

*These minutes were approved at the February 18, 2002 meeting.*

**DURHAM TOWN COUNCIL MINUTES  
MONDAY, FEBRUARY 4, 2002 – 7:00 PM  
DURHAM TOWN HALL – COUNCIL CHAMBERS**

**MEMBERS PRESENT:** Mal Sandberg, Chair; Annmarie Harris; Peter Smith; Bill Woodward; Jerry Dee; Katie Paine; Pete Chinburg (arrived at 9:20 PM and left at 9:30 PM)

**MEMBERS ABSENT:** Eileen Fitzpatrick; Mike Pazdon

**OTHERS PRESENT:** Todd Selig, Town Administrator; Paul Beaudoin, Business Manager; Ron O'Keefe, Fire Chief; Dave Kurz, Police Chief; Jim Campbell, Town Planner; 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 7:03 PM.

**II. Approval of Agenda**

*Peter Smith MOVED to approve the agenda as amended by adding a discussion of legal matters under Other Business. Katie Paine SECONDED the motion and it PASSED unanimously.*

**III. Special Announcements**

There were no special announcements.

**IV. Approval of Minutes**

January 21, 2002

There were no substantive edits to these minutes.

*Jerry Dee MOVED to approve the minutes as amended. Katie Paine SECONDED the motion and it PASSED unanimously.*

**V. Report of Administrator**

Administrator Selig reported on the following:



- ♣ He stated that the MainStreet Program Agreement is not on the agenda this evening as changes are being made and Michael Bradley needs to bring those changes to the Board of Directors of the MainStreet Program for its approval and then come back before the Council.
- ♣ The filing period for the March 2002 election has closed with the following slate of candidates:

Town Council (3 positions open):

W. Arthur Grant  
Annmarie Harris  
Mark Morong

Public Library Board of Trustees (2 positions open):

John Aber  
Bill Schoonmaker

Moderator (1):

Michael Everngam

Supervisor of the Checklist (1):

Ann Schump

Town Clerk/Tax Collector (1):

Linda Ekdahl

Treasurer (1):

Richard Lilly

Trustee of Trust Fund (1)

Bruce Bragdon

- ♣ The MainStreet Program is moving forward in organizing a Candidates Forum and the DCAT will be meeting with Michael Bradley at the February 5, 2002, meeting. He stated that it has been discussed that the Town and School forum be held the same night so the people who wish to attend only have to go out one night. He stated that in all likelihood the Town Moderator would be asked to moderate the forum as he did last year.
- ♣ He asked the Council if there were any changes the Council would like to see made to the Ground Water Trust draft letter he had sent to them. No changes were made to the draft letter.
- ♣ He read a portion of the letter from Strafford County Committee on Aging stating that volunteers are needed.



- ♣ He stated that discussion with Attorney Walter Mitchell on the Council's role in the Conditional Use Permit/Planned Unit Development process has been postponed to the February 18, 2002 meeting.
- ♣ He stated that according to Town Charter the Town Council needed to discuss and excuse Eileen Fitzpatrick's absence, as this would be her third absence in a row. The Council consented to excusing her absence and granting leave to Eileen Fitzpatrick. The Council also consented to allowing Eileen Fitzpatrick to participate via speakerphone, but that she would not be allowed to vote.
- ♣ He reported on the bonfire Sunday night on Madbury Road after the Super Bowl game.

Dave Kurz gave a brief overview of the events of Sunday night, February 3, 2002, following the Super Bowl. He showed videotape that the police were able to acquire from a citizen. He stated that the police had to wait for approximately one hour before they could clear the crowd, as there was not enough police coverage when the crowd first gathered and started the fire. He stated that nine other agencies besides the Durham Police Department were called in to get the crowd under control. He stated that there were approximately 2500 students gathered for this event. He stated that the portion of road where the fire took place was damaged beyond repair and had to be replaced today by the Department of Public Works. He stated that a traffic sign was also removed.

In answer to a question from Chair Sandberg, Administrator Selig stated that the costs for the events last night would probably be around \$3,000.00 to \$4,000.00. He stated that he did plan on sending the University a bill for the costs.

Dave Kurz stated that the decision was made to "control and contain" last night's situation and not worry about open containers or alcohol violations.

Mike Lynch stated that the piece of road that need to be replaced as a result of the bonfire was approximately 5' x 7'.

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

Peter Smith commented on the report the Town Council received titled "The Status of Alcohol, Tobacco and Other Drugs at the University of New Hampshire Fall 2001". He urged the Council members to read this report if they had not already done so.



Chair Sandberg reminded the Council members to fill out the evaluation form for the Town Administer. He stated that once the Council puts its thoughts together for an evaluation, it should sit with Administrator Selig to discuss future goals and objectives.

Peter Smith stated that he felt it was important for the Town Administer to evaluate himself during this process also.

## **VII. Public Comments**

There were no Public Comments.

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

- A. **Resolution #2002-05:** Authorizing the Town Administrator to accept a Federal Emergency Management (FEMA) grant in the amount of \$847.00 for the updating of the Town's Emergency Management Plan
- B. Shall the Town Council authorize the award of a bid for the purchase of a 35000 GVW cab and chassis truck as requested by the Public Works Director?
- C. Shall the Town Council authorize the award of a bid for the 2002 Road Program as proposed by the Public Works Director?
- D. Shall the Town Council approve and sign the fall 2001 Water and Sewer Warrant?
- E. Shall the Town Council appoint members to a Cable Governance Committee as recommended by the DCAT Committee?
- F. **First Reading: Ordinance #2002-02** amending Sections 160-1 and 160-2 of Chapter 160 "Water and Sewer Rates" of the Durham Town Code by Adjusting the Water and Sewer Rates for FY 2002

*The above six (6) items PASSED by unanimous consent.*

- G. Shall the Town Council authorize the Town Administrator to sign a contract with Planning Decisions for the rewriting of the Town's Zoning Ordinance?

*Bill Woodward MOVED to amend the rule to complete discussion/action on Item VII-G. Jerry Dee SECONDED the motion and it PASSED unanimously.*



Peter Smith asked for clarification about the relationship between Planning Decisions, the Zoning Re-Write Committee and Town Attorney. He stated that specifically he would like to have clarified how all three were going to work together to create a new Zoning Ordinance.

Jim Campbell gave an overview of how the process was working. He stated that the consultant (Planning Decisions) comes to the meeting and has outlined what he wants to accomplish based on what the Master Plan says.

Peter Smith asked who was making the initial judgment as to what it is that the Master Plan requires to be done.

James Campbell stated that although the consultant provides input, it was the Zoning-Rewrite Committee that tells the consultant what it wants to accomplish.

Eileen Fitzpatrick (via telephone) stated that the consultant also provides his opinion of what the Master Plan says. She gave a brief overview of the process. She stated that she was very comfortable with the language of the agreement with Planning Decisions.

Annmarie Harris stated that the Zoning Re-Write Committee found the consultant to be very articulate and helpful.

*Jerry Dee MOVED that the Durham Town Council authorize the Town Administer to enter into a contract with Planning Decisions, Inc. to update the Town of Durham's Land Use Regulations in accordance with the agreement and scope of services. Katie Paine SECONDED the motion and it PASSED unanimously.*



**IX. Unfinished Business (Beginning NLT 8:00)**

- A. **Public Hearing: 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

Administrator Selig gave brief overview of this ordinance.

*Katie Paine MOVED that the Durham Town Council open the Public Hearing on Ordinance #2002-01, on 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. Peter Smith SECONDED the motion and it PASSED unanimously.*

There were no public comments.

*Katie Paine MOVED that the Durham Town Council close the Public Hearing on Ordinance #2002-01, on 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. Peter Smith SECONDED the motion and it PASSED unanimously.*

**THERE WAS NO MOTION TO ADOPT THIS ORDINANCE.**

- B. **Public Hearing on Bond referendum:** to receive input from citizens regarding the referendum item to be placed on the March 12, 2002 election ballot to raise and appropriate the sum of Two Million, Four Hundred Seven Thousand Dollars (\$2,407,000.00) for long-term debt, pursuant to the provisions of the New Hampshire Municipal Act, RSA-33, such sum to be raised in part through the State of New Hampshire State Revolving Loan Fund, for the construction phase project costs to improve equipment deficiencies and other operational problems to the Town's existing Wastewater Treatment Facility (WWTF)

**Resolution #2002-06:** Authorizing the borrowing of money and incurrence of debt in the amount of \$2,407,000 for the proposed Wastewater Treatment Facility improvements

Administrator Selig gave a brief overview of this bond.

Bob Levesque gave a brief overview of the process already taken in preparing for the construction phase of this long-term project.



Peter Atherton, Representative from Wright Pierce, stated they were in the middle of designing the baseline improvements of the facility. He briefly explained what the baseline improvements consisted of.

In response to a question from Chair Sandberg in regard to funding available for a project such as this, Peter Atherton stated that funding assistance is available from federal government by petition from the Town. He stated that federal funds are based on need and that the Town of Durham would not rate very high in terms of need. He stated that Wright Pierce does work with towns to find funding. He stated that he could make phone calls right away to see if there is funding available because this project involves the Oyster River.

Peter Smith expressed concern that the questions were not being directly and clearly answered.

Peter Atherton stated that this upgrade to the Wastewater Treatment Plant would improve the operations, reduce some of the odors and will make the entire process more efficient.

In response to a question from Peter Smith, Bob Levesque stated that the Town was in violation of its permit from time to time. He stated that the information gets reported to the EPA on a monthly basis.

Peter Atherton stated that the 2.4 million dollar bond for upgrades is to maintain the status quo of the treatment plant and to give the Town of Durham more of an updated facility to meet its obligations. He stated that the EPA could come in at any time that there is a violation and impose fines.

Eileen Fitzpatrick (via telephone) stated that she had three reasons why she was opposed to this project. She stated that she did not have confidence in the funding numbers the Town had been given. She stated that she believes the University is unloading its capital costs onto the Town of Durham. She stated that the second reason she was opposed to this project is that the treatment plant is not currently outdated; it is anticipated to be outdated. She stated that she felt the treatment plant was in need of maintenance not an upgrade. She stated that the third reason she was opposed to this project is because of the haste that this project has been presented to the Council from day one. She stated that there is no reason the Town Council has to make an under the gun last minute decision on something that involves this amount of money. She stated that if this project is as important as the Council was being led to believe, the Council should have had more time to consider it.



Katie Paine asked what the University would do if the Town of Durham did not move forward with this project.

Bob Levesque stated that it was not a flow issue that the treatment plant could take much more wastewater. He stated that this issue with EPA is water quality. He stated that even if the University never puts another system on this line, it would not change the water quality discharging out of the plant.

Peter Atherton stated that the aspect of the upgrade primarily has to do with the outflow. He stated that the upgrade that is before the Council now is regardless of future discharge; it is for equipment upgrade that is used every day to pump and treat the sewer.

Bob Levesque stated that operations at the treatment plant would proceed as normal if the Town Council decided not to move forward with this project. He stated that he did not know what EPA would say if this was the case. He stated that the cost of the project would not go down if this was delayed and that the need to do the upgrade would not go away.

Eileen Fitzpatrick (via telephone) stated that the one thing that could change by waiting a year was the one-third/two-thirds allocation between the Town and the University. She urged the Council to wait a year before approving this project.

Mike Lynch offered to conduct a tour of the Wastewater Treatment Facility for the Council members to get a first hand look at the problems.

*Jerry Dee MOVED that the Durham Town Council open the Public Hearing to receive input from citizens regarding the referendum item to be placed on the March 12, 2002 election ballot to raise and appropriate the sum of Two Million, Four Hundred Seven Thousand Dollars (\$2,407,000.00) for long-term debt, pursuant to the provisions of the New Hampshire Municipal Act, RSA 33, such sum to be raised in part through the State of New Hampshire State Revolving Loan Fund, for the construction phase project costs to improve equipment deficiencies and other operational problems to the Town's existing Wastewater Treatment Facility (WWTF). Katie Paine SECONDED the motion and it PASSED unanimously.*

Judith Spang, 55 Wiswall Rd, stated that, in her opinion, the overriding issue is concern for the Great Bay. She urged the Town Council to move forward with the upgrade of the treatment plant.

*Annmarie Harris MOVED that the Durham Town Council close the Public Hearing to receive input from citizens regarding the referendum item to be placed on the March 12, 2002 election ballot to raise and*



*appropriate the sum of Two Million, Four Hundred Seven Thousand Dollars (\$2,407,000.00) for long-term debt, pursuant to the provisions of the New Hampshire Municipal Act, RSA 33, such sum to be raised in part through the State of New Hampshire State Revolving Loan Fund, for the construction phase project costs to improve equipment deficiencies and other operational problems to the Town's existing Wastewater Treatment Facility (WWTF). Katie Paine SECONDED the motion and it PASSED unanimously.*

Annmarie Harris stated that the concern with the Oyster River might be eliminated if the Oyster River is dredged.

Bill Woodward stated that operational efficiency was important. He stated that the plant would be more efficient with the baseline improvements. He stated that the Water, Wastewater and Solid Waste Committee is convinced that this upgrade is the most cost effective thing to do.

Katie Paine stated that she was willing to approve putting this issue on the March election ballot. She asked if there was a way to let the voters decide on the bonding and at the same time make it a priority to gather the data as to whether the one third/two thirds allocation is correct.

In response to a question from Peter Smith, Bob Levesque stated that if this project were to be postponed for a year the violations would continue to rise.

*Pete Chinburg arrived at 9:20 PM.*

*Bill Woodward MOVED that the Durham Town Council adopt Resolution #2002-06 authorizing the borrowing of money and the incurrence of debt in the amount of Two Million Four Hundred Seven Thousand Dollars (\$2,407,000.00) for long-term debt, pursuant to the provisions of the New Hampshire Municipal Act, RSA-33, such sum to be raised in part through the State of New Hampshire State Revolving Loan Fund, for the construction phase project costs to improve equipment deficiencies and other operational problems to the Town's existing Wastewater Treatment Facility (WWTF) on a roll call vote of 2/3 majority of Councilors presented and voting. Jerry Dee SECONDED the motion.*

Pete Chinburg gave a brief historical background of this project. He stated that this was not an issue that has just recently been dumped on the Town Council. He stated that at least four of the Council members have been exposed to this project for quite some time. He stated that the Water, Wastewater and Solid Waste Committee have been working on the project for at least five years.



Pete Chinburg stated that there seemed to be little regard amongst the Council for the recommendations of the Town Engineer and the Director of Public Works, who have been involved with this project for a number of years trying to figure out the best thing to do for the Town in regard to the treatment plant. He stated that the Town Engineer and the Director of Public Works have done their job in working with the State on cooperating and getting ahead of the problems rather than waiting for the entire ball to drop. He stated that maybe the one-third/two-thirds allocation between the Town and the University may need to be recalculated but, in his opinion, it was not the time to kill a project such as this based upon what the Town thinks of the University. He urged the Town Council to vote to move forward with this project.

*The motion PASSED unanimously by roll call vote as follows:*

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

*Pete Chinburg left the meeting at 9:30 PM.*

At this time the Town Council moved to item X-A.

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

Chair Sandberg gave a brief overview of this item. He stated that the Town Council had received a letter from the Planning Board endorsing an impact fee ordinance.

The Town Council asked staff to prepare a draft Impact Fee Ordinance and to put together material to help clarify any complications that must be dealt with if an Impact Fee Ordinance is imposed. This will be put on the agenda for the April 1, 2002 meeting.

Chair Sandberg explained the School Funding formula issue. He stated that the Oyster River School District (ORS D) has done a very comprehensive breakdown of how the formula actually impacts each of the three towns. He stated that the Council could schedule a meeting with the ORSD to discuss this again. It was decided to put the school funding formula discussion on the March 18, 2002 agenda.

Chair Sandberg stated that the Economic Development discussion would be coming forward during the Zoning Re-Write process.



Katie Paine stated that she would like to see if there was any interest in reviving the Economic Development Committee.

*Annmarie Harris MOVED to extend the meeting until 10:15 PM. Katie Paine SECONDED the motion and it PASSED unanimously.*

Administrator Selig stated that the Assessor has provided information on what the Town could do to help the elderly with their taxes. It was decided that this discussion would be on the March 4, 2002 agenda.

Administrator Selig stated that he would work on putting together a list of the items the Town Council would like to discuss with the legislative delegates.

Jerry Dee stated that he would like to see concrete data that the high taxes in Durham are driving the elderly out. He stated that he would like to know if the high taxes are driving out the elderly at a faster rate than the young families.

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

Administrator Selig gave a brief overview on how this proposed process would work.

*Annmarie Harris MOVED to extend the meeting to 10:30 PM. Peter Smith SECONDED the motion and it PASSED unanimously.*

Katie Paine stated that she would like to see a "References" section added to the application.

Administrator Selig stated that he would like to see all applications from people interested in serving on various boards and committees turned into the Town Office no later than Friday, March 8, 2002.

After discussion, the Town Council agreed to extend the deadline for applications to 8:00 AM Monday, March 11, 2002.

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

- A. Receive Quarterly Financial Report as provided by the Business Manager

Administrator Selig introduced Paul Beaudoin, Business Manager.



Paul Beaudoin gave a brief overview on how the quarterly report was set up. He explained various aspects of the report. He addressed questions from the Councilors.

*Annmarie Harris MOVED to return to item IX-C. Katie Paine SECONDED the motion and it PASSED unanimously.*

The Town Council returned to item IX-C.

**B. Other Business**

Peter Smith stated that he had read Attorney Mitchell's letter and agreed that an appeal of the court's decision concerning the Jacques case is not in the best interest of the Town. He stated that he believed there was a real problem with cases not being adequately presented to the Zoning Board of Adjustment in terms of evidence. He stated that he felt there was also a problem with education with respect to persons who sit on the Zoning Board of Adjustment. He stated that it is the responsibility of the Town to get the members of the Zoning Board of Adjustment appropriately educated so the hearings before the Zoning Board of Adjustment are meaningful and not just bull sessions.

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

There was no nonpublic session required.

**XII. Adjourn (NLT 10:00 PM)**

*Katie Paine MOVED to adjourn. Jerry Dee SECONDED the motion and it PASSED unanimously.*

The meeting adjourned at 10:30 PM.

Sharon Elliott, Secretary