

*These minutes were approved at the April 1, 2002 meeting.*

**DURHAM TOWN COUNCIL –MEETING MINUTES  
MONDAY, MARCH 4 – 7:00 PM  
DURHAM TOWN HALL – COUNCIL CHAMBERS**

**MEMBERS PRESENT:** Mal Sandberg, Chair; Jerry Dee; Annmarie Harris; Peter Smith; Pete Chinburg, Bill Woodward; Mike Pazdon; Katharine Paine

**MEMBERS ABSENT:** Eileen Fitzpatrick

**OTHERS PRESENT:** Todd Selig, Town Administrator; Mike Lynch, Director of Public Works; Jim Campbell, Town Planner; Interested Members of the Public

**I. Call to Order**

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

**II. Approval of Agenda**

*Councilor Chinburg MOVED to approve the agenda. Councilor Dee SECONDED the motion and it passed unanimously.*

**III. Special Announcements**

There were no special announcements.

**IV. Approval of Minutes**

February 18, 2002

Councilor Smith intended to abstain, but indicated he had discovered an error in the previous minutes. He asked that his name be removed from where it indicates that he was present, when he had left or had not been present.

Chair Sandberg questioned the minutes, and asked that on the first sentence of page 4 of the minutes, the name of Todd Selig be adjusted.

Town Administrator asked that the fifth paragraph on page 9 of the minutes be amended to state that Chair Sandburg had prepared a draft (though it was not distributed).

*As to whether or not that should be taken as a motion to amend the fifth paragraph, Chair Sandberg MOVED to amend the minutes as stated above. The motion was SECONDED by Councilor Dee and PASSED unanimously.*

Councilor Chinburg noted that on page 7, (first paragraph, fifth line) the word 'he' "shouldn't be capitalized.

Councilor Paine indicated that on page 3, paragraph 5, the last sentence should state that "she would like to know."

*Chair Sandberg asked for a vote to accept the minutes as amended; the motion PASSED unanimously.*

Councilor Smith abstained due to his absence from the February 18<sup>th</sup> meeting.

## **V. Report of Administrator**

Administrator Selig reported the following:

The Town has successfully hooked a T-1 line into the Town offices. As a result of the hookup, unfortunately, the e-mail is temporarily down to the Town Hall. Within the Town Hall the e-mail is functional, but no external e-mail can be sent or received.

The residential spring bulk waste cleanup is scheduled to begin the week of May 1<sup>st</sup>. A flyer will be circulated to educate the public about this program. The date has been moved up by a few weeks to avoid the large amount of refuse that is generated by UNH closing up its operations/dorms. It is hoped that this will cater more to Durham residents than students leaving the dorms.

Councilor Dee questioned that there may end up being a second spring cleanup without special notification procedures.

Administrator Selig indicated that in terms of the commercial entrepreneurs in Town who rent large complexes to students this issue hadn't been specifically addressed. In his mind, bulky waste permits are required, and these would still be required of the students that would be leaving. If they simply deposit their goods on the curbside, that would become essentially a code enforcement issue. He agreed that perhaps it would be worth a note to the large complex owners.

Councilor Smith indicated that he anticipates that there will be substantial problems with this, and that the Town ought to consider getting geared up in terms of a very vigorous enforcement of that. He stated that he thinks it would be wise to assume that this will be a problem.

Administrator Selig indicated he would contact the Landlords' Association about this, too.

Administrator Selig continued, stating that another item that deals with solid waste issues in Durham is that over the last few years the Town has not been

diligent in the collection of bulky waste coupons, despite that the Town technically requires those coupons. He has been pressuring the DPW to collect those coupons, since it is in the ordinance and has asked that the Department of Public Works become more stringent in that collection. He doesn't recommend that the Town do away with the spring cleanup, but feels it should be addressed in the spring budget process, as there seems to be a double standard there.

Administrator Selig also reported that the DPW has been monitoring water levels in Durham. The Governor has been thinking of declaring a state of drought in the State of NH. Durham will continue to monitor those levels closely. Administrator Selig said that he had placed a call to the State Dept. of Environmental Services regarding the USA Springs matter. The NHDES is still working through the various USA Springs applications that have been put together, a process that will take approximately a month and a half.

Town Administrator Selig reported on the cable issue. The Town of Durham, through cable negotiations two years ago with then-Media One, was under the impression that with a few exceptions, there existed a complete and total build-out of the cable network in Durham. The Council had set a cost that Media One would bear to build out those exceptions. After Media One was taken over by AT&T, it was discovered that there are numerous areas of Town that are not serviced by this provider, but by other Towns' providers. The School Dept. also wants Lee and Madbury to be able to tune into broadcasts of Town of Durham meeting. Ongoing discussions with AT&T to try to bring that service to those Towns is occurring. AT&T is willing to consider providing this service at no cost, and also to the Newmarket cable systems. The Town is in the process of touching base with those three Towns to make sure that they're comfortable with broadcasting that signal. The feedback so far from those communities has been very positive.

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

Councilor Paine indicated that regarding the DCAT Committee four training sessions have been scheduled to occur in March. Anyone interested should contact the Town hall. There is a cost of \$60 associated with that to cover basic expenses. The Town of Durham has developed a weekly schedule which would attempt to put up on DCAT and increased schedule of Town meetings and events.

Councilor Smith inquired if the committee doesn't have an adequate number of volunteers.

Councilor Paine indicated that the Town could televise the Planning Board, the Zoning Board of Adjustment and the Town Council meetings. The School Board is also covered. Those are the only ones for which the Town has sufficient resources.

Councilor Smith suggested that the training fee be waived for persons who commit to spending their time on these Town meetings etc.

Councilor Paine responded that the cost of the trainer is the difficulty, but the Town will consider that.

Councilor Dee asked if the training involves only the equipment in this building.

Councilor Paine indicated that it involves the remote equipment as well.

Councilor Dee asked if the training would assist people who want to do their own productions as well

Councilor Paine stated that the training is called Advanced Studio Production. Basic Production would be going into the back room, turning the machines on and off. This would be more advanced production training. It doesn't include taking the cameras out into the field.

Administrator Selig stated that Councilor Harris had reminded him of one other item to report. For those citizens interested in volunteering for boards or committees, the due date to submit applications is this coming Monday, March 11, 2002. Applications can be obtained at the office and returned to the same location.

Councilor Chinburg inquired whether if someone decides in May that they want to participate, could they still participate?

Administrator Selig indicated that if the Town were unable to fill vacancies, then as applications would come in, those applications would be brought to the Council.

Councilor Chinburg asked if there is a reason why it can't be open year-round.

Chair Sandberg indicated that the appointment cycle is an April 1 vacancy, so the Town tries to fill that cycle.

Councilor Pazdon mentioned a sign for closing Wagon Hill Farm that he would like the Council to look into. He also wants future agenda to be changed, to insert before the Agenda Changes review, that the Council address one budget item each meeting before that. The budget is one of the most important things the Council does, he feels, but has very little time spent on it.

Chair Sandberg responded that the budget preparation belongs to the Administrator.

Administrator Selig replied that if there are budgetary items that Councilors would like to bring forward before the budget process begins, they can be individually addressed earlier.

Chair Sandberg indicated that if there are specific issues that Pazdon or other Councilors would like to have discussed on a given agenda, there exists a projected agenda calendar. He suggested interested Councilors choose a date and request that it be added to the agenda for those meetings.

Councilor Chinburg expressed interest in commenting on some issues, mostly comments, calls and discussions received from Town citizens regarding Council and planning board meetings. One item brought up to him was affordable housing, that the Town needs more affordable housing; he questioned whether the Town needs affordable housing or senior affordable housing. Affordable housing could add to the burden of the schools as opposed to helping the tax base. He noted that at the last Council meeting, almost an hour was spent arguing with the Town attorney about a particular ordinance. Also, the Council can change an ordinance by rewriting things, but how can that be when things are ongoing? It appears to be an intentional method of disrupting projects, which is fundamentally unfair to people who are in that process.'

Councilor Chinburg continued by referring to a purported recent comment from Todd Selig about Heidelberg Harris wanting to achieve more space. Councilor Chinburg indicates that the following discussion is interspersed with some of his own personal comments. [paraphrased] 'The Planning Board and the people of the Town look at it with some degree of amazement.'

Councilor Dee stated that this is his last official meeting. He thanked the other Councilors, Administrator Selig, and other present officials and also thanked the public for this honor. He stated with a smile, "It hasn't always been a pleasure, but it has been an honor!"

Administrator Selig said that Councilor Dee's comment reminded him that the Town election is next Tuesday, March 12, 2002.

## **VII. Public Comments**

Julie Newman, 38 Mill Pond Road, read from a prepared statement distributed to the Council which are attached to this set of minutes.

Eric Froeberg, 170 Packers Falls Road, stated that he hasn't yet had a chance to voice his opinion on the Allen Farm proposed development. He lives within the watershed area of the proposed development. Like most residents, he said, he worries about the ongoing health of the watershed. He said he knows there was at least one new well put in the neighborhood this year. His house is about 20 feet from the road. Traffic is certainly a concern. The recent paving, as nice as it is, encourages the practice of cars regularly going by at 50-60 mph. The thought

of increased traffic thereby is to him unpleasant. He would also like the Council to look at the whole Packers Falls issue from a broader perspective, that of a rural road being a real resource for the Town. There are only a few left in Durham, he stated. Roads like that are, in his opinion, a valuable resource. When he says that he lives on Packers Falls Road, the response is always, he states, "Oh, I love that road." He stated further that there's a quality of that road that many members of the Town feel that has got a special value, not as a future development. He asked the Council to look at the road from that quality standpoint as well.

Julian Smith, 246 Packers Falls Road, stated he was glad to hear about the waste treatment in Durham. He'd like to see some basic changes. He went to get his transfer station/recycling permit. On his way into Town, he went out Mill Road for the first time since December. There is no snow on the ground now, and once one turns off of Packers Falls Road onto Mill Road, there are hundreds if not thousands of cans and bottles, he says. He mentioned that [Michelle Connors], who lives in that area, frequently picks up that trash voluntarily. He fears that every time someone sees a can and then more cans along the road, there's going to be more tendencies to throw more stuff out. His point is that once there was a pristine environment, but the scenic road had been degraded by the ditching work which was really unnecessary, in his opinion.

Mr. Smith said he asked that someone from Department of Public Works do some cleanup. He said that rather than the current cost of the permit of \$5, he would prefer to pay \$25 or \$50 a year and perhaps the recycling center could be open another half-day. He feels that the Town should charge more.

He also expressed concern that in a month and a half, there will be piles of old furniture along the road. He feels that if the Town did a better job of picking stuff up every week and encouraging people to take their own trash/bulk waste to the depository, that would be a better solution. He is unhappy that the Town uses heavy equipment, sometimes digging up the grass along the side of the road, to remove residents' bulk waste. He would like to see some changes made in how the Town handles garbage. He much prefer the way it was purportedly in 1965, when the dump was open, as he states, 24 hours a day, 7 days a week. He feels that most people have trucks or friends with trucks and can haul their own things to the dump.

Beth Olshansky, Packers Falls Road: Ms. Olshansky thanked Councilors Dee and Woodward for their years of service. She indicated that her impression is that later in the evening there will be discussion about the Conditional Use Permit and the Planned Unit Development. She referenced the concepts of Democracy and that in branches of government there is a system of checks and balances. In her opinion it seems that Durham's ordinances are subject to interpretation. She would prefer to see the Council weigh on the side of caution in providing those checks and balances for the Town. She felt that the CUP and the PUD are really about applicants asking for exceptions to the ordinance. In that light, she felt that

it made sense for the Council to have the prerogative to review what the Planning board reviews. She felt that the Planning Board members are often not educated in reading ordinances, though they are hard working and well intentioned. It made more sense to her to have more than one body checking on these exceptions to the rule.

She also referenced possible later discussion of the Bennett Road Bridge. In her opinion, that ties into retaining Rural Character. She's disappointed that the Packers Falls Bridge is going to be redone. She concurred that Eric's comments about the increased traffic are certainly true and feels that widening the bridges is more of an encouragement for cars to go faster. She's not sure why this is being discussed, but would prefer that if Bennett Bridge needs to be fixed, it just be fixed and not expanded or widened. She also proposed taking out the Wiswall Dam.

Robin Rousseau, 345 Packers Falls Road, spoke on the profit issue. She sees the growth moratorium to be not about preventing someone from making a profit. She considers herself to be a supporter of profit. She sees it as the most efficient way for developers and the Town to get on the same page quickly. She can't see the developers having to deal with different pieces of the ordinances during the course of their planning as far as their development, and stopping and starting, and not knowing where they're going. So a moratorium for a certain period of time could accomplish the goal of getting everyone on the same page quickly. That's how she feels. She objected to being included in the reference of Councilor Chinburg as being possibly part of a vocal minority seeking to stop developers from making a profit.

She stated that she would like to talk about the PUD/CUP issue. It is her understanding that the Council will be debating the PUD/CUP issue this evening. As a resident [she read from a prepared statement not provided to the Council] she asks that the Council take its guidance from Zoning ordinance 175-4. that states [paraphrased] where a provision of that chapter differs from any other proscribed chapter or ordinance, 'that provision which provides the greater restriction or the higher standard shall govern.' In her opinion the higher standard would be for the Town Council to review and approve a conditional use permit by looking at the provisions as a whole, not in part. The ordinance instructs the Council to "focus on the fiscal impact." This doesn't imply they can ignore other parts of the provisions of the ordinance in the approval process.

The Town's oversight of the conditional use permits is the greater standard, she feels. She feels that the authors of the ordinance knew that Conditional Use Permits typically involve major projects that have the potential of changing the Town's landscape forever. It is her opinion that they be placed in an additional level of scrutiny and consideration due to the importance to the community of these projects.

She feels that the Council should provide an additional level of review. She states that just because prior boards may have interpreted this ordinance incorrectly, the current Council need not do so. She feels that this is a bad policy and not something "we" want to teach the children of this community. She thanked the Council for taking the time to thoughtfully consider the Conditional Use ordinance as it relates to the Town's long-term interests.

There was no further public comment.

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

A. **Resolution #2002-07:** Recognizing outgoing Council members for their services to the Town.

A. **Resolution #2002-08:** Accepting an additional grant award of \$381.38 from the Federal Emergency Management Agency for completion upgrades to the Town's Emergency Operations Center.

*The above two (2) items PASSED by unanimous consent.*

IX. **Unfinished Business: Discussion on Conditional Use Permits/Planned Unit Development.**

Chair Sandberg stated that Attorney Mitchell's letter was reviewed in-depth at the last meeting. In the Council's packet are a couple of proposals that were put forward by way of advisories that were drafted, some of which were drafted by Chair Sandberg, set out in a resolution format. This was drafted before the discussion with the attorney. The second was set up following the discussion with the attorney. He states that while the Council doesn't necessarily want to adopt a resolution per se, these two documents were put together to help the Council to organize its thinking and help determine what is the best manner in which the Council should proceed in the future in terms of CUDs and PUDs. He offered the issue to the floor for comments, suggestions, etc. from the Council.

Councilor Dee stated that in the initial stages of this discussion some time last month, he was looking for some clarification of what's been done in the past. He states that the ordinance can be read and interpreted in many ways. He feels that the Council needs to review how it's been done in the past, to apply it with consistency until the Council may decide to change the ordinance. He feels that of the two drafts, one was attempting to put more control of the process in the Council's lap. He disagrees with that process. He feels that it should be more in the lap of the Planning Board and the ZBA. He feels that the second draft does that, and does clarify the process that residents and developers have gone through over the past 10-12 years, in attempting to have some of these issues approved and resolved.



Councilor Harris asked that the documents be assigned numbers.

Chair Sandberg deemed that the unstapled page is now known as Document Number One, and that the stapled document is now known as Document Number Two.

Councilor Paine stated that she has only just heard this discussion in the past two weeks, and feels strongly that the Council does need some kind of policy, to give guidelines in the future. She does not agree with Chinburg's earlier statements that the Council is in any way trying to discourage new development. She sees this as a way to basically make things clearer. She states that she feels that she would be very frustrated if she were trying to put forth a PUD right now, because she doesn't think it's very clear. She likes Document One for its simplicity and feels that it does act as a checks and balances system. But one or the other is necessary to clarify what the Council is supposed to do.

Councilor Smith stated that he would like to clarify what the Council's intention is in this discussion. He indicates that he was not at the previous meeting, where there was substantial discussion of this issue, but he did view the videotape of the meeting. He wondered if it the Chair's intention to continue the previous discussion, or whether it is to focus exclusively on these two documents and their possible relevance, or whether it is his intention to continue discussions with respect of the meaning of the statutes once it is in the context of making judgments with respect to specific applications. He said that the answer to that question would influence the Councilor on anything he's going to say about those matters.

Chair Sandberg responded that to the extent that the Chair's standpoint has anything to do with it at all, he reviewed his recollection of the discussion process thus far. He states that on January 7, 2002, there was a public hearing for a conditional use permit as a PUD. At this point, the present Administrator, the planner, the Code Enforcement Officer, and the chair of the Council had not orchestrated a process of conditional use or PUD consideration. So he found himself in the position of having to interpret what process to follow; he indicated that he had reviewed both 175-32 and 175-10 in the Zoning Ordinances and found that there were substantial questions to be asked as to what procedure to follow. When the Council looked at the packet they received on January 7, 2002, it contained only the findings of fact and conditions of approval from the Planning Board and the findings for the CUP and PUD, and the findings of fact and conditions of approval for the subdivision application. Those are the two documents that were presented. He stated that it occurred to him that in order for the Town Council to properly consider the application, they needed to have before them a substantially greater application. That in fact they may need the entire application so that the Council can carry out its responsibilities. So that's the question that he states came before the Council on January 7, 2002.

Chair Sandberg continues that the Council then proceeded then to seek input from the Town's legal counsel. Chair Sandberg then indicated that Councilor Smith had articulated a number of questions which were then put forward to the legal counsel. So the question as Chair Sandberg views it is, Where does the Council go from here? At some point in the future, he stated that the Council would have a Conditional Use Permit application in front of them. And the first question he has is what is it that the Councilors expect to have in their packets?

Chair Sandberg feels that the packets should contain the whole application. That the Council needs to see the layout, the Mylar, the elevations and setbacks, and everything that the planning board looked at. He stated that there's a question as to whether the Council should focus only the fiscal components. But even if that's what the Council did decide to focus on, in order for the Council to fairly answer the questions proposed in 175-10K-5 and 6, it seems the Council would need the entire packet, in his opinion.

So one thing that Chair Sandberg would hope would come out of this meeting, at least directed to the Administrator, that when the Council does face its next CUD/DUP application, that the Council have the full packet. Then it would seem that the Council would then be able to deliberate on future applications with a sense of real direction and purpose. So it would suffice from his perspective for the Council to come out of this meeting offering that as a directive to staff.

Councilor Smith replied that he doesn't see the purpose of getting into those two documents. He had some brief comments to make.

He stated that he knows the discussions of the last meeting were in isolation of an actual application. He has some difficulty in viewing that discussion as in isolation of an actual application, because it's known that the reason the Council had that discussion was that an application was shortly coming forward. He supposed that there could be continued abstract discussion of those issues wholly isolated from those issues, but feels that inevitably that territory is going to have to be covered as the discussion takes place. He is unsure that further abstract discussion is a wise idea. He doesn't intend to initiate that discussion, though he would participate in it if it is initiated.

As for the two documents under discussion, he feels that they can be looked at in two respects. He feels that one, they tend to take certain positions, with respect to a number of those issues that the Council debated at the previous meeting. He states that there clearly are differences. As to those differences, he prefers to wait on that.

Also, he stated that he feels somewhat uneasy in the Council going down the road of putting together by resolution or something in that form some kind of a statement of what one of the Town's ordinances means. He believes that when the Council sits in a quasi-judicial capacity, like any judicial body, it is forced to

decide what certain language in the ordinance means, to the extent that the Council has to make a judgement of the facts presented to them. In acting in that capacity, he feels the Council will have to make up its minds, and someone down the line will disagree with that.

To the extent that the Council is not sitting in that capacity, but rather as a political body that makes policy, passes ordinances, etc., he doesn't personally think it's a wise idea to try to be making that policy in terms of the meaning of a statute, other than if the Council simply wants to say 'now we wish to amend our statute.' If the Council wants to do that, then they ought to come up with a draft ordinance or a series of changes. However, he doesn't think at this point that the argument that the statute is absolutely clear has much force.

Councilor Smith stated that if the Council wants to go the route of amending the statute, then they should start that process. But under the guise of by resolution putting out a policy he doesn't think the Council should bypass the formal way they are to proceed. To some extent, there's material in there that he thinks is quite appropriate for the Administrator or the director of the planning dept. to put in the form of regulations. He happens to be of the view that the Administrator has the power to adopt regulations. But for the Council to do that seems to him kind of offending the provisions to the statute. He would like to discourage the Council from going down that road. He thinks either amend the ordinance or decide what it is that the Council thinks the ordinance means and act accordingly.

Councilor Pazdon agreed with Peter's statement, but for a different purpose. He said that according to the ordinance, it's the Planning Board's job, then that of the Council, not to second guess what the planning board already does. He felt that it is a disservice of stalling this process. He asked when the public hearing is for this issue.

Administrator Selig indicated he is waiting to set the date based on the discussions.

He said that applicant in this case has requested a public hearing. Prior, they had asked that the Council provide some clarification as to what it is they will be asked to produce. If the Council was going to require more than just fiscal info, they wanted to know what that was up front to be prepared. The other outstanding issue with regard to this particular application, the applicant has submitted draft association agreements, covenants. The litigants, who have a tentative settlement with the applicant on other issues, have yet to sign off on those proposed articles. Selig stated that it's really the Council's view on how they'd like to proceed. After consulting with attorneys, etc., it's been decided that the actual application should be in the agreement. The Council doesn't have that right now. They have a draft. The Council felt that it should have those finalized agreements. But ultimately it's the will of the Council, if they're

comfortable proceeding without those agreements. The goal was to ensure a complete packet to present to the Council.

The final covenants do have to be submitted to the Council for review. But if the Council wants to see all the final documents, how can it move forward without having those finalized documents? And why would it want to move forward without all those things.

Councilor Harris believes that the planning board did in its conditions require that those final documents were to be submitted before the final consideration by the Council as well.

Administrator Selig said that it wasn't required that they be submitted prior to the Council's considering the application.

Councilor Smith wanted to know whether or not all of the duties of the planning board in respect to this application have been completed. He clarified that to mean that all of the duties of the members of the board and all of the duties of the planner, to the extent that the planner has agreed to carry out certain duties in pursuit of the finality of the work of the planning board. He does not want to see it go out of here until that work is done, regardless of whether Council's jurisdiction is going to be defined as two feet, three feet, or five feet wide. He sees no justification of the Council moving forward until planning board's work is completed. He said that there's only one circumstance in which the planning board makes a final decision in terms of a Town body, and that's if they agree to deny a Conditional Use Permit. Otherwise, there is no question that the entire package needs to come before the board. The last thing he or the applicant would want to see is for this to come up here only to get bounced down because the materials are not complete.

Councilor Woodward questioned the transition of the discussion of general topics to talk of a particular application and its packet, etc.

Chair Sandberg clarified that the discussion is of whether the Council wants an application to be presented in its entirety, or in process. He said that Councilor Smith sees it as not helpful to have a packet that is not in its entirety. As an example, an application pending on January 7, 2002 was referred to, in which the documents agreed to by a Superior Court agreement contain language which is a moving target, according to Chair Sandberg.

Administrator Selig said that with regard to the specific application, it was about a subdivision planning application. The conditions of approval that the Planning Board acted on were quoted directly from the application by Administrator Selig. From the point of view of the planning board itself, their work was done, pending receipt of final covenants. But the issue had been brought forward that the review may not be completely acted upon without the final documents. He

indicated that the Council is questioning in many respects the role of the Council, and that brings to discussion what documents they need to have on hand.

Councilor Harris said that the votes recorded related to the fiscal impact, but referenced that all manner of discussions had taken place, though the votes were taken specifically upon the fiscal impact, but that was not all that was considered.

Councilor Dee said that regarding the completeness of the packet coming to the Council, he questioned why the Council would be overly concerned if they did not have a document that is pending, if the Council's role is to look at fiscal impact. Until a decision is made to change the ordinance, he feels that the Council needs to follow past practice. During the discussion of these drafts, Dee had been looking for clarification, not necessarily a legal document. He asks what is the Council going to be looking for when these issues are presented to the Council? While he doesn't want to see the Council revise the law in midstream, he feels that the Council should have clarification.

Chair Sandberg indicated that Council ordinance is specific that articles and bylaws etc. are specifically called for. The question is, Should they be in a draft form, or a more finalized version? In the specific cited example, the language is already the subject of a lawsuit, and the specific docket number is cited.

Councilor Dee asked that as long as the final version is not substantially different from the draft, why hold things up?

Councilor Smith stressed that the Planning Board with respect to any issue to be brought before the Council doesn't give final decisions on any thing. If the matter is coming before the Council, the Council should not be referring to final agreement or approval of the planning board. There is no such animal on either of those statutes. What Smith would like the planning board to deliver to the Council if it wishes to and wishes the Conditional Use Permit process to move forward, is items that are not undone, or he will move to table the applications until the incomplete items are complete. His understanding is that because of the litigation that took place, there were negotiations that got woven into what it was the planning board was doing with this item, but is the weaving done? If it's still going on, and the planning board is finished with it, then it's ready to go to the Council.

Chair Sandberg asked Administrator Selig if he has a clear picture of how he will handle the next Conditional Use Permit or PUD application that comes forward.

Administrator Selig replied in the negative. He wants to defer to Jim Campbell, the Town Planner, who was present in the audience. He further stated his belief that if the Council goes through its process for a motion for Conditional Use Permit, the conditions as outlined by the planning board assume that a final agreement will be reached as necessary as part of the court settlement between

the applicant and the litigants. He indicated he thinks their main focus was to ensure that agreement was reached. He believes the planning board has done everything they need to do.

Chair Sandberg recognized Jim Campbell, the Town Planner, to speak.

Jim Campbell said that it was his decision to put the application before the Council. The planning board had met. The weaving was assumed to be complete. But it was not. Campbell took responsibility for having sent it forward before it was truly complete. He referred to Wednesday night's upcoming meeting and asked for guidance on how to address these issues in that meeting.

Councilor Smith questioned whether the discussion is about how the Council will handle these applications in the future, or if the Council is giving the planner advice?

Administrator Selig stated that with respect to the process in general, it would be easier for the Allen farm application as well as future applications, to come before the planning board and the Council, if the applicants knew what in fact those bodies would be evaluating. He feels it should be stated for the applicants if it will be solely fiscal matters or more than simply fiscal matters for the Council to address. He indicated he is at a loss with respect to the particular application being discussed. He has heard multiple perspectives from the Council, to move forward or to demand clarification. He indicated willingness to schedule the hearing for the next meeting if the Council desires; the articles may or may not be completed at that time. If Council prefers that scheduling wait until final documents are in hand, that would be fine, too.

Chair Sandberg asked if there is a motion to be made to ask the Administrator to schedule a public hearing.

***Councilor Pazdon MOVED that the Council schedule the public hearing for the Conditional Use Permit that was put off last time, for March 18.***

***Jerry Dee SECONDED the motion.***

Councilor Paine initiated discussion questioning if the litigation will be complete on the Allen Farm application.

Councilor Pazdon said to light a fire and if they're ready, they're ready. If they're not, they shouldn't come to the hearing and it will be rescheduled.

Councilor Sandberg asked if it's Councilor Pazdon's opinion that the application is complete as it stands.

Chair Sandberg clarified that the Planner had stated that he in error moved it forward though the application was not truly complete. He asked who determines when it's complete.

Councilor Smith was in opposition of simply scheduling the public hearing without being informed that the application is complete. He stated feeling that there is a burden on the applicant to complete the work. He does not want to inconvenience the Council or the public by bringing people here and then not being able to have the actual hearing.

Councilor Dee stated that if the applicant knows what is expected and has requested a hearing, then it should be scheduled. He feels the Council is being faulted for the stalling of this particular hearing.

Administrator Selig said that it is required that the proposed covenants be supplied. The applicant interprets the word proposed as "proposed," as in a draft. Administrator Selig feels that the word proposed can be interpreted as "actual document", a conclusion reached after discussion with the Town's attorney.

He also reinforced that if the Council doesn't schedule a hearing, that when the final documentation is in, he, the Administrator will proactively schedule that hearing anyway. But he feels that he is getting mixed messages and directives and does not want to work at cross-purposes with the Council.

Councilor Paine feels that the documents are very important in how the project moves forth. She said that the public obviously needs to see those covenants. Things can go either way in litigation and negotiation, and she doesn't feel that things should move forward until those processes are complete.

Chair Sandberg argued that the public has the right to voice their opinion on the final application, and that might be part of the issue here.

*A vote was called to schedule the public hearing for March 18, 2002.*

*Councilors Pazdon and Dee voted in the affirmative.*

*The Nays were majority.*

*Councilor Chinburg abstained.*

*The Motion FAILED. So Administrator Selig will schedule the public hearing when ready.*

Sandberg asked what is it that the Council wants to see in the packet at that point: the Allen Farm application or another application.

Councilor Harris stated that a complete packet can't hurt and certainly might help. So she requested that a complete packet be prepared.

Chair Sandberg asked if anyone was opposed to requiring a complete packet. Councilor Pazdon stated an objection to requiring the complete packet. Councilor Woodward had some discussion about that. He cited citizen Rousseau's comments in the public comments section of the meeting. He wants to wait to hear other comments before deciding.

Councilor Paine reiterated that her view of the issue is that she can't make a decision of what is of benefit to the Town without all the information. She feels that getting a whole packet is incredibly important.

Councilor Smith clarified that a full packet means that the planning board has totally completed the process that it is supposed to engage in on a matter that is to come before the Council. He acknowledged the kinds of pressures that can be brought to bear that a Council or board is somehow deliberately delaying a process. He feels that applications should not even be accepted until it's reached a certain level of completion. He suggested a preliminary notice be given to applicants in terms of what items will need to be provided.

Chair Sandberg clarified that some examples would be blueprints; he asked how much information the Council will want. Some Councilors would like to see it "all." Chair Sandberg cited that he particularly would like to see blueprints, would like to know what the impact is, would like to have all the information that is available. He feels that whatever is presented to the planning board needs to be presented to the Council. It should be a complete packet.

Councilor Paine preferred version one, in that is there an opportunity when packet is received, to get that information if it is felt that there is information missing.

Councilor Smith said that Sandberg's definition of completeness was in agreement with his own. He said that while there may be debatable issues on what the Council should address, he agrees that all of the underlying materials as well as the conclusions and recommendations (not decisions) should all be delivered to the board.

Chair Sandberg asked if that is sufficient guidance.

Administrator Selig indicated that yes, he will ask that a complete packet, including all information presented to the planning board and the board's backup materials, be provided to the Council.

Jim Campbell was recognized to speak; no objection was voiced by the Council. Jim Campbell asked if that means that the planning board must provide a copy for each individual Council member? Applicants are not currently required to



provide those copies, and that's an expense that would perhaps need to be borne by the planning board. Where is the budget for that?

Councilor Dee stated that it sounds like the Council then would be attempting to repeat the Planning Board's own deliberations process. He asked whether it is fair to the planning board, the people presenting, or the staff's time to duplicate this.

Chair Sandberg asked if Selig is satisfied that he has adequate guidance.

Administrator Selig stated that in the past on Conditional Use Permit applications it was stated that the Council would restrict its deliberations to fiscal matters solely. He indicates that that is now in question, so that he will remove that line from the hearing notice, so that the Council will be free to interpret the ordinance as it sees fit.

Councilor Woodward stated that he didn't hear any instruction to remove that language from the hearing notice. He feels that removing that language is pushing things too far. He takes the Council's task to be to look at the fiscal impact.

Councilor Smith stated that all that Selig needs to indicate is that the Council will take action as provided by articles etc., and that the Council will respond to the issues as needed.

Chair Sandberg moved on to the next item of the agenda at 8:59 pm, to address New Business.

A five-minute recess was called at that time.

## **X. New Business**

### **A. Bennett Road discussion with the Public Works Department:**

Administrator Selig summarized the Bennett Road bridge proposal. An old bridge, it has a 10-ton limit, which means firetrucks can't pass over the bridge, the plows can't pass over it, etc. The DOT is addressing these old railroad trestle bridges, as they are not owned by the Town, but by the railroad. Because it's not a Town-owned bridge, the Town of Durham has not wanted to pay to maintain or expand the bridge. Many other communities across the state face similar problems with their railroad bridges. The railroads want to increase the heights of these bridges. They want to send double-stacked freight trains under the old height of bridges of approximately 17 feet. In addition, it is felt that the railroads haven't taken responsibility for maintaining those bridges. The railroads have recognized that the Towns may want to keep the roadways open and therefore may not want to raise the height of the bridges.

A tentative agreement has been reached in which the State would take ownership of the bridge for a period of 10 years, taking on the responsibility of maintenance. With most bridges of Durham, the Municipal Bridge Aid program provides some funds for bridge maintenance. The interesting idea with this deal with the DOT and the railroads is that if the Town signs on to that agreement, the Town would budget to improve the bridge, the feds would still pay 80% of the costs, and the state would take on 10% of the cost, leaving the Town with 10% rather than the more typical 20% cost burden of improving the bridge. The state would maintain the bridge for that duration of 10 years. There is a proposal in the packets that Durham enter into this agreement with the railroad/DOT. What happens if Durham likes the bridge like it is and doesn't want to enter into this agreement, or wants to eliminate the bridge entirely? The DOT and the railroad will not accept any kind of grade crossing. What if Durham refuses to sign the agreement? Since it's a new agreement, the DOT/railroad is not sure what would happen. It does provide some opportunity for the Town of Durham to make up its own mind. If the Town is content to leave the bridge as it is, they will lose a viaduct crossing over that bridge, which means residents on the other side would have to go around. The Fire Dept. must travel to sites along that road, and the roundabout way would be almost double the time of response times when using the bridge. However, if the Town wants to ensure that we're able to cross that bridge and upgrade it so that municipal vehicles can cross the bridge, this would be an opportunity to have the state come up with an additional 10%.

Administrator Selig doesn't feel that this opportunity will come along in another ten years. Many Towns have been challenging the state about the requirement to increase the height. As a result, that item has become negotiable. So it's possible that the height could stay the same, or that some intermediary height agreement could be reached. To increase the height by 4' would impact the scenic quality of the road. The costs associated with the roadwork that would be required would be the full responsibility of the Town. This also has become negotiable with many communities and might therefore be negotiable for the Town of Durham. A prior feasibility study done by the Town of Durham had projected the cost of maintaining the bridge at its current height was referenced, with \$65,000 to maintain, \$80,000 to increase the height. Residents along the roadway have not yet been brought into the loop, and Administrator Selig suggested that their feedback would be beneficial and should be solicited.

Councilor Paine asked if at the end of 10 years would the bridge revert to the railroad?

Administrator Selig responded that no, the ownership would become that of the Town. Otherwise, the bridge ownership will revert to the State of New Hampshire.

Councilor Harris asked if the width of the road would be affected.

Administrator Selig responded that he believed there might be some impact on the width, and that there would almost certainly be impact on the approaches. This does not necessarily negate the scenic quality of the road.

Councilor Pazdon asked for clarification that if the Town doesn't sign the agreement, the bridge reverts to the state of New Hampshire, and then the Town would have no real say in the future of the bridge.

Administrator Selig indicated that the agreement doesn't specifically address that, but that conceivably that is a possibility.

Chair Sandberg recognized Mike Lynch, Director of Public Works, to speak on this issue. He indicated that the width of this particular bridge is negotiable, due to the character of the road, and that the presentation of a waiver would probably be looked upon favorably. The signing of a waiver such as this might turn over some liability responsibility to the Town.

Councilor Paine asked if the degree of control Durham has over the bridge is based on the amount of the Town's cost, i.e., would the Town only get 10% of the input since its cost burden would only be 10%?

Mike Lynch responded that the Town would be the construction manager, controlling the design, the selection of the design firm, the materials (i.e. timber, steel, concrete). It cannot, however, be a wooden covered bridge.

Councilor Smith asked who it is that the Town is negotiating with who has said that the matters of height and width are negotiable, as is the matter of who pays for the ramping.

Mr. Lynch responded that Bob Barry, Head Administrator of Highways for the New Hampshire DOT, is that person.

Councilor Smith asked why the height increase might be negotiable.

Mr. Lynch responded that that was a futuristic look at railroads, and not an immediate need of the railroads today. He said that he had asked Bob Barry if the bridge could be replaced or repaired and remain at 17 feet high, and Barry's answer to that question was yes.

Chair Sandberg asked if Mr. Lynch knows what the accident record of that bridge is over the past years. Mr. Lynch stated that three or four years ago there was a motor vehicle accident at where the bridge abutment stops. He also recalled a motorcycle accident at one point in the past.

Chair Sandberg inquired as to the cause of the accidents, and whether they were related to sightlines or similar causes.

Councilor Dee indicated that this had been discussed a bridge collaboration before, and Mr. Lynch stated that it was in 1999. At that time, there was no offer of co-payment, or a significantly reduced offer of co-pay, from the federal government?

Councilor Dee asked if there is any contribution from the railroad.

Chair Sandberg indicated that they are giving us the bridge.

Mr. Lynch indicates that their contribution is ensuring the safety integrity of the rail system during the construction. This might include flag signalers, radio personnel, etc., assessing that the track is clear and passable, etc. Some of those items are federally mandated. The railroad would contribute that safety inspection element.

Chair Sandberg asked the year of construction of the bridge.

Mike Lynch indicates it was originally built in 1910 as a 20-ton bridge, but it has deteriorated to a 10-ton capacity. He indicated that the project would seek to improve the bridge to a 30-ton capacity.

Chair Sandberg asked that if the Town agrees to do that, but maintain the character of the road with the height, etc., would it essentially just be redoing the abutments and the girder? And if so, would it be at approximately just 10% the cost? If the Town can retain the rural character of the road, and lose nothing, then he feels that the residents would look favorably on this. If the Town were to have a neighborhood meeting to solicit the input of the people who live there, could the Town make such a guarantee, that it could be the same height and width and that the approaches could remain the same?

Mr. Lynch indicated that the DOT would like to take some of the curve off the curve on one end of the bridge. It is a fairly sharp corner, and they would like to redesign it. So there are some small tweaking elements that the state would like to see incorporated into the design.

Councilor Smith asked who is currently responsible for work done to the surface/maintenance of the bridge. Mr. Lynch indicated that is the responsibility of the railroad. Councilor Smith then asked if there have been complaints about the railroad's failure to perform maintenance that is required of them, and Mr. Lynch indicated that those complaints occur regularly and that they have not been resolved to the satisfaction of the Town, would the railroad doing as minimal amount as at all possible to correct any deficiencies in the bridge.

Chair Sandberg asked what direction Administrator Selig needs from the Council. Administrator Selig responded that he wants to know if the Council wants to either completely reject the discussion, or if it is acceptable to continue discussion with the state on a plan for the bridge that will seek to retain as many

of the scenic qualities of the bridge as possible, and also move forward with a neighborhood meeting, and eventually come back to the Council for further discussion.

Councilor Smith stressed that it is important to compromise very little in terms of the retention of the scenic character of the bridge.

Councilor Chinburg asked what a new bridge rating would be, as opposed to beefing up the current bridge. Mr. Lynch responded that that, too, would be a 30-ton capacity, and that the wooden timbers would be replaced by steel support timbers.

Chair Sandberg indicated that time was running short.

Councilor Dee quoted from a document that referred to overweight vehicles being known to use the bridge, and asked if the weight limits are adequately posted. Mr. Lynch responded in the affirmative. He feels that this is mostly oil and fuel delivery vehicles.

**B. First Reading: Ordinance #2002-03** amending Chapter 52 "Elderly Exemptions, Section 52-3 "Administration" of the Durham Town Code by increasing amounts and asset limits.

Administrator Selig started discussion of this item by quoting from a document that indicated that there can be an impact resulting in loss to the Town of elderly residents' presence. He then outlined current Elderly Exemption programs of the Town. Under the Town's current program, there are income limits and asset limits to determine whether people are eligible for this exemption. There are varying levels of exemption. These varying levels are age-dependent. Administrator Selig has put together two options for the Town to consider, Version A and Version B. Version A carries forth the traditional premise of elderly exemptions, that older citizens of limited means are given a tax break to allow them to continue residing in the community. From time to time the asset and income limits need to be revisited. The last time this issue was revisited in Durham was 1997, at which point the levels were adjusted. The income limit, Administrator Selig feels, should be increased, and he broke out in the paperwork how he calculated those figures as targets, and he also further explained it. The asset value excludes the value of the home you are living in, it was pointed out.

He pointed out that Version B is essentially a social experiment, an interesting one. What he's done in this version is increase the asset limits from \$50,000 to \$300,000 and the income limits substantially as well, which would greatly increase the number of people who would qualify for the exemption. In Administrator Selig's view, this still excludes the truly wealthy in the community. He's also increased the exemption amounts in Version B. He stated that Version B hopes to aggressively retain and aggressively attract elderly

residents. His recommendation would be to carry on with the more traditional version, moving forward with Version A, but he states that Version B is food for thought, and if the Council wants to pursue that, then Version B is the route to take. As a younger resident himself, he addressed that there's no free ride, and that the burden gets shifted somewhere. So that as a single younger persons in the community, he and others in the community who don't fit the criteria will have to share that burden. So he cautioned the Council in that regard.

Councilor Paine asked what the cost is to the Town, in terms of if the 80 example residents in the Versions were to leave Town.

Administrator Selig indicated that the Version B prognosis is a rough estimate. He pointed out that there is insufficient information present on the age categories to accurately determine how much income would be lost were those residents to leave. He addressed this question in more detail in terms of dollar mounts per capita, etc. Version B would result perhaps in a small increase in the general tax rate. Administrator Selig pointed out that it's possible that the exemption program changes might have no impact on the community, and that even if it did, it might be a very long-term impact that only becomes apparent over a long period of time. Also, Chair Sandberg pointed out that if no one applies, then there is no impact. Administrator Selig concurred that people need to be encouraged to apply, in that there are residents who are too proud or uninformed to apply.

Councilor Pazdon indicated that there is no residency requirement in the program, so that there is no reward for having been a long-term resident of Durham. So there should be an attachment of some sort in this type of proposal.

Councilor Smith had a couple of questions for Administrator Selig. He asked if the assessed-value of the homes quoted in the Versions was realistic. He also asked if any thought had been given to the concept of, as a person ages, lowering the asset consideration, since if you view this as a program to help the living, there would be one approach. If the program is designed to help the decedent's heirs, that's a different outlook, leading to reverse mortgage principles, etc. He pointed out that there could be some dangerous legal territory present in these programs, in terms of making exclusivity terms in regards to public assistance benefits.

Councilor Dee stated that he feels there are two entirely different concepts comprising the proposals: aiding individuals and tax table abatement. He's not sure that he is supportive of the concept of tax table abatement. He expressed a belief that was somewhat in support of offering assistance to the elderly.

Councilor Chinburg expressed disagreement with the radical nature of Version B, though he is comfortable with Version A.

Councilor Paine suggested supporting Version A, and further exploring the ramifications of Version B.

Chair Sandberg was intrigued, and referenced data from other communities in terms of what their exemption programs are. He asked how from a practical standpoint one would determine what someone's assets are in terms of qualifying for such an exemption program.

Administrator Selig indicated that the Town assessor is in the audience. If the Town wants to adjust the exemption amounts, effective April 1, then the Town would need to do a first reading tonight, then a public hearing, then adopt the program on April 1.

Chair Sandberg addressed that that is an option, but would require going over the scheduled time.

The Town Assessor stood up and indicated that the Town does ask for verification of assets, i.e. 1040 forms, bank statements, etc.

Chair Sandberg asked whether a public hearing should be scheduled.

*Councilor Chinburg MOVED that a public hearing be scheduled of Version A.*

*Councilor Pazdon SECONDED the motion.*

Councilor Smith agreed that such a program should be adopted, but that it should still remain on the agenda for immediate further consideration.

Administrator Selig stated that Durham would have to address and revisit the exemption amounts to address higher home values that are anticipated.

*Chair Sandberg called for a motion to extend the discussion for five minutes. Councilor Paine so MOVED, Councilor Harris SECONDED the motion.*

Discussion of the numbers/amounts was speculative. A vote was held on Version A:

*The motion PASSED unanimously.*

*Councilor Paine MOVED to adjourn, several SECONDED. The motion PASSED unanimously.*

