

This set of minutes was approved at the August 16, 2010 Town Council meeting

**Durham Town Council
Monday, July 12, 2010
Durham Town Hall – Council Chambers
7:00 PM
MINUTES**

MEMBERS PRESENT: Chair Diana Carroll; Councilor Neil Niman; Councilor Julian Smith; Councilor Doug Clark; Councilor Peter Stanhope (arrived at 7:46 pm); Councilor Robin Mower; Councilor Jay Gooze; Councilor Bill Cote

MEMBERS ABSENT: Councilor Mike Sievert

OTHERS PRESENT: Administrator Todd Selig; Police Chief David Kurz; Public Works Director Mike Lynch

I. Call to Order

Chair Carroll called the meeting to order at 7:05 pm.

II. Approval of Agenda

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

Councilor Smith MOVED to amend the Agenda, by including approval of the June 7, 2010 Minutes, and beginning Public Comments no later than 7:45 pm. Councilor Mower SECONDED the motion.

Councilor Smith noted that the meeting had begun late, and a long meeting was expected that evening. He suggested that Councilors keep their comments during the Roundtable brief in order to allow Public Comments by 7:45 pm.

The motion to amend the Agenda, as amended, PASSED unanimously 7-0.

The motion to approve the Agenda PASSED unanimously 7-0.

III. Special Announcements - None

IV. Approval of Minutes

May 17, 2010

Councilor Smith MOVED to approve the May 17, 2010 Minutes as presented. Councilor Mower SECONDED the motion, and it PASSED unanimously 7-0.

June 7, 2010

Page 13, first motion on page, should read “..and it PASSED 7-2, with Councilor Stanhope and Councilor Smith voting against it”.

Councilor Mower MOVED to approve the June 7, 2010 Minutes as amended. Councilor Cote SECONDED the motion, and it PASSED unanimously 7--0.

V. Councilor and Town Administrator Roundtable

Councilor Gooze said the Rental Housing Commission would meet on July 28th, and would discuss where they stood so far in regard to what had been put forth to the Council, and also in regard to a possible rental registration system.

Councilor Mower noted that the Durham Energy Committee was working toward bringing a program to Durham called Property Assessed Clean Energy (PACE). She explained that as part of this program, a bond was issued by a municipality or intra-governmental organization and the proceeds were then lent to commercial and residential property owners to finance energy retrofits.

She said the property owners could then repay their loans over about 20 years through an annual assessment on their property tax bill. She said that over the next few weeks, the Energy Committee planned to put out feelers to see if there was interest in this program. She said people could stay posted on the program on Friday Updates.

Councilor Mower said the Conservation Commission had recently met, and considered two conditional use permits, one for 10 Pettee Brook Lane and another for 20 Strafford Ave. She noted that said the Commission had also advised the Planning Board regarding a section of the Zoning Ordinance that addressed the calculation of useable area. She said the Commission had agreed that without science-based alternatives, the strict provisions currently in place were appropriate.

Councilor Mower said there was also discussion by the Conservation Commission on the work that the Southeast Land Trust and the Lamprey River Advisory Committee had been doing to put the Thomson property, located along the Lamprey River, into conservation. She noted that this would benefit Durham because it included the site of a water pumping station on the river. She said the Thompson family had put the proposal on hold in consideration of the appraisal. But she said the Commission believed this was an excellent time to move forward, in part because funding was available.

She said the Conservation Commission had heard a presentation from the Chair of the Bellamy and Oyster River Protection program (BORPP), which intended to promote the protection of watershed areas for the benefit of present and future generations, through coordinated inter-municipal natural resources management, and education. She said the membership would consist of Barrington, Dover, Durham, Lee, Madbury and Portsmouth. She said BORPP would like the Council to consider appointing a representative from Durham, and she asked that there be discussion on this.

Councilor Mower explained that the work BORRP was doing was related above all to the increased awareness of increases in nitrogen loads from nonpoint sources, primarily from development, including impervious surfaces. She said there were members of the community who believed there was an economic benefit to a watershed approach to addressing the nonpoint nitrogen problem, as compared to each town having to upgrade its wastewater treatment plant to meet EPA regulations.

Councilor Mower said resident Steve Roberts had been a nonofficial representative to this organization, and said if the Council was interested in this, she would recommend nominating him as Durham's representative. She also noted that Durham had a representative to the Southeast Watershed Alliance, which addressed water quality in the coastal watershed, and said she hoped the Council would hear from this representative soon.

Councilor Smith provided details on the upcoming Planning Board meeting. He noted that one of the public hearings at the Council meeting was a result of a recommendation from the Planning Board after a public hearing on proposed changes to the ORLI and MUDOR districts. He said one member of the public spoke at the Planning Board hearing, and was strongly in favor of the Zoning change. He said this was perhaps one of the reasons the Planning Board was almost unanimous in recommending the Zoning change to the Council. He reminded the public that it was good to pay attention to matters before the Planning Board.

Councilor Smith said at Wednesday's Planning Board meeting, there would be a public hearing on an application to build a two lane drive-up banking facility for the bank on the west side of the building that housed the Town Library. He said this was a good sign that the Plaza was in good financial health.

He also said there would be a public hearing on an application by Perry Bryant to keep the existing house on the property on Mast Road where the new multiunit development was located. He said the application also included the proposed removal of the existing driveway and parking on the north side of the house, and construction of a new driveway off of the new access drive for the development.

Councilor Smith said at Wednesday's meeting, there would also be a public hearing on the proposed stormwater management related amendments to the site plan regulations and subdivision regulations. He also said there would be a public hearing on a proposal to remove section 175-55 E of the Zoning Ordinance, concerning minimum contiguous lot area. He said if the Planning Board approved this after the public hearing, the Council would then have a public hearing on it if it was moved on first reading.

He said the Planning Board would also be considering an application to subdivide a large lot into 3 lots.

Councilor Clark said he was surprised to see Agenda Item, VII H and the fact that the University had bought another property on Mast Road. He said this was another property that would therefore be taken off the Town tax rolls, and suggested that there could be more of a process/policy to try to avoid more and more taxable land being bought by the University.

Administrator Selig explained that this parcel was the former Arthur Grant residence that was sold to Perry Bryant. He said Mr. Bryant had insufficient lot area to create the project he wanted, so had done a land swap that exchanged the Grant property for land the University owned next to the Bryant property. He said the Town had encouraged this land swap, because it was overtly to broaden the tax base. He said the process Councilor Clark had said was needed was working, and said it was a formal process.

Councilor Smith said Administrator Selig's explanation had been good, and noted that there were present and future benefits to Durham from the land swap in that the University was providing pedestrian access to its parking lot and Wildcat Transit service. He said this would benefit the Bryant project, and would also make it more attractive and likely for redevelopment of other land on Mast Road because it would be easier for students to not have to drive into Durham.

It was noted that a letter from a person who was against the proposed Zoning change to ORLI and MUDOR had been read into the public record at the Planning Board public hearing.

Administrator Selig noted the beautiful flower arrangement at the table, which he'd purchased that day at the Durham Farmers Market. He also noted that Councilor Sievert was on vacation so would not be at the meeting.

Administrator Selig asked that Councilors let EDC subcommittee member Yusi Wang Turrell know which businesses they would like to interview.

He thanked Great Bay Rotary Club for its organization of the great July 4th celebration, and said an older resident had told him it was the best small town fireworks celebration he'd ever seen.

Administrator Selig noted that he'd indicated in the Friday Update that the Town was starting to think about what to do about the Old Landing pump house. He said they were considering eliminating it, and asked that people think about whether it made sense to retain it.

Councilor Mower said it would be helpful to get a figure on what the maintenance costs were, and Administrator Selig agreed this should be provided.

Administrator Selig first thanked Chuck Cressy for donating a Freon detector to the Fire Department.

Administrator Selig updated the Council on the Wiswall Bridge signage issue. He said the signage had been enhanced, and said it was hoped it would be sufficient. He also noted that it was cost prohibitive to remove the ledge at the bottom of the river. He said if the Council wished to discuss the issue further, it could do so at an appropriate time.

Administrator Selig said the EDC had a subcommittee that was reviewing proposals for an economic analysis of the Town. He said they had just finished interviewing the four finalists, and were in the process of deciding on the company that would be hired.

He said Town staff were continuing to evaluate potential sites for the future Fire Department building, and also noted the long identified need for structured parking in the downtown.

He said the company that had already been utilized to analyze possible Fire Department sites would be analyzing C lot to see if it would be possible to install a combined Fire Department building, parking structure, and possible housing at that location. He said company would keep them posted on where they were at in the process. He noted that College Brook flowed under the site, and also said there were electrical wires under the site. He also said there were potential traffic issues associated with getting fire trucks out of the site onto Main Street in a timely way.

Councilor Clark said another concern was pedestrian access from the parking lot to Main Street and not just Durham Marketplace. He noted the possible idea of elevated parking, as compared to having to walk all the way down Mill Road and over to Main Street, and said they should evaluate whether there was in fact an efficient way to get from the parking lot to Main Street.

Administrator Selig noted that an attribute of the parking garage in Portsmouth was multi- levels and multi points of entry into the city, and said it would be good if this could be replicated in Durham.

Councilor Gooze asked if feedback had been received concerning the Pettee Brook Lane traffic design. He said he was concerned about visibility in regard to crosswalks.

Administrator Selig said both positive and negative feedback had been received on the traffic design. He said there would be a Traffic Safety Committee meeting to discuss how the design was working, after observing it for two weeks. He noted that there was an issue of insufficient sight distance coming out of Jenkins Court, as well as the issue of the visibility of the crosswalks.

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

Roger Speidel, 7 Nobel K. Petersen Drive, first noted that he had passed out three sheets, one of which was regarding the professional staffing at the high School, the second which was Oyster River class size guidelines, and the third which was the principal's list of the average class size. He said the guidelines suggested 22 students per teacher, but the principal's list said the overall average was 17.1 students per teacher.

Mr. Speidel said there were 5 administrators, 4 counselors, 1 coordinator and 1 psychologist for 690 students and 63 teachers. He said between 2001 and 2007, the High School lost 246 students, but said during that time, 40.6 teachers were replaced and 10 new teachers were hired. He said this didn't make sense. He said the issue of staffing levels would become critical over the next three years, as High School enrollment declined by another 100 students.

He said the High School renovation had been designed for an enrollment of 880 students, when the District knew the enrollment wouldn't be much over 700 students. He also said enrollment was projected to drop below 600 over the next 3 years. He said taxes were high in Durham, and said young families couldn't afford to move into the district. He noted that even the Superintendent had found a cheaper place to live, in Newmarket.

Mr. Speidel said the preschool program was moving to the High School in the fall, to fill up unused space. He said this space would have to be renovated, which would cost some money, and said he would find out how much.

He said now was the time to establish the goal of providing students with a great education, at a reasonable cost to the tax payers. He noted that the School system had ended the fiscal year with a \$2.8 million surplus. He said a zero increase in the School Budget was needed in order to stop the continuing cost escalation that was occurring, while enrollment was declining. He also said an advisory budget committee should be established to help the administration and the School Board achieve the best education at the best price. He said residents needed the Council to help in achieving these goals.

Ted McNitt, Durham Point Road read a statement opposing the proposed ORLI/MUDOR zoning amendment on behalf of resident Suzy Loder, 265 Mast Road, which is on file with this set of Minutes.

Bill Hall, Smith Park Lane, spoke in details about issues regarding the launching ramp at Jackson's Landing. He also spoke about the issue of a potential water shortage in Town, and said there was no such shortage. He noted that no water was currently being taken from the Lamprey River, and said the Town would be faced with a decision soon. He said the Lamprey recently had gone below 30 million gallons a day of flow, so the Town had to stop taking out 500-600,000 gallons per day because of the way the 401 restriction was written. He said there was no basis for this restriction.

Mr. Hall said treated water from the Oyster River was not a long-term solution. He also said Spruce Hole would cost millions of dollars, and noted the other expenses the Town was looking at for a parking garage, library, fire station, etc.

Administrator Selig noted that the sign was now installed at Jackson's Landing.

Councilor Stanhope arrived at the meeting a 7:46 pm.

There was discussion that extending the ramp was an issue still to be addressed.

Administrator Selig said DPW Director Mike Lynch was a dedicated employee, and said meetings referenced by Mr. Hall concerning the 401 restriction had occurred before Mr. Lynch became the full-time Public Works Director. He also said at least one Council representative was present for these meetings.

Mr. Hall said the rest of the Council had been kept in the dark about this issue, and said the Town's water rights were taken away without any study, notice, or hearings. He said it could best be described as a fraud.

Richard Peyser, UNH Student body President, asked that the Council table the disorderly house ordinance, noting that 1200 students/residents of Durham were not in Town right now, and that this ordinance would heavily impact them. He said it was hard to have a dialogue on this

issue without them.

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

- A. **FIRST READING ON ORDINANCE # 2010-XX** amending Chapter 175 “Zoning, Article XII “Zone Requirements”, Section 175-41(F)(7) “Development Standards in the Central Business District” of the Durham Town Code to change the requirements for the maximum height of mixed-use buildings in the Central Business Zoning District
- B. **FIRST READING (CONTINUED) ON ORDINANCE #2010-08** amending Part II “General Legislation” of the Durham Town Code by creating a new chapter, Chapter 45, entitled “Disorderly House”
- C. Shall the Town Council, upon recommendation of the Town Administrator, award the engineering construction oversight services contract to Hoyle, Tanner, and Associates, Inc. in the amount of \$37,075 for the rehabilitation of the portion of the wastewater collection system commonly referred to as the “bottleneck” running from Main Street (Old Concord Road) behind and alongside the UNH Field House and parallel to the track/football field and authorize the Town Administrator to sign said contract?
- D. Shall the Town Council, upon recommendation of the Town Administrator, reduce the assessment for property owned by Alexander & Alexandra Bakman located at 118 Piscataqua Road from \$916,000 to \$907,500, grant a property tax abatement in the amount of \$8,500 of valuation to Mr. and Mrs. Bakman, and authorize the Town Administrator to sign the Settlement Agreement between Alexander & Alexandra Bakman and the Town of Durham relative to Docket No. 24058-08PT?
- E. Shall the Town Council, upon recommendation of the Town Administrator, reduce the assessment for property owned by Belles Rev Inter Vivos Trust located at 14 Deer Meadow Road from \$874,500 to \$795,600, grant a property tax abatement in the amount of \$78,900 of valuation to Mr. Belles, and authorize the Town Administrator to sign the Settlement Agreement between Belles Rev Inter Vivos Trust and the Town of Durham relative to Docket No. 24050-08PT?
- F. Shall the Town Council, upon recommendation of the Town Administrator, reduce the assessment for property owned by Belles Rev Inter Vivos Trust located at 4 Fogg Drive from \$285,000 to \$231,100, grant a property tax abatement in the amount of \$53,900 of valuation to Mr. Belles, and authorize the Town Administrator to sign the Settlement Agreement between Belles Rev Inter Vivos Trust and the Town of Durham relative to Docket No. 24050-08PT?
- G. Shall the Town Council, upon recommendation of the Town Administrator, reduce the assessment for property owned by Donna Blumenthal Rev Trust located at 19 Deer Meadow Road from \$656,000 to \$648,000, grant a property tax abatement in the amount of \$8,200 of valuation to Ms. Blumenthal, and authorize the Town Administrator to sign the Settlement Agreement between Donna Blumenthal Rev Trust and the Town of Durham relative to Docket No. 24059-08PT?
- H. Shall the Town Council, upon recommendation of the Town Administrator, abate the spring tax bill amount, billed in error, of \$1,289.00 for 261 Mast Road, Map 13, Lot 4-0, owned by the University of New Hampshire?

Chair Carroll noted that Councilor Gooze had asked that VII B be taken off the Agenda.

Councilor Gooze suggested that the Council vote to pass Ordinance 2010-08 on first reading, but schedule the public hearing for September 13th, which would give everyone a chance to be present.

Councilor Mower MOVED to approve Unanimous Consent Agenda Items A-H, except for Item VII B. Councilor Smith SECONDED the motion, and it PASSED unanimously 8-0.

There was brief discussion on Item VII B.

Councilor Gooze MOVED on first reading Ordinance #2010-08 amending Part II “General Legislation” of the Durham Town Code by creating a new chapter, Chapter 45, entitled “Disorderly House”, as amended, and schedules a Public Hearing for September 13th, 2010.

Councilor Smith recommended a small amendment, that the second paragraph on page 3 be changed to read: “Second disorderly event.....that the fine of \$500 may be waived”.

Councilor Smith SECONDED the motion.

Administrator Selig said the Council had been very clear that the wording should be “...shall be waived”. There was discussion that this should be the wording because they wanted there to be a meeting.

Councilor Smith said he would withdraw his suggestion to change the wording to “..may be waived”, even though he thought “shall” was wrong in this case.

Councilor Clark said it wasn’t clear if there was any time period associated with violations, and Chief Kurz said it would be within a year.

Administrator Selig noted that the definition of disorderly house indicated this.

Councilor Stanhope said a police officer responding would be asked to make a decision on whether it was a disorderly or a general complaint.

Chief Kurz said if an officer went to a location and saw no need for police response, this would not be considered a disorderly action. He said if it was a disorderly action, this would be pretty obvious. Concerning actions listed in the quarterly report of police responses, he said they were simply responses to properties.

Councilor Stanhope asked what percent of these responses would have been classified as disorderly houses.

Chief Kurz said the bulk of the complaint calls constituted some kind of police action.

Councilor Mower said she recalled discussion during the development of the disorderly house ordinance where the Chief had said there were only two instances within the last year when this

would have been invoked.

Chief Kurz said that was correct. He said this would be a law that would be useful if they couldn't get dialogue going with the owner. He said the recently released report for the second quarter indicated that there had been six responses to one location. He said if they couldn't get positive dialogue with the owner to change some behavior, this would be a situation where they would activate this ordinance. He said there was discretion possible with this ordinance, as well as a number of safety checks.

There was discussion between Councilor Stanhope and Chief Kurz as to whether there could be situations where a written warning was given to the property owner.

Chief Kurz summarized that if an incident rose to the level of a disorderly action, and they couldn't get dialogue with the landlord, he would activate this law.

The motion PASSED unanimously 8-0.

Chair Carroll noted that there would be a public hearing on the proposed ordinance on September 13th 2010.

The Council stood in recess from 8:04 - 8:14 PM.

VIII. Committee Appointments - None

IX. Presentation Items - None

X. Unfinished Business

- A. **PUBLIC HEARING** on the purchase of a 3-acre parcel located at 49 Madbury Road as the future site for the Durham Public Library

Councilor Smith MOVED to open the Public Hearing on the purchase of a 3-acre parcel located at 49 Madbury Road as the future site for the Durham Public Library. Councilor Mower SECONDED the motion, and it PASSED unanimously 8-0.

Library Board of Trustees Chair Doug Bencks said the Trustees had waited for this moment for a long time, but said this was by no means the end of the journey. He then provided a slide presentation that showed how the site was accessible to the downtown, the neighborhoods and the Middle School, and was also only a 10 minute walk from the High School. He said it was a visible site, noting that Madbury Road was a prominent street in Town. He said the house itself was one of the most significant homes in the downtown, and said that almost all of the properties surrounding it were currently student rentals.

Mr. Bencks said pedestrian safety would be a key issue to address. He said the property contained three acres, so had the land needed to build the library for now and the future. He noted that the house was actually smaller in square footage than the current library, so would need to be expanded.

He said what also made this site stand out now was its affordability and availability. He said the property would be acquired for \$600,000, using no taxpayer dollars. He said the Trustees would use \$500,000 from donations and other accumulated money. He noted that questions had been raised about whether too much was being paid for the property. He said the assessed and appraised value was around \$500,000, but said the owner felt he was giving the Trustees a very good deal.

He said an anonymous donor had come forward to make up the difference, and said this money was contingent upon closing on this house. He said in this way, the property was affordable while also being fair to the owner's expectations.

Mr. Bencks said there had been some excellent questions raised about what the library would entail, how much it would cost, what would be in it, how parking would be accommodated, etc. He explained that they needed to have the site in order to get into all the details and answer all those questions.

He said due diligence was being done now to assess the site and access issues. He also said after the closing, there would be a very public design process, with discussion on all of these issues, including fundraising that would be needed, and bonding. He said some preliminary thinking on this had already been done, but said they now could go forward with a very specific plan, and finally begin the process of answering all those questions.

Naida Kaen, 22 Toon Lane, Lee, noted that her real estate office was located at 54 Main Street. She said finding 3 acres within walking distance was an unusual opportunity, and said it would be unfortunate to pass it up. She said many people wanted to be in an in town, walk to services location, and were also looking for a sense of community. She said a library could be a community center, and said the more opportunities there were to make one trip into Town and walk to a number of different locations, the better. She said this was a prime site that would satisfy that requirement.

Warren Daniel, 4 Palmer Drive, said he and his wife had owned the Bagelry since 1983, and that he was a founding member of the Durham Business Association. He said he was also on the committee of three that negotiated separating the Durham Public Library from the UNH Library in 1997, and also said since the time the Friends of the Durham Public Library had been formed, fundraising had been done for this exact reason.

He also said he had been on the Mill Plaza Study Committee, and said all three potential plans that were developed included a library, along with a mix of commercial and residential development. He noted that the financial crisis had affected the viability of that project.

Mr. Daniels said while he would rather have a library in the core business district, the currently proposed site had many advantages, and was the best, most realistic opportunity he had seen. He noted that his wife had served on the Library Board of Trustees so he was aware of the various potential locations that had been looked at.

Mr. Daniels said while some of the potential retail space for a Mill Plaza redevelopment would have gone to the library, that space would now be available for retail uses. He also noted that siting the new library at the Madbury Road location would take parking pressure off of the downtown, as compared to locating the library downtown. He said this meant there would be more opportunity for a diversity of products and services downtown to serve the Durham shopping community.

He also said locating the library on the proposed site would enhance the Madbury Road gateway to Durham. In addition, he said it would provide meeting space for various local organizations. He said that as a long-time local business person in Durham, he fully supported this project.

Luci Gardner, 61 Durham Point Road, said she was a former Library Trustee and former Chair of the Friends of the Library, and said this was the eureka moment. She said over 40 sites had been investigated thoroughly, but none was found to be just right. She said 49 Madbury Road was beautiful, large, well located, well landscaped, and had onsite parking. She said the Friends of the Library sent their unanimous approval. Paraphrasing Archimedes, she said “Give us but one firm site, and we can move the library to a permanent home.”

Jason Lenk, 12 Mathes Terrace, said he was a Durham business owner and resident, and said he thought there was great potential to draw family-based services into the Professional Office District as a result of locating the library at the 49 Madbury Road location. He said it also had the potential to push back on students encroaching into the neighborhoods. He said he wished the Trustees success in their pursuit, and said a proper library was an inspired idea.

Library Director Tom Madden, said he had been involved in the site selection process for five years, and knew the history of looking for sites for the library going back to 1997. He said because of all the criteria that had been discussed, this site was head and shoulders above the others that had been considered. He said it met all the criteria, including room for expansion and parking. He said right now the library was located in a strip mall, and said this was a wonderful opportunity now.

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

Councilor Smith MOVED that the Town Council authorize Administrator Selig to execute the deed taking possession of the 3-acre parcel located at 49 Madbury Road to be the site of the future Durham Public Library following successful conclusion of due diligence in accordance with the terms of the Purchase & Sale Agreement dated May 20, 2010 and upon receipt of a \$100,000 private donation to be used toward the \$600,000 purchase price of the DiMambro property. Councilor Mower SECONDED the motion.

Chair Carroll suggested going around the table so that Councilors could ask questions or make their comments on the motion.

Councilor Cote asked what the extent of the due diligence was, as they moved forward.

Doug Bencks said they intended to evaluate the site, including wetlands restrictions, as well as Zoning restrictions even though they were not formally required to follow them. He said they wanted to understand what the buildable parts of the site were and how parking could be addressed. He said they would also address how to handle the burial ground on site.

He said they hoped to understand how present but also future buildout of the site could be accommodated, for the library as well as other potential municipal uses. He said they also needed to understand how the existing house could be converted to a library use, and what would be involved in bringing it up to meet all current codes. He said a structural analysis of the building would be done.

Councilor Gooze asked if the Council would be kept apprised during the due diligence phase as issues came up.

Administrator Selig said the plan was to keep the Council informed as to whether there were or weren't challenges.

Councilor Gooze said if for some reason they found something that made the site unacceptable, there was a buy back provision in the Purchase & Sale Agreement.

Mr. Bencks said the closing wouldn't be completed until the due diligence was done.

Councilor Clark asked if thresholds had been established to determine whether to move ahead, or if they instead were going to play it by ear.

Administrator Selig said there was complete flexibility to walk away if they needed to for any reason. He said they were relying on the architectural analysis to inform them if it was truly a viable site.

Councilor Clark asked about the buy back provision, and Administrator Selig said the DiMambro family would be able to repurchase the property, if the decision was not to move forward with the site. He said the family had no obligation to do this, but would have the opportunity to do so. He said the price would be at the Town's purchase price plus the consumer price index.

Councilor Gooze said the owners wanted it for the library, and said if it wasn't used for this, they planned to repurchase it.

Councilor Clark said the timing seemed awkward, noting that a private developer wouldn't have a closing until he had a plan and a process for what he wanted to do. He said there was an added complication of a troubling intersection and crosswalk, and said they should have some idea how to mitigate that and how much it would cost.

Mr. Bencks said some analysis of that issue would be done during due diligence, but said he didn't know that all the questions would be answered. He said at this point in the process they were looking at the extent of the issues, and not necessarily the solutions to them.

Councilor Gooze noted that he had previously asked whether due diligence should be done first, and the Council had agreed that this would be all right. But he said Councilor Clark's point was well taken.

Administrator Selig said the concern was expending public funds for a site that didn't have public support. He said to date, no funds had been spent.

Councilor Stanhope asked where the dollars to build the library would come from.

Mr. Bencks said that conversation was now in front of them. He said the commitment of the Trustees over the last ten years was that they would be fundraising throughout the community for as much as they possibly could. But he said it wasn't known if this would be enough to cover the entire cost, and said they needed to be prepared that it would not be, and that a discussion would be needed on looking for a bonding issue to match the privately raised funds. He said the numbers in the CIP in the past were their best estimates to date, based on a generic library design.

Councilor Stanhope asked Mr. Bencks whether he envisioned that if a bond was sought, it would require a vote by the residents of Durham.

Mr. Bencks said that wasn't his call.

Administrator Selig said if a bond in excess of \$1 million was needed, that would take the support of the Council and a referendum vote. He noted that these issues being discussed had been recurring issues for Councils over the last 13 years. He said the Trustees had felt that until a site was found, they had been greatly limited in the ability to fundraise.

Councilor Stanhope asked what the contingency was if a bond needed to be raised in excess of \$1 million, and it wasn't approved by the voters.

Mr. Bencks said either the vote could be retried, or they could go in another direction, but said there were many steps before they got there. He said after the due diligence and closing happened, there would be an open design process, to come up with something that among other things could be presented to potential donors. He said at that stage, there would be a year of fundraising for this specific site. He said before coming back to the Council concerning a bond issue, the Trustees would gather much more specific information.

Councilor Mower said her understanding from other towns was that having a site made a significant difference in terms of being able to raise funds. She also noted that some of the funding for Smith Chapel had come from nonresidents. Concerning the crosswalk issue, she said once it was determined that this was the site for the library, they might have a better chance at some funding programs like Safe Routes to School. She noted that the cost of roads, etc., was a significant concern of residents.

Councilor Gooze noted that there were some grants available for libraries.

Mr. Bencks said they would be pursuing this in every possible way, but noted that the grant funding available was very modest.

Councilor Clark said it seemed crazy not to at least assess whether combining a new library and new Town Hall would save the Town \$1 million in the long run. He asked whether after the due diligence phase, they would throw in the possibility that this was a municipal site and not just a library site.

Administrator Selig acknowledged that an analysis had been done that argued in favor of a combined site, and said there were numerous economies of scale from such a project. He said when this idea had come forward in the past, the Council had not been favorably inclined to do such a project on the Town Hall site.

He said the DiMambro family was clear that they wanted a stand alone library on the site, but were very willing to allow a municipal facility to the rear of the property, or a property adjacent to the site, and perhaps have some common utilities and a breezeway between the two buildings. He said the commitment being made now was to a stand alone structure, and not a fully integrated structure.

Councilor Clark asked if the property next door to the DiMambro property had been explored as a possible site, and Administrator Selig said he had met with the owner of the site to the right. He said the owners were open to leasing the site or exchanging it for the Town Office site, but were not open to an outright sale. He said he had advocated politely and assertively on behalf of the Town, to no effect. He also said the property to the left was on the market now, for sale by owner. He said it was a small parcel, and would only be able to fit something like an improvement to the intersection, a sidewalk, etc.

Councilor Smith said he didn't remember hearing that the DiMambros wanted this to be a stand alone library, and asked how strong this position was.

Administrator Selig said the family was adamant that they didn't want the library to be bastardized by another use. He said they were very open to a municipal office next to it or sharing services, but wanted the library architecture to stand alone.

Councilor Stanhope said if there was the potential of a million dollar savings to the Town, there was the option of eminent domain in regard to the abutting property. He noted that the seller would receive fair market value for the property if this were to happen.

Administrator Selig said he had apprised the owner of that potential. He recommended doing some of the architectural analysis in order to determine how such a layout might be brought together.

Chair Carroll asked if there were any further questions. She then asked Councilors to state why they were voting the way they were, so the public would know where they stood.

Councilor Mower said despite the fact that the Town had a working library, it was emblematic of the values of a community to have a library it could be proud of. She noted that there were changes in the uses of libraries these days, which was good. She said many Durham residents realized they needed something to coalesce around as a community.

She also said the point had been made by several people that this was a part of Town that would benefit dramatically from having a library at the center of it. She said the anonymous donor was still willing to help, and it was an opportune time to take advantage of this. She said it was an extraordinary building, and as central a site as they were going to be able to find.

Councilor Smith noted he was a Library Trustee for six years, so knew how hard it was to find a site. He said he would vote in favor of this, with a considerable amount of trepidation about the whole issue of what happened if the ability of the Trustees, the Friends of the Library, and other supporters to raise funds was limited, and the Council had to go off the diving board into the potentially dangerous waters of a warrant article on a bond issue.

Councilor Cote said he had always wanted a central core facility, and said given the opportunity of this house, its location and the fact that it had 3 acres, this was the time to strike. He noted that his wife had been a Trustee. He agreed that there were unknown issues, but said it was premature to discuss them. He said he would vote for this.

Councilor Gooze said Mr. DiMambro was over for dinner one night and said he was going to move. He said he had told him to call Administrator Selig because the house would make a beautiful library. Councilor Gooze said he would vote for this because it was true that this was a gorgeous property. He also said he believed that in 10 years, that area of Town, which had somewhat gone to seed because of student rentals in the area, would turn around.

He said it might take some Zoning changes, to perhaps allow something like a coffee house. He said having a library there would help protect the neighborhoods from student housing moving north, and said he hoped the money could be raised for it.

Councilor Stanhope said many members of the community had worked for a long time on this issue. He noted that he had supported other sites in the past that were far less attractive than this one. He said this property made sense, although noting his concerns about significant costs. He said the Friends and the Trustees recognized that they needed to go forward aggressively, but said the process might take longer than they wanted. He said he would support this absolutely.

Councilor Clark said he liked the location and the price. He said his reservations had little to do with buying the property and more to do with his sense that renovation of the house would be a fraction of the library project. He said his sense was that the previous plans and cost estimates had been extravagant. He said he was interested in the design process, and negotiations to make sure that they didn't bite off more than they needed.

Chair Carroll said she was pleased to be a Councilor now, so she could vote for the purchase of this property. She said it had taken a lot of hard work, and would take more hard work and some luck to make this the new home of the library. She noted that risks had been brought up, and said

she realized that almost everything the Council voted on was a risk. She said this was well balanced by the intelligent people working to make this a reality. She said she also knew that the public would be heard from many times as things progressed, and that they would all move forward together with this process.

The motion PASSED unanimously 8-0.

The Council stood in recess from 9:01 to 9:13 PM.

- B. **PUBLIC HEARING (CONTINUED) 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

Richard England, Orchard Drive, said he was a UNH economist specializing in the study of property taxation land development and sustainability issues. He spoke in favor of the Zoning change. He said stabilizing the property tax rate and getting student renters out of family neighborhoods were twin goals of many Durham citizens. He also said the reduction of traffic in and out of Town was a concern of others.

He said rezoning of ORLI was likely to result in a major addition to the Town’s tax base in the future, and said cottage rentals outside of neighborhoods would compete directly with homes being rented now in the neighborhoods. He said the concern that ORLI parcels could be developed for non-housing uses in the future was highly speculative, and was not a good bet for the Town. He noted the situation with the Durham Business Park.

Mr. England also said construction of Capstone’s units would have positive impacts on the regional rental market, and he provided details on this. He noted a question his wife had asked as to whether Capstone would provide professional management of its development. He said he had done some research on the company and found they had management contracts for on campus housing at several universities. He said he was reasonably optimistic that Capstone would provide professional management if the project went forward.

Christina Caiazza, UNH Student body Vice President, said she and the UNH Student body President believed this development would draw students back into Durham, would rejuvenate downtown businesses, and would keep students away from single family homes. She said students would be more than pleased to live in these beautiful buildings that Capstone planned to build.

Malcolm McNeill, Colony Cove Road, said a question was how to balance all that the Council had heard about this proposal. He said his only horse in this race was his wife. He also said this wasn’t only about Capstone. He said ORLI was the only district really impacted here, and said MUDOR was already 90% occupied or built out by UNH. He said the idea suggested by Chair Carroll to move MUDOR across the line didn’t work, because MUDOR wasn’t even set up for that purpose.

He said what was proposed with this Zoning change was to achieve the goals of the Master Plan, and to give a developer some flexibility in the context of the Conditional Use process. He said Conditional Use was an important component of this proposal, noting that with it, eight criteria had to be satisfied. He reviewed these, and said if all were satisfied, a project might get approved.

Mr. McNeill said the likelihood of significant tax generating development in Durham was not going to come from the downtown, and instead would come from ORLI. He said there was the opportunity to do this development now and not 10-30 years from now. He said with such development, money could come in for projects like a new library, a Town Hall, etc.

He said this development would mean there would be an increase in the quality of student housing, and said the rising tide should lift all ships. He said this wouldn't take anything away from downtown Durham, and noted that Exeter and Portsmouth had thriving downtowns, but each also had vibrant commercial outskirts to support their infrastructure. He said that could occur in Durham as well.

He noted that Steve Roberts' letter had said that the actual change to the Zoning Ordinance was targeted and minor, without any ripple effects and unforeseen consequences. He also said Mr. Roberts had noted that the Conditional Use process would apply to the same kind of housing that was allowed there now, which was elderly housing.

Mr. McNeill noted that Mr. Roberts had said the use of Conditional Use was recommended by the Master Plan, and implemented RSA 674-21 as an innovative land use planning technique. He said the effect of Conditional Use was the building of varied and vital development, where both commercial uses and residences felt their needs would have a fair chance.

Concerning the possibility that McMansions would be built, Mr. McNeill noted that he had already said these weren't built on State highways. He also noted the criticism that the Zoning change proposal was project driven, and said most zoning changes were project driven. He provided some examples of this. He said master plans were generally ten years apart, and said planning boards didn't have a monopoly on good planning and development ideas for a community. He said there was nothing unusual about having a developer come forward and request some changes. He said they shouldn't shoot the messenger, and should take a close look at the message.

Mr. McNeill spoke against the idea of extending MUDOR as suggested by Chair Carroll. He said Route 4 was a natural zoning boundary, and also said much of MUDOR was a totally unregulated zone because land there was owned by UNH, and was an afterthought with regard to the proposed Zoning change. He noted that Mr. Campbell had said it rezoning MUDOR could address the fact that single family homes were currently nonconforming there. He said there had been discussion on this at the April 14, 2010 Planning Board meeting, and quoted from the Minutes of this meeting. He said this record indicated that the MUDOR zone didn't drive anything regarding the Zoning change.

He said if the Carroll hybrid was adopted just for the Capstone project, a creative project could

be built, which would then be totally surrounded by ORLI on three sides. He said the remainder of the ORLI zone, which encompassed far more area in the community, wouldn't have the ability to do this kind of development.

He noted that Capstone had said one of the reasons for its proposal was that big building projects didn't work anymore for college kids. He said Capstone would therefore have a monopoly with its development, other properties in ORLI wouldn't be allowed to do this kind of project, and those zones would therefore be disadvantaged, despite the fact that they were the focus of this Zoning change in the first place.

Mr. McNeill said in terms of zoning fairness, the Chair's proposal was grossly unfair. He said he realized people had varied proposals for the ORLI zone, and some wanted no development there whatsoever. He said some wanted it to only have office and industrial use. He said this kind of development wasn't happening in Durham, and noted that there hadn't been any proposed development of this kind in ORLI since it had come into existence.

He said this was not an entrepreneurial campus, and said Durham was a one business town, and the business was not industrial or commercial. He said it was a pipe dream for anyone to think otherwise, and spoke further on this. He said if the real concern was that singles and duplexes would overwhelm projects, a way to get around this was to have a mixed use district. He said a Zoning amendment could easily be developed to accomplish this.

Mr. McNeill recommended the proposed Zoning change, as something new that was fiscally responsible, and which recognized that any project would have to meet eight criteria as part of the Conditional Use process. He said he was in favor of it as proposed, with a caveat, that if there was a concern about the mix, either a Planned Unit Development ordinance or a Mixed Use Development ordinance was a viable option to protect against overuse of the zone by single family houses and duplexes.

Karl Van Asselt, 17 Fairchild Drive, urged the Council to approve the Zoning change. He said as with any change, there were both general and special interests that had been expressed. And said all of them were important in making a decision. He said he had a general as well as a special interest. He said he had owned six different properties, and had lived in Durham for 40 years. He said student housing was an ongoing issue, and said this Zoning change was another step in addressing the neighborhood issues. He said it would help the problems by giving students the housing they desired.

He said his special interest was that this was private equity that was proposed to build student housing in a desirable location outside for Durham neighborhoods, and provide full property taxes. He said it wouldn't be unrealistic to have two or three developments in the rezoned areas, which would approach \$50-70 million in investment. He said that translated to an additional \$325,000-350,000 a year for the Town in taxes, and \$800,000 for the school.

Mr. Van Asselt said with that kind of increased valuation, the Town could easily have \$3.5 million over 10 years to help with his special interest, which was reducing or not increasing the tax burden on single family homes. He said he had consistently argued that the tax base needed

to be expanded, and said this could be an opportunity to do that.

Cathy Leach, Fairchild Drive, said others who had spoken before her had said what she had wanted to say. She said she was in favor of the Zoning change, as written.

Henry Smith, Packers Falls Road, said the proposal was a viable one, with creative possibilities. But he said it constituted a serious risk by opening the entire corridor to the possibility of exposing the stretch of land to all sorts of houses and complexes. He said there was some protection in the Conditional Use process, but said he strongly urged requiring conservation subdivisions for residential development in commercial zones. He noted that this was a scenic gateway to Durham.

Mr. Smith urged the Council to not vote for this significant, expansive Zoning change now, and instead to seek an alternative that would allow Capstone to proceed with its development. He also suggested that the Woodward parcel could be zoned as MUDOR, or Capstone could be asked to build a traditional structure, which was allowable in the zone. He said if this offer was declined, the Town could invite a proposal from a second firm that had been waiting in the wings. He provided details on this, and said it would be equal to Capstone in terms of expanding the tax base.

He said the Capstone proposal wasn't indispensable to the Town's well being. He also questioned whether the Town should pamper students by trying to offer them what they allegedly wanted. He said they were here to pursue an education, and were not here as customers.

Steve Roberts, 174 Packers Falls Road, noted that he had submitted a written summary for the previous Council meeting. He said he had been surprised to review some Councilors' concerns about the proposed Zoning change. He said one concern was possible sabotaging of the conservation subdivision approach, something which was dear to his heart. He said it would not be impacted by this proposal, stating that conservation subdivision didn't apply to these two zones.

He said the Planning Board was under direction from the Master Plan that if residential uses had ever been allowed as not Conditional Use, the only way they would ever be considered was under the conservation subdivision banner. He spoke about the fact that the Planning Board had been working on the stormwater regulations for six months.

He noted that there were several housing projects that had been approved in recent years, and said they had all met the proposed stormwater management standards because of the existence of the Conditional Use process, which directed the Planning Board to reflect the goals of the Master Plan. He said the Master Plan did not direct the Planning Board to use conservation subdivision for the ORLI and MUDOR zones.

Mr. Roberts said a lot of the issues concerning the proposed Zoning change that had come up before the Council could have been addressed at the Planning Board level. He said he looked forward to the master planning process, and spoke further on this.

Councilor Gooze asked Mr. Roberts what his point was in regard to the conservation subdivision

issue.

Mr. Roberts said conservation subdivision didn't apply to the ORLI and MUDOR districts because single family homes currently weren't allowed there. He said that was the only reason this wasn't in the Zoning Ordinance. He said the purpose of these zones was for commercial uses, and said the Conditional Use process would be able to evaluate how the kind of development Capstone proposed would fit within the commercial purposes of those zones. He elaborated on this.

Administrator Selig spoke further on the point that had been made by Mr. Roberts that the development projects approved in recent years actually exceeded what the proposed stormwater regulations would require, because of the Conditional Use process the Planning Board used.

Paul Berton, local landlord, said it boiled down to location. He said at the end of the day, location was the most appealing aspect of where someone lived. He said he feared that Capstone at that location would not solve the single family neighborhood problem. He said there were 12,000 undergraduates in Durham, with about 7,000 of them on campus and 5,000 elsewhere. He said about 2,500 students lived in housing the landlords managed, but said they weren't really sure where the others lived. He said he had been making calls about this recently to try to figure this out, and said it was important to figure out where these students were living before going forward with the rezoning.

Councilor Smith noted that the public hearing was about a Zoning change, and not about a specific project, although the project may have initiated the Zoning change. He said he hoped people would speak to this.

Richard Peyser, UNH Student body President said there were 15,000 students, including graduate students, living in Durham and surrounding towns. He said students commuted from Portsmouth, Dover, Newmarket, Greenland, etc. He said there were 4,500 students living outside of Durham, and said many of them would like to live in Durham if they could.

Beth Olshansky, Packers Falls Road, said there was no hiding the fact that they were having this discussion because of a proposal to allow a use in a zone that didn't currently allow it. She said she believed the proposed location for the project was excellent, because there was already a new student housing building in the area, as well as other student rentals. She said she hadn't heard anything other than landlord concerns about this.

She said the new configurations proposed for the housing there sounded appealing, and could encourage students to take better care of properties and feel a greater sense of community. She noted that others countered that those students would be more difficult to monitor, and said they wouldn't know the answer to this until they tried it out.

Ms. Olshansky said something they probably didn't know was what would happen to this neighborhood if student housing became saturated, and whether it could turn into a tax negative situation if there were other housing complexes like the one proposed.

She said the whole idea of single family homes was problematic, but said this didn't mean she

didn't support coming up with a way to allow the Capstone development, as an experiment. She said she was in favor of this experiment in a limited fashion in a small location to see how it went. She said if they were then satisfied with it, and the development later didn't become vacant and result in a lot of families moving in and a tax positive situation becoming a tax negative situation, she would be looking for an expansion.

Ms. Olshansky said this Zoning change would rezone over 300 acres of undeveloped land, and said this seemed like a lot. She said they didn't need to bite off more than they needed, and again suggested trying it out in a limited fashion.

She said she was concerned that the Planning Board hadn't fully vetted the proposal when it came before it. She said neither the Planner nor Planning Board had mentioned the fact that there was no conservation subdivision in these zones, even though there could be residential developments in those zones as a result of the Zoning change.

Ms. Olshansky said the vision of allowing single family homes on 300 acres of undeveloped land that could potentially be cookie cutter style development was a huge step backwards. She noted that conservation subdivision was developed for residential development, and wasn't put in commercial zones because it wasn't anticipated that there would be residential development in these zones.

She gave an example of some possible developments that might meet the Town's needs but didn't meet all of the Conditional Use criteria. She then summarized that there could be unforeseen circumstances to what they had before them. She said the Capstone project was appealing, but said they shouldn't take this huge leap of faith and pull in more than half the Town's undeveloped land while testing the waters.

Ms. Olshansky urged that the Council turn down the proposed Zoning amendment, stating that if it was approved, the potential for unintended consequences was huge. She also recommended limiting the impact of this experiment to a smaller area, and said one way was to extend MUDOR to the parcel in question and to some other properties in that area. She said there was a precedent for extending a zone, noting that ORLI was changed from RB out on Packers Falls Road in recent years in order to accommodate a development.

Ms. Olshansky said she believed the intention of the Zoning amendment as drafted was to allow cottage style houses that a particular developer was interested in building. She suggested creating another use, such as cottage style rental units, development of mixed housing on a single parcel, or something else that would not be confused with residential neighborhoods. She said she didn't think they wanted cookie cutter single family neighborhoods spread out over 300 acres of ORLI, and asked why they were zoning for that. She said they needed to be more creative than this.

She said she believed conservation subdivision should be required in all residential developments, even in the commercial zones. She urged that if the Council moved forward to allow cottage style residential developments for student rentals, it would extend the conservation subdivision regulations to cover all residential developments. She said she thought this could be a fairly simple matter to accomplish.

Ms. Olshansky said in the MUDOR and ORLI zones, there were several options for retail. She said in the interest of the goal of revitalizing the downtown and not taking business away from it, she would like to see gas station/convenience store uses taken out of those two zones. She said she would like people to go downtown and support the existing businesses.

She noted that the Town was on the heels of a Master Plan rewrite, and said it seemed odd that they were thinking of this dramatic Zoning change with little public input because it was the middle of the summer, when many people were on vacation or not paying attention. She said a Zoning change so encompassing that it included all of ORLI and MUDOR should involve a larger public process.

After speaking before the Council, Ms. Olshansky distributed a map of the zoning extension she was recommending.

Roger Hayden, Hayden's Sports, noted that he owned commercial property at 44 and 46 Main Street in Durham, and had been the Vice President of the Durham Business Association for about 12 years. He said a concern he had heard from DBA members was that if these Zoning changes were made, many of the students living in these new developments might head out to the Lee Traffic Circle to go shopping. He also noted that there was already a parking issue in the downtown, making it hard for an additional 600 students to come downtown to shop.

He said if the Town wanted to revitalize the downtown, equal weight should be given to zoning changes there. He noted that his two buildings on Main Street were ripe for redevelopment, except for a few things. He said right now, if a four story building was built, two of the stories would have to be commercial. He said the reality was that second floor office space wasn't in demand, and said they should think about making some zoning changes in the downtown. He said if he only needed to have one floor of commercial space and could have three floors of student rentals, he would have the income to drive the project.

Mr. Hayden said he was looking for some balance, and said if they were going to have an open mind concerning one area of Town, this should be spread around to make it work for everyone.

Administrator Selig noted that the Council had received numerous letters, some of them in favor of the Zoning change, and some of them against it. He then read into the public record correspondence received that day from residents David Arthur and Rachel Rouillard, which had not yet been distributed to Councilors. (These letters are on file with this set of minutes.)

Mr. McNeill said the proposals for the uses that could come forward were commercial uses, and said if conservation subdivision standards were applied in these two zones, there would be no development, such as what was proposed, in these zones. He said the protections afforded by the Conditional Use process were more than adequate to accommodate the concerns that had been expressed. He said he was not in favor of cookie cutter house lots in either of these zones, but was in favor of the option of a developer having a variety of uses. He said technically speaking, a developer would not be subdividing the property.

He also said to separate a small section of the ORLI zone as a trial balloon was totally unfair and inappropriate. He said when these areas were zoned, the properties in them had common characteristics, in that they were on or close to State highways, were not adversely impacted by abutters, were relatively flat and developable property, were serviced by good roadways, and contained common characteristics. He said to single out for one purpose one piece of land would be totally inappropriate.

He said in terms of the conditions that would be attached to a development, these would be site specific, and the project couldn't be changed without a return to the Planning Board. He said perhaps the real goal here for some was to give this development a try, not permit it anywhere else in ORLI, and then come forward with a conservation subdivision idea so the rest of ORLI couldn't be developed at all. He said this would be grossly unfair, would be inconsistent with the existing Zoning, and would be inconsistent with the reasonable use of the land.

Councilor Gooze asked why conservation subdivision applied to ORLI and MUDOR would stop all development.

Mr. McNeill said in order for a project in these zones to be approved, it would be brought in as a non-subdivision project because of the way Conditional Use was written and the way the Master Plan was written.

Councilor Mower asked Mr. McNeill what his role was in the development of the Master Plan, and Mr. McNeill said he was involved with the issue of tax stabilization. Councilor Mower asked Mr. McNeill if he had been a part of the discussion on the designation of this part of Town, and McNeill said he may have been. She said she was interested in the fact that he was a significant land owner in this part of Town, and had been a participant at many stages and reasonably so, because he did have an interest in it.

Mr. McNeill said it would be unfair to suggest anything concerning his volunteering of time in Durham to try to adjust the tax rate, and to apply the expertise he had in this area. He said he was one of many who worked on the Master Plan, and didn't have greater persuasive power than others. He said he resented any allegation of a conflict of interest.

Steve Roberts said he wanted to clear up any confusion. He said MUDOR and ORLI were defined in the Zoning Ordinance and the Master Plan as commercial zones, and were not zones for subdivisions. He said there was therefore no way to put a single family house and conservation subdivision allowance here.

He said if this change proposed was by right, they would also have added a conservation subdivision change to the ordinance for these districts. But he said it was not, and said the goal was to retain the commercial nature of these zones, and only allow single family housing as a CU as a function of a commercial development.

Chair Carroll said her understanding was that if this Zoning change passed that evening, and an application came in asking for a mixed use development that included cottage style houses that looked like single family houses, duplexes and multiunit buildings, they wouldn't then be seeing

single family houses anywhere else in those zones.

Councilor Clark said even though they might call this single family houses, there wouldn't be a lot for every house, which was what made it commercial.

Councilor Smith asked Mr. Roberts whether if a property owner had 30-40 acres in ORLI, and this Zoning change passed, he could not subdivide his property and put single family houses or duplexes on single lots.

Mr. Roberts noted the letter he had provided regarding the considerable public comment the Planning Board had received from residents living on the south side of Beech Hill, and the northeast side of route 4 and Madbury Road, where there were a considerable number of single family houses already in existence, but were now nonconforming uses in ORLI and MUDOR. He said the question of pocket neighborhoods came up in the Master Plan, and said as he read the Master Plan, he would have trouble guaranteeing that a subdivision would be allowed in those zones.

Councilor Gooze MOVED to extend the meeting beyond 10:30 pm. Councilor Smith SECONDED the motion, and it PASSED unanimously 7-0. (Councilor Clark had left the room temporarily).

There was detailed discussion about what Mr. Roberts had just said. Chair Carroll asked Mr. Campbell to say a few words on this.

Mr. Campbell said in the Master Plan, it called for certain things to be allowed in the future. He noted that this didn't have the force of law, as the Zoning Ordinance did. He said when Mr. Roberts read the Master Plan, he didn't see that residential subdivisions were talked about as being allowed as a primary use in ORLI and MUDOR. He said this wasn't specified in the Master Plan, and wasn't allowed in the Zoning Ordinance. He said someone might read that differently, in that the Master Plan didn't specifically say there couldn't be residential subdivisions there.

He said in ORLI now, there could be an elderly housing subdivision, but not a conservation subdivision. He said conservation subdivision only applied in the RA, RB, RC and Rural zones. He said if they wanted it to apply to ORLI and MUDOR, the conservation subdivision provision of the Zoning Ordinance, Section 175-107, would have to be amended. He said right now, a subdivision out there would not have to be a conservation subdivision, and he spoke further on this.

Councilor Clark received clarification that if Section 175-107 was changed to include ORLI and MUDOR, this wouldn't impact the current proposal. He said the only thing it would affect would be elderly housing, because that was the only kind of subdivision allowed in those zones.

Mr. Campbell said that was correct as of today, but said if the Zoning was changed to allow single family homes in these zones, conservation subdivision wouldn't apply. He noted that single family homes and subdivisions historically were allowed in the former OR zone, but there weren't a lot of residential subdivisions built out there. He said he didn't think people would

really want to have their homes out in that area.

Ms. Olshansky said one issue that had arisen was whether they were talking about subdivisions or homes on a single parcel. She said if they adopted this Zoning change and single family homes were allowed by Conditional Use, there could be a scenario where a development was condominiumized and there was no conservation subdivision. She said they could still end up with single family homes sprawled across a large parcel of land.

She said trusting a Planning Board five years from now was a stretch of the imagination, and said what was in the Zoning Ordinance needed to be clear, to make sure future Planning Boards knew what was intended. She spoke further on this.

Ms. Olshansky said that Spruce Wood development was a PUD, which was a very tidy way to create a mixed used proposal that allowed what was envisioned for a specific location. She said perhaps it made sense to consider something like this again.

Dennis Kostis, commercial property owner, said like Mr. Hayden, he had two pieces of property downtown that hopefully would be developed in the next 2-6 years. He said he was having a difficult time trying to figure out how the Council wanted the Town to be developed. He said on the one hand, they wanted to go outside the downtown, and on the other, wanted to stay in town.

He said he wondered how he could approach banks and sell them on the development of downtown Durham, when there were these questions. He said money had been spent by the Town on plans to develop the downtown, and said it seemed that now things were changing in midstream. He said he would like to develop two properties downtown, but with the questions being raised, he was wondering how to go about this.

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

The Council stood in recess from 10:46-10:52 PM.

Chair Carroll recommended that before putting a motion on the table, there should be some discussion and deliberation.

Councilor Smith said he thought they might be able to get through this without a motion, and could agree on how to move forward. He said as the Council's Planning Board representative, he had failed in March to raise flags about what was being proposed. He said the only thing of substance he had done was to suggest that a PUD ordinance would be a better way to go, in terms of what Capstone was proposing. He said at that point, Mr. Campbell had said changing the Ordinance to allow PUDs would take too long. But he said four months later, they hadn't come to the end of this process.

Councilor Smith said he would vote against the proposal if it came to a motion, and said he hoped others would join him. He said they should send back to the Planning Board a request that it come forward with several new definitions that would accomplish what Capstone proposed and allow what other developers wanting to do a similar kind of development might propose,

without opening the door to the unintended consequences that had been mentioned. He suggested that they confront what it was that Capstone proposed, and acknowledge that they liked the basic idea of a multiunit development in which there were different styles of buildings. He said this struck him as something like a form-based code approach. He said instead of calling the units single family houses, there should be another definition in the Table of Uses, such as free standing living units with one or more bedrooms meant to be part of a rental complex designed for students. He said there could be duplexes as well, and said he would much prefer to see this, rather than giving carte blanche for the development of single family houses.

Councilor Mower said she regretted her own role in letting this go to public hearing, and said this hadn't been ready for prime time. She said this was primarily because of the definition, and because of the unintended consequences that derived from it. She said in working with Councilor Niman to come up with an alternative definition, it had become apparent that this was difficult.

She said the Town was very close to working on the Master Plan, and noted that many people had expressed concerns about how it seemed not to fit what the Town wanted now. She said it should be a living document, and on the next round should reflect the changes in the market. She said she hoped they would send this Zoning proposal back to the Planning Board with some guidance. She said there were other options, including PUD, and said Councilors should not feel that they needed to respond to a specific project with such immediacy that they lost sight of what they actually wanted for the long-term.

Councilor Stanhope said he had some of the same reservations about the concept of single family as a way to achieve the Capstone concept. He said he had asked Administrator Selig about this, and was told that Mr. Campbell had thought this through carefully and felt this was the appropriate way to address this type of development in these zones, and that the Planning Board gave it thorough and due consideration, and with the exception of Councilor Smith had unanimously brought forward the recommendation.

He said they had to put their confidence in boards when they brought something forward to the Council. He said he didn't think the Planning Board was about to approve a checkerboard plan for anything in these two districts. He also said he didn't think it was economically feasible to approve such a development in these zones. He said he would therefore support bringing this to a positive vote.

Councilor Gooze said that regarding the concerns of downtown landlords, he believed a good product downtown would outweigh the Capstone project, and said that project would cause the downtown landlords to realize that fact. He also said by doing rental registrations and inspections, they could pull students out of the neighborhoods into those good projects.

He said looking at the history of ORLI and MUDOR, the Town got rid of residential uses there because people were worried there would be more students in the Oyster River district schools. He said there was now some economic advantage to having flexibility, concerning development in ORLI and MUDOR. He also said there could be compatibility between the kind of residential development proposed and other residential areas.

He said he would be supportive of the current proposal, but asked that the Council also come up with an ordinance change to expand conservation subdivision to the ORLI and MUDOR zones. He said this would provide an adequate safeguard. He said some people might say there wouldn't be any other development there, but said that was what some people wanted anyway. He said this Zoning proposal was project driven.

Chair Carroll asked Administrator Selig and Mr. Campbell to comment on what Councilor Gooze had recommended, for future development.

Mr. Campbell said it certainly was an option, for a noncommercial development that was a subdivision.

Administrator Selig said he thought it was a good approach.

Councilor Gooze said it answered the concerns of most of the people who had called him.

Administrator Selig said there were three areas of ORLI that people were thinking about, one of which was on Technology Drive, the second which was on Mast Road, and the third which was the Farrell/Garvey area that was currently moving forward for conservation. He noted that if that project fell through, it would be the kind of land area that would be ripe for possible subdivision for single family homes. He said what Councilor Gooze had proposed would help in that regard.

Councilor Mower said that was why she would like to see PUDs. She said she was very reluctant to vote on something with the assumption that the Council would fix it later. She noted that there was unfinished business from the last rezoning the Council had initiated in 2008.

Councilor Niman said this was about people acting in good faith, and said if there was support on the Council for Councilor Gooze's suggestion, he thought the Council would commit to making that change in the Zoning Ordinance.

Councilor Mower asked what had happened with the previous commitment to make a Zoning change, which was to try to fix some of the concerns about impervious surfaces and buffers in ORLI, after a portion of it was rezoned from RB in October 2008.

Councilor Clark said there were many meetings and discussions on this, and the conclusion, which was supported by the Town Engineer and consensus of the Council, was that the Zoning change wasn't necessary.

Councilor Niman said he thought Paul Berton was an astute business person, but said if Mr. Berton didn't think he was in a cartel, he should take his economics class in the fall. He said the Woodwards could sell their property to whoever they wanted to, and said it was available for development under the current Zoning Ordinance.

He said he didn't think Councilors were acting out of desperation, and were instead trying to take advantage of an opportunity, and turn it into success for the outskirts of Town and the downtown as well. He said at some point, he could sit down with Mr. Kostis to discuss the strategy

concerning this.

Councilor Niman said there had been a number of public comments about this being a risky enterprise, etc. He said what defined Durham and the economic opportunities in Durham were the age and quality of the student housing stock, and not the number of beds. He noted that said several years ago, he had asked Administrator Selig to identify the rental housing in town, and in 2004, Robb Dix provided him with a spreadsheet on this. He said the landlords had recently updated the numbers, and the Council had heard now that there were roughly 2500 beds in Town, which was close to what Mr. Dix had come up with.

He said 41% of the housing stock was less than 50 years old, 37% was between 50-100 years old, and 21% was greater than 100 years old. He said this meant that 58% of the existing stock for student housing was 50 years old or older. He said it wasn't surprising that the current stock wasn't meeting students' needs. He said Capstone had new housing stock that was designed for today's students, and said he therefore found the various negative speculations hard to believe.

Councilor Niman said if a company like Capstone came to Durham, it would be very successful, and said he would look forward to their property tax payment twice a year. He said he didn't view this as an experiment or a speculative venture.

He noted that from the beginning, he wasn't a big fan of this Zoning change. But he said because of his fears that it wouldn't pass, he had wanted to come up with an alternative. He said he and Councilor Mower had tried to work on one, but it was a difficult thing to do. He said he had come to understand why the Planning Board had brought this change forward. He said everything in the Zoning Ordinance was intertwined, and it was difficult to unravel this.

Councilor Niman said he had reached the conclusion that creating a new definition wasn't going to happen. He also said even if they could come up with something, it was hard for people with different views to meet in the middle. He said this was why he found Councilor Gooze's recommendation appealing. He said he would like to see the proposed Zoning change pass, so Capstone could move forward with its development. He said if bringing conservation subdivision into these zones would ease peoples' fears, he could live with it.

Councilor Mower said something she and Councilor Niman hadn't discussed was attaching specific conditions, as opposed to performance standards, to a definition. She suggested that the Council could send the single family use back to the Planning Board and have it include specific conditions for these particular districts.

Councilor Niman said if Councilor Mower wanted to fix this later, that was fine, but he said he didn't want to drag this process out. He said he understood this wasn't about Capstone, and that something else could happen tomorrow, but said realistically, the economics didn't justify cookie cutter subdivisions in these zones. He said making something possible didn't mean it was inevitable that it would happen.

Councilor Mower asked John Acken of Capstone what he would need to hear from the Council that evening to feel comfortable, moving forward.

Mr. Acken said the problem came down to timing for Capstone. He said the hope was to break ground next spring, and deliver the 600 beds in 2012. He said knowing the difficulty of getting various permits, and the engineering involved, they needed as much time as possible. He said they were already behind concerning this, and spoke further on this.

Councilor Mower questioned the timing so far, and Mr. Acken said the process took time.

Councilor Smith noted the presentation at the MUB the previous month, and that he had asked what the time frame was. He said he had had some questions about what the Planning Board had brought forward. He said he would hope that at the end of deliberations, they would agree that they would like very much to see some new definition in the Table of Uses that would permit Capstone and other developers to do the kind of thing they wanted to do. He said the process would start with the Planning Board, and said this would require some trust on Capstone's part.

Councilor Cote asked whether if this didn't pass, and it was kicked back to the Planning Board for changes of some kind, Capstone would decide to build a big box or walk away.

Mr. Acken said they would have to regroup, and look at the timeline. He said a lot of risk would be introduced into the process if this went back to the Planning Board and then to the Council, and said Capstone would have to assess that risk.

Councilor Gooze said the Council had done a number of things since he was on it that involved timing pressures. He said this was another situation where they had to decide whether to take this risk. He said what he had proposed concerning extending conservation subdivision to ORLI and MUDOR, at least for the time being, was an adequate safeguard, although it didn't solve the issue for those who didn't want any residential development out there at all.

Councilor Cote said MUDOR had always allowed duplex development, and asked how many had been done.

Mr. Campbell said one had been done.

Councilor Cote said the demand wasn't there, and said he didn't think they were taking a quantum leap by allowing single family development in these zones.

Councilor Clark said he didn't see this was a big change, even though there was a lot of land involved. He also said he saw a lot of positives. He said he appreciated the work done to try to wordsmith things, and asked if it was possible to change the name single family home to commercially based multiunit developments.

Councilor Mower said it was a structure issue.

Administrator Selig said the problem was that the Zoning Ordinance referenced single family in many other contexts

Councilor Stanhope said he thought Councilor Gooze had come up with an excellent solution to the concerns. He said he had run the numbers, and single family homes didn't work. He said if a conservation subdivision provision was overlaid on MUDOR and ORLI, this would economically burden any development to the point where no one would undertake it. He said they should get this proposal before the Council in a timely manner, and said they should also take advantage of an opportunity to expand the tax base by approving this now.

Chair Carroll asked those Councilors who had spoken in favor for the Zoning change proposal if they would also be in favor of moving ahead with the concept of expanding conservation subdivision for ORLI and MUDOR in a couple of weeks.

Councilor Gooze said the only way he would vote for the Zoning change was if there was direction to Administrator Selig that a proposal concerning the conservation subdivision change came forward within the next month or so.

Administrator Selig thanked the UNH Student body President and Vice President for being a part of these discussions. He also thanked Mr. Berton and other members of the Durham Landlords Association for the good work they did. He said to the extent they had expressed concern about potential competitors, that was very understandable. He said this Zoning change would likely impact in some way their ability to create projects downtown.

He also acknowledged Chair Carroll, Councilor Mower, Councilor Niman and Councilor Gooze for their work in trying to come up with alternatives that would work.

Administrator Selig said what Capstone offered was very competitive, and more so than the big box form, and offered more potential to pull students out of the neighborhoods, along with more enforcement in the neighborhoods.

Administrator Selig said the students were in fact customers, and said it was important for the landlords to cater to them. He said a significant impediment for landlords was that they were operating buildings that didn't meet the current needs of the present demographic of students. He noted that the neighborhoods were experiencing some of the shift that students were making to more of a single family home style residence.

He said that regarding the Conditional Use process, residents had spoken about how difficult this made the application review process. He said the world out there perceived this process in Durham as highly restrictive, and said this was borne out by the actual developments that had taken place over time.

Regarding the concern raised about gas stations/convenience stores in ORLI, he agreed that they should initiate a change to the Zoning Ordinance to eliminate that use in that zone. He said this was currently a deficiency.

Regarding the proposed Zoning change being a dramatic change, Administrator Selig noted the parcel in ORLI that Farrell and Garvey owned, and that there was significant argument two years ago about changing a significant amount of acreage from RB, where single family residences

was a right, to ORLI, where it would not be permitted.

He said with the current proposal, they were suggesting that single family residences be allowed by Conditional Use which would actually continue to make the Zoning Ordinance more restrictive than it had been two years, ago, which some people who were against the current change were against at that time as well.

Administrator Selig noted that there had been a lot of feedback from business people downtown who expressed confusion as to what the Town's goals were in terms of where they wanted student housing and where they wanted investment. He said the Master Plan and the Zoning changes in 2004 and 2006 indicated that the Town wanted to see investment in both places.

He noted that there was concern at that time about allowing too much residential housing in the central core, and there was interest in seeing commercial and retail, and office space on the first and second floors. He said at the time these Zoning changes were made, concern was expressed by downtown landlords, who wanted more flexibility. He said they were also concerned that multi-unit developments were allowed in MUDOR and ORLI by Conditional Use.

But he said the Town had been working very hard to invigorate and renew the downtown area, with ornamental lighting, sidewalks, enhancements to traffic patterns and parking, and allowing four stories. He also said Town land had been sold to private owners to encourage additional density downtown. He said a charrette process of Mill Plaza was done to encourage development, and also noted the B Dennis charrette that had recently been done. In addition, he noted that the market analysis that would soon be done would focus to a large extent on the downtown.

Administrator Selig said the Zoning proposal was a good change. He noted that he was comfortable with the Conditional Use process, which among other things required an extra majority for an project to be approved. He said the criteria were very strict, and the Planning Board had tremendous flexibility to say no. He said what Mr. Roberts had tried to get at was that because the Master Plan was so clear about not having single family development occur in ORLI and MUDOR, it would be very hard for the Planning Board to not pay that much deference.

He encouraged Councilor Smith to reconsider his opposition, and said it was a positive change, with little risk, given the suggestion Councilor Gooze had made. He said for 20 years, they had not seen cookie cutter subdivisions out there, and said waiting another month or two to extend conservation subdivision to that area represented very little risk.

Administrator Selig noted that although this Zoning change was about the whole districts, the Council had been working very hard to broaden the tax base in Durham, including expanding sewer capacity to handle large multiunit developments like this. He said they had also been working hard to pull kids out of the residential neighborhoods, to address negative impacts.

He said members of the EDC had researched Capstone, and said they were a good company that managed their product well. He said they did have certain timelines, and said there was a likelihood that if this Zoning change was delayed for another two months, they wouldn't meet their construction timeline. He said their development was the kind of development Durham would like, with a new urbanist, B Dennis approach. He recommended that the Council move

ahead with this Zoning change, and also said he supported Councilor Gooze's suggestion. Councilor Smith said before Councilor Niman and Administrator Selig spoke, it was clear that this Zoning proposal would pass. He said what Councilor Gooze had suggested was a compromise that salved his conscience. He said Councilor Niman had said they couldn't tell property owners what to do with their properties, and said he agreed with this. But he said the Town had ordinances that told property owners what they couldn't do with their properties, unless they could convince the ZBA or a court otherwise.

He noted wording in the Council Communication that Mr. Campbell had supplied for the meeting: "In reviewing the Table of Uses, it was discovered that the ORLI district did not allow single family or duplex dwelling units and the MUDOR District allowed duplexes but not single family dwellings". Councilor Smith said it was as if this was a secret, but said it was actually there all along.

He noted that Councilor Stanhope had said the Council should go forward with the Planning Board recommendation. He said he remembered three years ago when the Board recommended seven different zoning changes to the Council, and the Council ultimately did not pass most of them. He said the Council had a history, after due consideration, of not going along with what the Planning Board recommended, even when the Council had been very enthusiastic about the Planning Board recommending things to it. He said he would vote against this Zoning change.

Councilor Mower said she echoed in some ways what Councilor Smith had said. She said anyone having watched the two Planning Board meetings at which this Zoning amendment was discussed might think that there wasn't as thorough a discussion as it could have been, and might have benefited from somewhat greater professional advice.

She said that was primarily why she was a bit concerned about the Council sending back to the Planning Board something on which it was relying on so heavily to come back to it with corrections, etc. in a fairly short period of time. She said this was not the way to go about planning.

Councilor Mower said she appreciated the concern that they figure out something to enable the Town to have this specific project, but said it was not just about this project. She said unless there was some morally binding, if not legally binding, constraint on the Council to fix this shortly, it wasn't a good choice to make.

Councilor Gooze suggested asking Mr. Roberts if he would have difficulty with the Council directing the Planning Board to extend conservation subdivision to the ORLI and MUDOR districts.

Mr. Roberts said given the order suggested, which was first passing the Zoning change as presented, he would support 200% extending conservation subdivision. He said the change, on paper, was simple, and said Mr. Campbell could have it for the Board on Wednesday.

Councilor Mower said it still troubled her that they were countering the intent of the ORLI district as written in the Zoning Ordinance, unless they defined this particular single family use

as a commercial use.

Councilor Niman said perhaps they could agree to disagree. He said Councilor Gooze's compromise, for those who were concerned, was an added protection.

Administrator Selig said the State statute addressed certain types of innovative land use planning regulations, and Conditional Use was one of them. He noted that the Zoning Ordinance spoke about the purpose and intent of the Conditional Use process, which was to allow certain uses that weren't normally allowed by the Zoning Ordinance. He said that was exactly what was happening here.

Chair Carroll said she and some other Councilors had recently pored over the Zoning Ordinance. She said as the sentiment of the evening had shown, many people were in favor of student housing being in this part of the Town, but were very uncomfortable with opening up all of ORLI. She said that had been the big consideration, and was why she had brought forward two possible suggestions, one to extend MUDOR, and one that was a new definition. But she said this had been tricky because of the existing Zoning Ordinance.

She said she didn't feel 100% comfortable with the Zoning change proposed, but would be voting in favor of it. She said she thought more than two months would be needed if the Zoning proposal was sent back to the Planning Board and then back to the Council, in order to try to do a perfect job. She said she was relying somewhat on the people who had spoken and had assured the Council that things would work out the way the Council had said it would like to see them work out.

Administrator Selig recommend that in addition to extending conservation subdivision to ORLI and MUDOR, the gasoline/convenience store use should be taken out of the Table of Uses.

There was brief discussion with Mr. Campbell that the site plan regulations would not need to be changed, in addition to the Zoning changes.

Councilor Cote MOVED to adopt Ordinance 20101-07 amending Chapter 175 "Zoning", Article XII, Zone Requirements, Section 175-53 "Table of Uses," "III Residential Uses" of the Durham Town Code to allow Single Family Homes and Duplexes in the Office Research & Light Industry (ORLI) Zone as a Conditional Use and to allow Single Family Homes in the Multi-Unit Dwelling/Office Research (MUDOR) Zone as a Conditional Use. Councilor Gooze SECONDED the motion, and it PASSED 6-2, with Councilor Smith and Councilor Mower voting against it.

Councilor Gooze MOVED to recommend to the Planning Board that it move forward with a Zoning change to extend the conservation subdivision regulations into the ORLI and MUDOR zones, and to eliminate the gas station/convenience store use that is permitted in the ORLI district and make it a non-permitted use. Councilor Mower SECONDED the motion, and it PASSED 8-0.

- C. Discussion and action on an application submitted by the Sigma Beta Alumni Association for 26 Madbury Road 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

Postponed

XI. New Business

Other Business - None

XII. Nonpublic Session (if required)

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

XIV. Adjourn (NLT 10:30 PM)

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

Adjournment at 11:56 pm

Victoria Parmele, Minutes taker