

These minutes were approved at the June 17, 2002 meeting.

**DURHAM TOWN COUNCIL MINUTES
MONDAY, JUNE 03, 2002 – 7:00 P.M.
DURHAM TOWN HALL – COUNCIL CHAMBERS**

MEMBERS PRESENT: Peter Smith, Mark Morong, Katie Paine, Arthur Grant, Malcolm Sandberg, Annmarie Harris, Mike Pazdon, Pete Chinburg

MEMBERS ABSENT Scott Hovey

OTHERS PRESENT: Todd Selig, Town Administrator; Paul Beaudoin, Business Manager; Ron O’Keefe, Durham Fire Chief; Robb Dix, Assessor; Interested Members of the Public

I. Call to Order

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

II. Approval of Agenda

Katie Paine MOVED to approve the agenda. Arthur Grant SECONDED the motion and it PASSED unanimously.

III. Special Announcements

Chair Sandberg announced that on Thursday evening, June 6, 2002, the Special Olympics will begin in Durham. Activities of the New Hampshire Special Olympics will be taking place at UNH on Saturday and/or Sunday. The Council has been offered a seat to attend on Thursday evening and Councilor Arthur Grant will be attending on behalf of the Town.

IV. Approval of Minutes

May 13, 2002

Councilor Paine MOVED to approve the minutes of May 13, 2002 as presented. Councilor Chinburg SECONDED the motion.

The following amendments were made to the May 13, 2002 minutes:

- *Page 1, 1st motion: change the word “remove” to “table”. Strike the words “from the table”.*
- *Page 3, subsection F. 1 at the end of the 1st sentence add the words “...to the end of the agenda.” Replace the word “Recommendations” with “Objectives.”*

- *Page 4, 5th paragraph down, beginning with Mark Morong: change sentence to read ... “and that they often cannot publicize information pertaining to negotiations for conservation easements until they are finalized.”*
- *Page 6, I, Other Business, 3rd paragraph down beginning with Scott Hovey: change the word “render” to read “affect”.*

Councilor Harris MOVED to approve the minutes of May 13, 2002, as amended. Councilor Smith SECONDED the motion and it PASSED 6-2-0. (Chinburg & Pazdon abstained on this vote).

May 20, 2002

Councilor Harris MOVED to approve the minutes of May 20, 2002, as presented. Councilor Grant SECONDED the motion.

The following amendments were made to the May 20, 2002 minutes:

- *Page 2, 5th full paragraph: clarify the phrase within this paragraph that reads “provisions are grated per the ordinance”.*
- *Page 4, 1st paragraph, 2nd sentence: change “justify” to read “explain”. Add last sentence as follows: “He expressed his hope that anonymous letters and newspaper advertisements would not become the method for Durham citizens to express concern about public issues”.*
- *Page 6, add before “New Business” the following sentence: “Mark Morong rejoined the meeting at this time”.*

Councilor Harris MOVED to approve the minutes of May 20, 2002 as amended. Councilor Morong SECONDED the motion and it PASSED 5-3-0. (Chinburg, Pazdon & Paine abstained).

V. Report of Administrator

- Town Administrator Selig introduced the new Recording Minutes Secretary, Darlene Dumais.
- Town of Durham has participated in the ground work with the new Clean City programs sponsored by the U.S. Department of Energy and the Governors Office of Energy Services as well as N.H. Department of Environmental Services. Durham has been recognized as one of the charter members of the clean cities campaign; a nice recognition for the Town.

- During the preliminary budget process in November 2001, a 25% increase in insurance costs was projected by the NHMA Health Trust. Later in the process, the Health Trust projected a 39% increase. The final increase has been set at 21.6%. This is approximately a \$45,000 savings throughout the year for the Town over the next year starting July 1, 2002 through June 2003.
- The Town of Durham is preparing to collect data for next year's implementation of Government Accounting Standards Board (GASB) 34. GASB34 is the new financial reporting model for Government entities.
- Danielle Pare of Cole, Laver, Trumble has been in the field since April 29th working on the revaluation update. The measure and listing will be done and recorded before the tax rate is set. The statistical part of the analysis will extend into next year.
- Meeting agenda and minutes will soon be available for the viewing audience on DCAT.

Town Administrator Selig referred to the last meeting in which Mary Miller had read a letter to the Council expressing concern over the Assessing and Code Enforcement Departments with regard to her property on Piscataqua Road. He said citizens feel strongly that government should have minimal interaction with their private lives. When ordinances require officials to go out and address certain things, it causes conflicts with the beliefs that certain people hold in the community. He explained that Code Enforcement Officers have every right and obligation to ensure that property is being built properly. Regarding the revaluation process, Town Administrator Selig said the Assessor's office has sent a mailing asking residents to call and make appointments for the Assessor or his Agent to come by and review their homes; otherwise, they will just show up to obtain the information needed. He said that citizens in the Town have every right to deny the Assessor entrance into the building. However, if a property owner chooses to express that right, the Assessor will have no choice but to stand back on the curb and make some assumptions about what is inside that house. If assumptions are in excess of what's really inside the property, the homeowners really have no recourse unless they allow the Assessor to come in and do an inspection. He indicated that there have been instances in other communities where the Board of Tax and Land Appeals, has denied abatements because the Town was not given access to the home to confirm what was inside.

Councilor Smith asked if persons who are involved in new construction are given the same form of notice as everyone else. Robb Dix, Town Assessor, explained the policy essentially is the same. Everybody in need of a building permit inspection receives a letter with the same invitation to make an appointment.

Councilor Chinburg added that the assumptions referred to by the Town Administrator sound almost like a threat. He said it made him nervous to have the Town say, "if you don't let us in, the strong arm of the law will be upon you".

Assessor Robb Dix explained the assumptions are going to be in the realm of characteristics that cannot be seen on the inside of a home. He said he and the Assessing Agent have to assume until they can see for themselves. They are not trying to intimidate people, but have no choice, in order to be fair to all the other taxpayers in Town. If they do not make a certain amount of assumptions, and indeed those elements are in the house, then the assessments are artificially low and it is not fair to the rest of the taxpayers.

VI. Reports and/or Comments of Councilors

Councilor Pazdon said that the whole assessment and property tax process is based on subjective evaluation and it shows that property tax is the worse way to fund the State.

Councilor Smith expressed concerns and commented on the adjustments in the property tax system and problems with this revenue-raising device, which is the major means for funding education, and virtually the exclusive device for funding Town and City government.

VII. Public Comments

There were no comments from members of the public.

VIII. Unanimous Consent Agenda

Councilor Smith asked that Item VIII.B. be removed from the table for discussion.

Councilor Grant MOVED to approve Item VIII.A on the Consent Agenda as follows:

VIII A. Shall the Town Council appoint John W. de Campi to fill the vacant Trustees of Trust Fund position?

The motion was SECONDED by Councilor Harris and PASSED unanimously.

VIII. B. Shall the Town Council approve the property tax abatements and exemptions/credits as recommended by the Town Assessor?

Councilor Smith directed a question to Town Assessor, Robb Dix relating to the Three Chimneys Inn listed on the abatement explanation spreadsheet. He noted that Mr. Dix, in terms of supporting his conclusions, focused explicitly on issues relating to what the percentage of occupancy was for rooms in the facility. He said Mr. Dix then figured how much each room should be valued on a "dollars per room" basis. Councilor Smith said when he reviewed all of the data, he realized that the largest revenue generator for the facility was the food aspect of the business, not the room occupancy. He asked what system Mr. Dix applied in order to make a decision for a business establishment deriving its revenue in different ways. Mr. Dix explained that the financial state of this property has two parts. He said the lack of room occupancy greatly overwhelms the health of the restaurant part of the business. For that reason, he originally used the "income approach",

which means that a property is worth what an investor would pay for it to get a cash flow. If the cash flow is inadequate, then the income approach does not apply. Three Chimney's representatives documented to him that the income approach would not be the best valuation method for the property. Therefore, that approach was not used. In its place, the "comparable sales" approach was applied. He explained that when using this approach, the basic unit of comparison is "dollars per room, per sale". From there, he broke down all of the sales, came to a common denominator of "dollars per room", then came to an agreement with Three Chimneys as to what would be a fair assessment based on the financial state of the property and given the current market.

Chairman Sandberg asked Mr. Dix how many other properties in Durham operate businesses with both lodging and restaurants. Mr. Dix said the Three Chimneys property was unique in Durham with no other businesses operating exactly the same as that facility. Chairman Sandberg asked how Mr. Dix determined which of the methods to apply to other businesses. Mr. Dix said Three Chimneys was unique because the demarcation between business and property was a "gray" area. He said with a typical property, such as a store, an owner will rent the property on a "dollars per square foot" basis, and will receive a cash flow from the property itself, regardless of how prosperous the business is. In the case of a hotel/motel with a restaurant, the revenue from the rooms is the rent. Therefore, the revenue becomes the cash flow. Three Chimneys is an upper scale restaurant/inn and there is nothing else like it in Durham. Generally, properties are bought and sold based on cash flow because the theory is that an investor will pay what the cash flow will yield. Because the cash flow of Three Chimney's is not investor attractive, the second method of "comparable sales" was used.

Referring to the memorandum Councilors received in their packets marked as "confidential", Councilor Smith asked Town Administrator Selig if the information contained in the memorandum meets the Right to Know definition of "confidential, commercial or financial information." Town Administrator Selig felt that cash flow information would be covered under the Right to Know Law. He said that in order to get to the heart of a true and accurate assessment for commercial properties, the cash flow needs to be reviewed. If business owners knew their cash flow would be public information, they would not likely provide the information to the Town. He said that Robb Dix had posed the same question to the Town Attorney and given the specifics of the Town's predicament, the Attorney provided the aforementioned memorandum in order to answer that question. Town Administrator Selig said he would acquire more detail from the Attorney on this matter.

Arthur Grant MOVED to approve the Recommended 2001 Property Tax Actions Recommended by the Town Assessors referred to in the "decision" column of the attached 2001 Property Abatement Recommendation Spread Sheet. The Durham Town Council would authorize the Town Administrator to sign the respective applications on its behalf.

The Motion was SECONDED by Councilor Chinburg, and PASSED unanimously.

IX. Unfinished business

Public Hearing (Continued): On the Planned Unit Development and Conditional Use Permit application submitted by Jones & Beach Engineers, Inc. on behalf of J.R. Collier Corporation for a Planned Unit Development and Conditional Use Permit in the Rural District for property located on Packers Falls Road.

Councilors Paine, Morong and Chinburg recused themselves from the discussion.

Town Administrator Selig explained that potential dates were forwarded to Councilors and the applicant. The only to date that worked for everyone was June 24, 2002. The applicant has asked that the Council not discuss this matter until that date, even though a quorum of councilors will be present at the June 17, 2002 Council meeting.

For lack of a quorum, Chair Sandberg declared that this public hearing would continue on June 24 in Council Chambers at 7 PM .

At this time, Councilors Paine, Morong and Chinburg rejoined the meeting.

X. New Business

- A. Public Hearing on and Adoption of Resolution #2002-14** authorizing the Town Administrator to sign a loan agreement to borrow up to \$820,500 from the State of New Hampshire State Water Pollution control Revolving Loan Fund Program to fund the Landfill closure project.

Town Administrator Selig explained that the landfill is required to be capped and closed. He said that in order to meet the standards set by the State, the Town has looked at a number of options for a number of years to officially cap and close the facility. After some scrutiny, the Town identified a model for closure of the landfill called the "Sandwich Model", so-called because the Town of Sandwich, NH identified this model to successfully close its landfill. He said that this is a joint project by the Town of Durham and the University of New Hampshire, with a current project cost totaling \$1,220,500.00. In addition, a number of years ago, the Town had appropriated an additional \$100,000.00 to do the preliminary engineering work on the closure. Therefore, the money spent over the last ten years, to include what will currently be spent, totals \$1,320,500.00.

Town Administrator Selig said the University of New Hampshire is contributing up-front \$500,000.00 in cash toward the project. This contribution, minus the \$1,220,500.00 needed to spend on the total project, comes to the maximum loan amount of \$820,500.00. To formerly move forward with the New Hampshire State Revolving Loan Fund (SRLF), which provides low interest loans to communities for projects such as this, the Town must hold a public hearing. The reason for this is because the SRLF is considered a "bond" and Section 5.12 of the Durham Town Charter requires that bonds in

excess of \$500,000.00 require a public hearing, followed by a two-thirds vote of the Town Council.

Councilor Grant MOVED, SECONDED by Councilor Paine, to OPEN the Public Hearing on Resolution #2002-14. The motion PASSED unanimously.

No members from the public spoke on this issue.

Councilor Chinburg MOVED, SECONDED by Councilor Paine, to CLOSE the public hearing on Resolution #2002-14. The motion PASSED unanimously.

Councilor Chinburg MOVED, SECONDED by Counselor Paine, to ADOPT Resolution #2002-14.

Councilor Grant asked Town Administrator Selig if the money being borrowed included the \$100,000.00 previously appropriated by the Town. Administrator Selig replied that Councilor Grant's understanding was not accurate. He explained that the previously appropriated \$100,000.00 comes into the picture because, at the conclusion of the project, the Town will be able to apply to the State for a 20% reimbursement grant on the amount the Town expended on the closure. Therefore, the Town is estimating that the total cost for the closure, including the \$100,000.00 spent a number of years ago, will come to \$1,325,000.00. If that number is divided in half, then UNH's portion (who will pay for half of the total cost of the closure) will be for \$660,250.00. The Town would pay \$660,250.00 minus 20% which would be \$132,050.00. Thus, the Town share of this project would actually be less than 50%, or \$528,200.00. The reason for this is that the grant program applied for covers only the Town and not the University. Funds which the University covers and any expenses are not able to be included in the 20% reimbursement at the end of the project. The Town will be able to include the \$100,000.00 in its reimbursement request to the State at the end of the project.

Councilor Pazdon asked if UNH would be giving the Town another payment for \$160,000.00. The Town Administrator said that the UNH would be providing another payment to the Town. He explained the way that would be handled is that the \$500,000.00 cash would be sent to the Town as the project progressed. In addition to the \$500,000.00, UNH will pay another \$160,250.00 to the Town. UNH will not be paying this amount in cash, but rather will pay its share of the \$820,500.00 loan over time. Therefore, UNH will be giving the Town both a cash payment as well as paying a portion of the Town's debt over time.

Councilor Grant wondered why the Town was borrowing the \$100,000.00 since the Town already spent it a number of years ago. Business Manager Paul Beaudoin explained that the extra \$100,000.00 is included because the State Department of Environmental Services requested that the Town ask to borrow more than it needs, as a buffer. The reason for this is in the event an unforeseen problem arises requiring the Town to need additional money, the Town would not need to reapply for more funds. He said the Town

would only borrow the amount of money it requires as the project progresses. Once the project is completed, no further money will be spent.

Councilor Smith asked what assurances the Town had from the engineers against cost overruns.

Administrator Selig replied that in the figures the engineering firm provided to the Town, a contingency amount had been built in. Councilor Smith asked if that amount was not enough, would the responsibility lie with the Town or the contractor. Town Administrator Selig said the responsibility would be with the Town because the project had not been placed out to bid. He said the Town was trying to secure all of the funding before putting it out to bid. He said if the bids were to come in higher than anticipated, then the Town would need to reassess and come back to the Council for an additional appropriation.

Referring to the last “whereas” clause within Resolution #2002-14 which states “the University of New Hampshire has agreed to pay half the cost of closing and capping the landfill”, Councilor Smith asked what the document was which expresses this agreement with the University. He said the Town should ensure there is some kind of document that reflects the clause contained in the resolution. Town Administrator Selig responded that before the Town puts the project out to bid, and before receiving the final authorization to go forward with borrowing the \$820,500.00, he would ask the University to put something in writing as to the University’s commitment to pay one-half for the project.

Chair Sandberg called for a vote on the motion to adopt Resolution #2002-14 as previously read. The motion PASSED unanimously.

Chair recessed the meeting @ 8:25pm until 8:30 pm.

Chair Sandberg reconvened the meeting at 8:30 pm.

B. Fire Department Staff Report

Fire Chief, Ron O’ Keefe, provided a brief power point presentation which included the following:

- The department’s mission and value statements
- Brief history of the department
- Departments, current operations
- Future goals and objectives
- Priorities

Councilor Paine raised questions and concerns regarding the forest fires caused by drought conditions and asked what preventions the Fire Department was taking against these conditions.

Fire Chief Ron O'Keefe briefly explained there is a great concern. He said grant money is being secured to buy equipment, get extra training, and purchase other items the department needs regarding public safety.

Councilor Smith asked Chief O'Keefe how much time and manpower was spent by the Fire Department dealing with medical calls versus fire calls. Ron O'Keefe, stated that EMS, true emergency medical responses, were between 36% - 38% of the responses the department was called out on.

Councilor Smith asked for a breakdown of data between medical and fire responses, which would reveal the amount of personnel time that goes into those respective functions. He asked the department to produce some research that would focus on the kinds of costs that exist, such as training, and how much of that preparation was for matters that relate to the University of New Hampshire versus the Town.

- C. **School Funding Formula** Shall the Town Council create a study committee to review the school funding formula as recommended by Councilor Art Grant?

Chair Sandberg recognized Councilor Grant who read the agenda description for the benefit of the public.

Councilor Grant MOVED that the Durham Town Council establish a school funding study commission to be comprised of 5-7 residents of Durham; the commission shall be responsible for researching and analyzing the fairness and equity of the existing 50% membership 50% equalized valuation formula. The Commission shall report findings and recommendations to the town counsel at the March 2003 informational town meeting. Commission members shall be nominated and appointed by the Town Counsel.

The motion was SECONDED by Councilor Harris.

Councilor Pazdon suggested that the committee be comprised of only five members.

Councilor Smith suggested that one important point to look at was the issue of the fairness and equity of the existing 50/50 formula. He felt the committee should examine the fairness, equity and general usefulness or problem creation of any alternatives that might occur if the Town desires to press for the substantial change in this formula.

Chair Sandberg added if the Commission were to come forward with a conclusion and a recommendation, it would fully have the burden of convincing the community that would be the right way to go forward. He said if the formula was changed, it could not be changed again for five years. The Commission would need to weigh all aspects, then come back with a suggestion.

Councilor Paine, commented that there is a citizens perception that needs to be looked into, that is expressed in the Master Plan.

Councilor Pazdon added that the funding formula used in the Town's study may be illegal and should be looked into.

Councilor Pazdon MOVED to amend the motion to have the Commission comprised of five (5) residents. The motion was SECONDED by Councilor Grant, and PASSED unanimously.

Councilor Grant asked that the Town advertise it is accepting membership applications and that the Town Council shall plan to make appointments at its July 8, 2002 meeting.

Chair Sandberg called for a vote on the motion to establish a school funding study commission comprised of five (5) residents of Durham, and it PASSED unanimously.

D. False Alarm Ordinances

Administrator Selig asked that the Council consider postponing this agenda item until Councilor Scott Hovey could be present.

Councilor Grant MOVED to approve postponing Item 10D until the June 17, 2002 meeting. Councilor Morong SECONDED the motion and it PASSED unanimously.

E. Other Business

There was no other business.

XI. Non Public Session

PERSONNEL MATTERS IN ACCORDANCE WITH RSA 91-A:3 (II)(c)

Councilor Chinburg MOVED that the Durham Town Council enter into nonpublic session pursuant to RSA 91-A:3(II) (c) for discussion of personnel matters. Councilor Paine SECONDED the motion and it PASSED on a roll call vote as follows:

<i>Peter Smith</i>	<i>YES</i>	<i>Malcolm Sandberg</i>	<i>YES</i>
<i>Scott Hovey</i>	<i>ABSENT</i>	<i>Annmarie Harris</i>	<i>YES</i>
<i>Mark Morong</i>	<i>YES</i>	<i>Michael Pazdon</i>	<i>YES</i>
<i>Katie Paine</i>	<i>YES</i>	<i>Pete Chinburg</i>	<i>YES</i>
<i>Arthur Grant</i>	<i>YES</i>		

The Town Council entered into nonpublic session at 10:00 PM.

The Town Council discussed an appropriate compensation for the Town Administrator for the period June 1, 2002 through May 31, 2003, based upon research of comparable compensation amounts in other communities for comparable positions.

Mike Pazdon MOVED that the Durham Town Council re-enter public session. Peter Smith SECONDED the motion and it PASSED on a roll call vote as follows:

<i>Peter Smith</i>	<i>YES</i>	<i>Malcolm Sandberg</i>	<i>YES</i>
<i>Scott Hovey</i>	<i>ABSENT</i>	<i>Annmarie Harris</i>	<i>YES</i>
<i>Mark Morong</i>	<i>YES</i>	<i>Michael Pazdon</i>	<i>YES</i>
<i>Katie Paine</i>	<i>YES</i>	<i>Pete Chinburg</i>	<i>YES</i>
<i>Arthur Grant</i>	<i>YES</i>		

The Town Council re-entered public session at 10:15 PM.

XI. Adjourn (NLT 10:00 PM)

Mike Pazdon MOVED to adjourn. Katie Paine SECONDED the motion and it PASSED unanimously.

The meeting ADJOURNED at 10:16 PM.

Darlene Dumais, Secretary – June 17, 2002