

*These minutes were approved at the February 4, 2002 meeting.*

**DURHAM TOWN COUNCIL MINUTES  
MONDAY, JANUARY 21, 2002 - 7:00 PM  
DURHAM TOWN HALL – COUNCIL CHAMBERS**

**MEMBERS PRESENT:**

Mal Sandberg, Chair; Annmarie Harris;  
Peter Smith; Pete Chinburg Bill  
Woodward; Jerry Dee; Katie Paine; Mike  
Pazdon

**MEMBERS ABSENT:**

Eileen Fitzpatrick

**OTHERS PRESENT:**

Todd Selig, Town Administrator; Paul  
Beaudoin, Business Manager; Ron  
O'Keefe, Fire Chief; Dave Kurz, Police  
Chief; Mike Lynch, Public Works  
Director; Bob Levesque, Town Engineer;  
Interested Members of the Public

**I. Call to Order**

Chair Sandberg called the meeting to order at 7:00 PM.

**II. Approval of Agenda**

*Pete Chinburg MOVED to approve the agenda. Katie Paine SECONDED the motion.*

Chair Sandberg stated that a number of Councilors would like to move item VIII A to item XI, nonpublic session.

*Peter Smith MOVED to amend the agenda by moving item VIII A to item XI. Mike Pazdon SECONDED the motion and it PASSED unanimously.*

*Peter Smith MOVED to amend the agenda by adding an item approving a resolution concerning redistricting hearings in the Senate after item X A. Mike Pazdon SECONDED the motion and it PASSED unanimously.*

*The motion to approve the agenda as amended PASSED unanimously.*

**III. Special Announcements**

There were no special announcements.

**IV. Approval of Minutes**

A. December 17, 2001

*Katie Paine MOVED to approve the minutes. Jerry Dee SECONDED the motion and it PASSED unanimously (Mike Pazdon abstained as he was absent from the December 17, 2001 meeting).*

B. January 7, 2002

The following corrections were made:

Page 7, last paragraph, item 3, the sentence should read **Does the Town Council apply a different standard of review of evidence presented to it than the standard that the Council would apply to evidence that was presented to the Planning Board.**

Page 7, last paragraph, item 6, the sentence should read **To what extent are any of the possible actions that the Town Council supposedly has the right to take under its conditional use ordinance permitted by provisions of state statute, and if they are not permitted by state statute, what is the state statute that permits such action under the conditional use ordinance but does not permit Council action under the Planned Unit Development ordinance.**

Page 9, add to the Informational Town Meeting agenda **D C A T Governance Committee**

*Bill Woodward MOVED to approve the minutes as amended. Katie Paine SECONDED the motion and it PASSED unanimously (Mike Pazdon abstained as he was absent from the January 7, 2002 meeting).*

V. **Report of Administrator**

Administrator Selig reported on the following:

- Copies of the approved 2002 Budget for the Councilors are on the table for them to pick up tonight.
- The retreat/workshop visioning session with Win Puffer will be rescheduled after the elections in March.
- The filing period for the March election is 8:00 AM January 23, 2002 through 5:00 PM February 1, 2002.
- He is trying to schedule a date for the Town Council to meet with Labor Attorney, Joe McKittrick. He asked if January 28, 2002 would be a good date for all the Councilors.

At least three Councilors stated that they would not be able to make that date. Administrator Selig stated that he would find another time and get back to the Council.

- He reported on the Town/Gown meeting that was held on January 9, 2002. He stated that the goal of the meeting was to allow Town and University officials to better understand each other's needs. He stated that the meeting was taped and had been re-broadcast on Channel 22.
- He gave an update on the Jaques v. Town of Durham court case where the Court overruled the Zoning Board of Adjustment's decision to deny a variance to the Jaques. He stated that the Town Council would need to discuss whether to appeal the decision once he had received input from the Zoning Board of Adjustment and the Town's attorney.

## **VI. Reports and Comments of Councilors**

Katie Paine stated that she had a number of things to bring up for Eileen Fitzpatrick. She reported that the Zoning Re-Write process is now underway and public input is welcomed. She asked that some time on a future agenda be set-aside for the Oyster River Coalition for Healthy Youth to do a presentation. She stated that on a future agenda Eileen Fitzpatrick would like to have a discussion on Zoning Ordinance 175-8 relative to the penalties for violating the Zoning Ordinance.

Katie Paine asked if the DCAT Committee could be added to the list of committees.

Pete Chinburg read a letter from Mike Lynch clarifying the UNH/Town water usage and ownership. He stated that the Town Council should listen to the Town Engineer when he points out deficiencies in the Crommetts Creek Bridge. He stated it was the staff's obligation to report to the Council any deficiencies it sees in the Town of Durham.

Jerry Dee stated that the Town Council should revisit the Town's liquor ordinance at a future meeting.

Annmarie Harris would like to add to a future agenda the Madbury Road / Route 4 intersection and consideration of making it one-way traffic.

Chair Sandberg stated that Eileen Fitzpatrick had requested that she be allowed to participate in the Town Council meetings via conference call.

Jerry Dee asked if she could be a voting member if she was not present. Administrator Selig stated that he would investigate this issue.

Chair Sandberg asked the Councilors to think about ending the meeting at 10:00 instead of the usual 11:00 and if the work on the agenda was not completed it would continue the meeting to the following Monday.

Peter Smith read an excerpt from a Martin Luther King speech.

Bill Woodward reported that he had attended a Newmarket Town Council meeting. He urged other members of the Council to attend its neighbors' meetings. He stated that he would like to have a report from the Land Protection Sub-Committee.

## **VII. Public Comments**

Stephen Thorne, 10 Watson Rd, expressed concern with the bulky waste cost in the proposed solid waste ordinance.

Dee Grant, 251 Mast Rd, spoke against the proposed solid waste ordinance.

Diana Carroll, 54 Canney Rd, urged the Town Council to move forward with a solid waste ordinance

Bonnie McDermott, 80 Dover Rd, spoke against the proposed solid waste ordinance. She stated that there were many other options the Town could look into.

Cliff Zetterstrom, 80 Dover Rd, spoke against the proposed solid waste ordinance. He stated that there were other solutions that could be implemented instead of this solid waste ordinance.

Dick Lord, 85 Bennett Rd, thanked the Council for discussing the Conditional Use Permit and Planned Unit Development process in public session.

Suzanne Loder, 255 Mast Rd, stated that the swap shop was an excellent idea. She urged the Council to consider the whole picture when making a decision on the solid waste ordinance. She urged the Council to look at revenue sources.

Robin Rousseau, 345 Packers Falls Rd, agreed with Mr. Lord in thanking the Town Council for holding discussions on the Conditional Use Permit and the Planned Unit Development in public session, urged the Town Council to enhance the Town's revenue, and urged the Town Council to look at meeting the needs of the elderly in the Town of Durham.

Lew Newsy, 221 Dame Rd, spoke against the proposed solid waste ordinance.

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

- A. **Resolution #2002-01:** Establishing the compensation for non-bargaining unit employees for Fiscal Year 2002

This was moved to nonpublic session.

- B     **Resolution #2002-02:** Authorizing the acceptance of private donations made to the Town of Durham between August 1 and December 31, 2001

*The above Resolution (#2002-02) PASSED unanimously by consent.*

- C.     **Resolution #2002-03:** Authorizing the Town Administrator to apply for a grant seeking funds to construct a skateboard park

Peter Smith stated that, in his opinion, the Council should not be asked to seek grant money without being asked if it approved of the project for which the grant money would be used.

Dave Kurz gave a brief overview of the need for a skateboard park in Durham. He stated that the Police Department has received great interest from the young people in the Town to proceed with this project. He stated that if the Town moves forward with the idea of developing a skateboard park, he would be enlisting the help of the young people to pull the project together. He stated that the grant could be up to \$100,000.00.

Chair Sandberg asked where the Parks & Recreation Committee fit in with this project.

Mike Pazdon spoke about the grant. He stated that there were members of the Parks & Recreation Committee who would help write the grant.

*Pete Chinburg MOVED that the Durham Town Council adopt Resolution #2002-03 authorizing the Town Administer to submit a grant application to the New Hampshire Land & Water Conservation Fund for funds to construct a skateboard park. Jerry Dee SECONDED the motion and the motion PASSED unanimously.*

## IX.     **Unfinished Business (Beginning NLT 8:30)**

- A.     Meeting with Town Counsel to obtain clarification and guidance with respect to the Conditional Use Permit and Planned Unit Development approval process

Administrator Selig stated that Attorney Walter Mitchell did not have the entire information ready that the Town Council had requested on these issues. He stated that the meeting with Town Counsel would be rescheduled for the February 4, 2002 meeting.

*Katie Paine MOVED to postpone discussion to the February 4, 2002 meeting. Annmarie Harris SECONDED the motion and it PASSED unanimously.*

- B. **Ordinance #2001-07 (Continued discussion):** Repealing Chapters 43 and 118 of the Durham Town Code and establishing a new Chapter 118 entitled "Solid Waste" which will implement changes to the Solid Waste Program

Chair Sandberg gave a brief overview of this proposed ordinance.

Administrator Selig stated that the Town Council needed to give some direction to him this evening as the Public Works Department needed direction. He stated that he felt it was important for the Council to either accept or reject this ordinance in order to move forward.

Administrator Selig stated that Article 118-8 of the ordinance currently covers the existing fee schedule. He stated that if the Council wanted to stay with the current ordinance, it could still increase or decrease the cost of the annual permit.

Katie Paine asked if some of the suggestions that the public have spoken about could be looked into.

Administrator Selig stated that he had spoken to the staff about some of the ideas spoken about by the public and that staff has assured him that some of the suggestions have been considered and have been turned down for one reason or another.

Peter Smith asked questions about the fees listed in the second motion. He asked for clarification on the proposed increase in fees and how it compares with the current ordinance.

Administrator Selig stated that unless it was noted as part of the motion, the fee would remain the same as it currently is.

Mike Lynch addressed questions from the Council concerning the proposed fee structure in comparison to the current fee structure.

*Mike Pazdon MOVED that the Durham Town Council adopt Ordinance #2001-07 as presented repealing Chapters 43 and 118 of the Durham Town Code and establishing a new Chapter 118 Solid Waste of the Durham Town Code which will implement changes to the solid waste program; and further gives advice and consent to the proposed Rules, Regulations*

*and Procedures for implementing the provisions of Ordinance #2001.07 of the Town of Durham as proposed by the Town Administer dated 12/5/01. Jerry Dee SECONDED the motion.*

Mike Pazdon stated that he felt the ordinance needs more work. He stated that the commercial hauler costs should be increased, as the transfer station was for the residents, not for private hauling. He stated that he felt the cost of the resident permit fee should be raised.

Jerry Dee stated that he felt the ordinance needed more work before the Council approved it.

The Town Council discussed various ways to change the ordinance in regard to the permit fees.

Administrator Selig stated that he would like to see the Council take action on the ordinance as presented so he could get a sense of direction on where to go with the solid waste program.

Pete Chinburg stated that he would like to see the motion voted down. He stated that he would like to see the fee structure modified based on common sense.

*Annmarie Harris MOVED to amend the motion by combining option A and option B from the Council Communication and adding it to the previous motion with an annual resident permit of \$25.00 and a daily commercial hauler permit of \$50.00 per load and would not require bulky waste coupons. The commercial hauler permit would include construction material, multi-unit, commercial businesses. Bill Woodward SECONDED the motion and it was DEFEATED unanimously.*

*The original motion was DEFEATED on a vote of 1-7 (Bill Woodward was in favor of; Jerry Dee, Pete Chinburg, Mike Pazdon, Katie Paine, Chair Sandberg, Peter Smith, Annmarie Harris were opposed).*

**X. New Business (Beginning NLT 9:30)**

**A. UNH/Town transportation update – Steve Pesci & Douglas Bencks**

Administrator Selig stated that he had asked the University to bring the Council up to date on transportation issues. He stated that Doug Bencks and Steve Pesci would be discussing current University Transportation issues.

Douglas Bencks stated that he wanted to briefly talk about five initiatives currently on going. He stated that he also wanted to speak about an upcoming study of the College Road/Main Street intersection and

provide an overview of the current Transportation Policy Committee and activities.

Steve Pesci stated that the rail service was going very well. He stated that the rail station was just about finished. He stated that the University has retained the services of Rizzo Associates to look at the College Road/Main Street intersection. He stated that the University has been provided with a set of preliminary recommendations and will be scheduling a meeting with the Traffic Safety Committee in Durham in the near future. He stated that the funding applications the University applied for are proceeding along. He gave each of the Councilors a copy of the November 30, 2001 Campus Journal, which lays out the direction of the University's Transportation Policy Committee and sets a broad agenda for all the issues being looked at.

Douglas Bencks stated that the University intends to begin working on updating its Master Plan beginning next fall. He stated that the broad overview of the transportation issues is a first step in updating the Master Plan.

Peter Smith stated that he hoped the University would let the Town know of its involvement in the University's Master Plan.

A.1. Resolution #2002-04 on the Proposed Redistricting of the New Hampshire Senate

Chair Sandberg read the following Resolution. He stated that, if the Council approved it, it would be presented to the New Hampshire Senate on Tuesday, January 22, 2002.

RESOLUTION #2002-04 OF DURHAM, NEW HAMPSHIRE

A RESOLUTION PROPOSING REDISTRICTING OF THE NEW HAMPSHIRE SENATE

WHEREAS, Durham, Lee and Madbury formed the first cooperative school district in the State of New Hampshire, known as the Oyster River Cooperative School District, and have worked together to educate our children since 1954; and

WHEREAS, Durham, Lee and Madbury continue to work closely together to address issues of importance to our communities, including such areas as recreation, resource protection and community television; and

WHEREAS, the University of New Hampshire's presence in Durham, Lee and Madbury creates myriad opportunities for mutual problem solving; and



WHEREAS, Durham, Lee and Madbury are in Strafford County and county government is centralized in the city of Dover; and

WHEREAS, the importance of these relationships can best be encouraged and protected by having common representation in the New Hampshire Senate

NOW, THEREFORE BE IT RESOLVED that the Town Council of the Town of Durham, New Hampshire by \_\_\_\_\_ affirmative votes, \_\_\_\_\_ abstentions and \_\_\_\_\_ negative votes respectfully requests the New Hampshire Senate to honor the close and mutually beneficial relationships among the towns of Durham, Lee and Madbury as it establishes the district lines for the New Hampshire Senate that will be in effect for the next decade.

Peter Smith stated that there were going to be several scenarios presented to the Senate concerning redistricting. He stated that one scenario that has been developed would move Durham out of its current district and join with Portsmouth and other towns/cities in Rockingham County for purposes of Senatorial district. He stated that from Durham's perspective, it seems important to leave Durham, Lee and Madbury in the same district.

*Peter Smith MOVED that the Durham Town Council adopt Resolution #2002-04 as read. Katie Paine SECONDED the motion and it PASSED on a vote of 6-2 (Peter Smith, Annmarie Harris, Katie Paine, Chair Sandberg, Jerry Dee, Bill Woodward were in favor; Mike Pazdon, Pete Chinburg were opposed).*

- B. **First Reading: Ordinance #2002-01** amending Section 153-49 of Chapter 153 "Vehicles and Traffic" of the Durham Town Code by prohibiting parking to certain hours on Nobel K. Peterson Drive

Police Chief, Dave Kurz, gave a brief overview of this ordinance. He stated that a petition from the neighborhood initiated this ordinance.

*Katie Paine MOVED that the Durham Town Council pass on first reading as presented, Ordinance #2002-01, an ordinance amending Section 153-49 of Chapter 153 "Vehicles and Traffic" of the Durham Town Code by prohibiting parking on both sides of Nobel K. Peterson Drive from 6:00 am to 3:00 pm, Monday through Friday, September 1 through June 30, holidays excepted and schedules a Public Hearing for February 4, 2002. Annmarie Harris SECONDED the motion and it PASSED unanimously.*

- C. Shall the Town Council approve the agreement between the Town of Durham and the MainStreet Program?

Administrator Selig gave a brief overview of this agreement.

*Jerry Dee MOVED that the Durham Town Council authorize the Town Administer to sign the agreement between the Town of Durham and the Durham MainStreet Program commencing January 1, 2002 and terminating December 31, 2002. Mike Pazdon SECONDED the motion.*

Jerry Dee stated that the MainStreet Program has done tremendous things for the businesses in Town of Durham. He stated that the money was a good investment.

Chair Sandberg stated that his concern was the issue of accountability. He stated that one of the mechanisms in the original agreement was to encourage the MainStreet Program to raise funds and the Town had a matching fund component that the Town would match the lowest contributors contribution up to just under \$20,000.00. He asked why that mechanism dropped as an inducement for the MainStreet Program to contribute its full share.

Administrator Selig stated that the original agreement with the matching funds mechanism was cumbersome and was not adhered to. He stated that, in his opinion, the Town of Durham has been fortunate to have a MainStreet Program that is so effective in the downtown area. He stated that, in his opinion, the MainStreet Program has proven itself by closing out the last two years with a fund balance. He stated that the question is whether the Town of Durham wants to support the program or not. He stated that, in his opinion, the Town of Durham should make the commitment to support the MainStreet Program regardless of whether the University or the Durham Business Association matches a certain amount.

Administrator Selig stated that in his conversations with Pati Frew-Waters he has made it pretty clear that in the Town's next budget cycle the amount of the Town's support for the MainStreet Program will probably decline. He stated that the MainStreet Program has been given some warning that it needs to step up it's fundraising.

Peter Smith stated that there was some language in the agreement that he would like to see changed. He went through those changes.

Administrator Selig stated that the Town of Durham could request an audit of the MainStreet Program finances and the Town would bear the cost of such an audit. He stated that the Town could have access to the MainStreet Program financial books at any time.

Katie Paine stated that she would like to see language in the agreement that more specifically defines what should be shown for results. She urged the Council not to confuse activities with results. She stated that she would like to see in the agreement the type of results the Council expects.

***Katie Paine MOVED that the Durham Town Council remand the agreement between the MainStreet Program and the Town of Durham back to staff and come back to the Town Council as an unanimous consent item at the February 4, 2002 meeting. Peter Smith SECONDED the motion.***

The Town Council discussed whether to insert the matching funds language into the agreement as was in the original agreement. Bill Woodward, Jerry Dee, Mike Pazdon and Pete Chinburg were opposed to doing that. Chair Sandberg, Peter Smith, Annmarie Harris and Katie Paine were in favor of this. As a result of the split vote, Peter Smith suggested that Administrator Selig work alternative language into the agreement that could be decided at the next meeting.

***The motion to remand this back to staff PASSED on a vote of 5-3 (Chair Sandberg, Peter Smith, Katie Paine, Annmarie Harris, Jerry Dee were in favor; Bill Woodward, Mike Pazdon, Pete Chinburg were opposed).***

- D. Wiswall Dam discussion with Public Works Department regarding potential for removal of the dam

Administrator Selig gave a brief overview of this item. He stated that on February 12, 2002, there would be a Public Hearing held at the Middle School in Durham by the US Fish & Wildlife Service and the NH Fish & Game about removing the dam. He stated that staff needed a sense of what the Town Council thought about the removal of the dam.

Mike Lynch gave a brief history of this project. He stated that by removing the dam more fish species would be able to migrate up the river. He stated that this Public Hearing on February 12, 2002 was to gather information and comments from the public.

Bob Levesque stated that the state and federal agencies were looking for input from the Town of Durham. He briefly went over the pros and cons of the fish ladder as well as removing the dam completely. He stated that the primary concern at this time is the feasibility of removing the dam versus installing a fish ladder.

*Pete Chinburg MOVED that the Durham Town Council authorize the Town Administer to proceed with discussions and research with State and Federal agencies relating to the Wiswall Dam project. Mike Pazdon SECONDED the motion and it PASSED unanimously.*

Chair Sandberg stated that it was 10:30 PM and asked the Council if it wanted to continue on with the agenda or go into nonpublic session.

*Katie Paine MOVED that Items E, F, G & H be postponed to the February 4, 2002 meeting. Peter Smith SECONDED the motion and it PASSED unanimously.*

At this time the Council moved to Item XI.

- E. Shall the Town Council review and adopt an application form to be used for board appointments and the process for said appointments?

This item was postponed to the February 4, 2002 meeting.

- F. Discussion on revenue enhancement ideas for the Town (i.e. UNH agreements, transfer tax, impact fees & land use transfer fees)

This item was postponed to the February 4, 2002 meeting.

- G. Who shall the Town Council appoint to the Conservation Commission's subcommittee on land protection?

This item was postponed to the February 4, 2002 meeting.

- H. Shall the Town Council appoint members to a Cable Governance Committee as recommended by the DCAT Committee?

This item was postponed to the February 4, 2002 meeting.

- I. Other Business

There was no other business.

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

*Katie Paine MOVED that the Durham Town Council enter into nonpublic session pursuant to RSA 91:3 II A for discussion of personnel matters. Jerry Dee SECONDED the motion and it PASSED on roll call vote as follows:*

<i>Bill Woodward</i>	<i>YES</i>	<i>Peter Smith</i>	<i>YES</i>
<i>Katie Paine</i>	<i>YES</i>	<i>Jerry Dee</i>	<i>YES</i>
<i>Chair Sandberg</i>	<i>YES</i>	<i>Annmarie Harris</i>	<i>YES</i>

*Mike Pazdon*                      *YES*                                      *Pete Chinburg*                      *YES*

The Town Council entered nonpublic session at 10:30 PM.

*Katie Paine MOVED that the Durham Town Council enter into public session.*

*Jerry Dee SECONDED the motion and it PASSED on roll call vote as follows:*

*Bill Woodward*                      *YES*                                      *Peter Smith*                      *YES*

*Katie Paine*                      *YES*                                      *Jerry Dee*                      *YES*

*Chair Sandberg*                      *YES*                                      *Annmarie Harris*                      *YES*

*Mike Pazdon YES     Pete Chinburg                      YES*

The Town Council entered public session at 11:07 PM.

*Jerry Dee MOVED to extend the meeting to 11:15 PM. Katie Paine SECONDED the motion and it PASSED unanimously.*

*Mike Pazdon MOVED that the Durham Town Council adopt Resolution #2002-01, a resolution establishing compensation for Non-Bargaining Unit Employees for Fiscal Year 2002. Pete Chinburg SECONDED the motion and it PASSED unanimously.*

**XII. Adjourn (NLT 11:00 PM)**

*Pete Chinburg MOVED to adjourn. Jerry Dee SECONDED the motion and it PASSED unanimously.*

The meeting adjourned at 11:09 PM.

Sharon Elliott, Secretary