

This set of minutes was approved at the September 13, 2010 Town Council meeting

**Durham Town Council
Monday, August 16, 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 8:52 pm); Councilor Robin Mower; Councilor Jay Gooze; Councilor Bill Cote

MEMBERS ABSENT: None

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

I. Call to Order

Chair Carroll called the meeting to order at 7:02 PM.

II. Approval of Agenda

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

Councilor Smith noted that in Agenda Items VII M, Q, R, S, W, and X, the word “appraisal” was used, and it instead should read “assessment”.

The motion PASSED unanimously 8-0.

III. Special Announcements - None

IV. Approval of Minutes

July 12, 2010

Councilor Mower MOVED to approve the July 12, 2010 Minutes. Councilor Niman SECONDED the motion.

Page 6, 3rd paragraph, should read “...read a statement opposing the proposed ORLI/MUDOR zoning amendment on behalf of resident Suzy Loder...”

Page 21, 3rd paragraph, should read “..the fact that there was no conservation subdivision...”

The motion PASSED 7-0-1, with Councilor Sievert abstaining because of his absence from the meeting.

V. Councilor and Town Administrator Roundtable

Councilor Smith said at its meeting on August 11th, the Planning Board had opened the public hearing on the Council's suggested Zoning change that the conservation subdivision regulations be applied to the ORLI and MUDOR zones. He said the hearing was left open.

He also said the public hearing was held on the Zoning change proposed by Administrator Selig that convenience stores with gasoline sales no longer be a permitted use in the ORLI district. He said the Board then voted 3-1 against that change, so if the Council wanted this Zoning change, it would have to initiate it on its own. He noted that he was the only Board member who voted in favor of it.

Councilor Mower asked what the reason was for the Planning Board's decision.

Councilor Smith said it was thought that convenience stores might be appropriate, and that there were already so many protections because of Conditional Use that it was unlikely that the Planning Board would permit gasoline sales anywhere near the Spruce Hole aquifer or the Oyster River. He also said it was thought that because the Town was thinking about having a large student housing complex next to Goss International, it might make sense for the 600 residents there to have gasoline sales and convenience store sales handy, rather than having to come to downtown Durham.

Councilor Smith said there was also the thought that somewhere near the intersection of the Route 4 bypass and Old Concord Road might be a good location for this use if the water table permitted it. He noted that some people spoke about the difficulty of keeping gas tanks from leaking. He said the Council could pursue the Zoning change, and said he thought they should do so.

Councilor Gooze said he had spoken against this proposed Zoning change at the public hearing, because on further thought, he felt there might be some appropriate places to have this use, so to not permit it at all might therefore be inappropriate. He said there was discussion that perhaps ORLI was too big and encompassed different types of areas, and that perhaps they should separate out where they did and didn't want certain commercial development.

There was discussion that the use "convenience store" by itself was not in the Table of Uses.

Councilor Sievert said he had been surprised that the Planning Board didn't approve this. He agreed that the ORLI district had too wide a range, and that this use might make sense in some places. He said there were protections in the Zoning Ordinance, including the overlay districts.

Councilor Cote noted that he had recently raised the issue of the ORLI district being an

almost unmanageable zone. He said a gas station might be appropriated on Route 4, but not on Mill Road. He said the Conditional Use process gave the Planning Board an incredible amount of authority, but he repeated that the ORLI district was unmanageable, and said the Council should take a look at this.

Chair Carroll noted plans to revise the Master Plan, and said this was a very good place to start.

Councilor Mower first noted that there were some vacancies on Town boards and committees, and she urged residents to consider volunteering.

She noted that there was information on the Friday Update about a solar hot water class taught by Energy Committee member Peter Ejarque. She said 20 people attended the class and said a solar hot water heater was built out of fairly cheap materials. She also said there had been 30 responses concerning the PACE program, and said the deadline for the first round was August 25th. Councilor Mower noted that the Energy Committee was considering a solar energy themed meeting for the near future, and asked those interested in this to contact the Committee.

Councilor Mower said the Water resource protection subcommittee of the Planning Board was working on updating the aquifer protection overlay district.

She said she would bring Council Communications forward in September regarding representation to the Wiswall Historic Interpretation Committee (WHIC). She noted that the Conservation Commission had had a long discussion reflecting some question on its role on the Committee. She said the conclusion was that perhaps the expertise of several individual Commission members might be welcome on a short term basis instead of long term representation by a single member.

There was discussion that Councilor Smith, the Planning Board representative to the Conservation Commission, and a member of WHIC at the moment would be in touch with WHIC Co-Chair Dick Lord regarding the membership issue.

Councilor Mower said the second Conservation Commission appointment would be for the Bellamy Oyster River Watershed Protection Program (BORWP). She said the Conservation Commission Chair said it was essential and a no cost measure for the Town to demonstrate an interest in watershed based management and compliance with upcoming regulations.

She said the Conservation Commission recently had a presentation and discussion with Dave Andersen, of the NH Coastal Protection Partnership. She said he was working with the Lamprey River Advisory Committee small grants program on an educational outreach program that focused on nitrogen pollution from lawn fertilizers, etc. as well as on water conservation tips.

She said Mr. Andersen planned to provide demonstrations at farmers' markets in the area on building rain barrels. She said partnerships with organizations like this could have an

economic payoff if they showed the Town was serious about working with them to address pollution.

Councilor Gooze said the Workforce Housing Committee had recently met. He noted that there was a grant so that consultant Jack Mettee could work with the Town on this issue. He said as part of the grant, there would be a public hearing on September 28th to discuss the results of the research Mr. Mettee had done so far on what housing was available in Durham, and the pricing. He said the committee would have a work session before the public hearing to determine how best to present this information.

Councilor Gooze said at the Rental Housing Committee meeting on Wednesday, there would be discussion on the rental registration idea. He said there would also be discussion on the draft disorderly house ordinance, noting that the Council had moved the public hearing on this up to its September meeting.

Councilor Gooze said at some point, the Council needed to discuss how much the Town wanted to push enforcement by the Police Department, and what kind of enforcement was needed. He said the financial aspects of this also needed to be addressed.

Councilor Mower noted that Administrator Selig was waiting until the public hearing on the disorderly house ordinance before promoting steps the Town was taking.

Councilor Gooze said there had been some issues over the last few weeks that would have been affected greatly by having a disorderly house ordinance. But he noted that that Durham was after all a college town, and said there had to be a balance in terms of acceptable noise levels.

There was discussion on the upcoming Durham Day in September, and which Councilors would be volunteering to help with grilling.

Administrator Selig said about a week ago, there had been a meeting concerning whether the boat ramp at Jackson's Landing could be extended in order to provide additional time for launching. He said Dori Wiggin of NHDES was at this meeting, and appeared to be open to talking further with the federal government about the idea of extending the ramp another 23 feet or so.

He noted that Agenda item VII A would be taken off the Unanimous Consent Agenda, and said he would share information on it at that time.

There was discussion on the large number of abatement appeals, and whether Councilors found it useful to get all the documentation on them, or instead to get a summary of each with the backup available. Councilor Gooze suggested that it would be useful to have one set of the abatement appeals information available for Councilors to read through if they wished. Other Councilors agreed.

Administrator Selig noted that at the previous Council meeting, there was discussion on the

401 certificate and the upcoming instream flow rules for the Lamprey River. He said Town Engineer Dave Cedarholm would be at the September 13th meeting to update the Council on this issue as well and other water and wastewater issues.

Administrator Selig said a walking path was currently being developed, and noted that it would connect the Mill Pond park with the Milne natural area. He said it would be completed within the next few weeks, and said the path should really open up this natural area to the community.

Councilor Mower said the Milne property was in a sorry state when she last saw it, and noted that she had asked if there could be occasional patrols there or other measures to clean it up. She said she didn't think they could rely on the garden club to maintain it, given the issues there.

Administrator Selig said unfortunately, the Milne area had over time become a gathering place for Middle School and High School kids. He said the Police Department had been sent there a few times, and also said the DPW had cleaned up the area in response to Councilor Mower's concerns. He said he would ask about possible periodic maintenance and patrol of this area.

Administrator Selig said as part of Durham's Kaizen initiative, he and several other department heads and staff members had participated in an all day session of the Maine Manufacturing Extension Partnership, where they learned more about lean and total quality management by making clocks. He said following this there was a 2010 Lean Systems Summit held in Portland, Maine. He noted that Durham was one of the organizers of this event, and said the Durham seal was at the front of the room, along with the State of Maine seal. He said the staff got a lot of good things out of participating in this event.

Administrator Selig said during the Council goals discussion, he would provide an example of a Kaizen process that had taken place in Durham over the past few weeks.

Administrator Selig spoke about the Pettee Brook Lane pilot program, noting that the number one goal was to reduce speeds on that road. He said speed counts were done before the pilot program was put in place, and were now being done again to determine the average speeds, before the students came back. He said a third set of speed counts would then be done after the students were back, to get benchmark data on whether the program was successful.

He noted that a second purpose of the pilot program was to make the area more walkable and bicycle friendly, and a third goal was to make additional parking spaces available.

Councilor Mower said some people in Town believed that this was a permanent change. She said her understanding was that the Town hadn't abandoned the idea of having two-way traffic on Pettee Brook Lane.

Administrator Selig said transportation planner Rick Chellman had made it clear that while two-way traffic might be ideal, the Town needed to do a number of things first. He said the

current program for Pettee Brook Lane had come out of the idea of doing incremental changes, and he spoke in some detail on this.

Administrator Selig said that on September 13th, there would be an update from Chief Kurz and Mary Westfall on the drug use issue. He suggested that the police enforcement issue Councilor Gooze had spoken about be included as a separate Agenda item that evening, since Chief Kurz would be at the meeting.

Administrator Selig said the Durham Business Association would no longer be doing the Light Up Durham event at Christmas. He explained that over the past few years, local businesses hadn't been as active in the event as they had previously been, and he said the feeling was that it had more recreational overtones now than a business tone. He said he planned to talk with the Recreation Committee to get their perspectives.

Administrator Selig said he had recently received the resignation of Parks and Recreation Director Mike Mengers, who had held the newly created part-time position over the past year. He said Mr. Mengers had done a wonderful job, but had decided that this career path was not right for him.

He said there would need to be discussion on how to proceed, and said they could return to the previous candidate pool, or could go out to the market again. He said the process was complicated by the question of whether it would be a part time or full time position. He said the Parks and Recreation Committee would provide an update to Council in September, and also said Mr. Mengers would continue to work for the Town on a part time basis into the fall. He noted that Durham Day was coming up in September.

VI. Public Comments (*NLT 7:45 PM*)

Roger Speidel, 7 Nobel K Petersen Drive, said when he began speaking to the School Board three years ago, his goal was that there would be zero increase in the School budget and that a Budget Committee would be formed to advise the School Board. He said the previous Wednesday, the Board had approved the formation of an advisory Budget Committee by a 5-2 vote, and said previous to this, the Board and the Superintendent had accepted as their target level funding, or a zero increase.

He said that in addition, the School Board would be returning approximately \$2.5 million to the taxpayers, which was the surplus from last year's School Budget. Mr. Speidel said after speaking to the School Board 35 times, the two goals he'd had had been achieved. He said he was therefore retiring, and would not be back. He thanked the Council for their interest and support.

Chair Carroll thanked Mr. Speidel, and said the Council had appreciated his positive nature.

Bill Hall, Smith Park Lane, noted that at the last Council meeting, there was discussion on the 401 certificate for the Lamprey River. He spoke in detail about the 401 certificate in terms of how it had come to be, and how inappropriate it was.

Doug MacDonald, 2 Stone Wall Way, said he would like to talk about next steps in revitalizing the downtown area. He thanked the Council for its vision with the Mill Plaza project and the B. Dennis project, and said it was time to move from vision to reality. He said the Town needed a development director who had extensive background in downtown development, and had a network of contacts. He said given the current economic environment, development would be difficult, and said without such a person, it would not be achieved.

Mr. MacDonald said the Council needed to look critically at spending priorities over the next 10 years, noting that economic development would require Town investment of some kind. He suggested that in order to be ready for this, the Council needed to look at the large, non-revenue projects being considered such as a new library and Town Hall. He said these projects should be put on hold until the Council and the Town had the tax base to support an investment in them.

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

- A. Shall the Town Council, upon recommendation by the Town Administrator, accept the Settlement Agreement between the Town of Durham and Goss International Americas, Inc. as agent for PREFCO XXV Limited Partnership, and authorize the Town Administrator to sign the agreement on behalf of the Town?
- B. Shall the Town Council approve a special event permit application submitted by the UNH Office of Public Programs and Events to close a portion of Main Street between Edgewood Road and Garrison Avenue on Tuesday, September 14, 2010 from 10:00 AM to 7:30 PM for the annual University Day Picnic?
- C. Shall the Town Council approve a special event permit application submitted by the UNH Campus Activities Board to close a portion of Main Street on Friday, October 8, 2010 from 5:00 to 6:00 PM the annual UNH Homecoming parade?
- D. Shall the Town Council, upon recommendation of the Town Administrator, approve a non-industrial wastewater discharge permit application for the La paz Mexican Restaurant, #7 Mill Road redevelopment (Tax Map 5, Lot 1-1)?
- E. Shall the Town Council, upon recommendation of the Town Administrator, **DENY** the 2009 property tax abatement application for property owned by Anthony L. and Natalie M. Diberto located at 282 Main Street and authorize the Town Administrator to sign said abatement application?
- F. Shall the Town Council, upon recommendation of the Town Administrator, **DENY** the 2009 property tax abatement application for property owned by William T. Goldstein located at 73 Piscataqua Road and authorize the Town Administrator to sign said abatement application?
- G. Shall the Town Council, upon recommendation of the Town Administrator, **DENY** the 2009 property tax abatement application for property owned by Alvin and Marilyn Mars located at 10 Edendale Lane and authorize the Town Administrator to sign said abatement application?
- H. Shall the Town Council, upon recommendation of the Town Administrator, **DENY** the 2009 property tax abatement application for property owned by David J. Murphy located at 283 Durham Point Road and authorize the Town Administrator to sign said application?

- I. Shall the Town Council, upon recommendation of the Town Administrator, **DENY** the 2009 property tax abatement application for property owned by Carl O. and Doris L. Nelson located at 61 Bucks Hill Road and authorize the Town Administrator to sign said abatement application?
- J. Shall the Town Council, upon recommendation of the Town Administrator, **DENY** the 2009 property tax abatement application for property owned by John S. Roundtree located at 6 Deer Meadow Road, and authorize the Town Administrator to sign said abatement application?
- K. Shall the Town Council, upon recommendation of the Town Administrator, reduce the assessment for property owned by John and Almeda Ambrulevich located at 13 Marden Way from \$408,100 to \$407,300, grant a property tax abatement for 2009 in the amount \$800 of assessed valuation to the John and Almeda Ambrulevich, and authorize the Town Administrator to sign said abatement application?
- L. Shall the Town Council, upon recommendation of the Town Administrator, reduce the assessment for property owned by Russell W. Couture located at 7 Ellison Lane from \$426,600 to \$421,600, grant a property tax abatement for 2009 in the amount \$5,000 of assessed valuation to the John and Russell W. Couture, and authorize the Town Administrator to sign said abatement application?
- M. Shall the Town Council, upon recommendation of the Town Administrator, reduce the assessment of property owned by Helen Donahue located at 50 Mill Pond Road from \$225,900 to \$217,100, grant a property tax abatement for 2009 in the amount of \$8,800 of assessed valuation to Helen Donahue, and authorize the Town Administrator to sign said abatement application?
- N. Shall the Town Council, upon recommendation of the Town Administrator, reduce the assessment for property owned by Diane P. Freedman located at 28 Laurel Lane from \$460,900 to \$434,800, grant a property tax abatement for 2009 in the amount \$26,100 of assessed valuation to Diane P. Freedman, and authorize the Town Administrator to sign said abatement application?
- O. Shall the Town Council, upon recommendation of the Town Administrator, reduce the assessment for property owned by Wenhui Li and Huili Tang located at 6 Nobel K. Peterson Drive from \$407,700 to \$383,400, grant a property tax abatement for 2009 in the amount \$24,300 of assessed valuation to Wenhui Li and Huili Tang, and authorize the Town Administrator to sign said abatement application?
- P. Shall the Town Council, upon recommendation of the Town Administrator, reduce the assessment for property owned by James McKiernan located at 2 Riverview Court from \$620,200 to \$545,800, grant a property tax abatement for 2009 in the amount \$74,400 of assessed valuation to James McKiernan, and authorize the Town Administrator to sign said abatement application?
- Q. Shall the Town Council, upon recommendation of the Town Administrator, reduce the assessment of property owned by Michael and Wendy Mahoney located at 105 Madbury Road from \$328,500 to \$309,500, grant a property tax abatement for 2009 in the amount of \$19,000 of assessed valuation to Michael and Wendy Mahoney, and authorize the Town Administrator to sign said abatement application?
- R. Shall the Town Council, upon recommendation of the Town Administrator, reduce the assessment of property owned by Jennifer Sayre located at 35 Durham Point Road from \$699,300 to \$638,600, grant a property tax abatement for 2009 in the amount of \$60,700

of assessed valuation to Jennifer Sayre, and authorize the Town Administrator to sign said abatement application?

- S. Shall the Town Council, upon recommendation of the Town Administrator, reduce the assessment of property owned by Martha M. Smith Revocable Trust located at 26 Woodridge Road from \$392,000 to \$390,100, grant a property tax abatement for 2009 in the amount of \$1,900 of assessed valuation to Martha M. Smith Revocable Trust, and authorize the Town Administrator to sign said abatement application?
- T. Shall the Town Council, upon recommendation of the Town Administrator, reduce the assessment for property owned by MD and LEK Smith Trust located at 17 Orchard Drive from \$268,900 to \$241,200, grant a property tax abatement for 2009 in the amount \$27,700 of assessed valuation to the MD and LEK Smith Trust, and authorize the Town Administrator to sign said abatement application?
- U. Shall the Town Council, upon recommendation of the Town Administrator, reduce the assessment for property owned by Thomas A. Toye III, Nicole J. Toye, and Thomas A. Toye IV located at 15 Cutts Road from \$407,300 to \$370,200, grant a property tax abatement for 2009 in the amount \$37,100 of assessed valuation to Thomas A. Toye III, Nicole J. Toye, and Thomas A. Toye IV, and authorize the Town Administrator to sign said abatement application?
- V. Shall the Town Council, upon recommendation of the Town Administrator, reduce the assessment for property owned by Dale Rollins Valena, Sherwood Rollins III, and Alter Rollins located at Durham Point Road from \$402,483 to \$55,595, grant a property tax abatement for 2009 in the amount \$346,888 of assessed valuation to the Dale Rollins Valena, Sherwood Rollins III, and Alter Rollins and authorize the Town Administrator to sign said abatement application?
- W. Shall the Town Council, upon recommendation of the Town Administrator, reduce the assessment of property owned by Colin Ware and Dianne Ramey located at 10 Laurel Lane from \$483,200 to \$454,000, grant a property tax abatement for 2009 in the amount of \$29,200 of assessed valuation to Colin Ware and Dianne Ramey, and authorize the Town Administrator to sign said abatement application?
- X. Shall the Town Council, upon recommendation of the Town Administrator, reduce the assessment of property owned by Elizabeth N. Watts located at 282 Mast Road Extension from \$193,000 to \$184,400, grant a property tax abatement for 2009 in the amount of \$8,600 of assessed valuation to Elizabeth N. Watts, and authorize the Town Administrator to sign said abatement application?
- Y. Shall the Town Council, upon recommendation of the Town Administrator, reduce the assessment for property owned by Betsy A. White located at 48 Bagdad Road from \$182,300 to \$178,700, grant a property tax abatement for 2009 in the amount \$3,600 of assessed valuation to Betsy A. White, and authorize the Town Administrator to sign said abatement application?
- Z. Shall the Town Council, upon recommendation of the Town Administrator, reduce the assessment for property owned by Douglas E. Worthen located at 14 Newmarket Road from \$303,200 to \$292,800, grant a property tax abatement for 2009 in the amount \$10,400 of assessed valuation to Douglas E. Worthen, and authorize the Town Administrator to sign said abatement application?

Chair Carroll noted that there had been a request to take Item VII A off the Unanimous Consent Agenda. She said she would read Items VII B, C and D, but would not read the

others, which were tax abatement requests. She said these could be read on the Town website.

Councilor Mower MOVED to approve Unanimous Consent Agenda Items B, C and D, and E through Z. Councilor Smith SECONDED the motion, and it PASSED unanimously 8-0.

Councilor Niman said he had asked that Item VII A be taken off the Unanimous Consent Agenda because he would like clarification for the record concerning the discrepancy in the numbers that had been provided.

Administrator Selig said the discrepancy was explained by the fact that the \$25 million number included two lots, one of which was in conservation.

Councilor Niman MOVED, upon the recommendation by the Town Administrator, to accept the Settlement Agreement between the Town of Durham and Goss International Americas, Inc. as agent for PREFCO XXV Limited Partnership, and to authorize the Town Administrator to sign the agreement on behalf of the Town. Councilor Smith SECONDED the motion, and it PASSED unanimously 8-0.

VIII. Committee Appointments

- A. Shall the Town Council appoint Andrew Freedman, 66 Main Street, as a Tenant Representative to the Durham Rental Housing Commission?

Mr. Freedman said he was a senior at UNH, and was volunteering for this position the recommendation of the Alumni Board that there be representation in the Town, and more involvement. He said there opportunities for everyone to work together.

Councilor Mower said a basic question for the Council to address was whether the appointment of Mr. Freedman would meet the requirements of the settlement agreement in terms of the designation of resident tenant. She said another issue was that behavioral issues at ATO had been a concern for the Town, and she spoke in some detail on this. She said it would be terrific for the Town if Mr. Freedman was a beneficial influence, but noted that historically ATO hadn't necessarily respected the ethos of the Town in terms of litter, noise and general maintenance. She spoke in some detail on this, and asked Mr. Freedman what his role would do in terms of helping with these issues.

Mr. Freedman said if he was on the Commission, he would have more stake in matters like a litter ordinance. He said ATO had seen the repercussions of the problems at the property, and said he could be helpful in preventing them. He said he had some perspective to provide on these issues.

Councilor Gooze asked Mr. Freedman what he thought his role would be on the Commission in regard to something like the proposed disorderly house ordinance or behavioral issues. He asked him if as a tenant, he would be looking out for the good of the community and what it had to deal with, or instead would feel beholden to those who said students should be able to do what they wanted to do.

Mr. Freedman said he didn't see himself as someone who was at one extreme or the other, and he spoke in detail on this.

There was discussion between Councilor Mower and Mr. Freedman on what support he had from his fraternity brothers concerning taking on this role. Mr. Freedman said he could keep them informed on matters before the Commission. He said there had been a number of discussions with the Alumni board on the Commission and the issues it addressed. He said there was a lot of support from the board regarding his efforts to get involved with the Commission. He noted that they owned the fraternity house.

Chair Carroll said Mr. Freedman would be in a very sensitive position, and could face flack from students as well as pressure from the Rental Housing Commission.

Mr. Freedman said he had to be able to see issues from both sides.

Chair Carroll said it would be important to look for compromise and creative solutions. She said it sounded like Mr. Freedman was willing to take this on, but said it wasn't an easy place for him to be in.

Councilor Clark said it sounded like this wasn't exactly what they had in mind regarding having a tenant on the Rental Housing Commission. But he said it was an opportunity they should try. He said he imagined that ATO's Alumni board had gotten very active over the past few years, and had recruited someone like Mr. Freedman. He said Mr. Freedman could be an active liaison between fraternity members at a house there had been some problems with, the Alumni board, and the Commission. He said Mr. Freedman could be in a pivotal role to facilitate conversations to get people on the same page.

Mr. Freedman noted that he had served on the Intra-fraternity Council, which was the liaison group with the University. He said he had a lot of experience dealing with the other fraternities.

Councilor Sievert asked what the Commission was looking for from this tenant representative position.

Councilor Mower said she didn't think of a fraternity as a rental property, but said perhaps it was. She read from the settlement agreement regarding the representative tenant.

Councilor Clark said for him, when they said they wanted a tenant representative, normally a tenant didn't have much accountability to the landlord. He said in this instance, the tenant did have accountability to the landlord, and in part was their representative. He said this created a whole new dynamic.

Councilor Mower said it met the letter of the law regarding being a tenant, which had been her main concern.

Administrator Selig said this position had been difficult to fill, but said typically it was held by a student at the University who resided off campus in Durham.

Councilor Smith said Councilor Clark had spoken awhile back about the Board of directors of the fraternity as being like a landlord. He said a member of a fraternity was not a typical tenant in the Town in a rental property. He said he would be more supportive of a candidate who was a tenant who lived in off campus housing.

Mr. Freedman said the fraternity was run like an apartment building. He said there was a property manager, the rooms each had separate leases, and he paid rent, and Councilor Smith thanked him for the clarification.

Councilor Mower said Councilor Clark had made an interesting observation, and said this might be something that they tried. She said the timing might be good in terms of influencing other members of the Greek society, and said she was therefore willing to consider it.

Councilor Gooze said he wanted to make sure that the representative would be someone who was good for the Town, and would not just be focused on making the fraternity and its relationship with the Town better.

There was discussion with Mr. Freedman about philanthropic events the fraternity had been involved with in the past.

Councilor Gooze asked Mr. Freedman if he was comfortable with the 10 pm limit that had recently been put in place in the noise ordinance, and Mr. Freedman said 10 pm seemed reasonable.

Administrator Selig said as a tenant representative, he hoped Mr. Freedman would bring the tenants' perspective to the Rental Housing Commission. He thanked Mr. Freedman for appearing before the Council.

Chair Carroll thanked Mr. Freedman for being there. She said the protection of Durham's neighborhood was an important, and very sensitive issue. She said the neighborhoods were susceptible because of their proximity to student housing, and she encouraged Mr. Freedman to walk through some of the neighborhoods to see whether they were too noisy. She said he would find that the residents were pretty balanced on this issue, but that right now there were some things that were out of balance.

Councilor Niman MOVED to appoint Andrew Freedman, 66 Main Street, as a Tenant Representative to the Durham Rental Housing Commission. Councilor Sievert SECONDED the motion, and it PASSED 7-1, with Councilor Smith voting against it.

- B. Shall the Town Council appoint Jennifer Flannery, 26 Edgewood Road, to fill an unexpired term on the Durham Cable Access Television (DCAT) Governance Committee?

Ms. Flannery spoke before the Council. She said she loved public access television, and said it was important to the civic life of a community. She provided details on her volunteer work in creating programming for local public access television in Coeur D'Alene, Idaho and Portland, Maine. She said at her last position in Vermont, she helped her town capture franchise fees in escrow and bring public access to their town. She said they started a TV station, and her organization managed it. She noted that they produced a monthly show that was topical to youth substance abuse prevention.

She said she hoped to help DCAT with the current negotiations with Comcast, and to help in general

Councilor Mower asked Ms. Flannery if she had some ideas about creating programming in Durham that would be similar to what she had done in Vermont, regarding targeting youth who might be at risk.

Ms. Flannery said the show was a talk show format, and said people came on who were knowledgeable, and/or stakeholders in the area of youth substance abuse prevention. She said she had produced this show, and said if a group organized in Durham to work on this issue, she would certainly work on it. She also said she had done other youth programming at the other stations she had worked at

Chair Carroll thanked Ms. Flannery for volunteering her many talents to the Town.

Councilor Smith MOVED to appoint Jennifer Flannery, 26 Edgewood Road, to fill an unexpired term on the Durham Cable Access Television (DCAT) Governance Committee. Councilor Mower SECONDED the motion, and it PASSED unanimously 8-0.

The Council stood in recess from 8:29 to 8:37 PM.

IX. Presentation Items

- A. Receive annual update from Cemetery Committee and Trustees of the Trust Fund – Craig Seymour, Cemetery Chair; Bruce Bragdon and George Frick, Trustees

Mr. Bragdon first said Mr. Seymour was unable to attend the meeting. He then provided an overview of the work the Trustees did, explaining that they were responsible for managing monies that had been set aside for the Town. He said they were charged with investing this money, and said there was a very conservative investment policy, using either short term CDs or money market accounts, because the funds had to be fairly liquid.

Mr. Bragdon also noted that the Cemetery Committee was responsible for the cemeteries in Town, but didn't meet often, but He noted that there was not enough money to maintain them, so donations from the public were always welcome.

Councilor Gooze asked for an update on Hamilton Smith Chapel.

Mr. Bragdon said a new fund had been created for Smith Chapel, which was a Town owned property. He said there were two levels of discussion on the work that could be done. He said one level of work would be historic preservation work in the goal was to get the property onto the historic register. He said he believed an application had been made, which was fine, but said if this happened, the building would have to be maintained at a higher level. He spoke further on this.

He said a lower level of work that could be done would be to do enough to maintain the building. He noted that a new roof was needed, and said a slate like material could be used instead of actual slate.

He explained that the stained glass windows, which were made of Tiffany glass, had been taken out of the casings in order to preserve them. He said the window casings were the problem, explaining that the wood sitting against the masonry had rotted. He said there was some damage to the windows themselves, so they needed some work as well.

He said they were looking at grants, but said it wasn't realistic that enough grant money could be obtained to pay for the work that was needed. He noted that so far, \$3,000 had been raised through fundraising and other efforts.

Mr. Bragdon said at a minimum, they would like to see a new roof to seal the building and make it weather proof. He said the building wasn't usable in its current state, and wouldn't be until the windows were put back in. He said they were stored in the chapel itself. He noted a man from Boston had been found who was an expert in restoring windows.

He said DPW Director Mike Lynch had said he would try to put money in the DPW budget for the roof.

In answer to a question from Councilor Mower, Mr. Bragdon explained that there was a specific fund set up for Smith Chapel that people could contribute to. Councilor Mower asked if there was a particular project that the Trustees would like to see supported more than this one, and Mr. Bragdon and Mr. Frick both said no.

Chair Carroll noted that Mr. Frick was involved in repairing the chairs at the Chapel.

Mr. Bragdon said Mr. Frick had done a wonderful job on repairing all of the chairs, and said this had generated interest in Smith Chapel, but not many donations yet. He said anyone interested in donating money to the fund should contact Administrator Selig,

Councilor Mower asked if there had been any discussion about videotaping the repair work and putting it on DCAT, if money was received to do the repairs.

Mr. Bragdon said no, but said it was a good idea. He noted that this was not the Trustees' project, and it wasn't for them to decide on funding it.

Chair Carroll noted the idea of possible beautification of Town Landing, and asked for details on this.

Mr. Bragdon said Dorothy Wilcox had put money in a trust, and said the interest on the \$80,000 she had given was to be used for the benefit of both Mill Pond and the Town Landing area. He said this came to about \$9,000 in interest in the account, and said about half was spent last year to put in a small garden at town Landing last year. He said money was also to be used this year to clean things up and push back the woods a bit and keep the landing open.

He said the Pump House came up as a secondary discussion. He said Administrator Selig wanted there to be some public discussion on what people thought about it. He said the Trustees didn't have a specific interest in it.

Councilor Gooze asked if there was a specific fund set up for the Pump House.

Mr. Bragdon said no. He said money would be required to take it down, and also said there wasn't enough money to replace the dock. He said it had been decided that in the mean time, doing the landscaping was the most important thing to do there.

Chair Carroll thanked the Trustees for their efforts.

Councilor Stanhope arrived at 8:52 pm.

B Receive annual update from DCAT Governance Committee Chair, Dianne Thompson

Ms. Thompson thanked the Council for appointing Ms. Flannery to DCAT, and noted that there was still one open spot. She said she had submitted a report on the work of DCAT, and then explained the initiatives the Committee was working on.

She said DCAT's policies had recently been updated, and said these would be distributed soon. She said a second initiative was working with the Oyster River School District and Comcast to get a second broadcast channel, so there would be one for the Town and one for the School District. She provided details on this, and said Comcast was considering the request.

Ms. Thompson explained that a certain threshold of original programming had to be met in order to secure a second channel. She said this was difficult to meet, but said Comcast understood that DCAT was working hard to come up with original programming, and that the threshold couldn't be met, based on the way the current contract ran. She said she believed they would get a second channel, but said this would take some time.

She said a third initiative DCAT was working on, with the assistance of their attorney, was negotiating the renewal of the Comcast franchise.

Councilor Clark asked if it was realistic to think that there was the opportunity to negotiate more bandwidth.

Administrator Selig said this was very challenging in that the technology had moved beyond these franchise agreements. He said while the negotiations with Comcast were in regard to the cable franchise, the Town intended to bring up the bandwidth issue. He said public comments on this issue would be conveyed to Comcast.

Chair Carroll said it was important that community entities speak up, send emails, etc. concerning the negotiations at the September 21st public hearing.

Councilor Mower said it might be helpful to have the questionnaire available on the Friday Update, so people could reply in this way as well.

Administrator Selig and Ms. Thompson said this could be done. It was noted that the questionnaire had been tailored to specific groups, but said a more generic questionnaire could be pulled together.

Councilor Mower said it could be easier for people to respond in this way, rather than having to come up with comments of their own.

Ms. Thompson said DCAT would videotape the meeting. Regarding the suggestion that the repair work at Smith Chapel could possibly be videotaped, she said people were under the impression that DCAT had money to videotape events, but this wasn't the case. She said the videotaping of Earth Day at Wagon Hill was privately funded, and said it would wonderful if DCAT had even a few thousand dollars so they could hire a videographer. She said they couldn't depend on volunteer videography for some events. She asked that the Council consider providing several thousand dollars in funds for DCAT for this purpose.

Councilor Gooze suggested that Ms. Thompson provide a formal communication on this to Administrator Selig so he could present this to the Council.

Administrator Selig said the issue of funding was critical. He explained that the Council and the negotiating committee for the Comcast franchise agreement 10 years ago had opted not to have a franchise fee, because they didn't want to increase the rates of customers.

But he said the consequence was that whether or not someone subscribed to cable, local tax dollars paid for programming. He said if a franchise fee was included as part of the upcoming agreement, this would provide ongoing support for DCAT in a way that wouldn't impact the tax rate. He said this idea might be brought forward as part of the negotiations, and said the fee would be 1% to 4% of a monthly bill.

Ms. Thompson said most communities DCAT had looked at that charged the fee had one that was in the range of 1%, and said the resulting funding provided a lot of benefits.

Councilor Mower said she would be in favor of thus.

Ms. Thompson said if implemented, the fee wouldn't go into effect until 2012. She said it would be nice if DCAT could get some additional financial support before then.

Chair Carroll thanked Ms. Thompson for her presentation, and she encouraged other residents to join DCAT. She said it was a very interesting time to be on the Committee.

C. Update on fire lane markings and enforcement – Corey Landry, Fire Chief

Administrator Selig said Chief Landry had discussed this issue with the Council earlier in the year, and had said he would report back to them at a later date on progress that had been made.

Chief Landry said he had done a fire lane tour that day, and said all the fire lanes of concern had been or were being addressed. He said four of them were still in the works, for good reasons, and all the others had been marked appropriately,

He said they were waiting on the fire lane for Jenkins Court until the construction was finished, and said the Town would then stripe the road. He said Smith Park Lane had just been paved, and said the striping company would be coming in. He said several new signs for the fire lanes had been put in at the High School, but said they would also be striped, and said they were waiting for the striping company to do this. He also said the Middle School markings would be updated.

Chief Landry said the fire lane for the Church Hill apartments had also been done well, noting that this was an area that he had been especially concerned about.

Chief Landry said there had been follow-up meetings with UNH on the fire lane issue, noting that he and UNH transportation planner Dirk Timmons had done a tour of UNH fire lanes. He said UNH had agreed to change the signage at the Whittemore Center and the Field House. He provided details on this, and said he thought a lot had been accomplished.

Councilor Mower discussed with Chief Landry the idea of doing a regular tour of fire lanes.

Chair Carroll thanked Chief Landry, and said it sounded like the project was going well, and the work would all be completed on schedule.

Councilor Cote asked Chief Landry how UNH move-in day was administrated to keep fire lanes open.

Chief Landry said UNH had an excellent plan to keep cars moving, and he provided details on this, and on the role the Fire Department played. He also noted that move-in weekend this year was the same weekend as the Pease air show, so Route 4 would be a mess. He said the Fire Department would have extra people on duty because of this.

X. Unfinished Business

Town Administrator/Town Council review and discussion concerning the current status of the 2010/11 Town Council goals adopted on May 3, 2010

Administrator Selig noted that the first Council goal was to “Pursue Long-Term Economic and Environmental Sustainability by embracing the notion of sustainability in its broadest terms”. He noted efforts to implement continuous improvement “Kaizen” principles in regard to financial efforts in Town, and said he would provide the Council with a matrix on how these principles had recently been applied.

He next spoke about the second Council goal, which was to “Revitalize the Central Business District and downtown commercial core”. He said there had been a lot of activity concerning this goal. He said the Economic Development Committee and the Planning Board were just starting to engage in working on this goal. But he said the Town had already started to implement elements of it with the Pettee Brook Lane pilot project. He said two way traffic on Quad Way had also been initiated, and said this was right out of the report. In addition, he said bus transit was being implemented on Edgewood Road, in conjunction with the University, after much discussion, and using resources that presently existed.

He noted the B. Dennis recommendations regarding redesigning some intersections with possible roundabouts and square-about. He said the following intersections were being looked at: Pettee Brook Lane and Main Street; Mill Road and Main Street (and squaring up with Jenkins Court); Main Street and Madbury Road; Church Hill and Route 108; and the Route 4 off ramp and Route 108.

Administrator Selig said there had been initial conversations with UNH about using some of their land as part of some of these redesigns. He also noted that there had been discussions with Mark Henderson about a possible land swap in regard to a possible roundabout at Main Street and Madbury Road.

He said there would be a meeting with the NHDOT District 6 representative, the Strafford Regional Planning Commission, UNH and the Traffic Safety Committee to talk about possible redesigns for the various intersections.

He noted that UNH had installed its first roundabout at the west end, and said it was thought that this would enhance traffic flow.

Councilor Gooze said this roundabout didn’t appear to have the central area tapered down to grade so trucks could maneuver.

Administrator Selig said it was his understanding that when the work was complete, trucks would be able to drive up onto the central portion of the roundabout if needed, with a 2-3 inch reveal there, but said the idea was to keep cars off of this area.

Councilor Cote said he was concerned that the pitch of the granite curbing of the new UNH roundabout would destroy tires, even with the final coat of the central area.

Councilor Stanhope said he had similar concerns, stating that while other roundabouts were designed so that larger vehicles as well as other vehicles didn't crash into the curb, this one seemed to be designed differently. He said he was concerned that people hitting the curb might swerve into another vehicle.

Administrator Selig said the design adhered to the federal standards for roundabouts, but said if there were still concerns once it was installed, the DPW and the University would come to speak with the Council about whether it was working.

Chair Carroll noted that the University would like to work with the Town on several transportation projects, including a possible roundabout/square-about at Pettee Brook Lane across from Quad Way. She said she was under the impression that the University would like to move forward with this now, and asked if the Town would be ready to look at this.

Administrator Selig said a purpose of hosting the upcoming transportation meeting was to talk about whether the Strafford Regional Planning Commission had some resources to bring to the table, and whether UNH had dollars to bring to the table in regard to this possible project. He said there was the possibility of doing a TIF district downtown in order for the Town to provide some funds for something like this, and noted that the town of Peterborough had a TIF district like this.

Councilor Mower said architect Patricia Sherman, who had worked with the Mill Plaza Study Committee, was perhaps involved with the Town of Peterborough, so might be a good person to invite to speak with the Council.

Administrator Selig said the improvements on Pettee Brook Lane had added 21 parking spaces, which was significant. He said if the Town decided that they would remain, there would need to be a decision on what the time limit would be for parking at these spaces. He noted that a subset of the Traffic Safety Committee and the Economic Development Committee was looking at the entire parking enforcement strategy downtown, and how it could be improved. He spoke about some of the possible technological improvements being considered, including the use of credit cards and solar powered meters.

Councilor Clark said charging for parking put Durham at a serious disadvantage relative to places like Pease, where parking was free. He questioned whether the revenue generated from parking was worth the potential loss of business. He said he thought the Town should stop treating parking as business and instead should treat it as an amenity.

Administrator Selig said the parking permit program for business owners in Town would be rethought as well, and said a question was how to encourage businesses to locate downtown with the assurance that there would be some parking available. He noted the evaluation being done of C lot as a possible combined parking structure and Fire station, which would be done in conjunction with UNH. He said this could open up the downtown significantly, but said it was important to make sure that it would work.

He said the EDC had selected the company that would be doing the market study, and would be discussing whether the company would be engaged in one project or instead would work on a number of smaller projects.

Councilor Clark asked if it was feasible that other parties that would benefit from the market study could perhaps help pay for it.

Administrator Selig said UNH, the Durham Business Association and the Durham Landlords Association would be asked about this.

Councilor Mower suggested that there could perhaps be an “adopt a highway” approach for this.

Administrator Selig noted Council goal #3, “Maintaining the Integrity of Durham Neighborhoods”. He said Rental Housing Committee Chair Sam Flanders and Councilor Gooze had been doing a great job of moving some of the initiatives under this goal forward. He said the noise ordinance had been updated, and said there would be a public hearing on the disorderly house ordinance at the September 13th Council meeting. He said the Commission had also been discussing the idea of rental registry, as well as a property maintenance code.

He also said the Police Department and Code Enforcement had been active with enforcement. He spoke about the Bolster case, involving a student rental property where there had been repeated violations. He said the owner pled guilty and agreed to pay the \$2400 fine in installments. He said the first installment was received, but subsequent payments had not been received, and said the Town would follow up on this.

Administrator Selig also noted that he had put together in draft form a letter to the realtor community as well as the Union Leader and Fosters Daily Democrat on the impact of student housing on Durham neighborhoods, and efforts to address this problem. He said he had requested a mailing list of realtors throughout the region, and said they would be advised of Durham’s restrictions.

Councilor Gooze asked whether with the new term at UNH, the Town would be willing to enforce the underage drinking law. He noted that there were towns that would actually send someone in undercover to large gatherings, noting that these gatherings were something that Durham landlords would like to see stopped. He said he wasn’t sure how much enforcement the Council was willing to push for, and said he thought there should be a discussion on this. He said the neighborhood representatives on the RHC were outnumbered by those who didn’t want to punish the students, so the question was whether the Council wanted to take more initiative on this.

Administrator Selig said the police force had been down about six officers, but said it might be possible to bring in additional reserve officers on Thursday, Friday and Saturday to address party sites, and raid houses. He said this would be expensive, and he suggested that the Council have Chief Kurz speak about what would be involved. He noted that the Police Department was not comfortable with this approach, and instead wanted to have a community policing approach.

Councilor Gooze said he understood that, and understood the need to weigh the cost of enforcement but also the cost of people leaving Town because they couldn’t take it anymore. He said the issue of the character of the Town came into play, and said there needed to be a discussion on this.

Administrator Selig noted that UNH was discussing the idea of having an amnesty approach so that if a student called for help for another student, there would be diminished consequences for having done this. He said there was some interest at UNH in asking the Town to participate in this program, but said he didn't want the Town to be involved with it. He said he believed that everyone needed to be treated the same way, and also said the policy might send a message opposite from the idea that there were significant consequences for bad behavior.

Councilor Clark asked when the Council would address the real issue, which was that kids were going to drink, and that they needed to figure out how to supervise them. He said he couldn't believe that going after underage drinkers was a sustainable solution, and said he therefore wouldn't be in favor of spending money on this approach.

He said raiding parties was not a sustainable answer, and said that instead, drinking should be made legal and regulated. He said otherwise, they were forcing the behavior to go someplace else. He asked if the Town had the right to set its own drinking age.

Administrator Selig said the only option was that Durham could decide to be a dry town. He noted that this had been done years ago but was then rescinded because of some bad accidents that occurred beyond Durham.

Councilor Gooze said the bottom line was that kids would drink, and said the Town needed to figure out some things that would help kids who were renters and were causing the problems to realize that they couldn't do this on a regular basis. He said if the Town didn't do this, it would have the same problems over and over again.

He also said if there weren't consequences for the owner of a house where there were problems because of student behavior, there would be no incentive for the owner to address these problems. He said it cost money to do enforcement, and said they needed to decide where to spend money. He said creating some good examples of enforcement could really make a difference.

Councilor Sievert said he thought the changes being made to draw student renters downtown and to other potential student housing developments in Town would have a large and positive impact on the neighborhoods.

Councilor Niman noted UNH's policy of no alcohol on campus. He said he thought the issue for Durham was not whether there was underage drinking, but that the drinking became a problem when there were negative effects on other people including residents of the neighborhoods.

Councilor Gooze agreed. He said the Town couldn't go into houses and say there was underage drinking, yet the University's education of students on drinking simply pushed the drinking off campus and into the Town.

Councilor Niman said perhaps the student leadership needed to be engaged with the Town on this issue to help find ways for the students to police themselves so the drinking didn't affect others in Durham.

Councilor Gooze said it was worth having a discussion on this issue at the Rental Housing Commission with the student representatives, and said he would bring this up at meeting.

Councilor Stanhope said the Council needed to be careful not to revert to administrating the Police Department.

Councilor Gooze said he was only asking about a possible policy of the Council.

Councilor Stanhope said they were all in favor of ensuring that people had the opportunity to quietly enjoy their private property. He noted that historically, the Town had not been aggressive in enforcing the noise ordinance, and said the Town needed to make it clear that there were consequences of violating it. But he said he didn't think the Town wanted to be in the business of sending goon squads in to arrest underage drinking.

Councilor Mower said it was worth considering Councilor Niman's suggestion of cooperating with the student bodies. She said there should also be some cooperation with local business owners who might be promoting the sale of very inexpensive beer. She said these owners should be concerned about having the continued good will of the permanent residents.

Councilor Cotes noted that the State had announced that day that the average age that NH kids took their first drink was 13.

Councilor Gooze said he thought they were all on the same page, and said there needed to be a policy that there would be good enforcement of the ordinances they were putting together. He said the Council might have to come forward with some enforcement policies since because of its makeup, the RHC might not want to bring this forward.

Chair Carroll said this was a tangential but worthwhile topic the Council had been discussing. She suggested that they go back to discussing the Council goals.

Concerning Council goal #5, "Revisit long-term vision for Durham through the update of the 2000 Master Plan", Mr. Campbell first said that regarding the innovative zoning program, there had been meetings with the consultant. He said there would be a public workshop on the work so far in September. He said there was already a draft from consultant Jack Mettee on this.

Mr. Campbell provided an update on the upcoming Master Plan process. He said he would be meeting with Michelle Gagne of UNH Cooperation Extension the following day, and said she would coordinate the steering committee and visioning sessions for updating the Master Plan. He said he hoped to kick off some of the visioning sessions and steering committee meetings in September. He said the makeup of the steering committee had not yet been finalized.

Councilor Mower said it might be helpful in recruiting the steering committee to get an idea on the time commitment involved.

Mr. Campbell said he would get this information from Ms Gagne.

Administrator Selig said that regarding Council goal #6, the Town continued to explore ways to collaborate with the University in various ways. Regarding plans for key facilities, he noted the purchase and sale agreement for the DiMambro property,

He next spoke about Council goal #7 to “Strengthen the community by supporting the needs of residents and families through a wide array of active and passive recreational opportunities...”. He said the Recreation Department had done some tremendous work over the past year, working with the Parks and Recreation Committee.

Regarding Council goal #8 which was to “Leverage town committees and subcommittees to develop tactical plans for the implementation of those portions of the B. Dennis Strategic Plan that are appropriate for Durham”, Administrator Selig said the work of the committees was starting to gain some momentum.

In regard to Council goal #9, “Engage the Oyster River Cooperative School District to be more open and transparent in communication, sustainability in financial matters, and issues of substance abuse“, Administrator Selig noted that Mr. Speidel had indicated this evening that some progress had been made on this goal.

Councilor Gooze asked what the time frame was concerning the Library.

Administrator Selig said various analyses had been done, and said nothing had been found to date that would preclude moving forward to purchase the property. He said a report on this was expected within the next week or so. He also said the anonymous donor was getting ready to make a donation of \$100,000.

Administrator Selig reviewed in detail how the Kaizen approach has recently been used to improve the efficiency of the police department permitting process, focusing on the Depot Road permitting of parking spaces. He described how a value stream map was developed to analyze how this process could be improved.

He said participants from the Police Department were involved in the analysis which took place. He said the goal of the process was to have a streamlined process that reduced call volume and resulted in a more user-friendly parking lot, and he reviewed in detail how the Kaizen approach was utilized to achieve this. He noted among other things how the participants had gotten invested in the analysis and the entire Kaizen process once they were involved.

XI. New Business

A. FIRST READING ON ORDINANCE #2010-XX amending Chapter 175 “Zoning”,

Article XII “Zone Requirements”, Section 175-55 (E) “Minimum Contiguous Lot Area” of the Durham Town Code

Mr. Campbell provided some background on the proposed Zoning change. He said it had resulted from a Planning Board discussion in May, after a letter received from Doucet Survey with questions about the provision. He also noted that concerns had been expressed about the provision previously. He said the Board agreed to post the change for public hearing, and said at that hearing, there were two people in favor of it, and two who raised concerns about it. He said the Board then voted 6-1 to send it on to the Council.

Mr. Campbell said as currently written, this provision only applied to conventional subdivisions, involving three lots or less. He said by removing the provision, a new lot would simply be required to meet the minimum lot area as well as other dimensional controls, and environmental constraints that when subtracted out determined the remaining usable area. He said the majority of the Planning Board believed that because there were these various other protections in place, the provision was not needed.

There was discussion on this with Councilor Sievert, and how removing the provision would apply for conventional subdivisions in the various districts. Councilor Sievert then asked if the Planning Board had discussed the somewhat poorly drained soils issue, and if not, if they ever would.

Mr. Campbell said a letter was received from another citizen on the usable area issue, as part of the conservation subdivision requirements. He noted that the Planning Board had sent this letter to the Conservation Commission, and said he expected that the Board would discuss this issue once it heard back from the Commission.

Councilor Sievert said the change proposed now would make it easier to do smaller lots, and there was discussion.

Councilor Mower said the proposed Zoning change was brought to the Conservation Commission, and said its position was that it took an Ordinance change seriously, and would like the opportunity to research it thorough in order to be able to provide an educated opinion.

She said the Commission didn’t feel it had gotten adequate notice, and would need some time to review it. She also said the Commission felt that because there weren’t planning professionals on the Commission, perhaps the Council should consider getting help from the Strafford Regional Planning Commission. She said if the Conservation Commission was asked to make a snap judgment, their recommendation would be to keep the most stringent protective standards.

She said other approaches might be appropriate, such as a slope ordinance that could address the ledge issue. She said eliminating this provision now might leave them without something that was needed.

Councilor Cote said when he had previously sat on the Planning Board, he recalled that it had some proposals that met the dimensional controls but not the lot size, and lots of odd shapes were created. He said he imagined this was how this provision had come about, so that there would be a reasonable shape to a lot. He asked if the odd shapes could happen if this provision was removed.

Mr. Campbell said it could happen.

Councilor Mower said this could make life pretty difficult down the road for some things, and said to a certain extent, a community would want to avoid those situations. There was discussion on the kinds of lots that might be allowed if this provision was removed, such as Swiss cheese lots. Mr. Campbell said because of the various setback requirements, etc, a property owner would have to go to the ZBA for a variance in order for such a lot to be approved.

Councilor Sievert said with all due respect to the Conservation Commission, Durham had many criteria in its regulations relating to lot configuration that had to be met. He also said there was information out there available so the Commission didn't need to hire someone.

Councilor Mower said the Commission's concern was removing this provision without adequate explanation as to why it wasn't necessary.

Councilor Smith said this would be removing an arbitrary regulation, and replacing it with the ability to subdivide land in a way that made sense. He noted the letter from Steve Michaud of Doucet Survey, which showed what was wrong with the provision with an example of a 100 acre parcel. He provided details on this, and said it was a nonsensical control. He said they didn't need science to understand this.

Councilor Mower suggested that perhaps the provision could say if a lot was a certain size, it wouldn't apply, and Councilor Smith said there could still be a problem with larger acreages because of this provision. He provided details on this.

Chair Carroll asked if there was a deadline to meet, and Mr. Campbell said no. Chair Carroll said she had come prepared to support this Zoning change, but would like the Conservation Commission to have the chance to respond.

Councilor Gooze suggested scheduling the public hearing for the September 27th Council meeting.

Councilor Niman MOVED on First Reading Ordinance #2010-XX amending Chapter 175 "Zoning", Article XII "Zone Requirements", Section 175-55 (E) "Minimum Contiguous Lot Area" of the Durham Town Code, and schedules a Public Hearing for September 27, 2010. Councilor Smith SECONDED the motion, and it PASSED 8-1 with Councilor Sievert voting against it.

B. Other Business

XII. Nonpublic Session (if required)

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

XIV. Adjourn (*NLT 10:30 PM*)

Councilor Sievert MOVED to adjourn the meeting. Councilor Mower SECONDED the motion, and it PASSED unanimously 9-0.

Adjournment at 10:27 pm.

Victoria Parmele, Minutes taker