

--D R A F T--

**DURHAM TOWN COUNCIL MINUTES
MONDAY, JUNE 17, 2002 – 7:00 P.M.
DURHAM TOWN HALL – COUNCIL CHAMBERS**

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

MEMBERS ABSENT: None

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

I. Call to Order at
Chair Sandberg called the meeting to order at 7:18 PM

II. Approval of Agenda

Councilor Harris MOVED to approve the agenda. Councilor Paine SECONDED the motion and it PASSED unanimously.

III. Special Announcements

A. **Resolution #2002-15:** Commending Police Sergeant Joseph D. Morganella for fifteen (15) years of service to the Town of Durham

Councilor Grant MOVED to adopt Resolution #2002-15 recognizing Police Sergeant Joseph D. Morganella for fifteen years of dedicated service to the citizens of Durham. Councilor Chinburg SECONDED the motion and it PASSED unanimously.

B. Presentation of Certificate of Commendation to retiring Police Sergeant, Joseph D. Morganella

Chair Sandberg presented Sergeant Morganella with a Certificate of Commendation and thanked him for his commitment to the Durham Community.

C. Introduction of new Police Reserve Officer, Catherine Lily

Police Chief David Kurz informed the Council that Officer Lilly was not present because she was in training. He said she would be starting as a Reserve Officer.

D. Introduction of new Patrol Officer, Holly Rouleau

Police Chief Kurz introduced Officer Rouleau and gave a brief background on her qualifications. Councilor Paine thanked Chief Kurz for increasing diversity on the police force.

IV. Approval of Minutes - June 3, 2002

Councilor Grant MOVED to approve the minutes of June 3, 2002 as presented. Councilor Paine SECONDED the motion.

The following amendments were made to the June 3, 2002 minutes:

Amendments to Page 1 were made as follows:

- ***Bottom of page 1, under the date of May 13, 2002: Councilor Smith MOVED to delete the words “and PASSED unanimously” from the line beginning ... “Katie Paine MOVED”. Councilor Paine SECONDED the motion and it PASSED 7-0-1 (Hovey abstained due to his absence from the June 3rd meeting).***

Amendments to Page 2 were made as follows:

- *Page 2, under the line May 20, 2002; strike the words “and PASSED unanimously”.*
- *Page 2, 5th line from the top of the page: change the word “adopt” to “approve”.*

Councilor Smith MOVED to approve the above amendments to page 2 of the June 3, 2002. Councilor Harris SECONDED the motion and it PASSED 7-0-1 (Hovey abstained due to his absence from the June 3rd meeting).

Amendments to Page 4 were made as follows:

- *Page 4, VI, 2nd paragraph of text, beginning with the 2nd line, change to read as follows: “system and problem with this revenue raising device which is the major means for funding education, and virtually the exclusive device for funding Towns and City Government.”*

Councilor Smith MOVED to approve the above amendment to page 4 of the June 3, 2002. Councilor Paine SECONDED the motion and it PASSED 7-0-1 (Hovey abstained due to his absence from the June 3rd meeting).

Amendments to Page 6 were made as follows:

- *Page 6, between the third line from the bottom of the page and the second line from the bottom of the page; insert “No members from the public spoke on this issue”.*

Councilor Chinburg MOVED to approve the above amendment to page 6 of the June 3, 2002. Councilor Smith SECONDED the motion and it PASSED 7-0-1 (Hovey abstained due to his absence from the June 3rd meeting).

Amendments to Page 8 and 10 were made as follows:

- *Page 8, 3rd paragraph: Change spelling to “Sandberg”.*
- *Page 10, nonpublic session, insert: “The Town entered nonpublic session at 10:00 pm for the purpose of discussing salary considerations for the Town Administrator”.*

Councilor Chinburg MOVED to approve the above amendments to pages 8 and 10 of the June 3, 2002 minutes. The motion was SECONDED by Councilor Pazdon and it PASSED 7-0-1 (Hovey abstained due to his absence from the June 3rd meeting).

V. Report of Administrator

Town Administrator Selig had indicated the drought watch which was discussed a few months ago had been called off. However, citizens with private wells should use caution with water consumption.

The Public Works Department and the Integrated Solid Management Advisory Committee had been marketing to sell solid waste composting bins. Selig indicated that 320 bins were in, selling for twenty-five dollars (\$25) each, and can be picked up at the Public Works Department from 8:00am – 4:30pm any day during the week.

The Town Council will hold a special meeting on Monday, June 24, 2002, to discuss the Allen Farm Conditional Use Permit/Planned Development issue.

Modifications have been made to the Town Hall to make bathrooms handicap accessible, to repaint the foyer, to repair wall cracks, to repaint the hallways on the first and second floors, and to replace carpeting. Town Administrator Selig said he is trying to maximize extra funds that were made available in order to make needed improvements.

Tuesday evening, June 25, 2002 at 6:00pm, The Durham Historical Association will hold its Annual Picnic. Those interested in attending can contact the Town Office or the Durham Historical Association for more information.

Town Administrator Selig said he appeared before the State Liquor Commission on June 6, 2002, to testify on behalf of the Town regarding the application filed by Cumberland Farms Corporation for a permit to sell alcohol. The Liquor Commissioner subsequently granted Cumberland Farms a liquor license. Town Administrator Selig said he relayed to the Liquor Commission that Durham's Zoning Ordinance precludes the sale of alcohol in that location because it is not a retail establishment and therefore alcohol would not be allowed as an accessory use. He said the Commission understands that the Town of Durham is a unique community with perhaps the highest per capita population of 18-22 year olds in the State of New Hampshire for nine months of the year. However, it felt constrained by the fact that neither its rules of procedure, nor the State statute, enable it to consider local zoning requirements when considering the location requirements to grant a license. Town Administrator Selig said the preemption issue was also raised and the Liquor Commission sent a letter to the Attorney General's office indicating the preemption issue was "alive and well". The Attorney General recommended that the Liquor Commission not consider the local zoning because it was felt if the Commission was challenged by the applicant, the Commission would lose. Therefore, the Commission ruled in favor of Cumberland Farms.

Town Administrator Selig said he also brought to the Commission's attention that in the section of its Administrator Rules which deals with a community's ability to petition the Commission to rescind a license that has already been issued, the Administrative Rules specifically allow the Commission to consider local zoning ordinances. He asked the Commission why it was willing to consider local zoning at the tail end of the process and not

the front-end of the process. The response was it is not in the statute and it is not in the Administrative Rules. Therefore, the Commission would not be able to consider local zoning when making its determination on those applications already on-hand, which would include Wildcat Pizza and Cumberland Farms. After approving the permit for Cumberland Farms, the Commission directed its Bureau Chief to enter into "emergency rule making" which would integrate its ability to consider local zoning in the future into the approval section of its regulations. Town Administrator Selig informed the Council at this stage, now that the application has been granted, Durham could petition the Liquor Commission to revoke the permit that was issued because it is in violation of local zoning. Town Administrator Selig said the Town could also choose to challenge the administrative ruling that the Liquor Commission made. He said if and when Cumberland Farms starts to sell alcohol out of that facility, he would direct the Code Enforcement Officer to issue a Cease and Desist Order which would land the Town in court. He did not believe, however, the Town would be successful in court.

Councilor Hovey said he would prefer that the money being spent on renovations to the Town Hall be spent on expanding the Council Chambers. He felt it was an insult to the public if the Town did not provide a suitable room for its citizens to come and attend a meeting in a comfortable environment. He asked that further discussion of the matter be placed under "Other Business".

Councilor Smith requested that the liquor license matter which Administrator Selig discussed be added under "Other Business".

VI. Reports and/or Comments of Counselors

Councilor Paine reported that the DCAT Governance Committee still needs members. She noted that the DCAT meeting dates have been changed to the 3rd Wednesdays of each month at 8:00 AM and are held in the Council Chambers.

Councilor Hovey expressed his concern over trash bags/bins not being picked up downtown. He said the Town has placed a lot of money into making the downtown presentable. However, he felt it was wrong when businesses and property owners do not take responsibility for keeping their areas clean.

Councilor Smith reported on the concluding meeting of the Taxation and General Government Committee. He said the Committee voted on six action issues it would be working on in the next legislative session. Two of the six issues emanated from Durham. One was to introduce legislation setting up a commission to seek revisions of Article 91-A, dealing with how electronic communications (e-mail) should be handled under the Right-to-Know statute. The other issue dealt with corps service charges to be made to state and governmental entities that impose various costs to local communities.

Councilor Grant gave an update on the progress of the Zoning Rewrite Committee. He said progress is slow. The committee has completed the initial review of the administrative section of the ordinance. However, there is still much work to be done and he could not accurately predict when it may be completed.

VII. Public Comments

There were no comments from members of the public.

VIII. Unanimous Consent Agenda

Councilor Smith asked that Item F and Item C be removed from the table for discussion.

Councilor Paine MOVED approval of consent items VIII A, B, D, & E. Councilor Smith SECONDED the motion and it PASSED as follows:

- VIII.A.** Shall the Town Council approve the special event permit applicant submitted by the Durham MainStreet Program to close a portion of Main Street for the annual Young Artists' Showcase?
- VIII.B.** Shall the Town Council approve the special event permit application submitted by the Durham MainStreet Program to conduct the annual concert series?
- VIII.D.** Shall the Town Council appoint Melanie Rose as a regular member to the Conservation Commission?
- VIII.E.** Shall the Town Council appoint Richard Gallant to the Integrated Waste Management Advisory Committee?

The Council discussed the following two consent items separately:

- VIII.C.** Shall the Town Council approve the nonindustrial discharge permit application for a change in the use of the UNH warehouse facility located at 1 Leavitt Lane as recommended by the Water, Wastewater and Solid Waste Committee?

Councilor Smith referred to the four standard conditions contained in the cover memorandum provided by Town Engineer, Bob Levesque. He felt the permit should be conditioned on the construction, currently underway, being completed and the apparatus being fully on-line and working. Otherwise, he felt the Town was knowingly allowing a pollution that is referred to by Bob Levesque as "surcharge". He said he did not have a problem taking action on this application as long as it was conditioned on the construction being completed.

Town Administrator Selig stated that he had spoken to Bob Levesque who insured him that the line would not go into full use and would not be approved until the construction was completed.

Town Administrator Selig offered the following amended wording for the motion contained in the Council Communication: ***The Durham Town Council hereby approves the University of New Hampshire's application for increase in sewer discharge for the cold storage warehouse facility at one Leavitt Lane contingents upon certification by the Director of Public Works that construction of the College Brook Interceptor Relief Project has been completed and authorizes the Town Administrator to sign the approved Wastewater Permit.***

Councilor Paine MOVED to approve the amended motion. Councilor Harris SECONDED the motion it PASSED 7-0-1 (Hovey abstained).

VIII.F. Resolution #2002-16: Establishing the compensation for the Town Administrator for the period June 1, 2002-May 31, 2003.

Councilor Grant MOVED to approve the Resolution #2002-16. Councilor Pazdon SECONDED the motion and it PASSED unanimously.

Chair Sandberg expressed gratitude to Town Administrator Todd Selig. He added that Todd had done an admirable job earning the respect of the people in the community with his ability to manage the affairs of the Town. He said Todd has succeeded in making substantial savings for taxpayers and management in the Town, which are real and meaningful. Chair Sandberg encouraged unanimous vote for the adoption of motion.

Councilor Smith expressed appreciation and full agreement for the increase in salary. He added that it cannot begin to measure the appreciation for what is more than good, but outstanding performance, and the Town was very lucky to have Todd.

Councilor Grant indicated that although he was not on the Council at that time, the Council did conduct a formal performance evaluation of the Administrator and the results were good to excellent.

Chair Sandberg called for a vote on the motion to adopt Resolution #2002-16 as previously read. The motion PASSED unanimously.

IX. Unfinished business

Chair Sandberg reminded Council members that a Special Meeting had been scheduled for June 24, 2002 at 7:00 PM regarding the Allen Farm application for a Conditional Use Permit/Planned Unit Development. Chair Sandberg asked Councilors to consider not closing the Public Hearing on June 24, 2002 until the next meeting in July.

X. New Business

- A. Public Hearing: Ordinance#2002-14** rescinding Chapter 96 "Permanently Disabled Exemptions", rescinding Chapter 52 "Elderly Exemptions" of the Durham Town Code and establishing a new Chapter 132 entitled "Tax Exemptions and Credits", 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.

Town Administrator Selig explained that tonight's public hearing was really a formality in accordance with RSA 72:39 b1(b). He explained that this ordinance was first presented to the Council in January of this year. At that time the Council directed staff to recraft some modifications to the elderly exemption ordinance, as well as other ordinances, which provide relief or tax credits to certain classifications of citizens. Based on that process, the Council held a public hearing. At the closure of the hearing, some textual issues were raised regarding the way in which the ordinance was crafted. Town Administrator Selig said the ordinance has been recrafted to provide not substantive changes but textual changes that clarify what was contained in the State statute. It would codify all of the Town's exemptions and tax credits in one location and it would raise the

asset and income levels that one needs to qualify for the elderly exemption and the disabled exemption. It would also increase the Veterans' tax credit from \$50 to \$100, and increase the Veterans' exemption from \$700 to \$1,400, that is allowed by statute.

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

No members from the public spoke on this issue.

Councilor Harris MOVED, SECONDED by Councilor Grant, to CLOSE the Public Hearing on Ordinance #2002-14. The motion PASSED unanimously.

Town Administrator Selig said the last version of the ordinance merely adopted the State statute and all applicable criteria listed in the State statute by reference. He added that the Council discussed whether or not there should not merely be a reference to the State statute, but to also include what those criteria should be in the language of the ordinance. In the version currently before the Council, Town Administrator Selig said he had spoken to Councilor Smith who recommended removing references to the State statutes and including the actual wording for the criteria in the ordinance.

Chair recessed the meeting at 8:18 pm.

Chair Sandberg reconvened the meeting at 8:25 pm.

B. Report by Sanitation Division of the Public Works Department.

Administrator Selig introduced Guy Hodgdon, Superintendent of Solid Waste, and Mike Lynch, Director of Public Works.

Gary Hodgdon explained that the Solid Waste Division of Durham Public Works is comprised of four main departments with 2 part-time and 2 full-time employees which carry out the day-to-day tasks in the Town. He provided a brief power point presentation which included the following elements:

- Curbside Collection, Hazardous Materials
- Operations of Solid Waste Management Facility
- Hauling of the Materials
- Swap Shop at the SWMF
- Recyclables Processing
- Commercial Recyclable Collection
- Division Administration
- Integrated Solid Waste Advisory Committee
- History of the Recycling Program
- Goals & Objectives

Mike Lynch, Director of Public Works, discussed the initial draft design of the new transfer station that will be located at the old landfill on Durham Pt. Rd. He said the new design, which is a substantial cost savings for the construction, will incorporate a lot of infrastructure that is already at the Durham Point Road site. Materials would be hauled

off in roll-off trucks, like a dump truck. He indicated there were two functions with the roll-offs. First, to be able to pull them out with a truck at one grade, and second, to make them user-friendly at another grade. Roll-offs will be 22 inches off the ground as the resident uses them. Currently, everything that is done is retained, and done more efficiently. There will be two burn bunkers that will separate the brush for use and burn. Mike Lynch said they would like to stockpile woodchips at the transfer station for residents to pickup, at no charge. Electronics would be a new item to be picked that will be seen on the new fee schedule.

Councilor Pazdon asked Mike Lynch why all of the brush would not be shredded. Mike Lynch responded that it would be a lengthy process. He said commercial haulers are hired to cut trees, chip what they can, and haul out what cannot be chipped. Stump grinding is done every three to four years where a lot of chips are derived from. Residents are allowed to receive them at no cost.

Councilor Paine asked about purchasing and selling of compost with other haulers. Mike Lynch indicated that DPW stock piles on site and turns over the mixture to decompose. The leaves, twigs, grass clippings, etc., are sent to market, then hauled off site or disposed of which could cost \$11.00 a ton. The cost fluctuates with the changeable and volatile daily market.

Chair Sandberg raised a question about keeping the membrane on existing buildings in place. Mike Lynch explained that capping occurs on the impervious asphalt surface. He stated that the idea is to collect all the surface water and let it run through the outer limits. The significant cost saver was the conventional cap that happens on the slopes which are not vegetated.

Chair Sandberg referred to the scale area on the plan where vehicles would be weighed. He said if the Town's goal is to encourage recycling, then the scenario he would envision for the process would be that someone would go to the transfer station and their vehicle would be weighed upon entering the transfer station. The items that would be desirable to unload first would be all non-recyclable items. The attendant would then inspect the load. He asked Mike Lynch at what point the vehicle would be weighed again.

Mike Lynch indicated the trucks would be weighed before the off-load of non-recyclables and then immediately after they unload the non-recyclables. Town Administrator Selig said he wants to evaluate the scale to determine if it will pay for itself over a period of time. He added that it would pick up equity, but no additional revenue.

Councilor Smith asked Mike Lynch if he had calculated which way going to a non permanent disposable system might point in terms of gain or loss, money wise. Mike Lynch said he hoped to do a revenue system that was fair and equitable which will take up some of the costs of disposing large items.

Councilor Smith asked Mike Lynch if once the Town is no longer able to dispose of yard waste on-site, would that be something the Town will financially be able to accomplish or would people bringing yard waste to the transfer station have to pay a fee. Mike Lynch replied there would always be a market for lawn clippings and leaves. He said the

idea of a fee schedule was more related to elderly homeowners who have landscapers rake their leaves.

Councilor Morong questioned the spraying of chemical treatments on grass. Mike Lynch said this was not a concern because most any chemicals would go into the soil once the grass has been watered. Councilor Morong also asked about the truck the Town was testing that would take both household waste and recyclables. He asked Mike Lynch his opinion on that truck. Mike Lynch said he felt it would be a cost-saving measure because it would eliminate one person and another truck. He said it was new technology on the market and that his department would look at it closely and weigh the pros and cons of utilizing that kind of truck.

C. Shall the Town Council authorize the Town Administrator to sign a contract settlement agreement with AT&T Broadband?

Chair Sandberg and Councilor Grant recused themselves from this discussion.

Councilor Smith MOVED to appoint Pete Chinburg as Chair Pro Tem for the purpose of discussing item X.C. The motion was SECONDED by Councilor Paine and PASSED unanimously.

Pete Chinburg pointed out that the Council had a non-meeting at 6:30 pm on this matter. It was the consensus of the Council that further information was required for discussion.

Town Administrator suggested the Council table this item for the time being.

Councilor Smith MOVED to table this item until further notice. Councilor Paine SECONDED the motion and it PASSED unanimously.

Chair Sandberg and Councilor Grant returned to the table.

D. Discussion on the false alarm ordinance.

Town Administrator Selig said he met with Thomas Carroll, Superintendent of Schools, and Blaine Cox, Business Administrator. He said Dr. Carroll and Mr. Cox had attended the March 18, 2002 Council meeting and had requested the Council reconsider its current false alarm charges that are contained in Chapters 68 & 69 of the Durham Town Code. He added they wanted an exemption for the School District which will eliminate any charges that might be incurred as a result of these ordinances. At that Council meeting, the Council did not take any action, but Councilor Morong indicated an interest in exploring this matter further.

Councilor Morong said he had contacted the Lee and Madbury Police Departments and found out how these departments handle false alarms in the Oyster River schools, which are also in their communities. He said Madbury does not have any ordinance to charge the School District for false alarms because they do not get many calls. The Town of Lee does have an ordinance where it charges \$25.00 per call but the ordinance is not enforced. Councilor Morong said he spoke to Durham's Police Chief who informed him that the average cost for a Police Officer to respond to a false alarm call was

approximately \$54.00. He said he would like to introduce the idea to Council to put costs on going out to the School District only, more in line with the actual cost for an officer to respond. He understood, and agreed, that the intent behind the ordinance was to have businesses, homeowners and the School District upgrade their security systems to minimize the number of false alarm calls. However, he felt that since the Town is exempted and also the University, the Town should not make money on the School District. Also, Dr. Carroll had indicated that the school system has placed bids for a new security system, which should reduce the number of false alarm calls the school receives.

Councilor Hovey said this ordinance had originally been initiated to reduce the number of calls and save the Town money. He said the School District is one of the main problems that still exist. He noted that as a result of this ordinance, the numbers of calls have been reduced and he believes that the ordinance has served the Town very well. He was not in favor of changing the ordinance. He said there is a risk involved when Police or Fire respond to false alarms which can cost more than \$54.00. He felt the Council should ask the schools to do a better job of educating its employees on the functions of the old and new alarm systems.

Councilor Smith said he had researched what the number of false alarms were that were represented in the \$44,200.00 false alarm bill to the ORCSD. He said the Town Business Office informed him that between 1997 and 2001, there were 71 false alarms at the High School and 82 false alarms at the Middle School. That totaled 153 which did not represent all the false alarms over the four-year period because there were periodic payments beyond those represented by the \$44,200.00. Therefore, it may be probable that it was closer to 200 false alarms during that period. Councilor Smith said perhaps one could argue that the Council should repeal the false alarm ordinance because it has not worked in its present form. He said it troubled him that the Council would reward that level of disinterest or carelessness. He noted that the *Foster's Daily Democrat* had an article regarding the City of Portsmouth amending its false alarm statute where the rates had substantially increased. He said there is a provision in Portsmouth's ordinance whereby if someone accidentally sets off a false alarm and is able to immediately notify dispatch of the occurrence, thus eliminating the need for Police or Fire response, then the fee is excused. He agreed with Councilor Hovey that the risks involved in responding to false alarms are much more than the average hourly rate of a police officer.

Councilor Grant replied to the comments from Councilor Hovey and Councilor Smith regarding the risks to Police and Fire officers. He stated that each alarm call is charged to Durham's share of the Fire Department Service Agreement with the University. The Fire Chief informed him that the University made significant reductions in its false alarm situation which helped to reduce its share of the cost of operating the Fire Department, and thereby increased the Town's share. Councilor Grant said Durham should do everything it can to minimize the number of unnecessary calls from Durham, which then would inflate the response and costs from the Fire Department.

Councilor Morong noted that false alarms arise from times when the school is being a good neighbor to the community in letting the community use its buildings for various functions. Councilor Harris stated that the buildings belong to the population of the community.

Councilor Paine stated the difference between a \$54.00 Police call and a \$200.00 penalty, seemed to be excessively harsh and asked if there may be some room for compromise. Chair Sandberg explained that alot of penalties are meant to be deterrents, not moneymakers. He said if the numbers are meaningful, then the response will be meaningful.

Councilor Hovey stated that the Oyster River Schools should train and qualify all personnel to be able to perform the daily duty of the system. It would save time and money on emergency service calls.

Councilor Harris felt there was a discrepancy between what it costs for major pieces of fire apparatus from the Fire Department to respond to false alarm calls; each one being \$200.00 an hour if they are large items and other apparatus being \$100.00 an hour.

Councilor Hovey MOVED to direct the Administrator to do nothing with respect to redrafting Chapter 58 of the Code of Durham. Councilor Pazdon SECONDED the motion and it FAILED 4-5 (Hovey, Grant, Chinburg and Pazdon voting in favor of the motion; Smith, Harris, Morong, Paine and Sandberg voting against the motion).

Councilor Morong MOVED that the Council redirect the Administrator to redraft Chapter 58 of the Code of Durham to provide a separate penalty categories for properties owned by the Oyster River School District to more accurately reflect the actual cost of Police response to the school as followings: 1-5 calls no penalty, 6 plus calls \$60. Councilor Pazdon SECONDED the motion.

Councilor Paine MOVED to postpone discussion on the above motion pending further data from the School District once it has installed its new alarm system. Councilor Harris SECONDED the motion and it PASSED unanimously.

E. Discussion on “Durham Day”.

Councilor Hovey commented that “Durham Day” was started a number of years ago. He felt that conducting a Durham Day brings about a ‘Sense of Community’. He stated there was fifteen hundred dollars (\$1,500) in the approved budget for this event and he would like to do it if the Council was in agreement.

Councilor Smith explained that he had checked the tide schedule. He stated the ideal dates would be Saturday the 7th and Saturday the 21st, to allow for boat trips.

Consensus of the Council was to schedule a Durham Day in September.

F. Other Business

A. Discussion on Alcohol Issue

Councilor Smith stated that he disagreed with the analysis from the Liquor Commission which was presented to the Town Administrator. He said that because of the text contained in a Town ordinance, the Town Administrator has indicated he will instruct the Code Enforcement Officer to issue a Cease and Desist Order to Cumberland Farms if and when it begins to sell alcoholic beverages. Councilor Smith said that for the Town Administrator not to do that would set a bad precedent for selective enforcement of

ordinances. He further stated as soon as the Town Administrator orders the Cease and Desist, there will be litigation filed against the Town in Superior Court. He said it was his view that the Town would lose on the merits of the case because of the state preemption issue. He did not feel it would be a wise expenditure of the Town's money to engage in losing litigation that would impinge more on the Town's budget. He felt the only remedy was to remove an illegal ordinance off the books and begin vigorously spending time getting at the underlying problem of alcohol abuse in the Town.

Councilor Morong asked if Council had the option to direct the Town Administrator to indefinitely postpone a Cease and Desist Order until the ordinance can be removed from the books. Town Administrator Selig replied if the Council concluded the ordinance was illegal and directed him not to enforce that section of the Zoning Ordinance, then he would be content not to enforce that section of the ordinance until it is removed from the books.

Councilor Grant said that the Cumberland Farms case involves permitted and nonpermitted uses in a zone. He asked if in fact the Town Administrator cannot require an establishment selling alcoholic beverages to also sell food.

Town Administrator Selig said there were two issues. One was what the Liquor Commission said it was willing to consider. It said it was not willing to consider what the Town's local zoning recommended in this site as an appropriate use. Second, he did not believe if the Town was to be challenged in Superior Court on the basis of enforcing its Zoning Ordinance, that a Judge would care whether it was the setback requirements or a permitted use in that zoning district. He did not believe the Town had any business telling any establishment where it can or cannot sell alcohol, unless there is some tangible safety issue in which to present to the Liquor Commission. He felt the Town was completely preemptive from regulating that aspect of liquor licensing, through the Zoning Ordinance or otherwise.

Councilor Grant asked the Town Administrator if he knew what the Liquor Commission means when it sites zoning as being the matter for revocation of a license. Town Administrator Selig replied that he has tried to explain his arguments to the Commission on behalf of the Town. He read a letter which he wrote to the Liquor Commission on the petition for revocation rules. He commented that Adian Moore, the Bureau Chief, relayed that what the Commission looks for in a hearing was a demonstrated documented series of events with respect to the sales of alcohol.

The Council directed the Town Administrator to continue researching this matter and to bring recommendations before the Council at its next meeting. Art Grant also asked the Town Administrator to research other communities to find out if they have restrictions for serving food only in their zoning regulations.

B. Discussion on Council Chambers

Councilor Hovey said that it should be a priority to improve and expand the Council Chambers. He said the meetings are becoming fuller and the hallways were becoming more crowded and felt that expansion of the Council Chambers should have priority over the Town Hall renovations.

XI. Non Public Session

LAND MATTERS IN ACORDANCE WITH RSA 910A:3 (II) (d)

Councilor Chinburg MOVED that the Durham Town Council enter into Nonpublic Session for the purpose of discussing land matters in accordance with RSA 91-A:3 (II) (d). Councilor Pazdon SECONDED the motion and it PASSED on a roll call vote as follows:

| | | | |
|-------------------------|------------|------------------------|------------|
| <i>Peter Smith</i> | <i>YES</i> | <i>W. Arthur Grant</i> | <i>YES</i> |
| <i>Scott Hovey</i> | <i>YES</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>Malcolm Sandberg</i> | <i>YES</i> | | |

The Town Council entered into nonpublic session at 9:54 PM.

The Town Council entered into public session at 10:30 PM.

Arthur Grant MOVED to seal the minutes of nonpublic session. The motion was SECONDED by Annmarie Harris and PASSED unanimously.

XII. Adjourn

Chair Sandberg declared the meeting adjourned at 10:32 PM.

Darlene Dumais, Secretary