

This set of minutes was approved at the November 1, 2010 Town Council meeting

**Durham Town Council
Monday September 27, 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

MEMBERS ABSENT: None

OTHERS PRESENT: Administrator Todd Selig, Police Chief Dave Kurz; Code Enforcement Officer Tom Johnson; Town Engineer Dave Cedarholm

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, and it PASSED unanimously 9-0.

III. Special Announcements - None

IV. Approval of Minutes - September 13, 2010

Councilor Mower MOVED to approve the September 13, 2010 Minutes. Councilor Sievert SECONDED the motion.

Page 1, should read that Councilor Sievert arrived at 7:06 pm

Page 5, 3rd paragraph from the bottom, should read "...the increase in the nitrogen levels, erosion problems and the decline in eel grass. But she said the good news was that many..."

2nd paragraph from bottom, should read "...trips on the Edgewood Road Campus Connector bus.....He said he had also taken the Wildcat Transit bus to the Newington Mall.....

Page 9, 5th paragraph, should read "Councilor Mower asked if the HDC would be including developers in discussions about design guidelines."

Page 31, 4th paragraph, should read "...and that putting it first under Unfinished Business..."

The motion to approve the September 13, 2010 Minutes, as amended, PASSED unanimously 9-0.

V. Councilor and Town Administrator Roundtable

Councilor Gooze said on Tuesday at 7 pm, there would be a public information session put on by the Workforce Housing committee. He said he believed the session would be broadcast on DCAT, and Administrator Selig said he would check on this.

Councilor Mower said Planning Director Jim Campbell might not be able to attend that meeting.

Councilor Gooze said the committee's consultant would be making a presentation at the forum on where things stood in terms of available workforce housing in Durham, and also in terms of the Zoning Ordinance. He said some possible approaches for complying with State law would be discussed.

Councilor Clark updated the Council on the most recent Economic Development Committee meeting. He said the first phase of the marketing study would move forward soon. He said the EDC had also talked about the 2011 Budget, and the idea of creating a part time EDC position if they could find a way to make this cost neutral for the Town. He said they believed this could be a valuable position, which would give the Town's economic development efforts more horsepower.

Councilor Clark said the EDC also discussed the idea of a possible TIF district for the downtown core, in order to raise money for infrastructure improvements, and to help make the ideas the EDC was discussing a reality.

Councilor Mower said the EDC had recently held a joint meeting with the Energy Committee for the second half of the EDC meeting. She said it was a fruitful discussion on some approaches to possibly take, including increasing the energy efficiency of downtown business and municipal buildings.

She also noted that on Oct 2nd, there would be a statewide green building open house, which would include some buildings in Durham. She referred people to the Friday Update for details on this.

Councilor Smith said the Planning Board had met on September 15th, and he briefly summarized the meeting:

- There was a public hearing on proposed tree trimming by PSNH along some of the Town's scenic roads
- There was a public hearing on a proposed amendment to an approved site plan for 6 Jenkins Court, to allow the unfinished attic to be used for commercial space
- The Board accepted an application to amend an approved conservation subdivision for Sophie Lane with some fairly minor changes.

- The Board accepted an application to build a personal wireless facility at Christensen Hall on the UNH campus
- The Board voted not to recommend a proposed amendment to the Zoning Ordinance to apply conservation subdivision regulations in the ORLI and MUDOR districts. He said he and Chair Parnell were the only Board members who voted in favor of the Zoning change.
- There was discussion on the CIP and 2011 Budget with Administrator Selig and Business Manager Gail Jablonski

Councilor Smith said the Planning Board would hold its quarterly planning meeting on Wednesday, and said the major item on it was further discussion with Administrator Selig, Business Manager Gail Jablonski, and DPW Director Mike Lynch on the Capital Improvement Program (CIP).

Councilor Stanhope asked that Councilors pay attention to the upcoming Historic District Committee meeting, which would be dedicated to the idea of design guidelines.

Councilor Stanhope noted that Councilor Gooze had indicated that he and Chair Carroll had recently met with the President of UNH, and he also noted that there had been criticism of Councilor Niman in the past for not limiting his duties to the running of Council meetings.

He said if there were going to be meetings outside of the Council that the Chair attended, it was important to provide a summary of the meeting to the Council, if the Chair was in fact acting as the Chair of the Town Council at that meeting. He also said that if a delegation of Councilors was sent out to address a particular issue, it was important that this delegation be made up of the full spectrum of opinions on the Council.

Councilor Stanhope spoke about the fact that Councilors had received an email dated September 19th regarding the 401 certificate. He said he thought it was well laid out, and asked that Administrator Selig provide a response as to whether it had changed his opinion on the 401.

Administrator Selig said what had been provided was not new information, and had not changed his opinion. He told Councilors that they would be hearing a presentation on the 401 certificate and water issues in general from Town Engineer Dave Cedarholm at the next Council meeting. He also said Paul Currier, whose department at NHDES administered the instream flow regulations, would be present at that meeting to speak with the Council.

He noted that this was the second time the Council had heard from Attorney Bisbee on this issue, and that he had still recommended not proceeding with litigation concerning the 401 certificate, and instead working within the framework of the instream flow regulations.

Administrator Selig also noted previous correspondence between former Councilor Peter Smith and the Town's law firm, Mitchell and Bates, on this issue, at a time when former Councilor Smith had asked that the issue be resolved once and for all. Administrator Selig read the letter written by Attorney Mitchell at that time. He then read the letter from Attorney Bisbee. He also referred to the fact that there had been a nonpublic meeting with Attorney Bisbee on this issue in 2009.

Councilor Stanhope said he didn't believe that the Council had formally concurred or rejected the recommendation provided by Attorney Bisbee. He said this issue kept coming up, and said he would like to see some closure on it.

Administrator Selig said when the Council met with Attorney Bisbee, the consensus at that time was to follow the instream flow process.

Councilor Stanhope said he would like to see a vote taken on this issue, which would represent a formal position taken by the Council. He said people continued to lobby Councilors on this issue because they didn't have a sense that the Council had adopted a position on it.

Administrator Selig said he agreed that the conditions on the 401 certificate didn't make sense and were not based on sound science. But he said the recommendation from legal counsel regarding being able to mount a successful challenge to it hadn't changed since 2006.

Councilor Mower said as part of the presentation on the 401 certificate at the next meeting, she would like to see a timeline/history of the Town's agreements with NHDES in regard to the 401 certificate. She also noted that people were concerned that the conditions of the 401 certificate might get rolled into the instream flow requirements, rather than starting from scratch. She said it would be useful to get some perspective from Mr. Cedarholm on how likely that was.

Councilor Smith said although the Council hadn't voted on accepting the 401 restrictions, there was a subsequent vote to take part in the mining of water from the Spruce Hole aquifer, and to take water out of the Lamprey River during high water periods and put it into the aquifer. He said the Council had voted to spend a substantial amount of money as a consequence of not asking for modification or withdrawal from the 401 restrictions.

Councilor Stanhope asked what the status was of the DPW labor contract, and Administrator Selig said a tentative agreement had previously been reached, but they were now back at the bargaining table. He provided further details on this.

Councilor Mower asked Administrator Selig if had been kept apprised of the status of the request to NHDES for an amended wetland permit for the Jackson's landing boat ramp.

Administrator Selig said NHDES inspector Dori Wiggin was supposed to check with the Army Corps of Engineers to ascertain their perspective. He said the DPW would be

preparing a request to modify the wetland permit, but said he didn't know the status of this. He noted that the DPW was heavily focused on the 2011 Budget right now. Councilor Mower said a reason she had asked was that November was a good time to make some changes.

DPW Director Mike Lynch said the application would go in the following week.

Councilor Gooze asked if there should be follow up on the comments made by Councilor Stanhope regarding the role of the Chair.

Chair Carroll noted that she had asked Administrator Selig to bring this issue up. She said agreed that it was important to have transparent government, and said what the Chair did should be transparent at all times.

Administrator Selig said the situation being referred to was his fault, explaining that he met on a monthly basis with UNH President Mark Huddleston on a variety of issues, and that there was a positive and collaborative relationship with him. He noted that an ongoing issue was student rentals in the neighborhoods, and said he had thought it would be beneficial for Dr. Huddleston to hear from Chair Carroll and Councilor Gooze regarding feedback they were getting from constituents on this issue. He said there had been further discussion with Dr. Huddleston on this issue, and said he had agreed to get more involved with it, including meeting with some students to express concern about their behavior.

Chair Carroll said she thought Councilor Niman, when he was Council Chair, had been invited to monthly meetings with Administrator Selig and UNH President Mark Huddleston.

Councilor Niman said he had not been invited to any monthly meetings when Administrator Selig and Mark Huddleston met, but he had, as Chair, met with Mark Huddleston several times.

Chair Carroll said this had been the first time she had done this. She said there had been a lot going on with press, and it was decided that it was important to hear where Dr. Huddleston stood on these issues. She said they didn't discuss the disorderly house ordinance, but did discuss how the Town and the University could continue to work together.

She said the big news at the meeting was that Dr. Huddleston wanted to be personally involved with the issues. She said she had not talked to any Councilor about the meeting because it was important that this information come out as it had.

Councilor Stanhope said he had simply been reflecting back on the historical criticism of Councilor Niman as Chair of the Council. He said he supported the Chair in speaking with Dr. Huddleston, but said he wanted there to be a consistent policy on this. He said he thought the criticism of Councilor Niman had been unfair. He also said if the Chair did hold meetings, the full Council needed to know what transpired at those meetings.

Councilor Gooze said Administrator Selig had made note of this meeting when he and Dr. Huddleston had recently put out a joint letter. He said the University was actually doing more on these issues than people were aware of, but said Dr. Huddleston had admitted that he had not been personally involved with them. He said the change of attitude should be very good for the Town.

Administrator Selig said Durham Day was a great event, and thanked the Parks and Recreation Committee, and Parks and Recreation Director Mike Mengers, who he said had done a terrific job on it even though he had already given his notice. He said there were about 500 people at the event, and said approximately 235 children went up the climbing wall.

Administrator Selig said he would be meeting further with the Planning Board in regard to the CIP. He said as in the past, DVDs would be made of these meetings with the Planning Board so Councilors could view them, since the Planning Board generally asked a lot of detailed questions on the CIP.

Administrator Selig said he was meeting with Town boards and committees right now on the 2011 Operating Budget. He noted the information recently provided in the Friday Update about the projected tax rate increase for the municipal portion of the 2011 Budget. He said Durham's 2010 Municipal tax rate was projected to increase 8%, from \$6.52 to \$7.04, due to a decrease in the total Town assessed valuation, the Goss tax abatement, diminished revenues, and fewer K-12 students who lived on UNH property and attended schools in the Oyster River School District. He provided details on these various factors, and noted that in December of 2009, the projected tax rate for 2010 was \$6.60, or a 1.20% increase.

Administrator Selig also said that on a positive note, the Oyster River School District had a surplus of \$2,239,401 for 2009-2010, which would impact the school portion of the tax rate by an as yet undetermined amount. He said the Business Office was working with the School District business office to determine the actual impact of the surplus, which would be an impact on the overall tax rate for Durham. He said he would be meeting with Superintendent Colter on this the following day.

Administrator Selig said the conclusion regarding the Pettee Brook Lane pilot program was that the changes were working quite well. He noted that a number of modifications had been made to the program along the way. He said the Town was also proceeding with an analysis of the parking strategy for the downtown core. He said an idea being considered was to provide somewhat more expensive parking on Main Street and provide cheaper parking as one moved further away from Main Street.

Councilor Clark said he thought parking should be an amenity, and said parking downtown should be free and affordable, among other things for people who worked there. He asked if all of the different options were being looked at.

Administrator Selig first noted that parking was not being looked at as a potential revenue source. He then explained that the perception currently was that there wasn't enough parking downtown, while in reality there actually was some parking that wasn't being fully utilized. He said transportation planner Rick Chellman was working with the Town to look at a variety of possible options, including electronic kiosks, and would be providing his recommendations.

Councilor Gooze said both the new roundabout and the Pettee Brook Lane traffic flow were dependent on yield signs, but said these signs were not being adhered to especially well. He said he wasn't sure what could be done about that.

He also asked where things stood regarding tax abatements and the tax structure in Town. He noted that the majority of residents hadn't gone through the abatement process, and asked if the plan was to do a correct evaluation that would bring everyone on line.

Administrator Selig noted that the contract Assessor had covered this issue in his recent presentation to the Council.

Councilor Stanhope said there were a number of inequities in regard to the current assessment. He said it was important to recognize that in addition to properties that had been over assessed, there were also a number of properties in Town that had been under assessed, so that some people were therefore not paying their fair share of taxes. He said it would take a period of time to correct what had gone wrong, and he spoke further on this.

Councilor Gooze said he simply wanted the public to be aware of what was going on in regard to this issue

Administrator Selig said the next scheduled revaluation would take place in 2013.

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

Bill Hall, Smith Park Lane, noted that he had a NHDES file regarding the 401 certificate, and said after going over this material, the Town didn't have one. He also said he had read the letters that the attorneys had written about this issue, and said they didn't bring up one aspect of the requirements that the Town either met or did not meet. He said they also didn't refer to administrative procedures or the fact that that 401 was a discharge permit and nothing else. Mr. Hall spoke in further detail on this issue.

Henry Smith, Packers Falls Road, said he had listened to the public hearing on the proposed disorderly house ordinance, and noted that several of the speakers were landlords who lived on the premises where they rented, or at least nearby, and did a good job of monitoring tenants' behavior. He said one of these landlords was Todd Campbell, and said he agreed with his objection that a town official had photographed the number of vehicles on his property.

Mr. Smith noted that Pam Weeks, also a landlord, had made a thoughtful presentation at the hearing. He said she had indicated that the behavior of her tenants was ultimately beyond her control, but said he disagreed with this. He said details in a lease controlled tenant behavior.

He spoke about the fact that the Durham Landlord Association attorney had said the proposed ordinance was too vague and was unconstitutional, but said this hadn't been tested in a court of law. He also noted that the ordinance included an appeals process that allowed a landlord to take steps to prevent being fined.

Mr. Smith reviewed the perspective the Town's Attorney, Laura Spector, had concerning the ordinance, including the fact that the Town did have the authority to adopt it. He urged the Council to adopt the disorderly house ordinance.

Timothy Horrigan, 7 Faculty Road, said he realized that the disorderly house ordinance proposal was a divisive issue. He said his own perception was that the Town was reasonably quiet, but said he understood that some people felt otherwise. He said ad hoc groups did great work, but could be dominated by people who were invested in a particular issue.

He said he wasn't sure that this problem was something that could be solved with legislation. He said he didn't think the Council or the State had the power to regulate this, and said market forces would always win. He said when families needed to sell their homes, they would sell to the highest bidder, who perhaps would be someone who wanted to rent to students. He said it would be in that person's economic interest to maintain his property, and said those landowners who didn't do this would learn that they hadn't made a good investment.

Mr. Horrigan also spoke about how the student housing stock in Town appeared to be changing.

On a separate issue, Mr. Horrigan said there were some lights out on his street, and Councilor Mower said PSNH had been contacted about this.

Morey Borovick, 15 Mill Road, said he was not speaking for or against the disorderly house ordinance, but was speaking in general about this issue. Concerning comments about Gestapo tactics and surveillance by the Code officer, he said Mr. Johnson had been given the mission to enforce the codes that were currently on the books. He said properties were being observed, as opposed to receiving surveillance.

He said it was delusional to think that the neighborhoods were not deteriorating and that there were no problems. He spoke about the number of student housing properties near him, and the fact that there had been problems with them from time to time. He also noted that a family on Bagdad Road had moved out because of a nearby student housing issue. He said someone who bought it had then put it back on the market, and said this impacted property values.

Rich Conrad 2 and 8 Coe Drive, said noise was noise, wherever it came from. He said people like him who had made an investment were being profiled. He said he took a personal interest in his properties, and said when there was a problem, he took action. He said he thought the disorderly house ordinance was the wrong strategy, and said the Town was doing UNH students a disservice by not holding them accountable.

Attorney Bobby Hantz, said she had not had the opportunity to get back to the Town regarding Attorney Spector's comments until that afternoon. She then said there was concern about the legal underpinnings of the disorderly house ordinance. She said over the past 15 years, the landlords hadn't disagreed with the Town about whether there was a problem, but she said they disagreed with this approach to solving it.

She said the Town had in recent years been proactive, and had taken a collaborative approach that included an awareness of peoples' rights. She said it was good to hear about the meeting with UNH President Huddleston, and said there was more that UNH could do. She said unfortunately, the ordinance stepped back from the progress that had been made, in that it punished the wrong people and sent the wrong message.

Attorney Hantz said she had serious concerns about the ability to enforce the penalties, stating that there was not a land use or criminal code enforcement mechanism. She also said she didn't think the ordinance would effectively solve the problem, and said the landlords thought there were better, more collaborative approaches.

Morey Borovick, 15 Mill Road, said he had been a landlord for 13 years, and had no issues with enforcement agencies during that time. He said it was fallacious for a landlord to say this ordinance would let the kids off free. He said being a landlord was a voluntary undertaking, and said a good landlord wrote a good lease. He said the landlord owned the property, and also said the code was meant to regulate the good use of the property.

Debbie Valente, NH Property Owners Association, Manchester NH, first noted that she had been asked to provide clarification on how long an eviction would actually take. She said a normal eviction took 2-3 months, but it was now taking up to 6 months because of recent State budget cuts. She also said if a landlord filed to evict on the basis of a disruption in the building, he had to be extremely specific about the reasons for the eviction in order to be successful. She said if the person being evicted filed an intention to evict, this could extend the process further. She spoke further on this.

Ms. Valente noted that someone had asked for information on a restrictive vs. a nonrestrictive property, and said she had forwarded information on this to the Council.

She said her association represented property owners across the board, and said if the disorderly house ordinance passed, it would apply to housing across the board. She said the association was in favor of going back to the Rental Housing Commission to see what could be worked on as a joint effort. She suggested the idea of requiring a party permit for gatherings of 10 or more people.

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

- A. Shall the Town Council, upon recommendation of the Town Administrator, approve the special event permit application submitted by the UNH Campus Recreation Department to close a portion of Main Street for the annual UNH Homecoming 5K road race on Saturday, October 9, 2010?
- B. **FIRST READING ON ORDINANCE #2010-11** amending Chapter 153 “Vehicles and Traffic”, Article VI “Schedules”, Section 153-43 “Stop Intersections” by creating a stop intersection at Cedar Point Road in the vicinity of where the gravel roadway meets the paved section
- C. Shall the Town Council approve the Water and Sewer Warrant for fall 2010 totaling \$370,308.55 and authorize the Town Administrator to sign said warrant?
- D. Shall the Town Council, upon recommendation of the Town Administrator, reduce the assessment for property owned by England Family Limited Partnership located at 573 Bay Road from \$890,068 to \$885,968, grant a property tax abatement in the amount of \$4,100 of assessed valuation to England Family Limited Partnership, and authorize the Town Administrator to sign the Settlement Agreement between England Family Limited Partnership and the Town of Durham relative to Docket No. 24053-08PT?
- E. Shall the Town Council, upon recommendation of the Town Administrator, reduce the assessment for property owned by England Family Limited Partnership located at 573 Bay Road from \$925,968 to \$815,600, grant a property tax abatement in the amount of \$110,368 of assessed valuation to England Family Limited Partnership, and authorize the Town Administrator to sign the Settlement Agreement between England Family Limited Partnership and the Town of Durham relative to Docket No. 23849-08PT?

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

VIII. Committee Appointments - None

IX. Presentation Item

Receive annual report of the Parks and Recreation Committee – Sara Badger Wilson, Chair

Ms. Badger Wilson spoke before the Council, and said it had been quite a year for the committee. She said it had been difficult for volunteers to implement all that the committee wanted to do, and said it had therefore been great being able to work closely with Parks and Recreation Director Mike Mengers. She said unfortunately, he would be moving on, but said she was sure the committee would find someone else who was great.

She spoke in detail about accomplishments in 2010, including Winterfest in February, the Adopt a Trail program, and two Band by the Bay concerts during the summer. She also noted that Parks and Recreation had taken over some of the cornerstone Durham events,

including the Memorial Day parade and Durham Day, and said they most likely would also be taking over Light Up Durham in December. She said this had proved that when other groups in Town for some reason weren't able to continue an event, Parks and Recreation could take it over and make it a success.

Ms. Badger Wilson thanked Councilors for having accepted the proposal to hire a part time Parks and Recreation Director, and said this had made a huge impact on the Parks and Recreation Committee. She said although they were separate entities, they worked closely with the Director.

Councilor Gooze said he had heard great comments about the various Parks and Recreation organized events from residents, and said this was what made a community.

Ms. Badger Wilson provided further details on the variety of efforts Mr. Mengers had undertaken, and said the fact that he was leaving his position was a great loss.

Councilor Stanhope asked if there was more that could be done with a full time Director, putting aside the economic aspect of this.

Ms. Badger Wilson said she would provide a report on this to the Council in October. She noted that with a full time position, they would have the ability to hire some UNH interns, and consequently would be able to do more programs.

Councilor Stanhope asked whether Mr. Mengers had actually worked only 20 hours a week, considering how much he accomplished.

Ms. Badger Wilson said some weeks he put in 15 hours, and some weeks he did 30 hours. She said he needed the volunteers in order to get some of the projects going.

Administrator Selig said the position was budgeted for a 20 hour week, with an allowance of an additional 10 hours per month. He said Mr. Mengers had stayed within these parameters.

Councilor Sievert encouraged other Councilors to keep the Parks and Recreation Director position, and to make it a full time position. He said it had been proven that there was a need for it in the community. He said funds for the department would probably come in, even though they might not pay for the Director position itself.

Ms. Badger Wilson explained that the profits from the programming Mr. Mengers had done had gone into the General Fund, and had paid for the Committee's budget. She noted that this budget was separate from the Parks and Recreation Department budget.

Chair Carroll said it would be interesting for the Council to see the numbers on this.

Administrator Selig said Parks and Recreation had done really well this year, and he read through the variety of programs that had recently been developed.

Chair Carroll agreed that there had been some very successful programs. She thanked Parks and Recreation Committee members for the great work they were doing.

X. Unfinished Business

- A. **PUBLIC HEARING AND ACTION ON ORDINANCE #2010-10** amending Chapter 175 “Zoning”, Article XII “Zone Requirements”, Section 175-55 (E) “Minimum Contiguous Lot Area” of the Durham Town Code

Councilor Smith MOVED to open the Public Hearing on Ordinance #2010-10 amending Chapter 175 “Zoning”, Article XII “Zone Requirements”, Section 175-55 (E) “Minimum Contiguous Lot Area” of the Durham Town Code. Councilor Stanhope SECONDED the motion, and it PASSED 9-0.

There were no members of the public who came forward to speak.

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

Councilor Mower said there had been correspondence on this proposed Zoning change with several people, two of whom were part of the Planning Board subcommittee that had developed the conservation subdivision provisions of the Zoning Ordinance. She said 175-55(E) might have been a consideration as part of this. She said the issue behind this provision had to do with the idea of protecting sensitive soils, and the possibility of building where building shouldn’t occur.

She also noted that she had received an email response from Town Planner Jim Campbell concerning her question to him as to how effective this provision had been. She said Mr. Campbell had said there were no instances where the provision had actually come up, but had noted that Steve Michaud of Doucet Survey had started the conversation on the provision because of a problem he had run into regarding a Durham Point Road property.

She said Mr. Campbell had said that over the past few years, a few people had mentioned that this provision was a problem, but said he hadn’t seen any plans where it had been involved. She said her understanding was that the Planning Board consensus was that there were other protections in place that in effect negated the need for the provision. But she said the Planning Board hadn’t put anything in writing regarding its decision, and said it would be helpful to see the Board’s rationale.

Councilor Smith said the Planning Board typically was not expected to put anything in writing about a decision about zoning ordinance changes, noting that they were not the ZBA. He said the Board had held the public hearing, discussed the proposed Zoning change, and then took the vote to remove it from the Ordinance.

Councilor Mower said the reason she had asked for the rationale was that there was relatively little discussion by the Planning Board on this issue. She noted that most

Councilors were uninformed on the provision, and said she thought it would be useful for them to have something in the record to refer to. She noted that no communication was provided to the Council on this.

Councilor Sievert said he thought the provision was redundant, and didn't think it should be in the Ordinance. He said it was almost impossible to subdivide a parcel in Durham, and do a conventional lot, given the provision. He said it almost constituted a taking, and said the calculation of usable area provision of the Ordinance covered what needed to be covered.

Councilor Clark said this issue seemed pretty straightforward, the Council knew what the Planning Board had decided, and also said what Mr. Campbell had said made complete sense.

Councilor Mower said this was one of several provisions in the Ordinance that was based on soils analysis. She said it was put in the Zoning Ordinance for a reason, and said since the Council hadn't heard from the people who had developed the provision, she would have liked to have heard more explanation from the Planning Board. She said for her, it was a question about the process that had taken place.

Councilor Gooze said he felt this Zoning change should be made, stating that it didn't make a lot of sense and was too restrictive. He said there were other resource protective provisions that came into play, so this one wasn't really necessary.

Councilor Stanhope agreed. He noted that this issue had come about in regard to a parcel of land his firm was involved with, and said the owner was faced with the fact that with a 100 acre lot, he couldn't create two 50 acre lots out of it. He said this was something that was contradictory to common sense.

Councilor Mower said she was not necessarily against removing this Zoning provision, and stated again that for her, there was a process issue, in that the change was being made without adequately documenting the rationale for it.

Councilor Gooze suggested that someone who was interested in this could read the Minutes.

Councilor Stanhope MOVED to adopt Ordinance #2010-10 amending Chapter 175 "Zoning", Article XII "Zone Requirements" of the Durham Town Code to remove Section 175-55 (E) "Minimum Contiguous Lot Area". Councilor Smith SECONDED the motion, and it PASSED unanimously 9-0.

The Council stood in recess from 8:51 to 9:03 pm.

- B. DISCUSSION 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"

Administrator Selig said there had been a lot of discussion on this proposed ordinance throughout the community, and said the Council had received numerous emails on it. He noted that some specific questions had been posed to legal counsel Laura Spector at the last meeting, and said she had provided a fairly concise response to the Council in her letter dated September 24, 2010, which Administrator Selig released to the public on the same date. Administrator Selig read this letter for benefit of the public. (The letter is on file with this set of minutes).

Administrator Selig also reviewed other materials that had been provided to the Council in regard to this issue.

He spoke in some detail on the settlement agreement out of which the Rental Housing Committee had been created. He said the RHC had met from time to time as needed since its inception in order to address issues that came up. He said by 2003, there was significant concern about student rental housing in residential neighborhoods, and 3 different ordinances were developed at that time to potentially address the concerns: a disorderly house ordinance, a gathering assembly permit ordinance, and a rental registry/landlord permit ordinance.

Administrator Selig said the RHC deliberated on them, and ultimately it was recommended that the Town not proceed with any of them, and instead work on a collaborative approach to solving the problems. He said the focus at that time was problems with some of the larger rental properties, and the fact that there wasn't buy-in from professional property managers. But he said this buy-in had in fact occurred since that time. He said a new category of student rental, the non-owner-occupied single family home, had then become more and more prevalent and problematic.

He said some of these homes were purchased by parents of UNH students, as a potentially cost effective approach to providing housing for their kids. He said it had been found that it was very often these properties, where the parents had little experience managing rental properties, where there were problems. He said they tended to be absentee landlords who lived out of state, and said when they were contacted, some were unwilling to collaborate to address problems at a property.

Administrator Selig said there had also been outside investors who had purchased homes in Durham to use for student housing rentals. He explained that for the majority of them, it wasn't economically feasible to operate such a property as a rental and still work within the Zoning Ordinance, including abiding by the no more than 3 unrelated provision. He explained that the Town had had great difficulty proving over-occupancy of a property, and he provided details on this. He noted that the RHC had discussed this problem in great detail.

Administrator Selig next reviewed the ideas the Rental Housing Committee had been bringing forth at its meetings over the course of the last year.

He said the RHC had requested that the staff actively pursue enforcement of existing town Zoning, parking and trash violations. He said the RHC thought the status quo of responding to complaints, because of limited staffing in the Code office, was

unsatisfactory, and said the Town needed to be much more pro-active. He said the Town had therefore engaged in a data collection effort and an observation effort to determine if there were in fact violations at problem properties, and to pursue this if there were violations.

Administrator Selig said the RHC had also urged that the Town pursue court action, or obtain administrative warrants to gain access to properties where there were suspected Zoning occupancy violations. He said it had been found that the administrative warrant route was very cumbersome, and was not user friendly. He noted that the Town had pursued court action on a property and had won the case, but said the person involved had not yet paid the fine so the Town had to go back to court.

He said there had been efforts to better informing residents of Town efforts, and Town regulations, and also noted that the RHC had recommended modification of the noise ordinance so that it went into effect at 10 pm instead of 11 pm. He said the Council had made that regulatory change during the summer.

Administrator Selig said the RHC had also brought forth the disorderly house ordinance. He noted that the Council had opted to delay the public hearing on this until September, when UNH students were back in Town. He said it was therefore not true, as some young people had said, that the Town was moving forward with this without input from UNH students.

He said the RHC had considered the idea of a large gathering permit ordinance, but had decided that this would not be an effective medium to address the problems. He said the committee had also given thought to the idea of a registration ordinance, but said it appeared that there wasn't interest in focusing on this approach at this point in time. But he said the committee had discussed the merits of some type of regular health and safety inspection program, especially for non owner occupied properties. He noted that such a program would apply to all rental properties.

Administrator Selig said the Council had begun discussion on the idea of a disorderly house ordinance based on the RHC's recommendation. He noted that the RHC had recommended a more tiered fine structure in place than was now in the Ordinance. He said it was the strong perspective of the commission, and particularly the landlords, that there needed to be a significant enough fine, that was imposed as quickly as possible, in order to get the attention of landlords of problem non-owner-occupied single family homes.

He said that after its discussion, the Council determined that there was consensus on moving forward with the disorderly house ordinance. He said once this occurred, the proposal went back to the RHC with the question of whether it would be possible, in addition to a fine or instead of one, to focus on properties deemed to be disorderly, and to do then do a health and safety inspection of only those properties. He said the feeling of the RHC was not to do that, and the Council then moved forward with the proposed ordinance as written.

Administrator Selig said there had been a great deal of discussion on the RHC about not holding landlords hostage for the behavior of their tenants. He said the landlord representatives on the RHC felt strongly that if landlords were working to make a tenant aware of the regulations and were working with the Code Officer, there should be a mechanism to waive the fine.

He explained that this ordinance was not being proposed as a new way for the Town to collect revenue. He said the situation was entirely the opposite, and said the Town's hope was that it would never have to use the ordinance, but that if it did have to use it, this would bring property owners to the table and engage with them in a constructive way.

He noted that the Council had determined that contrary to his desires, the Town Administrator would be the appeal mechanism, and not the Police Chief as had originally been proposed. He also explained that if a landlord did all the things he was supposed to do under the ordinance and still couldn't control the tenants, there would be no liability on the part of the landlord. He said the Town wanted to have the landlord as a partner, and said unfortunately there were some times when they were unable to get this.

Administrator Selig said the question had previously been asked how many houses in Town this ordinance would actually apply to. He said it would have applied to the 99 Madbury Road property, where over a period of 3 to 4 months, throngs of young people had gone to parties there, and the Town was unable to get the attention of the landlord. He explained that it had taken a long time to get everyone to the table, including the students, the landlord, UNH, the parents, and the Town. He said this Ordinance was intended to get this to happen sooner.

He provided details on another property where there had been problem activities. He said the house at 14 Valentine Hill Road had been rented to young adults who had just graduated from Oyster River High School, and said when the problems occurred, the Town had great difficulty getting the attention of the landlord. He said the landlord was brought to court over Zoning violations, but said the fine for this hadn't been paid yet.

Administrator Selig explained that some Councilors had suggested that Attorney Spector should be present right now, but he said it was felt that her letter was sufficiently pointed, and he noted that she had attended two RHC meetings. He said he would in the mean time try to answer any legal questions people had about the proposed ordinance.

Chair Carroll thanked Administrator Selig for the summary he had provided, and noted that there were some additional Town staff in the audience if there were questions.

Administrator Selig said people should not view this ordinance as the silver bullet that would solve the student housing problems, and said it would be utilized in very few situations, which were the most egregious cases when there was a disengaged landlord and ongoing issues with a property.

He said Mr. Horrigan was right that ultimately this was an economic issue at the core, because there was a high demand for more affordable, desirable student housing off campus than what existed now. He said until the Town found alternative housing stock, it would continue to have a proliferation of student housing in the neighborhoods.

He said the disorderly house ordinance was important because for many residents, it symbolized that the Town was doing something, and was another tool to address problematic properties. He said the ordinance was not brought forward by the Police Department or himself, and had come from the RHC. He noted that he continued to believe that the fine structure was too assertive, too quickly.

Administrator Selig said the communities of Keene, Berlin, Plymouth, and Hanover were watching what Durham did regarding this ordinance proposal. He said whether it passed or failed, the Town would work to address student housing issues. He said a failure of the ordinance to pass did not mean the Town was turning its back on the neighborhoods.

Regarding the concern expressed by some that those causing the problems should be held responsible, he said the Town did hold them responsible, in spades. He noted the police data on student arrests for a variety of violations. But he said if there were properties week after week where problems occurred, at some point the property owner had to come to the table. He said this ordinance was intended to get the owner's attention. He said the estimate was that it would never have to be used for professionally managed properties.

Councilor Gooze said there were about 25 rental properties managed by members of the DLA. He also said the estimate was that there were about 150 properties or more that could be a problem, and said the DLA and RHC had no say with landlords who weren't members of those organizations.

He said it was fascinating as to why Attorney Hantz was fighting so hard now against this ordinance on behalf of the DLA. He said he couldn't understand this, because members of the DLA wouldn't be affected by this ordinance. He said the question was how the RHC would help the Town get to that group of 150 property owners without this ordinance.

Councilor Mower read a letter from resident Duane Hyde dated September 25, 2010 (on file with this set of minutes).

Councilor Niman noted the information on police calls to rental properties, and said he could see on it that some properties had had a lot of visits from the Police Department. He also noted that there had only been one police call per year to the Valentine Hill Road property. He said he would think a disorderly house would be a property where there had been more calls involved.

Chief Kurz provided details on how the Department had begun to provide information on police responses to properties over the past several years. He said with 99.9% of the properties the Department dealt with, when the email was sent out to the property owner after a police response, there was the sense that the issues were addressed.

He noted that in the five years the Department had been keeping this data, there were only two properties that this ordinance would have been used for. He said with the Valentine Hill Road property, it had been hard to target the particular problems with a police response, and he provided details on this.

Councilor Gooze said there were numerous instances in his area where people just didn't call the police anymore. He said he knew of someone who left Town every weekend, and also knew of someone who basically hid in the house. He said the data underestimated the problem, and said he knew of three properties right now that would fall under the category of disorderly house.

Councilor Clark asked Chief Kurz if this ordinance would help him do his job.

Chief Kurz said yes, if it was needed. He also said he thought there were enough checks and balances so that if he or Administrator Selig was not working for the Town anymore, the process would still stop quickly if the landlord came to the table. He said it was disheartening to hear that some people didn't even call the police anymore, and said the Department tried to deal with the problems in a proactive way. He spoke further on this. Councilor Clark asked if the ordinance would be a vehicle that could lead to harassment or abuse.

Chief Kurz said he hoped that it would stay on the shelf. He said if a landlord was having a problem, he could talk to him. But he said if the landlord didn't want to do this, having this ordinance could make that happen.

Councilor Mower said she didn't get the sense that Councilor Niman's question about the Valentine Hill Road property had been answered.

Chief Kurz said one event might not be a disorderly event, but it also might be a horrendous event. He said what generally stopped further action, even if this ordinance was in place, was the landlord engaging in the situation, with the tenants, etc. He said the professional landlords had model leases, but said with a lot of the rental properties, the landlord had no experience. He said that regarding the data for the Valentine Hill Road property, the Department had difficulty engaging with the landlord, and said the ordinance would have therefore been triggered, in order to get this engagement.

Councilor Mower asked Chief Kurz if the current tools he had didn't give him as much clout as he needed in order to crack down on a situation. She asked whether if the Department had this ordinance as a tool, it could address a problem more quickly, with less resources, and the public would also suffer less.

Chief Kurz said if a landlord engaged in the process, the ordinance would not be activated. He said 99% of landlords would engage, and said the ordinance would be available in rare instances when this didn't happen.

Councilor Stanhope said there had been one police response each year to the Valentine Hill Road property.

Chief Kurz said that one response was in regard to a significant fight, and 100 people at the property. He spoke about trying to engage with the landlord, and explained that there continued to be problems in the vicinity although there wasn't a specific event. He said the fact that the fine had not yet been paid set the tone, in terms of the person they were dealing with.

Councilor Stanhope said the Police Department would have to develop a protocol to work with some rather vague language in the ordinance. He asked how "vicinity of the building" would be defined. There was discussion on this with Chief Kurz.

Councilor Niman said he hadn't meant to make Chief Kurz the defender of the proposed ordinance. He said he was hearing that there were a small number of individuals who were acting in bad faith, and that the Town could work with the majority of landlords. He said some landlords were interested in money and nothing else, and said it sounded like Chief Kurz viewed this ordinance as a tool to bring them to the table.

But he said if these people were acting in bad faith, he wondered if there was a realistic expectation that they would come to the table. He noted that the president of the UNH student body had expressed concern that if a landlord was acting in bad faith, he might put it in the lease that if he was nailed for a disorderly house, the tenants would have to reimburse him for the fine he had to pay. He said such a landlord might therefore have no interest in talking to the Chief, and nothing would change.

Chief Kurz said he was still optimistic that this could work.

Councilor Gooze noted that South Orange, New Jersey had an ordinance like this. He said it was used twice, and then never had to be used again. He said if a landlord had a lease that passed on the fine to tenants, he questioned how many tenants the landlord would get. He said the idea was to have strong leases, and also to engage the parents. He noted that Durham landlords Rob Watson and Jerry Gottsacker had done this.

He said there had been many calls regarding the 21-23 Edgewood Road properties, and said the landlord of these properties would be brought to the table if this ordinance existed. He said if this happened with one or two properties, he thought there would be some changes. But he acknowledged that this ordinance would not solve all the noise problems, given the fact that this was a university town.

Councilor Clark said a lot of the platform he had run on was the importance of preserving the character of the Town, and said this issue was about so much more than noise. He said he agreed with what Duane Hyde had said. He said student housing was an important economic enterprise in Durham, and in fact was its most important industry. He said it was a commercial endeavor, yet it had ended up in the neighborhoods.

He said they had all seen what could happen in terms of the deterioration of a property, which detracted from its value as well as the overall property values of a neighborhood. He said this was a critical issue because of the domino effect, and said this was really happening in Durham. He said there had been a perfect storm that had allowed this to happen, and he spoke further on this.

Councilor Clark said his sense was that this commercial use was incompatible with the spirit and intent of the residential zones, and said the student housing industry could be the most destructive one the Town could possibly have.

He also said that right now, it was important to do something. He said the Town's attorney had said the legal issues weren't of that much concern, but didn't say what the chances would be of being able to defend the ordinance in court. He said he would like it if someone could say the Town would be on a solid basis if it the ordinance was in fact challenged in court.

Councilor Cote said Duane Hyde's letter clearly indicated that there was a significant problem, because he knew how tolerant he generally was. He spoke about properties on Edgewood Road that were single family homes at one time.

He said a lot of the bigger student rental properties were well managed, but said landlords tended to have a myopic view and only think about their own properties, and not consider what it was like for a single family home that became surrounded by rental properties.

He said landlords should think about this and about how it was causing problems for residents. He said the Town was at a watershed moment, and said he hoped that Berlin, Keene and Hanover were watching. He said the Council owed it to the their neighbors to pass this ordinance.

Chair Carroll noted that she was approached by at least four people on this issue when she was downtown recently. She said one resident had launched into what her life was like on Saturday night, and another who lived near 99 Madbury Court had spoken to her about the landlord who wouldn't come to the table, and had made things difficult in that area for 3 months. She said one property could make a big difference in a neighborhood. She said when a landlord was willing to work with Town staff, there could be a neighborhood that worked well for its residents.

Councilor Smith said he thought the University should stop throwing disruptive students off campus, and said he had spoke with University administrators about this issue several times over the past year. He said as a condition of being able to remain at UNH, students who had gotten into trouble in off campus neighborhoods should be required to move into dorms on campus, under supervision.

He said he would vote against the disorderly house ordinance, although noting that it was much better crafted than the one the Council had first seen. He said he had been a landlord since 1970, and noted that he and his wife had at times lived in two student

ghettos. He said he had found the students he rented to in the seventies in Durham to be very good tenants, and provided details on this.

But he said things began to change in the 1980's, and the leases got longer and longer. He said he was a college professor for 40 years, and over that time had seen a significant decline in the ability of students to think clearly, write clearly, and understand the basic ethical and moral issues in regard to what they were writing about. He said there had been a significant change in university communities, and said something more comprehensive than this ordinance needed to be done about it. He said he would vote against this ordinance, but wouldn't argue against it.

Councilor Sievert said he was disappointed that Attorney Spector wasn't present. He said some of the information she had provided was good, and was stated succinctly. But he said some of the wording in the RSA didn't seem to be exactly what she had said.

He said on the one hand, residents deserved to be protected, but said a question was whether the ordinance would automatically be challenged. He said he was disheartened by the threat of this, and said he would like the buy-in of the DLA, who were the landlords who were setting the bar on how to manage properties. He said he was sad that this buy-in had been lost at the eleventh hour.

Councilor Sievert said he felt bad for the residents in terms of possibly pushing this off. He said some lawyers said the ordinance was unconstitutional, and some landlords said it would mean they were screwed and also said someone else should pay. He said Chief Kurz said it was a tool that could be used the way the Town wanted to use it, and not against the landlords.

He questioned why the landlords weren't buying into it. He said he appreciated the work that had gone into this, but said a question was whether it was the right thing to do, given the potential cost to the taxpayers. He considered whether they should work on this a bit more, and try to get the buy-in of the DLA. He also considered whether things were at the breaking point.

Councilor Gooze said as a former member of the ZBA, he had gone to court eight times, and each time the Town had been successful. He said every time, the ZBA's attorney said it should win the case, but she couldn't guarantee it. He said the Town would be challenged concerning this ordinance no matter what it did. He also noted that the DLA had no bearing in regard to many of the student rental properties. He said the DLA would have been helped by this ordinance, and said he had discussed this with some of them.

He spoke about the communications between Attorney Spector and Attorney Hantz, and stated again that it had to be accepted that the Town would be challenged. He also said he hoped that the DLA wouldn't go for an injunction in regard to the ordinance.

Councilor Clark said the data showed that properties that were rented to students lost a large amount of their value, and said he would argue that this would cost the Town more,

in terms of reducing its tax base, than the cost of a lawsuit if a case went to the State Supreme Court.

He said there were landlords in Durham who said they shouldn't be responsible for the behavior of others, and students who said not to pass the fine onto them. He said even if such a \$1000 fine was passed on, it would cost about \$27/month, and said this cost was nothing compared to the cost to the Town in terms of reduced tax value and declining neighborhoods.

Councilor Clark asked if perhaps this ordinance could be restricted to residential zones, because he thought what they really wanted to do was control this commercial activity in those zones. He said there was concrete proof that when UNH, professional property managers and most other property managers put good leases in place and put consequences in for bad behavior, there wasn't a problem.

Councilor Stanhope said it was disingenuous to say that the Council waited to have the public hearing in order to allow UNH students the chance to participate in the process. He said this delay had allowed the Town to see the effects of aggressive enforcement, and he noted that resident Sam Flanders had said his neighborhood had seen a dramatic improvement.

He said he had argued all along that some of the problems the Town was now trying to address were the result of benign neglect. He said he would like all non-owner-occupied properties to have an occupancy load limit, and said this should be posted at the building. He said there should be significant fines for exceeding the limit, noting that this was a life safety issue.

Councilor Stanhope said if there was a complaint regarding noise and it was found that the occupancy was greater than what was allowed, there should be aggressive enforcement of what was on the books.

He said he would like to see the ordinance go back to the RHC, and to be directed to more specific violations. He said right now, the ordinance was so broad that he thought the Town would wind up in court. He also questioned whether, as currently worded, it was the best way to solve the problems, and asked if the Town's attorney could tighten it up so that it was more likely to be sustained in court.

Concerning the issue of the decline in property values, Councilor Stanhope said a lot of this decline was not necessarily related to student occupancy, and was related to general trends. He provided details on this.

Councilor Smith MOVED to extend the meeting beyond the 10:30 pm adjournment time. Councilor Mower SECONDED the motion, and it PASSED 7-2, with Councilor Stanhope and Councilor Niman voting against it.

Councilor Niman said zoning and land use policies had had a detrimental effect on the ability to create new rental housing in Town, which meant there was a chronic shortage of housing, escalation in rents, and the opportunity to make money. He said Durham as a community bore some responsibility for this, in that it had made sure that developers didn't build new big buildings. He provided details on this, and said student housing in the neighborhoods was therefore attractive to students because the Town had made it so.

He said if Councilors agreed with him that it was economics that was driving this, until things changed, the problems wouldn't be solved. He said if he were a landlord, he would say the ordinance wasn't going to work, and this was just one in a series of regulations that were trying to fix a problem that couldn't be fixed with regulations.

Councilor Niman said if he was a landlord, he would draw the line in the sand because otherwise there would be more regulations. He said he thought the DLA opposed the ordinance because they were smart enough to know that it wouldn't solve the problem.

He said when he first heard about the ordinance, it sounded relatively harmless, but said it apparently had turned into a big deal. He said efforts to bring a handful of people to the table had driven the landlords and the student body leadership away. He said he wondered about the cost of passing this ordinance, when these entities, who were some of their best allies, had been alienated. He said the Town was saying it didn't want to work with them anymore.

Councilor Niman said it wasn't clear to him that the students were fully engaged regarding this issue, and said if this ordinance passed, he didn't think they would come together to work with the Town to solve the problems that he didn't think the ordinance would solve.

He said he thought of this in economic terms, and not in impassioned terms in regard to the neighborhood. He said his concern was that they were driving people away in order to come up with an interim solution to solve a problem that would ultimately go away because of the economics. He said he thought this isolated the Council, and said they would wind up with a community that he didn't want to live in.

Chair Carroll asked Councilor Niman what he meant in saying that economics would solve the problem. She noted that he had said the Town needed more student housing, and said developers were in fact interested in building a sizable number of beds in Durham. She said some people had in fact stepped forward and said they saw the value of that.

Councilor Niman said he had talked to several large national student housing developers who couldn't find an appropriate piece of land in Durham, either because it was too expensive, there was no infrastructure, or there were Zoning constraints that prevented them from getting the rate of return they needed given the high cost of land. He said there was also the high tax structure. He said it would be great if these developers could bring in another 1600 beds, but said right now this didn't exist, and students were stuck in crummy single family homes in neighborhoods that didn't want them there.

Chair Carroll noted that a developer currently had an option on a piece of property that had the needed infrastructure. She also said she agreed that they wanted to work with the landlords, and said she would like to see that continue. She said they didn't want this ordinance but also had said they didn't want the kind of large scale building that Councilor Niman had spoken about. She said they had said the Town was turning its back on the downtown by supporting that kind of student housing.

Councilor Gooze said he lived in Durham because he liked the University, and the students. He said the point of this ordinance was to be able to get at the egregious properties. He said he didn't agree with some of the economics that had been described, and said there were other opinions about what would work.

He noted that the UNH student body president didn't want to take the blame for other kids who were causing problems, but said people could pick their roommates carefully. He said he didn't think this ordinance pushed the students away, and also said the goal was to work with the landlords. He said right up to the last day, he had thought the landlords were in favor of it.

Councilor Gooze said he had gotten the sense from those he had spoken with that they were not against the ordinance, but were told by Attorney Hantz that it wouldn't fly. He said a question was what the DLA could do for the Town regarding this issue, when only a fraction of the landlords with student rental properties were members of the DLA.

Councilor Mower noted the book "The American College Town" which spoke about the experience of a town that hosted the University of Delaware. She said points made in it were common to college towns across the country, including Durham. She said one point was that there was a correlation between a decline in the number of students housed on campus, and the decline of surrounding neighborhoods.

She said the author also said a 1999 survey of housing preferences at the University of Delaware indicated that many undergraduates preferred to live off campus in houses, because they offered more freedom and privacy than dorms, along with parking and room to party. Councilor Mower said she believed there would always be some students who would want to live in neighborhoods, and that if it was this type of student who led to the disorderly events, no amount of wonderful new housing would draw them out of the neighborhoods.

She said the Town would therefore need some instrument to allow them to address potential egregious behavior. She said landlords had a choice in that they could have a specific type of lease. She said students also had a choice, in that if a fine on a landlord was passed on to them, within a fairly short period of time they could get another apartment. She noted that families who had invested over time in properties in Durham couldn't simply pick up and leave the way students and landlords could. She suggested that the student body could perhaps prepare a handbook of recommended properties and landlords.

Councilor Mower said this ordinance was a specific tool to address specific problems, and said good landlords should have no problems with it. She said this was a moment when the neighborhoods were under threat, and said it would take awhile for the economics to play out. She said if this was a tool that would result in less staff time required to deal with the problems, and less time for the community to have to live with the problem, it was a reasonable step to take.

Councilor Sievert asked why the Rental Housing Commission didn't go after the occupancy permit ordinance.

Councilor Gooze said there wasn't enabling legislation in the State for licensing occupancy. He also said that while nothing was for sure when going to court, he believed this ordinance was eminently defensible. He said he believed that Attorney Spector would say that if she was present.

Administrator Selig agreed. He also said he supported what Councilor Niman had said regarding the economics, and said he saw the value of creating additional housing stock to the west, and downtown.

Regarding Young Drive, he said Carolyn Fischer was an outstanding landlord and a wonderful partner to work with. He said she had been extremely responsive.

Administrator Selig referred to the dueling correspondence between Attorney Spector and Attorney Hantz. He said Attorney Spector had said there was no guarantee, but said she believed the ordinance was lawful, the authority for it did exist, and it was defensible. But he said they were moving on a statewide basis into uncharted territory. He noted that Durham was a town but had the authority of a city, so operated differently than most other towns.

He said the data collected by the Police Department over the past few years was not intended to track disorderly houses, and was instead a mechanism to notify landlords of problems, and to get buy-in from them to address these problems. He said the data provided a sense of where police responses were going to, and also set up some peer pressure in that landlords didn't want their properties to be listed on the police log.

He noted that many landlords had worked with their tenants and asked them to call the police to deal with issues before they became a problem. He said if the disorderly house ordinance was enacted, there would have to be a new mechanism to track properties where there were incidents that rose to the level of disorderly house.

Administrator Selig noted the point made earlier that whether a property was managed well or not, there was a strong sentiment that the lifestyle of student housing was not compatible with the residential neighborhoods.

Administrator Selig said the landlords had a variety of points of view, and said landlord representatives to the RHC had come to some consensus that this ordinance was part of a

larger solution. He said it was harder to get buy-in from landlords who had not been part of this process. He said he agreed that landlords did believe this would be the first of a number of regulations.

He also said he believed there were landlords who believed this was a property rights issue. He said some landlords thought there were better solutions to the problems than this one, and said some also understood that current Town staff wouldn't be there forever, and were fearful of who might come next and how the ordinance would be administered in the future. He noted that built into the framework of the ordinance was RHC involvement. He provided details on this, and said he believed that if the Town was using the ordinance in a scenario where it wasn't warranted, the RHC would be the first to recognize this.

Administrator Selig said it was important to remember that Attorney Hantz represented her clients. He also said from the Town's perspective, he had not asked Attorney Spector to prove that the ordinance was defensible, but had asked her if she thought it was. He said Attorney Hantz had raised some legitimate points, but Attorney Spector had said that while there were no guarantees, there were legitimate points to support the ordinance as well.

Councilor Gooze said the State was waiting to see what the Town did with this ordinance. He said he hoped it wouldn't go to court, but said if it did and the Town lost, the question would be what could be done to get at these egregious houses. He said the RHC had been trying to figure out a different way to do this for the last few years, and this ordinance was the best they had come up with.

Administrator Selig noted that under the Zoning Ordinance, if a tenant sublet an apartment and there were then too many people living there, the Town cited the tenant but also cited the landlord. He said the disorderly house ordinance therefore wasn't that different from this.

He noted that Esther Tardy-Wolfe was present, and said she was the head of the University Judicial Affairs program, so was the key person who held students responsible for bad behavior. He said she was a Durham resident, and said her presence that evening indicated the University's willingness to work with the Town on this issue.

He said that regarding the idea that the University threw troublemakers off campus, there was no documentation that those thrown off campus were the people who were causing the problems in the neighborhoods.

Regarding the idea of possible targeting only the residential zones as Councilor Clark had suggested, he said this idea had been discussed with Attorney Spector many times. He said the only way the Town could do this was to develop a strong argument that demonstrated that it was only in the residential neighborhoods that there was a problem. He said he didn't think this could be done, stating that there had been issues with professional property managers in the past, and said this could happen in the future as well.

Councilor Clark said the disorderly house ordinance felt like a zoning ordinance to him in some ways, and asked why they couldn't say there could be no commercial business in a residential zone.

Administrator Selig said Berlin had developed an ordinance that would force eviction proceedings if there was a disorderly house. He said the Durham ordinance was not saying that, but was saying that the landlord had to be part of the solution. He also said Keene had defined more explicitly the kinds of offenses, and had a point system. He provided details on this.

He said the Town might want to consider that approach, but said it would allow less in the way of discretion. He said he preferred having more discretion to use the ordinance or not in a particular situation. He said Attorney Spector's perspective was that if they were going to strengthen this ordinance, more should be done to flesh out what was expected of landlords so they wouldn't be liable to fines.

Administrator Selig said the Police Department had a positive relationship with the landlords, and valued what the professional landlords brought to the table. He said it was challenging dealing with the students, and noted there was always a new batch of students coming along. He said over the long term, the Town wanted to get the buy-in of the landlords, but said in buying a property, landlords needed to be actively involved in managing it. He said whether or not the ordinance passed, the Town would continue to work on this issue.

Councilor Mower said this was clearly an issue of great interest and concern. She said everyone agreed that this ordinance wouldn't solve all of the problems, but some people believed that it was important to have it, as one tool that could be used.

Councilor Clark said he agreed concerning the economics of this issue, and said there needed to be long term solutions. But he said he also agreed with Councilor Mower that some students wanted to live in a house. He said he would vote in favor of the ordinance, even though it could create a possible wedge between landlords and students. But he said he didn't want there to be a wedge between the Council and residents.

He said he needed to vote for this because he wanted to prioritize their needs, and the integrity of the neighborhoods. He said he felt a mechanism was needed, and said while they needed long term solutions, this was a quick fix that didn't allow a landlord to transfer the job of property management to the Town, the Police, the neighbors, and the taxpayers. He said this was the only one he had seen so far.

Councilor Sievert noted that he was involved with some of the development that was going on in Durham, and agreed that supply and demand was a piece of the issue. But he said he disagreed that it would work. He said a lot of things had to change, and said if they didn't change the economics, student housing development wouldn't be affordable. He provided details on this.

Administrator Selig said new housing stock, which was what students wanted, would command high prices, and said the older properties would command a much lower rate. He said they would then start to see those marginal properties change.

Councilor Stanhope said if an ordinance with these characteristics was put on the books, they probably wouldn't see a significant change. He said there would be habitual offenders, and said the bottom line would be that there would be 4 or 5 houses that would be addressed periodically, which would result in the spending of significant municipal resources. He also said the eviction process could take 6-9 months right now, and said in the mean time, the students could make a real mess. He said nothing would change, and said this was simply feel-good legislation.

Administrator Selig said there had been analogous scenarios on the Zoning side, where it was known there was over occupancy. He said as long as it was known that an eviction process had begun and the landlord was doing the best he could to work with the Town, the Town had not brought such a matter to court. He said in the mean time, with the change of semester, the resident was gone. He said he believed there would be a similar scenario with this ordinance.

Councilor Stanhope said he agreed. He said whether one voted for or against this ordinance, no one wanted someone not to have the quiet enjoyment of his home. But he said he thought this ordinance was window dressing, and said it was disingenuous to pass something that would cost the taxpayers money and wouldn't solve the problem.

Councilor Gooze MOVED that the Durham Town Council adopt Ordinance #2010-08 amending Part II "General Legislation" of the Durham Town Code by creating a new chapter, Chapter 45, entitled "Disorderly House". Councilor Mower SECONDED the motion.

Councilor Cote moved to amend the motion to change Section 45-5 Penalties to read as follows "Anyone who violates this chapter shall be subject to fines in accordance with the provisions of Chapter 1 "General Provisions", Article II "General Penalty", Section 1-16 (B) "Violations and Penalties". Councilor Mower SECONDED the motion, and it PASSED unanimously 9-0.

The motion as amended PASSED 6-3, with Councilor Niman, Councilor Stanhope, and Councilor Smith voting against it.

XI. New Business

- A. Discussion regarding police enforcement efforts relative to student behavior and stepped up zoning/trash enforcement efforts in and around Durham's central core

Administrator Selig suggested that the Council address this Agenda item at the Council meeting the following Monday.

- B. Shall the Town Council, in accordance with Section 175-14 (B) of the Durham Zoning Ordinance, schedule a First Reading for October 4, 2010 on **ORDINANCE #2010-12**, a Council-initiated ordinance amending Article XIX “Conservation Subdivision”, Section 175-107(B) “Applicability”, to add Office, Research & Light Industry and Multi-Unit Dwelling/Office Research Zoning districts to the list of zones required to be developed as conservation subdivisions?

This item was also postponed.

- C. Other Business

XII. Nonpublic Session (if required)

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

XIV. Adjourn (NLT 10:30 PM)

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

Adjournment at 11:17 pm

Victoria Parmele, Minutes taker