

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

**DURHAM TOWN COUNCIL –MEETING MINUTES
MONDAY, MARCH 18, 2002 – 7:00 PM
DURHAM TOWN HALL – COUNCIL CHAMBERS**

MEMBERS PRESENT: Mal Sandberg, Chair; AnnMarie Harris;
Peter Smith; Pete Chinburg; Mike
Pazdon; Katharine Paine; Arthur Grant;
Mark Morong and Eileen Fitzpatrick

MEMBERS ABSENT: None

OTHERS PRESENT: Town of Durham Selig, Town
Administrator; Linda Ekdahl, Town
Clerk; Thomas Carroll, School District
Superintendent; Blaine Cox, School
District Business Administrator; Several
Candidates for Appointment to Town
Committees/Boards; Interested
Members of the Public

I. Call to Order

The Meeting was called to order at 7:00 pm.

II. Approval of Agenda

Councilor Paine MOVED to APPROVE the Agenda. Councilor Fitzpatrick SECONDED the Motion, which PASSED with unanimous approval.

III. Swearing in of Council Members

Town Clerk Linda Ekdahl swore in newly elected officers: Arthur Grant, Mark Morong, and Annmarie Harris.

IV. Selection of Council Chair and Chair Pro Tem

Councilor Paine nominated Mal Sandberg and Councilor Harris SECONDED. Councilor Paine nominated Grant for pro tem. Councilor Chinburg expressed no interest in being nominated for the position of Chair pro tem. Councilor Harris MOVED and Councilor Paine SECONDED that slate of appointments. The Motion PASSED with unanimous approval.

IV. Council Rules of Procedure

Last year, the order of events on the agenda was changed as an item of procedure. Chair Sandberg had suggested Roberts Rules of Order as the Council's guide to procedure. Councilor Pazdon expressed concern about limitations on deliberation times, public commentary times, and how items are added to agendas, and suggested an amendment. If an item has been submitted to the Chair in time that it be added to the agenda. *Councilor Pazdon MOVED that the Council rules be used, with the aforementioned amendment under Item 2. He asked that the following sentence be added: "If timing criteria is met, this item will be placed on the agenda."*

Councilor Chinburg SECONDED the Motion. Councilor Pazdon agreed with Councilor Smith that the review of those rules could be tabled for the Council to further review it. Councilor Smith MOVED to postpone discussion/action on that item until April 1, 2002. Councilor Chinburg SECONDED the Motion.

Chair Sandberg asked that the Councilors refer to the Council's approved version of Roberts Rules of Order if need be.

The Motion PASSED unanimously.

VI. Special Announcements

There were no special announcements.

VII. Approval of Minutes

Councilor Smith MOVED to postpone a review of the Minutes. Chair Harris SECONDED the Motion. The Motion PASSED unanimously.

VIII. Report of Administrator

Town Administrator Selig reported on the following:

- A letter from UNH has been received indicating that UNH is planning to pay in full the amount expected of them for damages, etc. resulting from the post Super bowl fire on Madbury Road.
- The Council has been invited to participate in sessions interviewing four finalists for the UNH President. Town Administrator Selig will set up a schedule for interested councilors to attend on one of the following dates: Monday, March 25; Thursday, March 28; Monday, April 1 and Wednesday, April 3.
- The State of NH has declared a drought emergency. A Water/Wastewater Committee meeting has been scheduled for this week to address how Durham should respond to this development.
- As a result of the efforts to protect Waggon Hill Farm, during what is a traditional mud season, the farm will be posted closed from April 1-April 30.

Councilor Paine asked about the progress of the website. Town Administrator Selig indicated that the implementation date has been pushed back from the end of February but that the site is progressing in its developmental stage. The consultant hired is suggesting putting the site on in a simulated fashion for limited access to be critiqued.

Councilor Fitzpatrick asked if direction from the Council would be helpful to Administrator Selig regarding the Wiswall Dam removal. Town Administrator Selig responded that that would be helpful, and he has tried to obtain that. But the implicit direction he's received has been to continue to evaluate the possibility of removing the Dam. Fitzpatrick asked that it be put on the agenda for April 1.

Councilor Fitzpatrick asked if Town Administrator Selig could use Council's guidance in terms of staff time being used for the Wagon Trail bike path maintenance. Town Administrator Selig indicated that there would be an update to the Council on that on April 1, 2002.

IX. Reports and Comments of Councilors

Councilor Paine indicated there is a vacancy on the DCAT committee.

Councilor Fitzpatrick indicated there is a seat for townspeople available on a UNH President's Land Advisory committee and asked how the Council would go about filling that seat. Town Administrator Selig will look further into that, and whether it requires Council action or not. She also asked about the Integrated Waste Management Committee, which is making bins available for discounted prices to residents. She reminded people to put in their orders for these composting bins.

Councilor Harris referred to the Land Advisory Committee and that the Town has been invited to participate in it.

Councilor Pazdon indicated that Dick Dewing is going forward with the Easter egg hunt on March 23, 2002. He noted that "Skate with the Champions" is on track for the March 25, 2002, 7:00 pm at the Whittemore Center. Kathy Trainor, ORYA, is working with the UNH people regarding logistics and Parks and Recreation Committee people will be called on to collect donations. Over half the fee has been collected already.

Councilor Harris noted that the Zoning Rewrite Committee has requested that Mark Ireman work to synthesize the Master Plan into zoning ordinances to facilitate speedy progression.

X. Public Comments

Beth Olshansky, Packers Falls Road, asked that her name be removed for consideration as a candidate for Planning Board due to personal circumstances. She expressed pleasure that the Council is looking into the drought situation, and that there is

projected to be similar concerns next fall and winter. She is especially concerned due to recent developments with aquifer protection areas, and the USA Springs item. She referred to model plans being available for citizens to restrict their water usage. She offered to post such plans on the citizens' exchange and suggested that they be put on DCAT.

Chair Sandberg asked the Council to strike Ms. Olshansky's name from the slate of potential candidates for Planning Board.

Michael Behrendt, 27 Edgewood Road, urged people to vote to support Item 12, the Main Street Agreement, and offered to answer any questions about that.

Robin Rousseau, 345 Packers Falls Road, read from a prepared statement [not provided here] calling for revocation of the Allen Farm subdivision plan due to her opinion that the plan is in violation of a number of town ordinances and State RSAs. She also suggested that the developer has "threatened abutters" that he could use this plan if the Town Council does not vote in favor of a conditional use permit for this property. She was distressed that she had not received a response from the Zoning Administrator in reply to a letter she had sent more than two weeks ago. Town Administrator Selig indicated that the Zoning Board has been very busy with elections as well as zoning violations and election violations. He indicated that the issues she raised were complicated and required further review. Town Administrator Selig said he would touch base with the Zoning Administrator. Ms. Rousseau insisted that a timeframe for that response and also some further information in that response, be given. Town Administrator Selig indicated he had no firm timeframe in mind and he wanted to ensure that her concerns and questions were thoroughly addressed.

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

- A. Shall the Town Council appoint Council representatives to the various Town boards, commission and committees as indicated on the proposed "slate of appointees"?
- B. Resolution #2002-09: Establishing regular Town Council meeting dates for April 2002 through March 2003

Item B was unanimously APPROVED.

Councilor Chinburg asked that Item A be remove from "Unanimous Consent" for discussion

Councilor Chinburg said that Councilor Harris had been on the board for a year and felt that she had not demonstrated enough objectivity for that appointment. He indicated his opinion that some of her positions in the past have resulted in considerable legal costs to the town.

Councilor Chinburg MOVED that Councilor Morong replace Councilor Harris on the Planning Board. Councilor Pazdon SECONDED the motion. Councilor Morong is also currently on the Conservation Commission and would continue in that position.

Councilor Chinburg asked if there was a conflict in having a representative on both the Conservation Commission as well as the Planning Board. Chair Sandberg indicated he did not believe so. Councilor Morong felt that he could not accept such an appointment because it would be too heavy a workload.

Councilors Chinburg and Pazdon voted in favor of the amendment; the remainder of the Council and the Chair voted against the amendment.

Councilor Fitzpatrick MOVED to appoint Council members to the boards, commissions, and committees listed on the slate of appointees. Smith SECONDED the Motion and it PASSED on a vote of 8-1 (Chinburg opposing).

Chair Sandberg clarified that all of the Councilor votes should be a roll call vote. Traditionally the Council has simply called for the vote, then the minutes have shown what the roll call is. He asked if there is any objection to continuing that process. No objections were voiced.

Chair Sandberg read the rosters of appointees for the various committees under discussion, at the request of Councilor Grant:

Cemetery Committee: Councilor Morong, Councilor Paine, and Councilor Smith.

Conservation Committee: Councilor Morong

Historic District Commission: Councilor Sandberg

Parks & Recreation: Councilor Pazdon

Planning Board: Councilor Harris (Primary), Councilor Grant (Alternate)

Rental Housing Commission: Councilor Chinburg

Durham Cable Access Television: Councilor Paine

XII. Unfinished Business

Shall the Town Council authorize the Town Administrator to sign an agreement with the MainStreet Program?

Town Administrator Selig indicated that at the Council's January 21, 2002 meeting, the Council discussed the MainStreet program, and a number of suggestions were made by members of the Council at that time. He said that he had met with Michael Bradley of the MainStreet Program and that the proposed agreement had been brought before the MainStreet Board of Directors to see if their board was amenable to some of the suggestions from the Council.

Councilor Chinburg MOVED to authorize the Town of Durham to sign the agreement with MainStreet. Councilor Pazdon SECONDED the Motion.

Councilor Paine suggested that there is a proliferation of newsletters in town, and that the MainStreet Association money spent on a newsletter could be focused on facilitating communications in the town. She noted an item on the document as “will publish a quarterly newsletter”. She saw that not as a goal, but rather as a task. She asked what happened to the notion of taking the \$20,000 and focusing that on the communications issues such as a vehicle for recreation program communications/publicity. She would like to see more measurable goals outlined.

Town Administrator Selig indicated that in his discussions with Michael Bradley, he felt that MainStreet has a wide array of objectives. He concurred that many items on this list are more task-oriented rather than goals. However, he felt that the program has clearly established a goal focus. He felt that MainStreet would be happy to include any town information in their newsletter. While he felt programs that are provided in the downtown (i.e. the concert series) do help to foster a community sense in the downtown area, the MainStreet Program is not comfortable expanding its focus to be more on developing recreation itself for the town.

Councilor Smith said that he objected to the town giving support to a private entity but that most of his previous concerns in the contract had been corrected. However, there were two items that he was not comfortable with. First, the lack of an insurance certificate and second, on the matter of the possible termination in paragraph 4, he raised the issue as to what would happen to town money if the group failed and the Agreement were terminated. He wanted to see further language in the contract that would clearly indicate that funds given by the town would be kept in a separate account or accounted for in a separate way and would be spent on an even basis throughout the year rather than all being spent up front. He did not believe there was adequate showing that this is an example of the people’s money well spent. Too many of the items, in his opinion, were likely to occur whether or not MainStreet was involved with the activities or not, either by Town or volunteer entities. He did not feel that the expenditure was justified.

Councilor Fitzpatrick indicated that she would vote against the MainStreet Program because of tax increases that the funding would impart. She felt that the benefit of the \$20,000 expenditure would not be distributed evenly to the citizenry of Durham.

Councilor Grant said that every town should have a good, viable Chamber of Commerce kind of organization and felt that the MainStreet Program provided that. He did not feel that tax funds should be provided to cover operational costs. He said there appeared to be a divergence of opinion as to what the organization itself should be doing which he felt was unfair to both the organization and to the community.

Councilor Chinburg said that the MainStreet Program has been beneficial to the town and he planned to support it. He felt that supporting it for one more year was reasonable.

Councilor Harris supported the viability of the downtown area. She said that many of the projects were underway before the MainStreet program came in and would continue. Referring to earlier remarks made by Councilor Paine relating to communications, Harris said that the town should not contribute to a MainStreet newsletter but perhaps should be communicating to the community in a larger sense. She did not feel this program should be supported with taxpayer dollars.

Councilor Paine asked that a MainStreet Program representative in the audience speak to the survey from last year that was to have been conducted by the MainStreet Program. She wanted to see hard numbers from that survey on the public feelings about downtown.

Chair Sandberg was reluctant to open up the meeting to the public on that issue as the public commentary period had already been held. Pazdon indicated the Chair could be overruled by a two-thirds majority vote.

A vote was held to overrule the rule of the Chair to not allow members of the public to speak on this issue at this time. The following councilors voted in favor of overruling the Chair and allowing further public discussion: Councilors Chinburg, Pazdon, Morong, Smith, and Paine. The Chair and remaining Councilors voted against the vote to overrule the Chair's decision. The Motion to overrule the Chair **FAILED**.

XIII. New Business

- A. Introduce and appoint citizen members to the Planning Board and Zoning Board of Adjustment

Planning Board:

Ms. Olshansky has asked that her name be removed from that slate of candidates.

Planning Board:

Mr. McNitt was not present.

Information and Discussion on Other Candidates:

Amanda Merrill, 8 Meadow Road. 22-year resident of Durham. Served for 10 years on the legislature in various capacities. She is willing to serve.

Councilor Fitzpatrick asked how Ms. Merrill would describe her values in terms of the future development of Durham. Ms. Merrill said that she thinks her first step would be making sure she's prepared by knowing the documents that guide the Board at this point (i.e. the Master Plan and the Zoning Ordinance in process). She is a permanent resident of Durham and has a concern for careful development and a long-time interest and experience with issues of land conservation and historic preservation. She's also a member of the board of New Hampshire's preservation alliance, which is an interest of hers.

Councilor Grant asked if he's seen her at recent meetings of the Planning Board and if she is familiar with the issues and processes currently underway in that context. Ms. Merrill indicated she is familiar with various current issues, including the rewrite underway.

Councilor Smith asked if Ms. Merrill could comment on what differences she sees in the two roles. Ms. Merrill responded that her past experience has been in terms of policy committees. She also served on a quasi-judicial committee, the Legislative Ethics Committee. She thought that the value of fairness and open-mindedness would guide working in both those functions on the Planning Board. The second function of working as a policy committee allows for more creativity or flexibility than in the first case, which may be more dependent on understanding the laws before one.

Councilor Chinburg asked if in reference to existing ordinances in her deliberations that come up now, what set would she follow: existing ordinances or those that are coming down the line. Ms. Merrill responded that she would need guidance on that but assumed that the board was currently guided by existing ordinance and statutes.

Rachel Rouillard: Not present.

Tracy Wood: Ms. Wood stated that she had been approached by several townspeople to apply. She's been in the community for two years. She has served on the Waste Management Advisory Committee for the past year and one-half. She values her experience in life to make thoughtful decisions and listen to others and help guide the development of a livable community.

Councilor Fitzpatrick asked what her time availability would be to get up-to-speed on the actual law that she would be applying to. Ms. Wood indicated she has already obtained a copy of the Master Plan and started reviewing it. She has already made an intent to change plans that would conflict with the current weekly meeting schedule.

Ms. Wood referred to her own values as having been raised in a rural community and having lived all over the world, and having seen the results of thoughtful development contrasted with the results of poorly planned developments. She referenced concerns with creative growth. As part of the committee, she feels that each committee member is charged to move forward in a thoughtful way.

In response to a question from the Council, Ms. Wood indicated she had not served on any boards in Oregon and Plattsburg. She also responded to questions from the Council to indicate that she had applied her Master's Degree in Environmental Sciences through volunteer projects in a variety of capacities.

Asked if she prefers an appointment to the Planning Board or the Zoning Board of Adjustment, both of which she has applied to, Ms. Wood indicated a dual preference to the lighter schedule of the Zoning Board but also prefers the more concentrated contribution of the Planning Board.

Ms. Wood responded to questioning that she would be prepared to clear her Wednesday night schedule to meet consistently on that evening.

When asked if she has any experience in reading statutes or regulations, or in engaging with lawyers in their roles as advocates, Ms. Wood responded that her pharmacy experience and her environmental experience have required her to familiarize herself with multi-state ordinances and statutes. She responded that she would be perfectly prepared to deal with lawyers in exactly the same manner as with any other people.

Neil Wylie: Not in attendance.

Mr. DeCampi: He has lived in Durham for two years, and moved here through choice. He has a Bachelor's and MBA degree. He worked for DuPont for many years and later owned a company that manufactured industrial equipment, in Wilmington, Delaware. He has since retired after selling his company. He has been on several boards in Delaware and Pennsylvania. It's no small matter of pride that for the 27 years he was chairman of the budget committee during which time they never had a tax increase. He was also chair of the public safety committee. He spent a lot of time understanding what Zoning Board hearings accomplish and what one can and cannot grant, while being sympathetic to reasonable requests from the community.

Councilor Smith asked what familiarity the candidate had with the land use laws of the Town of Durham and the State of New Hampshire and of controlling court decisions of the state incorporating those land uses. The candidate indicated very little at this point, but he understands he will need to become familiar with those.

Councilor Fitzpatrick asked a similar question she had asked Tracy, in terms of applying a list of criteria to a decision. What values would he bring in making a decision. The candidate responded that when it's an individual applying, they often want to change a piece of property for their own needs. He tends to be favorable towards those decisions. He tends to view that developers should have a greater requirement to live with the ordinance as it's written.

Robin Rousseau: Ms. Rousseau is already a Zoning Board of Adjustment member, but is applying to be a regular rather than an alternate member. Councilor Fitzpatrick asked if Ms. Rousseau is aware that the Master Plan indicates a charge to the Council to be cautious in the granting of variances. Ms. Rousseau responded in the affirmative, referring to lists of criteria and also hardship rules regarding variances. As far as discretionary issues, she felt that her values are consistent with those reflected in the Master Plan and the community. Councilor Smith asked if Ms. Rousseau has had reason to read the decision of the Supreme Court of New Hampshire (Simplex). Ms. Rousseau indicated definitively in the affirmative. Councilor Smith asked if Ms. Rousseau agreed with the Supreme Court decision on that case. Ms. Rousseau indicated she was unsure but that she would consider it and respond at a later date.

Councilor Chinburg asked, in light of Ms. Rousseau's past activities in relation with boards, if she could maintain an unbiased and objective role in the future. Ms. Rousseau indicates that she looks at the law and by the intent of the Master Plan, even if it goes against her own personal opinion. In terms of her personal advocacy, she has advocated what she sees as the values of the community. She has in the past decided on issues that she may not personally agree with but she follows the law, the ordinances as they exist Town of Durham.

Councilor Grant stated his opinion that in his experience, Ms. Rousseau is very vigorous in considering the exactitude of the ordinances as they are written.

David True, 9 Foss Farm Road: Mr. True is on the Zoning Board of Adjustment as an alternate. He said that he has learned a lot. He wants to be appointed to a full-time position on the board. He liked that board members really cannot put forth personal opinions on the Zoning Board of Adjustment but have to go by the laws instead. He expressed confidence in his ability to read ordinances and deal with attorneys, based on his experience as a business owner.

Councilor Grant asked if Mr. True would be able to meet the time commitment of the board. Mr. True responded in the affirmative.

Councilor Fitzpatrick asked how Mr. True would like Durham to look from a development perspective 20 years from now. Mr. True responded that you can't keep a town as small as you would like. But a town can control its growth with the cooperation of all the boards. He'd like the essential nature of the town to remain the same, while effectively dealing with growth issues and concerns.

Councilor Fitzpatrick indicated a preparedness to make the nominations. Chair Sandberg asked if councilors would like any guidance to be considered in the nominations.

Councilor Fitzpatrick referred to Tracy Wood and her experience in rewriting the garbage ordinance. She stated that Tracy was instrumental in hammering out the language, and that she had quickly grasped the importance of words in the ordinance. Fitzpatrick specifically thought of Ms. Wood in reference to the zoning rewrite process.

Councilor Harris called the Council's attention to Rachel Rouillard, whom she said was a relatively new resident with significant experience.

Chair Sandberg said he had spoken with Ted McNitt regarding his plans. Mr. McNitt is interested in the zoning rewrite aspect of the planning project, but he's also reluctant to make the time commitment of the weekly meetings, and would prefer the monthly meetings of the Zoning Board in general. Chair Sandberg felt that Ted's depth of experience would be valuable to the Zoning Board of Adjustment.

Councilor Chinburg asked if Mr. McNitt could participate. Chair Sandberg indicated Mr. McNitt would participate as a citizen. Councilor Morong agreed that the consistency of retaining Mr. McNitt's years of experience would be valuable.

Councilor Smith stated that he is impressed with the quality of the candidates on the Planning Board list. He thought that Ms. Merrill had served the state in an exemplary manner and that her appointment would be an extraordinary opportunity for the town. He felt that Neil Wylie was tremendously committed, thoughtful, and very interested in seeing the work of the board get translated into law. He planned to nominate Mr. Wylie for the two-year position. He feels that Rachel Rouillard has had numerous years of experience as a planner and is currently in a very responsible Executive Director position. Tracy, he feels, has demonstrated a tremendous commitment to the Town.

Chair Sandberg indicated that there were two 3-year and two 2-year regular member seats on the Planning Board and one alternate seat. Four names and four seats. He asked if the Council wanted to fill all the open seats, and if so, with which candidates.

Town Administrator Selig conducted the election, with the assistance of Jen Berry. Official ballots were provided to the Council members

Ballot Number 1: Two three-year REGULAR seats on the Planning Board

Councilor Smith nominated Amanda Merrill and Rachel Rouillard.

Peter Smith: Merrill and Rouillard.

Eileen Fitzpatrick: Merrill and Wood

Mark Morong: Merrill and Rouillard.

AnnMarie Harris: Merrill and Rouillard.

Pete Chinburg: Rouillard and Wiley but was allowed to amend his vote due to a misunderstanding on his part. He then voted for Rouillard and Wood.

Katie Paine: Merrill and Rouillard.

Art Grant: Merrill and Rouillard.

Malcolm Sandberg: Merrill and Rouillard.

Mike Pazdon: Merrill and Wood.

Vote: Merrill and Rouillard

Ballot Number 2: One two-year REGULAR seat on the Planning Board

Councilor Grant nominated Neil Wylie. Councilor Chinburg nominated Tracy Wood.

Peter Smith: Wylie

Mark Morong: Wylie

Eileen Fitzpatrick: Wood

Katie Paine: Wylie

Art Grant: Wylie

Malcolm Sandberg: Wylie

Pete Chinburg: Wylie

AnnMarie Harris: Wylie

Vote: Neil Wylie

Ballot Number 3: One three-year ALTERNATE seat on the Planning Board

Councilor Harris nominated Tracy Wood

Peter Smith: Wood

Eileen Fitzpatrick: Wood

Mark Morong: Wood

Pete Chinburg: Wood

Mike Pazdon: Wood

Malcolm Sandberg: Wood

Art Grant: Wood

Katie Paine: Wood

AnnMarie Harris: Wood

Vote: Tracy Wood.

Councilor Pazdon asked if Ms. Wood would want to be considered as an alternate on both the Planning Board and the Zoning Board, but it was deemed that that would represent a conflict.

Councilor Smith requested that the council take a brief recess. The Council reconvened at 9:05 pm.

Ballot Number 4: One three-year REGULAR seat on the Zoning Board of Adjustment

Councilor Smith nominated Ted McNitt. Councilor Fitzpatrick nominated Robin Rousseau. Councilor Chinburg nominated John DeCampi

Councilor Pazdon: McNitt

Councilor Harris: Rousseau

Councilor Paine: McNitt

Councilor Sandberg: McNitt

Councilor Grant: McNitt

Councilor Fitzpatrick: Rousseau

Councilor Morong: McNitt

Councilor Smith: McNitt

Vote: Ted McNitt

Ballot Number 5: One two-year REGULAR seat on the Zoning Board of Adjustment

Councilor Paine nominated Robin Rousseau. Councilor Chinburg nominated John DeCampi.

Councilor Pazdon: DeCampi

Councilor Chinburg: DeCampi

Councilor Harris: Rousseau

Councilor Sandberg: Rousseau

Councilor Grant: Rousseau
Councilor Paine: Rousseau
Councilor Smith: Rousseau
Councilor Fitzpatrick: Rousseau
Councilor Morong: Rousseau

Vote: Robin Rousseau

Ballot Number 6: One three-year ALTERNATE seat on the Zoning Board of Adjustment

Councilor Chinburg nominated John DeCampi. Councilor Fitzpatrick nominated A. Linn Bogle. Councilor Grant nominated David True

Councilor Harris: Bogle
Councilor Pazdon: DeCampi
Councilor Chinburg: DeCampi
Chair Sandberg: Bogle
Councilor Grant: True
Councilor Paine: DeCampi
Councilor Smith: Bogle
Councilor Fitzpatrick: Bogle
Councilor Morong: DeCampi

There was no winner on the above ballot, as a majority was not achieved. The vote will now be revoted as Ballot Number 7:

Ballot Number 7: One three-year ALTERNATE seat on the Zoning Board of Adjustment (REVOTE)

Councilor Smith nominated A. Linn Bogle. Councilor Chinburg nominated John DeCampi.

Councilor Harris: Bogle
Chair Sandberg: Bogle
Councilor Grant: Bogle
Councilor Paine: DeCampi
Councilor Chinburg: DeCampi
Councilor Pazdon: DeCampi
Councilor Smith: Bogle
Councilor Fitzpatrick: Bogle
Councilor Morong: DeCampi

Vote: A. Linn Bogle

Ballot Number 8: One two-year ALTERNATE seat on the Zoning Board of Adjustment

Councilor Fitzpatrick nominated John DeCampi
Councilor Grant nominated David True

Councilor Harris: DeCampi
Councilor Chinburg: DeCampi

Councilor Pazdon: DeCampi
Councilor Sandberg: DeCampi
Councilor Grant: True
Councilor Paine: DeCampi
Councilor Morong: DeCampi
Councilor Fitzpatrick: DeCampi
Councilor Smith: DeCampi

Vote: John DeCampi

B. Report on School Funding Formula and discussion of false-alarm fee assessment.

Town Administrator Selig stated that a few weeks ago the Council had requested information from the School District regarding the school funding formula to determine where Durham stood in relationship to Lee and Madbury. Superintendent Tom Carroll and Blaine Cox, the School District Business Administrator, were present at the March 18, 2002 meeting to provide this information. Much of the data discussed by Mr. Carroll in his PowerPoint presentation was included in the Council packets in the form of tabular data.

The School District requested of the Council that they reconsider the current ordinance, which assesses fines for false alarms at the high school and middle school in Durham. Some of this information was in the 1999/2000 School District Report.

Superintendent Carroll said that the budget that was voted in March 2001 was \$25,779,891 for all three funds: regular operating, federal funds, and food service. From that, there are some credits apportioned to the entire cooperative: \$4.1 million. The amount to be assessed to the three towns is \$21.6 million. That is apportioned currently 50% based on average daily membership and 50% based on equalized valuation. Average daily membership relates to number of students actually in school each day throughout the year. They usually use the October 1 enrollment. But this applies to students present every day. Data is for previous school year, 1999-2000. Durham had approximately 45% of the enrollment, Lee had 39.8% and Madbury had 15.1%.

The equalized valuation data is two years old. Compared to the cooperative, 60% is Durham, 29% is Lee, 11.5% is Madbury. These two figures are combined to come up with the average, and that is how the budget is apportioned between the three towns. He said that the perception is that there has been a big shift in this formula. But historically there has been very little shift in those percentages. How that impacts the local school tax rate: the percentages translate into an assessment for Durham of \$11 million. The money raised by the statewide property tax is subtracted from that. The cost of an adequate education in Durham is about \$4.1 million. The amount of money that the tax rate is thus set at is \$7.2 million. Divided by the total valuation, a local school tax rate of \$19.54 is the resulting current local school tax rate.

Over the last six years, since the statewide property tax came in, in 1999 the rate went down, but it went back up in 2000 and 2001. Since 1996 the total school tax rate has gone up just under \$6 for Durham. The towns all assess at varying rates. One must know the towns' individual ratios to compare the rates. The Superintendent also explained variances in the years that the various tables of calculations were taken from and why.

The State's equalization formula has recently come under question; it was part of a lawsuit recently brought in which the Supreme Court mandated that it be further examined. But it is the set of numbers which must currently be used to compare rates. Additional information was provided in this report on the rates and the school district, based on data provided in the PowerPoint presentation.

Chair Sandberg asked if the Council had an opinion on when the formula for the tax rate should be revisited/revised and at what point would the School Board suggest revising/revisiting these formulae/rates. The Superintendent suggested that the rates will come closer in line when people reassess. Assuming that they are all equalized, he felt that would disappear. If not, then the formula should be reviewed.

Chair Sandberg clarified that he was discussing the spread of the rates, and asked if there is a point at which the School Board would consider the spread too great to continue with the existing formula. The Superintendent responded that they would continue to look at that.

Councilor Grant asked for clarification on the average daily membership percentage of Durham versus its assessment percentage. He asked what the average per pupil cost for the whole district would be. Superintendent Carroll responded that it would be approximately \$7,000, not including tuitions, transportation and food service.

Councilor Smith asked if, regarding the average daily membership, the calculation included only those students who are actually physically in the school district, or did it include students for which the district as a whole has responsibility. Superintendent Carroll clarified that it is the average daily students in attendance. Councilor Smith also asked about the formula used and its development by determining what the average daily membership of students is, then looking at equalized valuation, which he calls the value of the real estate that's assessed in the three towns, and that those two concepts influence the total to the degree of 50%. His question was, For a town such as Durham that ends up having to pay considerably more on the local tax by using a 50/50 formula, then if the only consideration was the average daily membership, that town is going to wonder why they shouldn't use a 100% average daily membership. He asked for the Superintendent's opinion why it's a matter of good policy for Durham to continue to utilize the 50/50 formula when it would be better off financially, using a 100% ADM. Superintendent Carroll responded that it is a cooperative district and a cooperative effort, and that the economy of the State of New Hampshire isn't dependent on how well educated the students in Durham are, but how well educated the students in the entire state and nation are. He felt a cooperative was better able to

provide a good quality of education to all three towns. When per pupil cost is looked at, consideration should also be given to what does the taxpayer pay for that per-pupil cost. Because of Durham's ability to pay, it doesn't cost the taxpayer in Durham proportionately more than it costs the taxpayer in Lee. The taxpayer that it costs the most to do this is the taxpayer in Madbury, because of their smaller valuation. The key is that by having a school district that supports the youngsters in three towns, the district is able to provide a better education for all of them than would be possible if the district were to try to do that independently.

Councilor Smith asked if the only way that Durham could have the benefit of being able to offer better educational programs is if the three towns were to pool their resources and develop a formula that represents certain compromises that each town has to make to get the best funding for itself so that the district can hold together. The Superintendent answered in the affirmative stating that was the reason the concept of cooperative districts was started in the state and why they continue to work.

Smith made a MOTION to amend the rule to adjourn the Council meeting at 10pm so that the next item could be addressed, by extending the meeting for an additional 15 minutes. The motion was SECONDED by Harris and PASSED unanimously.

Blaine Cox, the Business Administrator, reported on the false alarm issues. A letter was sent to Town Administrator Selig a month ago relative to false alarm charges. The Town of Durham has two ordinances on the books, 91-3 and 2000-12(a). The first relates to the Police Department responding to burglar alarms. The second relates to the Fire Department responding to false fire alarms. What's been reported to the School Board is that over the past several years, back to 1997, the District is charged for any false alarms that exceed six in number in a year. The School Board wants the Council to consider amending the ordinances to grant an exemption to the School District for several reasons: the nature of the building is that there are a lot of outside visitors and groups using the buildings which contributes to excess alarms. In reviewing charges over the last few years, 34 of the 38 charges that occurred were burglar alarms. That indicates that it's not related to faulty equipment but is rather related to the use of the buildings.

The second issue that the School Board raised is that the District is another local government entity, and a fee is basically being paid to this entity by using tax dollars from many of the same taxpayers. The only other item that he pointed out was the second ordinance reads "This chapter applies to all properties and or residents within the Town of Durham, with the exception of Town of Durham and UNH agencies, personnel, and properties." It appears there is already a recognition that University and Town buildings should be exempted from the ordinances, and the District therefor seeks similar consideration.

Councilor Grant referred to the letter in which it is stated that the School District is making a payment to Town of Durham of \$42,000 towards the current outstanding balance. He asked what the outstanding balance was.

Chair Sandberg asked if the system distinguishes between burglar and fire alarms. In the billing, there is no distinction. He also indicated that there is an overhead to consider in terms of the response needed for false alarm. He also indicated that the dollar amount shared with the UNH is based on an apportionment formula, with a greater percentage carried in regards to the Fire Department budget. He asked if the Town of Durham should pick up that full burden when it's a cooperative district. If Lee and Madbury also bear part of the responsibility, Durham would be able to recoup some of those costs. It's charging a greater group of people to help defray the costs. Mr. Cox responded that most of the situations are Durham-type buildings and activities. Also, Madbury and Lee don't charge for false alarms out there.

Councilor Chinburg asked if the inadvertent triggering of the alarms could be solved by having school district personnel look after the systems. Mr. Cox responded in the affirmative and indicated that they could try to minimize that and that they try to educate users about the systems. Mr. Cox indicated that the groups often are not charged for additional personnel to staff that but that it could be considered.

Councilor Smith questioned the reason for such high numbers of false alarms and the ascending nature of the fees-per-alarm. TA Selig indicated that the total balance represents a long history of false alarm charges that hadn't been paid by the district.

Councilor Smith questioned why the charges have not been paid for so long. The Superintendent indicated that this discussion has been ongoing for years and even predates his arrival in his position.

Chair Sandberg ascertained that the outstanding costs break down to approximately \$8,000 per year. Councilor Paine also questioned the frequency of false alarms. The Superintendent responded by stressing the high volume of use the buildings receive seven days a week by a variety of individuals and groups for a variety of purposes. He did not feel that that is an unusually excessive number of alarms for that number of people.

Councilor Morong asked what kind programs had been instituted to reduce the number of alarms, such as literally barriering off certain portions of the buildings that might be potential areas resulting in false alarms. It was indicated that there are gates and similar features, and that recently it's been communicated more strenuously to the administrators of the various user organizations that the district needs to receive prompt and detailed information about the occurrence of the alarms, and that there is a standard operating procedure regarding the alarms that is provided to groups using the buildings.

Councilor Paine stated that it was the district's problem, not the Council/Town's, and that the groups should be getting billed directly for the false alarm costs, and that the Town should not have to absorb the costs and not the users. The Superintendent

responded that that would mean charging community groups who come to this and other groups seeking money, like the Oyster River Youth Association.

Councilor Paine pointed out that the taxes in Durham are paid by many people who do not have children, and who have no relationship to the Youth Association or High Schools or anything else, but their taxes are being diverted to relieve the pain of a small group of citizens. She felt that it was unfair to seniors, elderly, and others to bear the burden of these school-use costs.

Councilor Chinburg suggested that these costs be tracked, and that the groups be alerted that in the future they will be charged.

Councilor Grant observed that the District should speak with UNH and that they have implemented an excellent program, which has greatly reduced the number of their false alarm occurrences and therefore costs.

Councilor Pazdon MOVED to adjourn to Monday, March 25, in a continuation of this meeting. The motion was SECONDED by Chinburg and PASSED unanimously.

XIV. Adjournment

The meeting was adjourned at 10:15pm.

Marie MacDonald, Minute Taker