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**DURHAM TOWN COUNCIL
MONDAY, MAY 13, 2002
DURHAM TOWN HALL – COUNCIL CHAMBERS
7:00 PM**

MEMBERS PRESENT: Malcolm Sandberg, Chair; Annmarie Harris; Peter Smith; Katie Paine; Arthur Grant, Scott Hovey, Mark Morong

MEMBERS ABSENT: Pete Chinburg; Mike Pazdon

OTHERS PRESENT: Todd Selig, Town Administrator; Jim Campbell, Town Planner; Interested Members of the Public

Chair Sandberg called the meeting to order at 7:04 PM. He stated that the meeting was a continuation of the agenda from last week.

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

- B. **Public Hearing: Ordinance #2002-07:** amending Chapter 175 “Zoning” of the Durham Town Code by creating a new use for recreational playing fields (outdoor) and allowing said playing fields in certain zoning districts.

Peter Smith MOVED to remove this item from the table for Council discussion. Annmarie Harris SECONDED the motion, and it PASSED unanimously.

Katie Paine MOVED that the Durham Town Council open the public hearing on Ordinance #2002-07, amending Chapter 175 “Zoning” of the Durham Town Code by creating a new use for recreational playing fields (outdoor) and allowing said playing fields in certain zoning districts. Mark Morong SECONDED the motion, and it PASSED unanimously.

Lynn Allen, 148 Packers Falls Road, spoke about the need for more recreational areas in the town, and urged the Council to approve the Ordinance.

Dave Doran, 135 Packers Falls Road, spoke against creating town ordinances for special interest groups.

Marco Dorfsman, 4 Sauer Terrace, spoke about the need for more recreational fields, and how he hopes other people will be as generous as the Allens.

In response to a question from Peter Smith, Jim Campbell stated there was a proposed amendment to the Site Plan Review Regulations that would strengthen the Planning Board’s ability to impose conditions on applications related to the proposed

Ordinance. He stated that the Planning Board also had the authority to deny any application based on safety issues or abutters' concerns.

Peter Smith stated that he understood the definition of "non-commercial" use, used in the wording of the Ordinance, as a use "for which there is neither profit nor compensation."

Ted Mulligan, 4 Rocky Lane, stated he is President of the Oyster River Youth Association and there is a great need for more recreational fields.

Katie Paine MOVED that the Durham Town Council close the public hearing on Ordinance #2002-07, amending Chapter 175 "Zoning" of the Durham Town Code by creating a new use for recreational playing fields (outdoor) and allowing said playing fields in certain zoning districts. Annmarie Harris SECONDED the motion, and it PASSED unanimously

Katie Paine MOVED that the Durham Town Council adopt Ordinance #2002-07 as presented, amending Chapter 175 "Zoning" of the Durham Town Code by creating a new use for recreational playing fields (outdoor) and allowing said playing fields in certain zoning districts. Annmarie Harris SECONDED the motion.

Administrator Selig advised the Council to consider both positive and negative impacts the zoning change could have on a residential neighborhood.

Peter Smith stated that he believed the Planning Board would have adequate power to regulate the use of recreational fields in residential areas.

The Council discussed concerns relating to the Planning Board responsibility to exercise control over the approval of recreational fields.

Katie Paine stated that she was in favor of encouraging other generous people like the Allens to provide recreational fields.

Annmarie Harris stated that the Planning Board has taken, and will continue to take its responsibility to this issue very seriously.

In response to a question from Chair Sandberg, Arthur Grant stated that he believed the wording of the proposed Ordinance would be consistent with the language of the zoning ordinance revision.

The motion to adopt Ordinance #2002-07 was PASSED on a vote of 6-1 (Peter Smith, Annmarie Harris, Mark Morong, Katie Paine, Arthur Grant were in favor of; Scott Hovey was opposed)

- C. Discussion with UNH representatives on construction of new police/dispatch facility

Administrator Selig gave a brief history of the progress on planning the facility. He stated that he had recently been informed by UNH that the proposal for the project plan will be withdrawn and will undergo extensive revision before being presented again to the Planning Board later this year.

D. Report by Police Chief David Kurz on Police Department activities

Administrator Selig stated that the presentation is part of a plan to facilitate Council communication with the various departments.

Scott Hovey stated that he would like to reinstate the system of quarterly reports from the departments to the Council.

Administrator Selig stated that he has been successful in reinstating the system of quarterly reports. He stated that he has also been working with the dept. heads to establishing each department's goals and objectives for the year.

Katie Paine stated that she would be willing to be part of helping the various dept. heads develop their measures of success.

Chief Kurz gave an extensive presentation outlining the activity, as well as the goals and objectives, of the Durham Police Department.

Chair Sandberg addressed the issue of reduced police presence during the week, as result of the need to have greater presence on the weekend.

Chief Kurz stated that the need to manage the Department's resources effectively has made it difficult to maintain a highly visible presence on weekdays.

In response to a question from Chair Sandberg, Chief Kurz stated that technology that is being installed in the police cruisers will enable the officers to work on their reporting while maintaining a visible presence in the community. .

E. **Resolution #2002-13:** Policy for naming public facilities, trails, forests or trees

Administrator Selig gave a brief overview of this resolution. He stated that he had referenced processes used by other towns to derive the proposed policy.

Arthur Grant MOVED that the Durham Town Council request the Town Administrator schedule a public hearing on Resolution #2002-13. Katie Paine SECONDED the motion and it PASSED unanimously.

F. Discussion on Council goals and objectives

Administrator Selig and the Council reviewed the list of Goals and Recommendations from the April 22, 2002 workshop. They designated items on the list that were

achievable within the next 9 months and would make progress toward long-term objectives with respect to their vision.

Administrator Selig stated that the list would help guide him in facilitating action on issues that the Council would be willing to address. In response to a question from Katie Paine, he stated that issues relating to the University would be addressed individually and not sent directly to the Town Gown Committee. He stated that the list did not include objectives supported by the Council but acted upon by other committees and boards, such as the preservation of open space.

Chair Sandberg stated that the items that were on the list were those that could be achieved by the Council with the resources of Administrator Selig.

Peter Smith stated that the Council should encourage, as well as monitor, progress of the Conservation Commission in their endeavors.

Mark Morong stated that he is Council Rep to the Conservation Commission, and that they often cannot publicize information until pending deals are finalized

Peter Smith spoke about the UNH land use submission issue in reference to an opportunity to submit a proposal that would call for the mandatory involvement of Planning Boards in subdivision site plans involving governmentally owned land, specifically in reference to that used by higher education institutions. The proposal would have a chance to be under consideration by the New Hampshire Municipal Association as a legislative initiative.

The Council discussed the status of the bike path, and what action, if any, should be taken to resolve this issue in the near future.

Katie Paine MOVED to adopt the Vision Statement as represented in the workshop session of April 22, 2002 report, which outlines the Core Purpose, Core Values and the Goals and Recommendations of the Town Council. Arthur Grant SECONDED the motion and it PASSED unanimously

Administrator Selig made amendments to the Time Horizon portion of the Goals and Recommendations list.

Peter Smith suggested that the UNH adequate on-campus housing goal not be defined as 60%

Katie Paine WITHDREW the motion.

Peter Smith MOVED to adopt, as written in the draft from the workshop session of April 22, 2002, the Core Purpose and Core Values statements from page 1 and the Goals and Recommendations on page 1 & 2 with amendments as recommended by Administrator Selig, noting that Goals and Recommendations items with an asterix

are to be focused on for accomplishment during the current calendar year. Annmarie Harris SECONDED the motion and it PASSED unanimously.

G. Approval of April 1, 2002 Minutes.

Chair Sandberg noted that he had found a few minor sentence structure issues that had been corrected by the Administrative Assistant.

Mark Morong MOVED to approve the minutes. Katie Paine SECONDED the motion and it PASSED unanimously. (Scott Hovey abstained as he was not a member of the Town Council when the April 1, 2002 meeting occurred).

H. **Adopt Ordinance #2002-04** rescinding Chapter 96 “Permanently Disabled Exemptions”, rescinding Chapter 52 “Elderly Exemptions” of the Durham Town Code and renaming Chapter 52 “Exemptions”, codifying all existing adopted property tax exemptions, adopting and codifying the optional standard veteran tax credit and surviving spouse veteran tax credit and codifying and modifying the income amounts and asset limits for the disabled and elderly exemptions?

Administrator Selig addressed issues that Peter Smith had discussed with him about specifying the exemption criteria in the ordinance by reference to state statute and the inclusion of the question format in citing the provisions of the state statute. He also suggested amending the proposed name of Chapter 52 to “Tax Exemptions and Credits.

Arthur Grant MOVED that the Durham Town Council adopt Ordinance #2002-04 rescinding Chapter 96 “Permanently Disabled Exemptions”, rescinding Chapter 52 “Elderly Exemptions” of the Durham Town Code and renaming Chapter 52 “Exemptions”, codifying all existing adopted property tax exemptions, adopting and codifying the optional standard veteran tax credit and surviving spouse veteran tax credit and codifying and modifying the income amounts and asset limits for the disabled and elderly exemptions?. Katie Paine SECONDED the motion.

Peter Smith stated that he was in favor of the amendment to the proposed title as suggested by Administrator Selig. He spoke further about the importance of having the wording of the state statute included for section 52-2, Criteria. He also stated that formalities in the recommendation from the state statute were inappropriate for inclusion in the wording of the Ordinance, as they were irrelevant to the legislative format of the Town Council form of government.

Annmarie Harris stated that she wished Peter Smith had submitted a proposed rewording of the Ordinance that was based on his suggestions.

Peter Smith MOVED to postpone consideration on Ordinance 2002-04 pending the redrafting of the Ordinance to remove the interrogatories, to include the appropriate statutory provisions, and to modify the title. Arthur Grant SECONDED

the motion and it passed 6-1 (Annmarie Harris, Katie Paine, Peter Smith, Arthur Grant, Mark Morong, Chair Sandberg were in favor of; Scott Hovey was opposed)

I. Other Business

Peter Smith spoke about the initiative to enable Planning Boards to have normal land use authority over government owned or occupied lands. He spoke about the initiative in relation to New Hampshire Municipal Association Committees and their role in the recommendation of action policies for which an effort would be made to draft and support appropriate legislation. He stated that Jim Campbell, being on the appropriate NHMA committee to which a proposal would be submitted, could aid in promoting it for consideration.

Peter Smith MOVED that the Durham Town Council request that Administrator Selig submit an application to the New Hampshire Municipal Association for consideration of amending state statute 674:54 for the purpose of creating a mandatory Planning Board review of governmental property, including the university system. Katie Paine SECONDED the motion

Scott Hovey asked about how this proposal, if passed, might render the actions of Town Council under mandatory review of the Planning Board .

Peter Smith stated that it would be premature to define the terms of the proposal.

The motion PASSED unanimously.

Arthur Grant MOVED that the Durham Town Council reconsider its decision against recommending that Administrator Selig re-open discussions with Powerspan to negotiate a new Sales Agreement and Deposit Receipt. Mark Morong SECONDED the motion.

Chair Sandberg stated that if the Council voted in favor of reconsideration, they would enter a non-public session to discuss the conditions under which Administrator Selig would re-approach Powerspan and then they would deliberate on the issue of re-entering negotiation on a Purchase and Sales agreement with Powerspan.

Peter Smith suggested that the order of the last two actions be reversed, so that the entering of the non-public session would be contingent upon the decision to re-enter negotiation with Powerspan.

Arthur Grant stated that he voted against re-entering negotiation with Powerspan not because of issues relating to the Business Park Design Guidelines, but because of statements made by the Architect and the Chief Financial Officer that conveyed to him that Powerspan was disinterested in pursuing further negotiations. He stated that he has reconsidered his decision as a result of realizing that he may have been incorrect in judging Powerspan's position on the matter of negotiation, based on only

two of its representatives. He stated that his intent in reconsidering would be to have Administrator Selig contact Powerspan's Chief Executive Officer to ascertain the company's official position on the matter.

Peter Smith stated that he was in opposition to the motion because he felt that the statement from Powerspan's Chief Financial Officer was valid and definitive.

Scott Hovey stated that he opposed the motion because, by allowing the contract to lapse, Powerspan had demonstrated their lack of interest in commitment to the project.

Annmarie Harris stated that she was in agreement with Arthur Grant's suggestion to contact the CEO/President of Powerspan.

Katie Paine spoke her support of the motion.

In response to a question from Mark Morong, Chair Sandberg stated that it would be inappropriate to reconsider the decision absent new evidence or an essential change to the proposal, and subsequently he was opposed to the motion.

Mark Morong stated he was not in favor of the motion as he believed that the representatives from Powerspan were credible.

Administrator Selig stated that the Chief Financial Officer from Powerspan had contacted him to request the refund of the \$50,000 deposit.

The motion was DEFEATED on a vote of 3-4 (Annmarie Harris, Arthur Grant, Katie Paine were in favor of, Peter Smith, Scott Hovey, Mark Morong, Chair Sandberg were opposed.)

XI. Nonpublic Session (if required)

There was no nonpublic session required.

XII. Adjourn (NLT 10:00 PM)

Katie Paine MOVED to adjourn. Peter Smith SECONDED the motion and it PASSED unanimously

Chair Sandberg adjourned the meeting at 9:47 PM