was three years old, and would have been correct in 2007. He said they hadn't done their homework, and were operating on old assumptions about the Durham/UNH student rental market, when we were drunk with demand, and the sky was the limit.

He said smaller, controlled redevelopment near the commercial core was the answer, and asked the Council again to take its feet off the Capstone accelerator, and come up with a plan for the Town's single biggest tax base, student rental property. He noted the Town's flyer promoting economic development, and said he didn't see where Capstone fit into this.

Dick Gsottschneider, said he had been a resident for 30 years, and owned some rental property in Town. He also noted that he was a retired consulting economist. He said there was a high probability that this Zoning change would not be good for the Town's tax base. He said at a recent meeting of the Durham Landlords Association, where 30 members were present, it was determined that there were about 2000 private owned beds in Durham, which didn't include fraternities and sororities, or individual rental units above garages, etc.

He noted that there had been a dramatic increase in assessments of multifamily student rental properties a few years ago. He said the value of each bed came to about \$45,000, which was about \$90,000,000 in assessed value for about 2000 privately owned beds. He said the DLA landlords managed about 1400 of these beds. He said in addition to the 15-20% vacancy, over 2/3 of landlords had lowered their rents or added concessions, like free heat, etc. He said the net effect of this was a reduction in the assessed value of these properties, and he noted that some landlords had applied for abatements.

Mr. Gsottschneider said adding a project like Capstone to an already soft market would impact the valuation of the student rental properties. He said if the value per bed dropped by \$5,000, the valuation would go down to \$80,000,000, and if it dropped by \$10,000, they would be down to \$70 million. He said Capstone in theory could add \$25 million, if they build 600 beds at \$45,000 per bed.

He said if these things happened, some of the projects planned for the downtown wouldn't happen, so the momentum for the downtown would stop. He said this would mean a further reduction in values, and said enough fuel could be added to an already weak market so Capstone would win and everywhere else would lose. He asked what the Town would have gained from this. He said it was bad planning and bad economics to consider a project of this magnitude in this location, and said it had the potential to be a fiscal negative.

Christina Caiazza, UNH Student Body Vice President, said they were continuing to have overcrowding in dorms. She provided details on this, and said whether or not Capstone was the answer, there needed to be a diversification of housing opportunities for students off campus.

Richard Peyser, UNH Student Body President, spoke in detail about the fact that students wanted to live in Durham, affordably.

Administrator Selig noted the 15-20% vacancy rates at student rental properties, and asked Mr. Peyser why students were moving into houses in residential neighborhoods, or to other nearby towns.

Mr. Peyser said it was because of the landlords, in that some people weren't in favor of some of their policies. He said students were moving into homes in the neighborhoods because of convenience, because of the freedom and because it was somewhat more affordable. He said it was more expensive to live in Durham than in nearby towns, but said students wanted to live there. He said if there was an affordable price, there would be an increase of students, revenue and a better experience for students and residents.

Ms. Ciaizza noted that four tenants she had shared a house with this year would be moving to a house in Dover because of price. She said they wanted to feel at home and comfortable, and said it was also cheaper.

David Choate said he was the principal with Grubb and Ellis, and represented the Woodwards in marketing the property. He said this wasn't a referendum on Capstone, or the landlords. He noted that a project could be put together right now of a traditional multiunit building, in the ORLI and MUDOR district.

He said Capstone had done a very extensive marketing study, representing a very modern view of the world. He said the study had found that there was a demand for the kind of housing Capstone proposed in Durham. He provided details on this, and noted that there was one bedroom and one bathroom per student, so it was like having a studio apartment.

He said studies had also shown that these kinds of developments did draw students out of single family neighborhoods. He also said Capstone developments forced local landlords that hadn't been diligent to maintain their properties better, and said he probably wasn't talking about the landlords present at the meeting.

He said the question was whether this was the type of housing alternative that made sense in ORLI, and said whether or not the project was viable was an issue for Capstone. He also noted that they weren't at the Planning Board level right now.

Councilor Stanhope asked what the chance was of attracting a user to the property that wasn't in the housing market.

Mr. Choate said as was seen with the Business Park, the chance of attracting businesses on a large scale to Durham was slim to none. He said there had been no demand, because of the Town's tax rate, the cost per acre, etc.

Councilor Mower asked if there might be a demand over the next 20 years for an office/research location that couldn't be filled by Pease.

Mr. Choate said the nature of the workforce was such that such businesses would be driven farther north, to Dover, Rochester, etc, where skilled tradespeople were living. He also noted that Rochester still had some reasonably priced land. He spoke further on this.

Dennis Kostis, a landlord in Durham, said his main concern was that people had been excited about downtown redevelopment a few months ago, but now were looking at taking some downtown development outside of the downtown. He said downtown landowners were therefore looking at their projects and asking where they were going.

He said it was important to take a step back and see where they were and where they were going, including what they wanted to do with the downtown. He said he and others wanted to develop downtown, but now had a lot of questions, and he asked the Council to keep this in mind.

John Acken of Capstone said the market study had just been completed. He said they had learned that the rents in Durham were high, especially given the kind of housing here. He said the market was good for good quality student housing, and said whether it was cottages or not, this kind of student housing was coming to Durham. He said the reason they went with cottages for Durham was that kids wanted the privacy, quiet and community of a single family home.

He said they had realized that if they could provide these things along with great amenities and good property management, the students would rise to the level of the quality of the housing He said Capstone had seen this in its other developments to date, across the board. He said the economics and the market was there for cottages, and he spoke in detail on this. He said Capstone was confident that this kind of housing would have the greatest success at pulling students out of the neighborhoods.

Councilor Mower said she appreciated the attraction of the privacy and amenities of a cottage unit, but asked about the issue of property management, in terms of what students wanted and how this could be accomplished with individual units.

Mr. Acken said they had a lot of experience with managing student housing of various designs, and said it was less about design than it was about expectations. He said when students were involved in maintaining their properties, there was a sense of ownership, and he spoke about the importance of good management in making this happen.

Councilor Mower asked what the retention rate was.

Mr. Acken said retention rates were higher with cottages than for walkup apartments, which meant money that would otherwise go into marketing and leasing could be put into management.

Councilor Gooze said if one Googled Capstone, one saw that there were some complaints about student managers who were unresponsive.

Mr. Acken noted that said they had survey teams who talked with students, and measured the responsiveness of management at properties, using 35 different criteria.

Councilor Gooze asked if the policy of renting out buildings could change.

Mr. Campbell said as long as it wasn't a change of use, it wouldn't have to go back to the Planning Board.

Councilor Gooze asked if Capstone could decide to sell these as individual units, and Mr. Campbell said yes.

Councilor Mower noted that the conditions of approval would run with the property.

Administrator Selig said these were excellent questions, but re-stated that this Zoning change would apply to the entire Zone. He noted emails received that evening from Pam Gill, Edgewood Road, who was in support of the Zoning change. Ms. Gill said this could give students the kind of house-style living they desired, while giving the neighborhoods back to the residents. She said without the change, the neighborhoods would continue to transition from family friendly to off campus party zones, and she provided details on this.

Administrator Selig said an email from Jania Marshall, Emerson Road, was similar to the email from Ms. Gill, and spoke in favor of the Zoning change.

Malcolm McNeill, Colony Cove Road, asked if the hearing would be continued. He noted that it was nearly midnight, and that he and others had a lot to say. He suggested placing it at the top of the Agenda for the next meeting.

It was determined that there was no one present who would not be able to attend the continued hearing.

Councilor Mower MOVED to continue the Public Hearing to the next meeting, and to take under advisement putting it early on the Agenda. Councilor Gooze SECONDED the motion, and it PASSED 7-1, with Councilor Smith voting against it.

Councilor Gooze asked that the first reading on the disorderly house ordinance be held early at the next Council meeting, noting that it had already been delayed twice.

There was detailed discussion on when to schedule the next Council meeting, given this and the other Agenda items at that meeting. There was also discussion on the idea of having another Council meeting before July 12th in order to address the disorderly house ordinance proposal. Councilors agreed to meet at 7:30 pm to continue the meeting, in order to have the first reading on the disorderly house ordinance.

Mr. Sievert returned to the table at 12:04 am.

Councilor Niman MOVED to continue the meeting until 7:30 pm, June 22, 2010. Councilor Clark SECONDED the motion, and it PASSED 8-1 with Councilor Mower voting against it.

The meeting ended at 12:06 am.

Victoria Parmele, Minute taker