

**This set of minutes was approved at the September 27, 2010 Town Council meeting**

**Durham Town Council  
Monday September 13, 2010  
Durham Town Hall - Council Chambers  
7:00P.M.  
MINUTES**

**MEMBERS PRESENT:** Chair Diana Carroll; Councilor Neil Niman; Councilor Julian Smith; Councilor Doug Clark; Councilor Peter Stanhope; Councilor Robin Mower; Councilor Jay Gooze; Councilor Bill Cote; Councilor Mike Sievert (arrived 7:06 PM)

**MEMBERS ABSENT:**

**OTHERS PRESENT:** Administrator Todd Selig, Police Chief Dave Kurz

**I. Call to Order**

Chair Carroll called the meeting to order at 7:03 pm.

**II. Approval of Agenda**

*Councilor Smith MOVED to approve the Agenda. Councilor Mower SECONDED the motion.*

Chair Carroll noted that some people had asked if the public hearing scheduled for that evening could be moved up before Committee Appointments, but said the Agenda would remain as it was.

*The motion PASSED unanimously 8-0.*

**III. Special Announcements**

None

**IV. Approval of Minutes**

Councilor Sievert arrived at 7:06 pm.

July 26, 2010 Minutes

*Councilor Cote MOVED to approve the July 26, 2010 Minutes. Councilor Gooze SECONDED the motion.*

After a question about one apparent mistake, ***Councilor Smith MOVED to table the July 26, 2010 Minutes. Councilor Mower SECONDED the motion, and it PASSED unanimously 9-0.***

August 16, 2010 Minutes

***Councilor Gooze MOVED to approve the August 16, 2010 Minutes. Councilor Cote SECONDED the motion.***

Page 1 should indicate that Councilor Sievert was at the meeting.

***The motion to approve the August 16, 2010 Minutes, as amended, PASSED unanimously 9-0.***

**V. Councilor and Town Administrator Roundtable**

Councilor Gooze said the Rental Housing Committee would meet on Wednesday.

Councilor Stanhope said the Historic District Commission was looking at developing design guidelines, and said the Chair of the Commission was present to speak further on this.

Councilor Niman said there would be a public hearing on September 21<sup>st</sup> in regard to the Comcast negotiations, in order to get feedback from the public on issues people might have about services provided now and possibly in the future.

Councilor Niman also noted that a pilot project was planned to put a speed table in place, and said it was becoming apparent that everyone would want one for their street. He asked if there was a policy in place concerning this.

Councilor Mower said the Traffic Safety Committee didn't have a policy, and said given the feedback that had been received in the last week, the Committee should look at this.

Councilor Smith said at the Planning Board meeting on August 25<sup>th</sup>, the Board continued its discussion on the proposed Zoning amendment to apply conservation subdivision to ORLI and MUDOR. He said he hoped the Board would deliberate on the proposal at its meeting on Wednesday, and he noted that Attorney Laura Spector would be present.

Councilor Smith said the Board unanimously approved Peter Andersen's two lot subdivision plan at the August 25<sup>th</sup> meeting, and noted that this was an issue that had as taken up time at several Planning Board and ZBA meetings.

Councilor Smith said at this same meeting, there was a conceptual consultation with developer Jack Farrell for a proposed 8 lot subdivision on the west side of Mill Road. He noted that when he first came to Durham in 1965, Mill Road was unpaved, and there was only one house on it, which was the house on the property Mr. Farrell planned to develop.

Councilor Smith said there would be a public hearing at Wednesday's Planning Board meeting on PSNH's plans to cut trees along Durham Point Road, Bay Road, Bennett Road, and Packers Falls Road

Councilor Gooze noted again that the Workforce Housing Committee has been meeting, and said an informational session was planned for September 28<sup>th</sup> at Town Hall. He said the State had mandated that 50% of the Town's available acreage be available for workforce housing, which meant that some zones would need to be made available for this. He said the Committee was working with consultant Jack Mettee to figure out how to do this in the best way.

Councilor Gooze also spoke about the design RFP's for the library.

Councilor Mower first updated the Council on the Energy Committee. She said 73 property owners had indicated interest in the PACE program. She then noted that there was some uncertainty about whether the program would be available to property owners whose mortgages were in any way backed by Fannie Mae and Freddie Mac. She said commercial property owners would not be affected.

Councilor Mower said the Energy Committee had agreed to move forward anyway, and would be sending a letter to federal representatives to urge that they and the Federal Housing Finance Authority support the PACE program through federal H.R. 5766: "To ensure that the underwriting standards of Fannie Mae and Freddie Mac facilitate the use of property assessed clean energy programs to finance the installation of renewable energy and energy efficiency improvements."

She also noted that right now was a great time to get a project rolling, since the Public Utilities Commission was likely to significantly cut rebates for renewable energy projects starting in January 2011.

Councilor Mower said the Energy Committee discussed a proposal that the Town extend its alternative-energy-related property tax exemption to include wind power and Central wood heating.

She said on September 20<sup>th</sup>, there would be a joint meeting with the Economic Development Committee to discuss options for the Town regarding alternative and renewable energy measures, such as solar panels for the wastewater treatment plant, possible creation of a downtown heating district and the purchase of wholesale power.

Councilor Mower next updated the Council on issues the Conservation Commission was currently addressing. She said the Southeast Land Trust had expressed an interest in the Oyster River Forest/Trust for Public Land project. She said exactly what this meant would be clearer after the Board of Directors met, but said since it was a large project, it would be good to have such a regional organization on board.

Councilor Mower noted interest previously expressed in timber cutting on Town owned lands, and said the Commission had just learned that in late spring, forestry consultant Charlie Moreno had managed the cutting of the Town-owned parcels near Spruce Hole. She said DPW Director Mike Lynch had indicated in an email that because it was a maintenance cut in an environmentally sensitive area, the gross stumpage paid to Mr. Moreno for the timber was only \$2,730.58.

Councilor Mower said Mr. Lynch had calculated that subtracting out Mr. Moreno's fee of \$2,561.25 resulted in a net profit to the Town of \$169.33, and had said that while this was not a lot of money, it was a start for the stewardship of the parcel, and included opening up several thick tree canopies, eliminating invasive species and marketing of some of the matured trees. She said Mr. Lynch had also noted that Mr. Moreno was currently working on the Natural Resources component of the stewardship plan for this area.

Administrator Selig noted that the Primaries would be held the following day at Oyster River High School, and said the polls would be open from 7 am to 7 pm. Councilor Smith said he could be there at 7 am, and Councilor Mower said she could be there at 7 pm.

Administrator Selig said he had received a letter from the HDC/Heritage Commission regarding an application to the State Division of Historic Resources to list the Oyster River dam as an historic structure. He said the consensus of Councilors setting the agendas was that this item would not be scheduled for a Council meeting until the data anticipated concerning the dam was received.

He said Town staff and the Council were slowly moving into the annual Budget process. He said the process began with discussion with the Planning Board on the draft CIP for 2011-2020, which included information on projects that department heads had submitted. He said he, Ms. Jablonski and Mr. Lynch would meet with the Planning Board this week.

He noted that the Town Charter mandated that the CIP be forwarded to the Council a month before the Budget, but said this would happen two months ahead. He said the CIP proposals would then be integrated into the operational Budget proposal for 2011.

Administrator Selig noted that at the July 26<sup>th</sup> Council meeting, there was discussion on the 401 certificate. He said a letter had now been provided from Attorney Dana Bisbee, which reviewed the issues he had discussed in person with the Council the previous year. He said a letter on this issue from the Mitchell and Bates law firm from a few years ago had also been provided.

He said the plan had been to have Town Engineer Dave Cedarholm speak with the Council on this and other water and wastewater issues, but said this had been pushed off to a future Council meeting because of time constraints. He said they were also looking to see if someone from DES could talk with the Council about the 401 issue.

Administrator Selig noted the upcoming Comcast public hearing, and said it was important for residents and organization representatives to come to the hearing. He said

there would be a word for word transcript of the hearing, which would provide the negotiating team with substantiated oral and written testimony from the people in Town. Administrator Selig said the idea of using speed tables was being evaluated, and said a pilot project would be done on the portion of Edgewood Road between Madbury Road and Emerson Road. He said speed tables were good in that they slowed people down, and said the downside was that they slowed cars down quite a bit, could cause wear and tear on cars, and also created noise issues. He said it would be interesting to see what kind of feedback was received. He said the use of speed tables would be looked at on a case by case, but also said a policy on this might be needed.

Councilor Mower noted the cost involved in doing speed tables, which meant they couldn't be located throughout the Town. There was brief discussion on this with Administrator Selig.

Administrator Selig said the deed for the DiMambro property had been executed, so the Town now owned it. He noted that it was the site of the future public library, and thanked the Library Board of Trustees and the DiMambro family for helping to make this happen.

Administrator Selig said as a follow-up to the power outage in the spring, the DPW, Police Department, and Fire Department would be meeting with PSNH to see how communication with the utility during an outage could be improved. He said it was hoped that in the future, power restoration could be accomplished as efficiently as possible.

Administrator Selig said the Economic Development Committee had hired DCI to do the market study, and explained that there was a revised proposal, where the work would be broken out into sections.

Administrator Selig noted again that Durham Day would be held on September 26<sup>th</sup>.

Chair Carroll said she had recently taken a boat ride on the University research vessel Gulf Challenger, to hear about the health, or lack of health, of Great Bay. She said there was bad news concerning the increase in the nitrogen levels, erosion problems, and the decline in eel grass. But, she said the good news was that many people were working hard to return Great Bay to great health. She said they would be hearing more about what needed to be done, but said there were actions that every citizen could take, and said the sooner they did so, the better.

Councilor Gooze said he had recently been taking trips on the Edgewood Road Campus Connector bus, which was free to residents. He said he had also taken the Wildcat Transit bus to the Newington Mall, which was free for UNH faculty and cost a dollar for residents.

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

Chair Carroll asked that members of the public who were present to speak at the public hearing wait until that Agenda item. But she said if they were unable to stay that long, the

Council could hear their comments now.

**Bill Hall, Smith Park Lane**, noted a recent article that said there was a water shortage, but he said there were 140 million gallons of water going over the Wiswall Dam. He said the 401 certificate was never intended to restrict drinking water. He also said he was able to verify from three very competent people that the 401 didn't apply because the process that was required had not been done.

Mr. Hall said the Town got \$20,000 for the forestry cut at the Doe Farm. He said he was available to get some more tree cutting done, and said the Town would be likely to make out better financially this way as compared to having Town staff involved.

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

Shall the Town Council, upon recommendation of the Town Administrator, approve a special event permit application submitted by the UNH Wildcat Marching Band and the UNH President's Office to close a portion of Main Street for the band to march from Main Street in front of Thompson Hall to the entrance of Cowell Stadium during UNH home football games scheduled for September 25, October 9, November 6 and November 20, 2010 at 11:20 AM?

**Councilor Smith MOVED to approve the Unanimous Consent Agenda. Councilor Mower SECONDED the motion, and it PASSED unanimously 9-0.**

Chair Carroll said the leader of the marching band was supposed to be present, but the band was busy practicing. She noted that she could sometimes hear the band practicing from her home, and said it was a wonderful sound.

**VIII. Committee Appointments**

The Council decided to address the appointments to the Energy Committee first because Mr. Betts, who had volunteered for the Parks and Recreation Committee, was not yet at the meeting.

- B. Shall the Town Council appoint Charles Forcey, 12 Thompson Lane, and Brian F. Goetz, 4 Hamel Drive, to the Durham Energy Committee?

Mr. Forcey said he lived in the Faculty neighborhood, and had lived in Durham for 10 years. He noted that he had a 50 year old house, and had installed an energy efficient boiler and was also hoping to install solar panels. He said he wanted to join the Energy Committee in order to learn, and also to use his skills in web development to help promote the Energy Committee's ideas.

Mr. Goetz said he had just moved to Durham, and noted that he was an engineer and worked for Weston and Sampson, which did work for the Town concerning water resource management and water conservation. He explained that it was a personal interest

that had caused him to want to serve the Town on the Energy Committee. Councilor Mower said the Energy Committee had met with Mr. Forcey, but had not yet had the opportunity to meet Mr. Goetz. She said the Committee was delighted to work with both of them.

***Councilor Smith MOVED to appoint Charles Forcey, 12 Thompson Lane, to the Durham Energy Committee. Councilor Mower SECONDED the motion, and it PASSED unanimously 9-0.***

***Councilor Smith MOVED to appoint Brian F. Goetz, 45 Hamel Drive, to the Durham Energy Committee. Councilor Sievert SECONDED the motion, and it PASSED unanimously 9-0.***

Chair Carroll noted that there was a lot of work to be done on the Energy Committee, and said it was doing some great things for the Town.

- A. Shall the Town Council appoint Gregory Betts, 11 Edgewood Road, to fill the alternate member vacancy on the Parks and Recreation Committee?

Mr. Betts said he looked forward to working with the Committee. He told the Council that he had been an Eagle Scout, and had worked for the Appalachian Mountain Club.

***Councilor Cote MOVED to appoint Gregory M. Betts, 11 Edgewood Road, to fill the alternate member vacancy on the Parks and Recreation Committee, said term to expire on April 30, 2013. Councilor Stanhope SECONDED the motion and it PASSED unanimously 9-0.***

Chair Carroll thanked Mr. Betts for stepping forward, and said there was a lot of work to be done on the Parks and Recreation Committee.

- C. Shall the Town Council move alternate member Jim Lawson on the Economic Development Committee to fill the unexpired regular member term of Christopher Mueller?

***Councilor Mower MOVED to move James Lawson from his current alternate member position on the Economic Development Committee to fill the unexpired regular member term vacancy of Christopher Mueller, said term to expire on April 30, 2010. Councilor Clark SECONDED the motion.***

Chair Carroll noted that Mr. Lawson had introduced himself to the Council previously, and also noted that he had taken on all kinds of projects as an alternate on the EDC.

***The motion PASSED unanimously 9-0.***

Chair Carroll thanked Chris Mueller for having served on the EDC in a variety of capacities, including as Chair, and also thanked him for his many efforts on behalf of the

Town.

- D. Shall the Town Council appoint Yusi Wang Turrell to fill the unexpired alternate member term of James Lawson on the Economic Development Committee?

Chair Carroll said Ms. Wang Turrell wasn't present, but had previously come before the Council on two occasions. She also noted that she had taken on some special projects for the EDC.

***Councilor Stanhope MOVED to appoint Yusi Wang Turell, 5 Stevens Way, to fill the unexpired alternate member term on the Economic Development Committee of James Lawson, said term to expire on April 30, 2011. Councilor Sievert SECONDED the motion, and it PASSED unanimously 9-0.***

Councilor Clark said that as a volunteer, Ms. Wang Turell had acted like she was already a member. He noted that among other things, she was coordinating the entire business visitation program the EDC had developed.

***The motion PASSED unanimously 9-0.***

- E. Shall the Town Council appoint the following committee representatives to the Wiswall Historic Interpretation Committee (WHIC)?
1. Conservation Commission – Councilor Julian Smith
  2. Lamprey River Advisory Committee – Suzanne Petersen
  3. Parks & Recreation Committee – Diane Moore and Jenna Roberts (alternate)

***Councilor Smith MOVED to appoint Councilor Julian Smith, Suzanne Petersen, Diana Moore and Jenna Roberts to the Wiswall Historic Interpretation Committee. Councilor Mower SECONDED the motion, and it PASSED unanimously 9-0.***

Chair Carroll thanked all of the residents who had stepped forward to serve on the various committees of the Town.

## **IX. Presentation Items**

- A. Receive annual report of the Historic District Commission – Leslie Schwartz, Chair

Ms. Schwartz noted that she was present with HDC member Andrea Bodo, who did much of the work of the HDC right now. She outlined from her written report to the Council the HDC's ongoing and planned projects as well as topics for discussion. *Ms. Schwartz's report is on file with this set of minutes.*

Councilor Stanhope asked Ms. Schwartz to speak about the challenge of getting a quorum for meetings, and the need to create alternate membership on the HDC in order to be able to conduct meetings. .

Ms. Schwartz acknowledged that getting a quorum was sometimes a problem, and said it would be helpful if there were alternates positions on the HDC, especially considering the many things the HDC wanted to accomplish.



Chair Carroll asked Councilor Stanhope if he could work with the HDC to address this issue.

Councilor Stanhope noted that this issue had come up before, and said the lack of a quorum at some meetings was unfortunate, especially because of the HDC's challenging agenda. He noted that there were a relatively small number of regular members on the committee to begin with.

HDC member Andrea Bodo spoke about the fact that there was some resistance to the idea of nominating the Oyster River dam as an historic site through the NH Division of Historic Resources. She said the reality was that the dam was already on the National Register of Historic Places, so there was already some red tape to deal with.

Ms. Bodo explained that there was a better chance of getting funding if the dam was listed on the Division of Historic Resources' register, and said the State was interested in advocating for the dam. She also spoke in some detail about the fact that Smith Chapel was eligible for listing on the Federal Register.

Councilor Mower asked if the HDC would be including developers in discussions about design guidelines.

Ms. Bodo said the HDC was collecting information on design guidelines. She said they would talk with local architects first, and would then branch out from there.

Chair Carroll noted that the HDC had a very full agenda, and thanked them for the work they were doing on behalf of the Town.

**B. Receive annual report of the Planning Board – Lorne Parnell, Chair**

Mr. Parnell said the Planning Board had been quite busy reviewing subdivision applications, boundary line adjustments, site plan applications and Conditional Use applications. He spoke briefly on the larger projects the Board had reviewed, and said the majority of them were student housing projects, some of which had commercial aspects to them. He said they would certainly change the skyline of Durham.

Mr. Parnell said the Board had recommended several changes to the Zoning Ordinance after considerable deliberation, and he reviewed these Zoning changes. He also said there had been extensive discussion with Town Engineer Dave Cedarholm and several members of the public on proposed changes to the storm water provisions in the site plan regulations and subdivision regulations. He said the Planning Board had subsequently approved these new provisions.

Mr. Parnell said the Planning Board appreciates the public input it received, and noted that some review processes took a long time, while others were quick.

He said the Board would be updating sections of the Master Plan in coming months, with

the help of Durham citizens and staff from Cooperative Extension. Councilor Clark said the Town would be seeing a pretty drastic change in the Durham skyline, and asked Mr. Parnell how important he thought it was to spend time on design guidelines.

Mr. Parnell said he thought they should be looked at, but said he was a bit skeptical about implementation. He said when there was a Conditional Use application, the Board did look at aesthetics, but he said they weren't experts, and provided suggestions. He noted that architectural changes had in fact been made to building designs because of suggestions that Board members had made. He said there was a realization that some new buildings would be large, and needed to fit in as well as possible with what was already there

Councilor Gooze said one of the new buildings on Jenkins Court was a nice building, but then there was the other red building that had been built there. He said perhaps they did need design standards for the downtown. He said right now, there was a hodge-podge of low buildings, and said the concern was that there would be a hodge-podge of big buildings.

Mr. Parnell said the Board did think about this, but said right now there was nothing to go by.

Councilor Mower said it was important not just to look at a building on its own, but to also look at how the building integrates into the scheme and goals for the downtown. She said it would be good to get some professional help in looking at the bigger picture.

Councilor Mower also noted that she had spoken with some residents about the idea of the Planning Board perhaps considering incorporating into its agenda the opportunity for members of the public to bring up issues that were not specifically related to an application. She asked if the Planning Board could consider this idea at its quarterly planning meeting, to think about it.

There was discussion on this with Mr. Parnell. He said such an approach sounded a bit open-ended.

Councilor Mower said such an approach would be a good way for residents to be able to bring up things like design guidelines, or the impact of not requiring parking downtown.

Councilor Smith said almost every time there was an application that resulted in a public hearing, there was the opportunity for the public to speak for or against a project in terms of design. He noted at this point, the Planning Board couldn't use those comments as a reason for approving or denying an application.

Chair Carroll thanked Mr. Parnell and other Planning Board members for their work on behalf of the Town.

- C. Community initiatives pertaining to youths and drugs – David Kurz, Police Chief; Reverend Mary Westfall, Durham Community Church; Laura Rogers, ORHS Principal

Administrator Selig noted that one of the Council's goals for 2010 was to address this issue, and to identify things the Town could do to address the problems

Chief Kurz and Principal Laura Rogers provided a slide presentation on the topic. They explained that marijuana was now the drug of choice in the United States, and said something that many people, including parents did not realize was that the average potency of marijuana now exceeded 10% THC.

A chart was shown of drug arrests in Durham since 1998, and it was noted that there had been 921 arrests involving illegal narcotics between 1998-2009. The presenters said the 2009 survey results indicated that about the same percentage of ORHS students used alcohol and marijuana as the State average.

It was also noted that there was a higher level of frequency among ORHS students who used these substances, and a lower perception of risk. Survey results indicated that ORHS students thought marijuana was more acceptable than students statewide did, and that their attitudes about "inappropriateness" mirrored attitudes about alcohol.

It was noted that ORHS students reported significantly lower percentages of usage for all other drugs, including over the counter medications, cocaine, "huffing" substances and steroids than their peers statewide. It was also noted that ORHS students felt it would be more difficult for them to obtain these substances than did students in the statewide sample.

The presenters spoke about measures being used to combat drug use, including gating the upper parking lot, which was formerly a problem area.; mixed parking among grade levels; installation of security cameras; adding locks to lockers and mixing age groups; and doubling Health class time from a quarter to a semester. It was also noted that the High School continued to promote school spirit as a means of fostering a sense of belonging. There was also discussion about the student advisory program, Focus, which sought to have every freshman become involved in a sport or club.

The presenters spoke about plans to increase the LADC's hours; expand the use of security cameras (in process); continue to provide teacher training; continue to work collaboratively with the PTO and other groups (Oyster River Teen Initiative, etc.) to send a clear "no tolerance" message with respect to drugs and alcohol. They stressed the importance of recognizing that they couldn't exceed the influence of parents.

Reverend Westfall next spoke in detail about the issues and what could be done to address them. She said there was a collaborative approach now, and said it was hoped that they ways could be found to get the community more involved.

Councilor Clark said he applauded this unprecedented presentation, and said he hoped it could be done on a more regular basis, and that they could reach out through collaboration. He noted that when the Council had started talking about this issue a year ago, it had discussed the role the Town might play in educating parents and residents. He noted that the survey results indicated that parents almost had an acceptance of drug use, to a point that he said was unacceptable.

He said the no tolerance message would only happen if they taught people the dangers of this high risk behavior. He said there were real problems with high school kids but also after they left high school. He said they had to keep this going, and engage even more actively with the community to fight this.

Councilor Mower asked whether the High School had invited recent graduates to talk with students about this issue. She also asked if drug usage had changed much from year to year. There was discussion, with Ms. Rogers noting among other things that drug use sometimes started in the middle school. There was also discussion about the fact that the potency of marijuana was so much stronger now than it once was.

Chair Carroll thanked everyone for having this discussion. She said this had been a first, but wouldn't be the last time these issues were discussed by the Council.

The Council stood in recess from 8:56 to 9:14 PM.

## **X. Unfinished Business**

**PUBLIC HEARING AND ACTION ON ORDINANCE #2010-08** amending Part II “General Legislation” of the Durham Town Code by creating a new chapter, Chapter 45, entitled “Disorderly House”

Chair Carroll noted that there was a TV in lobby so others can follow the meeting.

Administrator Selig said this Ordinance had been forwarded to the Council from the Rental Housing Commission. He said the RHC had been meeting and deliberating on the impacts of student housing on rental neighborhoods over the last 12 months or so, and said over the last 5 months, the Commission had looked specifically at whether there were some legislative things that could be put in place to have an impact on this issue.

He said the disorderly house ordinance focused not on the tenant, but on the property owner, with the idea that ultimately, the property owner needed to be responsible for the behavior occurring on a rental property.

Administrator Selig explained in detail how the disorderly house ordinance would work, in terms of what was expected from the landlord, what the fines were, how the fines could be waived, etc. He stressed that the goal of the ordinance was not to fine landlords, but to get their attention and involve them in addressing issues at their properties that

would be categorized as disorderly house. He spoke about the fact that if the property owner was working to address the problems, the fine could be waived. He said after the third and all subsequent events, there would be a fine of \$1,000.

Administrator Selig said the Council wanted input for and against the ordinance proposal.

Administrator Selig said he had spoken to Town attorney Laura Spector, and in response to Durham Landlord Association attorney Anna Barbara Hantz's letter of September 9, 2010, he and attorney Spector believe that attorney Hantz has three essential arguments. First, she argues that there is no authority for this ordinance. To the contrary, the ordinance is authorized by RSA 31:39, I(n), which allows the town to make ordinances to regulate noise. A disorderly house is one which can be heard outside the walls of the unit; and therefore this ordinance is based upon the regulation of noise. Second, she argues that the injunction from 1996 prohibits this ordinance. The stipulation says that the town will not pursue the regulatory initiative in ordinance 93-16 (which related to registration of rental homes); but specifically provided that the town may continue to exercise the authority it is granted under state and local law. Finally, she argues that the town cannot impose penalties on landowners for the conduct of others. Mr. Selig pointed out that the ordinance would punish landowners for their own conduct (i.e., not controlling the tenants to whom they rent their property). As long as a landlord is making good faith efforts to solve the problem and work with the town, there will not be any punishment for the conduct of others.

***Councilor Gooze MOVED to open the Public Hearing on Ordinance #2010-08 amending Part II "General Legislation" of the Durham Town Code by creating a new chapter, Chapter 45, entitled "Disorderly House". Councilor Niman SECONDED the motion, and it PASSED unanimously 9-0.***

**Jim Jelmberg, Park Court**, said the ordinance was a win for everyone because it was good for neighborhood residents, the Durham Landlord Association, and students. He said he loved the students, but said they kept completely different hours, which resulted in a variety of noise, trash, and other problems. He noted that when he was a student, he partied but was always careful not to disturb residents. Mr. Jelmberg urged the Council to pass this ordinance, and said the Town really needed it.

**Chris Chickering, Pine Ledge Holdings, 20 Strafford Ave**, said this ordinance was another example of vague, excessively restrictive Durham legislation that would be exploited to discriminate against politically unpopular individuals or groups. She said the ordinance was vague in terms of what constituted a violation when an allegation was made. She also said there was no protection that the demands of the Town would be reasonable once a house was labeled disorderly.

She said there was no standard by which the effort of a landlord to repair a disorderly label was to be measured. She said the ordinance was an invitation for lawsuits and was bad legislation. She said it was developed in an environment of fear, and was a reaction to one or two isolated problem properties. She said the ordinance would subject every property owner to arbitrary legal liability and was likely to be abused in unforeseen ways.

**Jane Coder, 5 Garden Lane**, said she and her husband had been property owners in Durham for 12 years, and also said her daughter owned a home in Town. She said she had seen their property values decrease, while the taxes had increased.

She said another problem for her was the lack of a newspaper in Town. She said she appreciated the Friday Updates, but said there didn't seem to be a forum for citizens to come together to express their views. She said she was grateful for the hearing this evening.

She said the proposed ordinance seemed to place almost all of the responsibility for student behavior, and enforcement of consequences, on the landlords, and said this was not fair. She said the brunt of consequences should be placed squarely on who caused the problems, which was the tenants, and if they were underage, their parents as well as the University, which should be monitoring what these students were doing. She noted a previous comment about how things had changed drastically so that students now were not thinking about whether they disturbed the neighbors.

She said with this ordinance, the landlords would be asked to be parents and overseers, and she asked what the role of the police, Town officers, and parents would be. She said perhaps the University should pay the fines, if their students were causing the problems.

She said notifying landlords of unacceptable behavior, and assessing small penalties seemed fair, but said escalating fees, when the landlords might be trying unsuccessfully to evict or control their residents, seemed against the civil rights of property owners, in view of their already high property taxes. She noted that the State of Connecticut paid the town of Storrs, CT to host the University of Connecticut, and said this relieved the tax burden of some of the residents. She said in Durham, the property owners were heavily taxed.

She said perhaps the Town should be directly involved not only in policing with hidden cameras the number of cars parked in driveways, but also should maintain records of tenants' and parents' names and addresses and their University status. Town might also issue format and language that landlords could use when they write their leases that would perhaps assure that this problems did not occur.

She asked what "disorderly event" meant, stating that it was very subjective and asking who would define it. She said it seemed to open the door to all kinds of unfairness. She said there would be too much arbitrary judgment as to what was considered grandfathered, loud, boisterous, unnecessary verbal or physical fighting.

She said she sometimes wondered if calls coming in were from disgruntled neighbors who didn't like the rental of a property, or the landlord.

She said there should be a level playing field for property owners. She asked if the Town would address the concept of grandfathering of residential rental properties, stating there

were landlords who rented to 7 people in a single residence while others had to be bound by the 3 unrelated limit. She said she had sent questions on this to Administrator Selig, asking how many properties in residential neighborhoods were grandfathered and therefore were exempt from this new Ordinance. She said was told this wasn't the purview of this meeting, and was told to call Tom Johnson to get answers. She said she had tried to get some history on this, and would appreciate this kind of information when thinking about putting in a new ordinance.

**Jane Kaufman, 19 Oyster River Road**, said she had been a Durham resident for 47 years, and was happy when she heard about this proposed ordinance. She said there were times when she heard so much noise at night she couldn't sleep. She questioned the possible waiving of fines in the ordinance. She said if she owned property and people weren't behaving, she would make sure they behaved. She said if the Town met with her one time, they would never have to meet with her again. She said she didn't feel sorry for landlords who didn't live in Town and were hard to get hold of. She said she hoped the ordinance passed.

**Kitty Marple, 82 Madbury Road**, said she was a member of the RHC. She said no one disputed the fact that Durham had a number of excellent landlords. She also said no one wanted to end the fun for students, or penalize people who were landlords. But she said there were some people who abused the privilege of owning a home, and living in a residential neighborhood. She said it was ironic that there had just been a discussion on substance abuse at the high school level, when this was very clearly an issue at UNH.

Ms. Marple spoke in support of the ordinance, which she said was meant to address properties that were a continual problem. She said she had lived next to such a property for 4 years. She said being a good landlord required a lot of time, and good communication. She said some landlords purchased property without investing in due diligence necessary to maintain the property and quality of life in the neighborhood. She said she looked at these people as making money at the neighbors' expense.

She said while some landlords would complain that their properties should not be subjected to the scrutiny this Ordinance mandated, all residents were entitled to live in a tranquil and safe environment.

**Rich Conrad, 2 and 8 Coe Drive**, said he was a graduate of UNH, and also said his two kids went to UNH. He said he bought a property in Durham because his daughter went from Stoke Hall to a ghetto apartment. He said he had then bought two houses on Coe Drive, and described some of the work he had done on his property.

He said 35 years ago, there was also a problem with kids acting up. He then said the global plan of UNH was to go to 30,000 students in the next 10 years. He asked why the Town should subject single family and duplex dwellings to these fictitious noise, trash and parking violations. He said these problems existed for not only single family houses, but also for every dwelling, whether an apartment building, or fraternity/sorority house.

He spoke about trash violations he had recently received, and said he had then driven around and saw other properties that qualified for trash violations. He said this could be found if one looked for them.

Mr. Conrad said he didn't want to see profiling. He said the Code inspector was putting a file together for every single family and duplex, and taking pictures of cars illegally parked on the grass. He said when he personally drove around, he saw all kinds of boats, etc., parked out front. He said no one was saying anything about that.

He said without consistent enforcement of the law, there was no program. He asked the Council to consider this, and not profile kids who lived in single family houses.

**Chris Hall, 23 Bagdad Road**, said he had lived in Durham for 7 years, and taught at the Middle School. He said residents were fed up. He said conditions had deteriorated especially in the last few years, because of excessive noise, etc., and said the current situation was untenable. He said a possible reason was UNH's zero tolerance policy, which was driving kids off campus. He also said the economy was causing people to rent apartments.

He said he was glad the disorderly house ordinance was being considered, stating that it was a proactive measure that was needed because current measures were not effective. He said some of the people who were against this ordinance were landlords who were concerned that this would hit them in their wallets, and students who didn't want to be penalized for their actions.

Mr. Hall said landlords and students who were responsible had nothing to fear from the ordinance. He noted he was a landlord. He said if a landlord screened and warned tenants, added penalties, made changes in leases, followed up on complaints in a timely fashion, this was being a good neighbor and landlord, and not having to be a mother or father.

He noted that Pam Weeks was a landlord of a grandfathered house on his street. He said when there were issues, Pam dealt with them in a timely manner. But he said unfortunately that wasn't the case in all situations with rental properties. He asked the landlords who were opposed to the ordinance if they lived in the Town, or in the neighborhoods. He said those against it seemed to think it wasn't their problem if it wasn't in their backyard.

Mr. Hall said the cost of not passing this was continued frustration of homeowners and citizens; deterioration of properties, safety and quality of life; and ultimately residents leaving Durham or at least abandoning the inner town area. He said he had heard his neighbors talking about this. He said the ordinance was fair, and was a critical step to preserve the health, safety and welfare of the Town. He urged the Council to pass it.

**Steve Burns, 20 Newmarket Road**, said he considered the proposed ordinance outrageous. He said he was a landlord, not a policeman, and had no power to enforce the



law. He said all he had was eviction, a process which was costly, hostile and difficult. He said if he was to be a policeman, then the rules should be spelled out, and he should have the power to enforce them.

Mr. Burns said the meaning of “to identify ways to prevent future disorderly events” was vague and completely subjective. He said if he was told what “disorderly” was, he would put it in the lease. He said he also should be told what to do if he told his tenants to cool it and they didn’t. He asked the Council to imagine the parties there would be after he told the tenants they were evicted.

He said it seemed a fine or a little jail time was in order for the offending tenant. He said the landlords’ sole remedy for continuing noncompliance with the ordinance was eviction, which was mostly a penalty for the landlord.

He said he didn’t notice anything in the ordinance about a landlord being absent. He said he lived next door to the property he rented, and said it seemed to apply to him, as it should.

Mr. Burns said the only thing locally that was comparable to this proposed ordinance was the incidence in 1998 at Durham Marketplace, when students used fake ids to purchase alcohol. He said the store got fined, and then sued the students to recover the fines. He noted that the University provided a lawyer to represent the students. He asked if this was what he could expect.

**Stephanie Higgs, 10 Oyster River Road**, said she had lived there for 10 years as a property owner and a landlord. She said during that time, she had not witnessed or heard any behavior she thought was worthy of a complaint to the police. She said she did care, as a landlord, and said the generalization a speaker made about who was against this ordinance was unfair.

She said she was very concerned about what had promoted this initiative. She said often the squeaky wheel got the grease, and said she didn’t want these restrictions on her. She noted the provision that said disorderly activities included occupants of the building or their invitees being intoxicated outdoors in the vicinity of the building. She asked if this applied to her and her friends. She said there were vague terms in the Ordinance, and said it opened up a lot of things she would be responsible for, including her own behavior. She said she wanted more than 3 cars in her garage, and didn’t want any more restrictions on her property and her rights as an owner.

**John Griswold, Greek affairs officer for the UNH Student Senate**, said his problem with the ordinance was that it directly referenced fraternities and sororities under “dwelling“, and said it unfairly profiled a certain kind of student, and drove a wedge between landlords and tenants

**Denise Day, 89 Bagdad Road**, said she believed the ordinance was too punitive. She noted an incident where she called the police at 3 am, because the tenants who lived next

door were making noise outside. She said the police came and things were handled professionally, and said that was the end of it. She said with this ordinance, she would be hesitant to call the police if this happened again. She said she felt the ordinance was really going overboard.

**Todd Campbell, 9 Faculty Road**, said he had moved to the Faculty neighborhood in 1999, and was a student at UNH in the 1980s. He said Durham was a great community to live in, and said it included students. He said the reality for him was the enforcement in itself wasn't bad. But he said what Administrator Selig's letter concerning enforcement didn't say was that someone would be hired to go around the neighborhood and create a watch list based on the number of cars in driveways. He said he had not known about the cars in the setback code. He said he did have 4 cars on his driveway, and noted that he had found out he was on the watch list, and saw people taking pictures of his house.

He said the reason he could afford to live in Durham was that he rented to a student. He said he had never had a problem at his property, and until the car situation, didn't realize he had a code problem. He said the Town should enforce the things that needed to be enforced, and not hope to find the person who would need enforcement in the future. He said this wasn't fair, and didn't speak to the forward thinking nature of a university community, or the Constitution. But he said he liked enforcement, and said the Town did a great job on Valentine Hill around the corner, with a problem property.

Mr. Campbell said his fear with the proposed ordinance was that if a landlord couldn't evict a tenant, what was his supposed to do. He said landlords sometimes wound up with bad apple tenants, and said unfortunately because of the way the ordinance was written, the tenant probably wasn't going to go anywhere until he graduated. He asked if it was fair to fine landlord over and over again, even though he was doing everything he could.

He said that was why the circuit breaker was written into the ordinance, where Administrator Selig and Chief Kurz could say the landlord shouldn't be fined because he was doing the best he could. But he questioned whether they would still say that after the third and fourth, etc., violations.

Mr. Campbell said the Town should enforce what needed to be enforced, stop the surveillance of residences, and enjoy this diverse community they all loved.

**James Harper, 7 Davis Ave.** said he had personally been strongly affected by the parties and loud noises from the two apartment buildings on Edgewood. He said this had recently become a problem, and had not previously been a problem in the many years he had lived in the community. He said he loved the location because it was within walking distance of many things in Town. He said he strongly supported the ordinance, and thanked the Council for considering this serious issue.

**Anna Barbara Hantz, attorney for Durham Landlords Association**, noted the letter she had provided on behalf of the DLA. She said the landlords thanked the Council for its time in reviewing this ordinance, and thanked the RHC. She provided some history on

the creation of the RHC, and noted that it resulted from litigation she was involved in with the DLA. She said the prior Town Administrator had signed off on the stipulation that was entered into by the Court.

She said the outcome of the litigation went to Strafford County Superior Court over a licensing ordinance, which was similar to this proposed ordinance but different. She said it started with a registration list for landlords to provide of tenants, and had a similar enforcement mechanism as this one, which allowed for penalties against the landlords for the conduct of tenants.

Attorney Hantz said a temporary restraining order was entered, and that ordinance could not be enforced until there was a further hearing. She said what happened in the interim was remarkable in that the Town and the landlords got together and came up with a settlement agreement that founded the RHC, and put various duties in place for the various interest groups. She said 15 years later, the RHC had worked. She said the stipulation was remarkable in its breadth, including what it saw was coming in the future.

She said this had shown that the problems were better solved collaboratively and not in an enforcement or adversarial way. She said some would say the RHC got rid of the big problems. She said it did, and in doing so, there were now the small problems that remained. She said the landlords would like the Council to focus on not letting the few spoil it for the many. She said the progress that had been made would be undone by going back to an adversarial relationship.

Attorney Hantz said the proposed ordinance targeted a few single family rentals, wielding a big sledgehammer, when an extension of the effort made by the RHC, which included all the parties involved, would suffice. She also said the University had had success in other areas, using academic consequences for failure to abide by various rules and regulations. She said that could be tried here.

She said at the hearing she went to in October of 2009, only 5 houses were identified as problems. She said it didn't sound like there were many more today. She said the recent stepped-up enforcement, as reported by Administrator Selig in the Friday Updates, had made a difference, and said continued enforcement of the existing laws and outreach to property owners, as had happened with the commercial landlords, could happen with single family landlords, and made a lot of sense.

She said the ordinance threw a big net to try and solve a very small problem. She said besides being unfair, it was vague and would fail because it didn't describe what kind of behavior was being targeted. She said the basis for the challenge would be the same as last time, in that it unconstitutionally imposed penalties on one group of behavior for the behavior of another group of people. She said none of the criminal laws did this, and noted that this ordinance had criminal penalties associated with it.

Attorney Hantz said the ordinance also exceeded Town authority. She noted that she spoke with Attorney Spector about this and the licensing ordinance, and said Attorney

Spector was as concerned as she was about the legal underpinnings of the ordinance. She said a legal basis cited was RSA 31:39 N, which allowed the Town to make bylaws governing noise.

She said noise ordinances could be drafted through the land use ordinance drafting process to address land use noise. She said noise ordinance could also be enacted to address personal behavior, which was enforced by the police department. She said 31:39 did not afford authority for the Council to pass a land use ordinance on a property owner to govern the conduct of an individual.

She said RSA 644:2 was also cited as a basis for this ordinance, and said this was a criminal statute that governed disorderly conduct, and was to be enforced by the Police Department. She said it wasn't up to the Council to pass an ordinance under that authority to apply to a land use issue. She said the Planning Board reviewed changes to the codes, and went through a process for due process purposes to impose regulations on property that met with the constitutional protections afforded property rights. She said they were two very separate regulatory schemes, and said this ordinance mixed the two in a way that would be found illegal by the court.

Attorney Hantz said the landlords felt student conduct, whether violating a lease or town ordinance, should have consequences. She said a landlord's remedies were very limited, and said it was almost impossible to evict someone on a timely basis. She said the University had responses, and the police had responses, and said this ordinance was not the way to change behavior. She requested that the Council send it back to the RHC for further work. She said passing it as it now wouldn't solve the problem, and would create an illegal ordinance.

**Daniel Day, 89 Bagdad Road**, said he was a student at UNH and a resident of Durham. He said for many years, the property behind his house was rented out to college students. He said the relationship had been mostly positive, but said there were times when the students had kept him up. He said knowing that the landlord would be fined for a second offense would make it awkward to call the police. He said the students just needed a reminder.

He said this ordinance was too vague, and also said students had a right to live in Durham. He said it added to the diversity of the Town, and said the students should be made to feel more welcome. He said living in a house was a lot nicer than living in a dorm, from his experience. He said he realized that UNH was to blame for its zero tolerance policy.

**Pam Weeks, Durham Point Road**, said her family moved to Durham in 1965. She said in 2008, she turned to the dark side and became a landlord. She said she bought 12 Woodman Road with the intention of living there for a few years, but moved when other opportunities arose. She said she had experienced first hand on both sides of the issue the noise and behavioral changes that precipitated the creation of this ordinance, an ordinance she did not support.

She said she agreed wholeheartedly that action was needed concerning the invasion of the neighborhoods by noisy students, but said the ordinance was not the solution. She said the issue was more complex than represented by the 4 to 6 problem properties out of the 600 or so houses in Town where there were accessory apartments, apartment buildings or non-owner occupied buildings in family neighborhoods.

She said those few houses were a problem because the landlords weren't adhering to the existing ordinances concerning occupancy, and because the unacceptable behavior of the occupants had been allowed to continue without consequence. She said they needed to enforce the ordinances already in place, and provide serious consequences to the individuals whose behavior was not acceptable.

Ms. Weeks said parties were a small part of the problem, and said the police did an excellent job. She said when she lived at Woodman Road and there were problems, the police were there within a few minutes. She said in passing the 10 pm all quiet ordinance, they could shut down the parties even sooner.

She said the most drastic change in noise levels after hours was caused by access to technology, including people going back and forth to parties and having loud conversations on their cell phones. She said she didn't have a solution for this, and the fact that students roamed at night.

Ms. Weeks said the proposed ordinance did not address the real issue when there were parties, which was the personal behavior of the residents. She said if they wanted to change the behavior, they needed to fine or arrest the source of the behavior. She said as the owner of two rental properties, she was not and could not be held responsible for the behavior of the tenants. She asked who got the ticket when there was a shoplifting incident.

She said she already had policies in place in the leases to control the number of people who could be in a unit at one time, but noted that even two occupants could be noisy. She said she had required quiet times, and already had in place a sliding scale of fines \$250-1000 for repeated visits by the police. But she said she still had one or two complaints per semester from neighbors, and responded immediately.

She said they should arrest the host of the party, and ticket the cars illegally parked. She said if they put a fine on the behavior, it would change. She said if it was illegal or an underage drinking issue, the arrest should be made and there should be serious consequences for the individual, and not the property owner.

Ms. Weeks said a solution to the noise problem could be the development of a formal Town sponsored program like Get to Know Your Neighbors, which would involve active, individual citizenship and taking responsibility for the neighborhood one lived in. She said if one lived in a neighborhood where a house had been purchased and the owner intended to rent to students, neighbors should put a face on the neighborhood.

She said she did this at Woodman Road when she moved in. She said she met the tenants next door, brought brownies and asked for help moving furniture. She said with the help of their landlord, they planned their parties for afternoons, and invited her. She said if the music got too loud after 11 pm, she was comfortable knocking on the door asking them to turn it down. She said they did so because they knew her.

Ms. Weeks said neighbors should go over on move-in day with cookies and explain the current ordinances concerning parties, parking, etc. She said she was sure the Town Administrator could provide a written checklist, and said a code of ethics from the Dean of students could also be provided.

She said some people had expressed fear of students in their neighborhoods, and said if a formal program was in place, a concerned neighbor could contact the Town Administrator and have a representative from the Town such as a member of the RHC come along on a first, welcoming visit. She volunteered to serve on a subcommittee for the RHC to explore the merit of this idea.

Ms. Weeks said the best changes happened in small steps, and said this program could be a good one for families and neighborhoods. She said the proposed ordinance was too large a step, did not make common sense, and was not the solution to the problem.

**Debbie Valente, President of the NH Property Owners Association**, said Keene was going through the same public forums Durham was going through, and had proposed similar ordinances, which the landlords were not welcoming.

She said the NHPOA addressed bills before the House and Senate, and noted Senate Bill 354, which came into effect in Jan 2011. She said hopefully this would highlight that there should be easier communication with landlords who owned properties in Durham, but did not live there.

Ms. Valente said the second bill her organization believed this ordinance would be in violation of was Senate Bill 431. She said it addressed fighting, and said if at any time, domestic violence came into the picture, according to it, the landlord could not evict the tenant. She said this new statute was in addition to the fact in NH, tenant rights were very prone to assisting tenants, which severely impacted upon the rights of a landlord. She asked the Council to consider this in its deliberations.

She said there were two other issues her organization felt were of serious concern in regard to this ordinance, because it would affect other towns. She said the ordinance smacked of discrimination. She said it was very hard to accept that both Durham and Keene was trying to pass ordinances against students, yet they were not student related.

Ms. Valente also said the ordinance attempted to create a relationship of agency between a landlord and a tenant. She said the tenant was not the landlord's agent, and said the ordinance was trying to hold the landlord precariously liable for the conduct of another. She said this was not permitted, and was only possible when the principal, which was the

landlord, had the right and ability and duty to control the conduct of another.

She said this was strict liability, and therefore the ordinance would fail in a court of law. She said because no court would recognize an agency relationship between a landlord and a tenant, if Durham proceeded with this ordinance, her organization would be forced to seek court intervention. She said they understood the need to control student behavior, but said making a landlord responsible was not fair and was not correct according to the law.

She noted that some landlords had said it was almost impossible to evict a tenant. She noted a resident who had said that if she owned a property with students living there, she would make sure that they behaved themselves. She said this person spoke from ignorance, and had no idea what was involved in evicting a tenant. She suggested that residents should be educated on this issue.

Ms. Valente described a possible situation where a tenant in a landlord's building caused a first disorderly house offense, and then another tenant caused a second offense. She said there might then be a third offense for another student, yet each of these offenses was the first offense for the particular tenant involved. She then explained that the law did not allow a landlord to evict a tenant after one notice or complaint, and provided details on this. She said the landlord could have spent \$1000 already, as a result of different tenants causing problems.

She said there were three grounds for evicting a tenant, and said if there was a 30 day eviction process, by the time this went to court, 90 days had passed. She said at that point, the judge was allowed another 90 days discretion, so a landlord had 180 days during which tenants could run up fines for the landlord from their behavior. She said these days, they weren't holding the students responsible for their actions, and said they had to be made accountable in order for them to respect any enforcement that was put in.

Ms. Valente said if a tenant got a letter of notice from the landlord stating that the landlord had been cited by the Town and the tenant therefore had to stop what they were doing, this could upset the tenants, who might stop paying rent. She said in this instance, the landlord not only had to pay fines, but wasn't receiving rent. She said these things along with the ensuing eviction process would mean that a landlord would have to suffer financial burdens and losses.

Ms. Valente said once a tenant was evicted, the problem moved from one house to another, instead of being dealt with. She said the record of the person causing the problems should travel from residence to residence. She also said the Council should consider the registration idea, which held both the landlord and tenant names, which would allow the landlord to determine if a potential tenant had previously been a decent tenant.

She said another issue was that the provision concerning intoxication on the property was far reaching, and created a crime where there wasn't one.

***Councilor Smith MOVED to extend the meeting beyond 10:30 pm. Councilor Gooze SECONDED the motion, and it PASSED 8-1, with Councilor Sievert voting against it.***

Ms. Valente said the University had disciplinary rights and the police had fines and jail, but the landlords had no recourse. She said if the person didn't choose this process, it was still costly because the tenant stopped paying rent, so the landlord suffered either way with this ordinance. She recommended that a subcommittee be set up with all the stakeholders in order to come up with a workable solution.

**Richard Peyser, 8 Mill Road, UNH student body president**, said he was a member of the RHC and was present to discuss the vague language "disorderly events" and "buildings". He asked why a large apartment building with dozens of units could be fined for the behavior of one tenant, or even a couple of tenants over the course of several disorderly occurrences. He said he would not support this ordinance, if it had the potential for the fine to trickle down to students who weren't involved in the event. He said a few hundred dollars could be the difference between books and food, and said they really need to think about this.

**Karen Mullaney, 8 Davis Ave**, said she was a member of the Durham Resident Owners Association, and wished to respond to some of the comments that had been made, by people who were new to the party. She said last fall, at the height of her frustration and sadness, she wrote a letter, and as a result met many neighbors who were affected by the problems. She said over the past year, they had worked with the RHC to solve some of these problems in a legal and reasonable way.

She said until the neighbors got together, the RHC was an inactive entity, and met infrequently. She said there were no minutes or agendas of these meetings. She said interestingly, the original lawsuit that led to the development of the RHC was partially about landlords not wanting the kind of registration someone had just said would be helpful.

Ms. Mullaney said it had become clear that Durham was at a crossroads. She noted a recent article in the University paper and the Union Leader, with ensuing comments, one of which said that Durham was a college town, and was not an appropriate place to raise a family, and besides, "your kids will act the same when they go to college". She said this put them in the same category as Las Vegas and Atlantic City, and said with a student population of 30,000 to look forward, they should all move because it was hopeless.

She said she and her husband moved to Durham 35 years ago because they thought it was a good place to raise a family. She said they had invested much of their savings then and now in their home. She said when they moved in, some students lived in owner occupied homes, and said no one was against that, and was not against it now. She said the University and the Greeks rented to most everyone else at that time. She also said the apartments were occupied by working people and elderly people, and noted that there were no adult renters in Town now.



She said the big problem used to be a fraternity party, which seemed like a small problem now. She said when people started buying some of the smaller, older housing stock, either as parents or investors, the town was caught by surprise. She said this, along with changes in student behavior that everyone recognized, had led to this.

She said it was understood that students wanted to party, but said what residents didn't want was for students to party in their neighborhoods. She said she wouldn't mind if students partied all night on campus, and suggested that UNH build a big party bowl for them over there.

Ms. Mullaney said what she cared about was the right to peace and quiet, and maintaining the equity in her property. She said what had happened to the DiMambro property could happen to any property. She said student ghettos had taken over in many college towns, noting that she had done a lot of research on this. She said it could happen here, and said then, Durham would in fact be an inappropriate place to raise a family.

She said unfortunately there were many older smaller properties that had suffered. She said maintenance had not been done for awhile, and said they became less desirable for ownership without incentives to rehab, which was a conversation for the future.

She said they were left with dealing with those who chose to ravage the neighborhoods from both in-town and now into the subdivisions and near other desirable, rather expensive homes. She said they had to let people know that there were responsibilities involved in these ventures. She said being a landlord was a conscious business deal they made, and said they had to take some responsibilities. She said perhaps the ordinance as written had problems that put an onus on the landlords. But she defied anyone to tell the RHC something it hadn't heard or discussed in the last year.

Ms. Mullaney said the University was not about to take any responsibility for these students. She said they had a broad definition of what was an offense, and said there would be no punitive action by the University.

She said the landlords should pick their renters well, and let them know what the expectations were or pay the price. She said the neighbors didn't care about the added cost, and said this could be built into the lease. She said what they did care about was the right to use their property and enjoy it as they law said they could, and maintain their value.

Ms. Mullaney said some of the people who had spoken were really new to the party, and had not heard discussions the RHC had had for an entire year. She said it sounded simple to say don't do it to the landlords, do it to the students. She noted that when she and someone else called the police the other night, 150 students were pulled out of 21-23 Edgewood. She asked if all of these people were supposed to be arrested for partying. She said the reason the RHC had come to the landlord ordinance solution was that it was a little more of a way to handle things.

**Mike Hoffman, Durham Point Road**, agreed that this was a serious problem, and said he felt badly for residents who were disturbed. But he said the ordinance was overly broad and unconstitutionally vague. He questioned what “situations which would have a tendency to disturb unreasonably an ordinary individual” meant, and said it could be a barking dog, a construction site, or a TV that was too loud.

He also said the definition for “building” included just about everything, and wouldn’t eliminate the High School. He said his own house would be considered a disorderly house, and asked if he would get a \$1000 fine because he had called the police three times when his sons were fighting. He said the only solution to this would be to arbitrarily and selectively enforce the ordinance, which was dangerous. He said this was a shotgun blast aimed at the problem, and said when a shotgun was aimed at people, they got nervous.

**Wes Smith 26 Woodridge Road**, said he had been a resident of Durham for 33 years, and had been a landlord for 30 years. He said there had been ongoing problems, and said he worried about noise and trash issues. He said he discussed these issues with tenants, and said most of his properties therefore had very few complaints.

He said there were a number of laws on the books, such as the noise ordinance, that should be enforced. He said students should be ticketed, or their names should be taken and given to the University. He said over the years, the University had started working more closely with the Town, and said they should work jointly on solving these problems.

Mr. Smith said there were also life safety issues, and said when there were 150 people in a building, the Police Department and Fire Department should close that down right away. He said another thing that had worked very well was a beat cop. He said with this, 90% of the problems went away because students or others would not act up in front of law enforcement, and if they did, they were dealt with.

Mr. Smith said at some parties, there were people there who the tenants didn’t even know. He said a lot of the problems he had encountered were caused by these kids from out of town. He noted that he cruised his properties on the weekends, and said when he appeared, the parties went away. He noted that some other landlords had a service that patrolled properties in order to maintain order. He said this ordinance was very unfair to the people who were working on maintaining their properties.

**Stan Mullaney, 8 Davis Ave.** said he was watching the meeting on TV, and felt obligated to speak. He said he had practiced law in NH for 40 years. He said the Council had heard from constitutional experts that evening, and said none knew what they were talking about. He said there was nothing wrong with the ordinance, and said it was well written.

He said numerous criminal statutes included the wording “aiding and abetting”, and said they were all enforceable and withstood constitutional muster. He said it had been said

that the ordinance was constitutionally vague, but said everything was constitutionally vague, and he provided an example of this. He said anything could be taken to the point of absurdity, and stated again that there was nothing wrong with the ordinance. He said it was enforceable and made sense.

Mr. Mullaney said there was a problem in Durham, and said there was no mistaking the noise issues. He provided details on this, and said they had to do something about them. He said this took courage.

He said there was an article on the proposed ordinance in the Union Leader that day, and people from all over the State had then come in quoting constitutional law. He said if people were going to rent property, they were doing it for financial reasons in most cases. He said it was a business, and said along with making money came a responsibility to maintain a property. He said landlords should be held to maintain reasonable properties, and said there was nothing unconstitutionally vague or unfair about this.

Mr. Mullaney agreed there was an enforcement component to this, but said the Police Department had 19 officers. He said when the police tried to get peoples' names at a party, they scattered. He said it would be wonderful to have cops on the beat, and said this would go far toward solving the problem, but he said the Chief didn't have the budget or the personnel. He said it would take courage to pass this ordinance, but said it ought to be passed.

He said his final argument was that evictions were done all the time, and said there was now a kit the District Court system had put together for landlords, which anyone of normal intelligence or less could do work with. He reviewed what was involved, and said it was a very simple, inexpensive procedure. He said lawyers were no longer needed for this process. He said it was not too much to ask a landlord to evict someone people who misbehaved on the property. He asked who was running the property, the landlord or the tenant.

Mr. Mullaney noted the statement at the public hearing that someone couldn't be evicted for domestic violence. He said someone could certainly be evicted for bad behavior such as a fist fight in a rented apartment. He said there should be a clause in a lease that said tenants needed to behave themselves.

**Paul Berton, local landlord**, said the RHC had been around since the mid 1990s. He said the Town was lucky to have it, and said it was not a puppet for the DLA. He said the RHC had met on a regular basis since its enactment, although noting that there was no one in the audience at meetings for years. He said it had always tried to have residential representation, but said this had always been the weakest one to find until recently, when the issues had become hot.

Mr. Berton said the RHC had always responded to issues when they were brought to it, and increased its meeting schedule when this was necessary. He noted that he often learned of situations in other college towns where there wasn't an RHC, and therefore an ability to put all the entities involved in the room at the same time.

**Marty Gooze, 9 Meadow Road,** said something they were forgetting was that this was a large town with a lot of students. He said they were only asking students to do what they did in their own homes, and she spoke in some detail on this. She said it was a small group of students who were causing the problems, and said there sometimes was total disrespect when residents tried to engage with them regarding a problem.

Ms. Gooze said the ordinance wasn't intended to be punitive, and was intended so that landlords would take responsibility, and would write their leases for the worst possible situation so they wouldn't have it, and wouldn't get fines. She said in this way, students would know what the expectation was.

She said the point of the ordinance was to make people aware, and said if someone was a good landlord or good tenant, they had nothing to worry about. She said it was for those who totally disregarded the fact that while students had rights, the people who lived in Durham also had rights. She said taking cookies to rental properties was a good idea, but said it was a two way street. She said they wanted the University to take a firmer stand, and said part of educating people was taking a firmer stand when something was wrong.

**Janice Aviza, 2 Garden Lane,** said she was also a landlord, and rented a house across from hers. She said there were no problems there, but said she was still uncomfortable with the proposed ordinance, for many of the reasons stated. She said she was against it, stating that it didn't seem fair to punish one adult for the behavior of another adult.

She also said she hear a lot of ambient noise at her house, and said she didn't know what the answer to roaming students was.

**Sam Flanders, 6 Glasford Lane, and Chair of the RHC,** said the committee had unanimously voted to send this proposed ordinance to the Council. He said he had lived at his residence for 22 years, and the first 16 years were idyllic. He said in July in 2004, the home across the street was purchased by a college student, who moved in with 5 roommates that September. He said small gatherings turned into larger gatherings, and said drug use and heavy alcohol use was documented.

He said the police were called frequently over the next 3 years, because he and his wife were awakened frequently at 2:00-3:00 am. He said the constant noise affected their health and their ability to do their jobs because they couldn't sleep. He said it also affected his neighbors and their children. He said the police issued a number of citations, but the behavior issues didn't go away. He said when three years later, the student who owned the home assaulted a police officer at the doorstep, things started to change. He said the prospect of prison had an effect, and he changed his behavior.

Mr. Flanders spoke in some detail about the proposed ordinance, and said the fine would occur only if the landlord was unwilling to help. He said if that was the case, he shouldn't be in business, and also said a landlord should want to fix the problem.

He said he didn't think the ordinance was intended to be heavy handed, and said this was not some draconian group of people who wanted to crush the landlords. He noted that

there were two landlords on the RHC, one of whom was the former president of the DLA, and the other who was the current head of the DLA. He said they both had voted in favor of passing this on to the Council, and said Mr. Berton had made the motion. He said what was being seen now was a reaction from some elements of the DLA who were finding the ordinance to be unacceptable.

**Mark Rubenstein, UNH Vice President for Student Academic Services**, said he was speaking on behalf of the University of New Hampshire. He noted that earlier in the evening, a statement was made that the University planned to grow to 30,000 students. He said he had been involved in enrollment planning efforts for UNH over the past 12 years, and he assured the Council that this number was not on anyone's mind. He said during the most recent campus Master Planning process in 2004, the University was serving about 11,000 undergraduates, and a 10% increase was projected. He said this was where the University had been over the last two years, at about 12,200. He said it was possible the numbers might drift one way or the other going forward, but said from the outset, the University had an appreciation for the issue of quality of life both for the Town and the students. He said the capacity to serve the students well was somewhat finite.

Mr. Rubenstein said he was raising this issue now so that the conversation on the disorderly house ordinance would not be deliberated under the shadow of that misinformation and fear, and so that the incorrect number would not become part of the folklore for the future. He said the University's current size of about 12,200 undergraduates and 2,500 graduates was for the most part the footprint they would expect to have for resident instruction on the campus.

**Bill Hall, Smith Park Lane**, spoke in some detail about other Town ordinances that had gone to Superior Court and to the Federal court because of not listening carefully.

Chair Carroll asked Mr. Hall not to wander from the topic of the disorderly house ordinance.

Mr. Hall said he wished to speak about the vagueness of the proposed ordinance. He said he was also concerned about any issue where the police could simply declare something. He said his own experience in this area had been less than stellar, and he spoke further on this.

He said they had to be very specific with an ordinance, and said if they were going to talk about noise, there needed to be a decibel meter rather than using someone's opinion, or else the Town would get into trouble in court again. Mr. Hall said the RHC appeared to be a buffer to let people feel good about what was going on.

**Diane McCann, 22 Oyster River Road**, said she had lived in Durham since the 1970s. She said there had been a change in terms of noise, parties, kids wandering around, and people being responsible for their properties and who lived in them. She said what she had heard from the landlords this evening was that the Town needed to agree to have the police be more involved in managing the disruptive behavior.

She said this would mean the Council would have to decide whether more money needed to be spent on the police to enforce the ordinances already in place, what this would mean regarding to the Budget, and who would pay for this. She asked if the landlords would help the Town enforce these ordinances so their properties would be protected. She said that would be great, and said she would like to see the landlords help the Town.

**Mark Henderson, President of the DLA, and member of the RHC**, said Sam Flanders was correct that he and Paul Berton were in favor of the disorderly house ordinance. He said his problem with it was that a lot of the landlords over the last few weeks had gotten a lot of legal advice. He said Mr. Mullaney believed there weren't a lot of loopholes, but said he believed there were.

He said he paid a lot of taxes in Durham, and didn't want to see the Town put through an ordinance that was not legally and constitutionally enforceable. He said he wasn't an attorney, but said legal advice had been heard from both sides. He said he wanted to make sure that the Council completely understood and believed that the ordinance was enforceable and constitutional. He said the Town would be seeing some disorderly houses, and said those landlords potentially could challenge the ordinance in court. He said this needed to be considered.

Mr. Henderson said the landlords put their fair share into running the Town. He said he understood there were some problems with some single family rentals, but said he didn't feel the ordinance would solve the problems, and could cause the Town some legal problems in court.

Chair Carroll noted that said there were people who had sent their comments by email, and said Administrator Selig's office had compiled them.

Administrator Selig said 18 emails were received, and said the majority were in favor of the ordinance. He said there were also 2 emails sent after the close of business that day, one from Tom and Colleen Yoder, Valentine Way, which spoke in favor of the ordinance. He said there was another email from Pam Shaw and Doug Webb, Faculty neighborhood, which spoke in favor of the ordinance.

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

The Council stood in recess from 11:20 to 11:28 PM.

Chair Carroll noted that it had been a long evening, with a lot of testimony. She asked Councilors to weight in on when they would like to deliberate on the proposed ordinance.

Councilor Smith said he would like to begin and conclude the deliberations that evening or by tomorrow morning.

Councilor Gooze agreed, noting that the information was fresh in his mind right now.

Councilor Clark said perhaps the deliberations could begin, but questioned how they could actually be concluded that evening.

Councilor Mower said she would like to hear any comments the Town's attorneys might make in response to some of comments heard this evening. There was discussion, and Councilor Mower asked Administrator Selig whether he felt the legal issues had all been addressed.

Administrator Selig said it was never good public policy to deliberate at this hour. He suggested that the disorderly house ordinance deliberations be the first item under Other Business at the next Council meeting. He said there was a lot to think about, and said in the mean time, he would share with Attorney Spector some of the feedback received that evening. He said none of this was actually new, and noted that Attorney Spector had appeared before the RHC to address the issues that had been brought up. But he said it was a good idea to check back with her.

There was further discussion that it would be important to get to this Agenda item early enough at the next meeting, and that putting it first under Unfinished Business could accomplish this, especially if the Presentation items that would come before it were limited. Administrator Selig said it would make sense for it to go ahead of the downtown police enforcement efforts, under New Business, as well as the discussion on the concept of developing a property maintenance ordinance.

There was further discussion on whether to deliberate on the ordinance that evening. Councilor Cote said he would like to review the testimony in order to reprocess all that they had heard. He said it couldn't be done in a half hour.

Councilor Gooze said his problem was that he had been at all the RHC meetings so had already heard everything. He said he had heard no new testimony.

Chair Carroll said Councilor Gooze had already had the chance to think through a lot of the things that had been brought up that evening, whereas other Councilors had not had this chance.

Councilor Smith said he agreed with Councilor Gooze, and said they had been living with this for a long time.

Councilor Stanhope said the Council had heard from some people from the RHC who might have had the opportunity to rethink things. He said this might be addressed at their upcoming meeting. He said there were so many questions raised that evening that he didn't get the answers to, and said he therefore needed time to research some of it on his own, in order to cast a well informed vote.

He said he didn't think there was anyone on the Council who didn't want to ensure that residents had the quiet enjoyment of their own homes. He said after listening to the testimony, he wasn't sure whether or not this ordinance was the way to go. He said he hoped they would adjourn now.

Councilor Sievert said in light of what the Council had heard that evening, including the change of the top level landlords on the RHC, the Council needed to look at this.

Councilor Gooze said they changed their minds because of their attorneys. He said if the Council was going to put off the deliberations, he wanted everyone to get a copy of the 1996 Court decision, to see that it had nothing to do with this whatsoever.

Councilor Sievert agreed, stating that he was frustrated at the legal comments back and forth at the eleventh hour. He said somebody was wrong.

Administrator Selig noted that Mr. Flanders had put together a summary of what was in the 1996 agreement.

Councilor Clark asked if the Council could get a statement from Attorney Spector, or if she could be at the next Council meeting.

Administrator Selig said she could be there, noting that she had been at two RHC meetings.

Councilor Niman said he would also like to see something from Attorney Spector in writing, point by point, so he could review it in advance of the meeting.

Chair Carroll asked what other resources Councilors needed in order to be able to do their own analyses concerning the proposed ordinance.

Councilor Gooze said Councilors needed to know what the actual court case was about, and what the 93-16 ordinance was. It was agreed that this would be sent to Councilors by email.

Councilor Clark asked that data be provided to Councilors on how many houses had had police calls.

Councilor Mower suggested that the proposed Keene, NH ordinance should be looked at.

Councilor Stanhope said it would be interesting to know how many of the police calls would have risen to the level of a disorderly house.

Councilor Gooze noted that Chief Kurz had said at the First Reading of the ordinance that the purpose of the ordinance was to get at the chronic problem properties that they couldn't seem to get at any other way. He said it was important not to lose track of that.

Chair Carroll said Councilor Stanhope's question was a good one, and said having this information would give them some point of reference.

Councilor Smith noted that the July 26, 2010 Minutes had previously been tabled. He provided details on the Minutes corrections:



Page 1, Agenda item III should be Special Announcements, None.

Agenda item IV should be Approval of Minutes

Page 2, under V. Councilor and Town Administrator Roundtable, remove paragraph right under it starting with “said the business visitation.....” Also remove Councilor Mower’s name from the beginning of the next paragraph.

***Councilor Mower moved to take off the table the July 26, 2010 Minutes. Councilor Smith SECONDED the motion, and it PASSED unanimously 9-0.***

***The original motion to approve the July 26, 2010 Minutes as amended PASSED 8-0-1, with Councilor Gooze abstaining because of his absence from the meeting.***

Councilor Gooze asked if public comments would still be accepted on the disorderly house ordinance. He noted how strict the ZBA was about this when he was on that board. He said he wanted to make sure things were done right, and said it was very uncomfortable for him to get comments without someone else having the chance to rebut the comments.

There was discussion, with Administrator Selig stating that feedback from the public could continue to be received, because the Council was not a quasi judicial board, and its hearings were legislative in nature. He said the purpose of the public hearing was to provide a time specific opportunity for people to express their views. He said the Council had no further obligation to hear from the public on this issue, but said there was no way to prevent the public from talking with Councilors about their concerns or providing other feedback.

He said the only way to deal with this was to deliberate and take action now, or continue the public hearing. He said perhaps the hearing could be opened again if there was new information provided or additional feedback was needed. He also noted that another hearing would be required if a substantial change was made to the ordinance.

Councilor Smith said any Councilor could move to reconsider closing the public hearing, at the next meeting, but said he hoped that no one would do so.

## **XI. New Business**

- A. Discussion regarding police enforcement efforts in downtown area relative to student behavior
- B. Discussion regarding the concept of developing a property management ordinance
- C. Other business

Due to the lateness of the hour, the Council moved these items to the September 27<sup>th</sup> Council meeting.

## **XII. Nonpublic Session (if required)**

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

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

*Councilor Cote MOVED to adjourn the meeting, Councilor Stanhope SECONDED the motion, and it PASSED 8-1, with Councilor Smith voting against it.*

Adjournment at 11:48 pm

Victoria Parmele, Minutes taker