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**DURHAM TOWN COUNCIL MINUTES
MONDAY, AUGUST 19, 2002 – 7:00 P.M.
DURHAM TOWN HALL – COUNCIL CHAMBERS**

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

MEMBERS ABSENT: Katie Paine

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

I. Call to Order

Chair Sandberg called the meeting to order at 7:00 PM

II. Approval of Agenda

Annmarie Harris MOVED to approve the agenda. Peter Smith SECONDED the motion and it PASSED unanimously.

Arthur Grant MOVED to amend the agenda by adding the phrase “Effective September 1, 2002” to item VIII. C. on the Unanimous Consent Agenda. Annmarie Harris SECONDED the motion and it PASSED unanimously.

The motion to approve the agenda as amended PASSED unanimously.

III. Special Announcements

There were no special announcements

IV. Approval of Minutes

Minutes of August 5, 2002

Arthur Grant MOVED to approve the minutes of August 5, 2002 as presented. Annmarie Harris SECONDED the motion.

Arthur Grant stated that under item IX, paragraph 4, the word “they” should be changed to “The Council”

Chair Sandberg stated that on page 7, paragraph 3, the term “in lieu of” should be changed to “in case of.”

Pete Chinburg stated that, on page 7, the reference by Tom Johnson to the “International 2000 codes” should be verified for accuracy.

Annmarie Harris stated that on page 10 the line “endorsement of the building for a library” should be changed to “recommendation that the SAE building should be evaluated as a possible library site.”

Peter Smith MOVED to amend the minutes to include the discussed amendments. Mark Morong SECONDED the motion and it PASSED 7-0-1 (Mike Pazdon abstained as he was absent from the August 5, 2002 meeting)

The motion to approve the minutes as amended PASSED 7-0-1 (Mike Pazdon abstained as he was absent from the August 5, 2002 meeting)

Minutes of August 5, 2002 (nonpublic session)

Arthur Grant MOVED to approve the minutes from the nonpublic session on August 5, 2002. Annmarie Harris SECONDED the motion.

Chair Sandberg stated that in the 3rd paragraph the term “in lieu of” should be replaced with “in case of.”

The motion to approve the minutes PASSED 7-0-1 (Mike Pazdon abstained as he was absent from the August 5, 2002 meeting).

V. Report of Administrator

Administrator Selig reported on the following:

- There is a new assessing terminal in the foyer of the Town Offices at which people can access the assessments, and not have to interrupt the activities of the Planning Office.
- The Town and the University will be working together to plan a 9-11 remembrance event on Sept. 11, 2002. More details on the event will be available soon.
- Effective Sept. 1, 2002, the fines related to noise and open container violation Ordinances will be increased. This effort will offer additional revenue, but will also hopefully encourage more appropriate behavior.
- As a result of concerns raised by Bill Hall, resident, about the posting of firelanes in the town, Administrator Selig spoke to the Fire Chief who will be evaluating the town’s firelanes and appropriate signage for the firelanes.
- There will be 2 hearings by the Department of Environmental Services regarding the proposal for the USA Springs bottling plant in Barrington, to be held on Aug. 21 at 7 PM at the Barrington Elementary School, and on Aug. 29 at 7 PM at the Nottingham Elementary School.

- He spoke about the efforts by the Town and the University to inform the public and the students that there has not been a lot of rain and people should make an effort to conserve water. He stated that is a proactive measure and the water supply is not yet in a critical situation.
- He stated that resident Mary Miller, who had spoken before the Council about concerns she had with the assessing process, saw the Assessing program on DCAT which helped her better understand the process, and as a result called and invited the Assessor to come review her home.
- The Town is currently looking for an audit firm to conduct the 2002 audit, and they have posted a Request for Bid. He stated that any Council members who would like to participate in the bid proposal review process should let him know.
- There are still vacancies on the Parks and Recreation Committee, the Integrated Solid Waste Management Advisory Committee, the Historic District Commission, and the Strafford Regional Planning Commission. He stated that any community member interested in any of these positions should contact his office for an application.
- The Durham Day celebration will be held September 8, 2002.
- On Sat the Young Artist Showcase was held Downtown, and was sponsored by the MainStreet program, Channel 11, and Fosters Daily Democrat.
- On Aug. 29 the Durham, Lee and Madbury Police Departments will be holding a freshman lunch at the Oyster River High School in an effort to build bridges between the Police Departments and the students at the school.
- He states that members of the public who are having concerns that there might be too many students occupying a property, should contact the Code Enforcement Officer, Tom Johnson.
- UNH will be sponsoring activities for students called "Spice Up Your September" that are designed to provide alternate and appropriate activities on the weekends.
- He is trying to arrange a site walk of the SAE Fraternity building on Fri morning, Aug 23 for the members of the Trustees of the Library and interested members of Council.
- Last week at the grounds of the University there were 2 positive tests for coliform bacteria at Huddleston Hall and Fairchild Hall. He stated that the systems have been flushed and they are no longer testing positive.
- There will be paving work on Mill Road Aug. 20-23.
- The Town has been served with a lawsuit brought upon it by John Farrell, trustee of Spruce Wood Realty Trust. He stated that the suit names the Town, UNH, and Scott Construction, the contractor responsible for building the Lamprey River hard pipe project. He spoke briefly about the details of the suit.

In response to a question from Chair Sandberg, Administrator Selig stated that if it were that all the members of the Trustees of the Library would be attending the site walk, then the site walk would be posted to the public.

In response to a question from Peter Smith, Administrator Selig gave a brief update of the status of the SAE property. He stated the building is slated to be occupied for this year, so there will be more time to make a decision about this property.

Mark Morong asked if the Health Officer would be inspecting the SAE building, as it had been reported that the building was in poor condition. Administrator Selig stated that they won't allow the fraternity group to occupy the building until the health and safety issues are met.

VI. Reports and Comments of Councilors

Pete Chinburg stated that he has a correction to his last announcement of the Durham Rental Housing Commission meeting, and that the meeting will be on August 27th at 4:00 PM in the Council Chambers.

Mike Pazdon stated that they should confirm who gave the permit to Tom Johnson for the mosquito spraying. He stated that although it was reported that it was the DES, he believed the Department of Agriculture Pesticide Control Office gave out the permits.

Arthur Grant stated that the School Funding Formula Study Commission will have an organizational meeting on Aug 22, at 7:30 PM in the Council Chambers.

Mark Morong stated that he attended the meeting for the Inaugural Celebration by the University for Dr. Hart that will take place Nov. 21 and 22. He stated that the University would like the community to participate in and celebrate this event with them.

Scott Hovey announced that Durham Day at Wagon Hill will take place on Sunday, Sept. 8. He stated that it is free to Durham residents and Town employees.

Peter Smith stated that he feels that the Council should move forward with resolving the ATT Broadband cable access issue in the Town. He also congratulated Annmarie Harris on her daughter's achievements on the U.S. National Rowing Team as was reported in Foster's Daily Democrat.

Arthur Grant noted that he, Chair Sandberg, and 46 other Durham residents do not have access to the local community cable TV channel.

Scott Hovey stated that the air conditioning in the Council Chambers is making it difficult to hear what is going on during the Town's meetings televised on DCAT, and he is appalled that the Council is doing nothing to rectify the situation.

In response to a question from Mark Morong, Administrator Selig spoke further about the drought issue and the water conservation education effort.

Chair Sandberg extended thanks, on behalf of the Council and the community, to the effort made by the sponsors of the Young Artists Showcase.

VII. Public Comments

Maury Borovick, 50 Mill Road, spoke about issues he had with the financial management of the Town and how he felt the Council has not done a good job addressing those issues.

Ann Hart, 2 Garrison Ave, introduced herself as the new President of the University of New Hampshire.

Randy Hart, 2 Garrison Ave, introduced himself as Dr. Hart's husband, and spoke a few positive words of support for the Town.

Emma Rous, Adams Point Road, stated that she is a candidate for the NH House of Representative election and she wanted to be here this evening to hear the discussion between the Council and the Legislative Delegation.

Joe Miller, Burnham Ave, stated that he is a candidate for the NH House of Representatives election and is also here for the Council discussion with the Delegation.

Naida Kaen, State Rep for Lee & Madbury, introduced herself and stated that due to the redistricting she will be a candidate for Lee, Madbury, & Durham.

Bill Hall, Smith Park Lane, spoke about the water issue, stating that he did not think that there was a problem. He spoke about issues relating to the technical review of a loading zone near his property. He also issued a complaint about how the trash truck operators were being managed.

Betsy Horskin, Smith Park Lane, spoke about issues relating to the technical review of the loading zone on Smith Park Lane. She also issued a complaint about how the trash truck operators were being managed.

Peter Smith MOVED to amend the agenda to disregard the 8:00 PM time constraint on item XI. Unfinished Business. Mark Morong SECONDED the motion and it PASSED unanimously.

Mike Pazdon MOVED to amend the agenda to disregard the 10:00 PM time constraint on adjournment. Pete Chinburg SECONDED the motion and it FAILED 4-4 (Peter Smith, Arthur Grant, Scott Hovey, Chair Sandberg were opposed.)

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

- A. Shall the Town Council award the bid for painting the Foss Farm Road Water Tank to Target New England in the amount of \$76,400.00?
- B. Shall the Town award the bid for painting the Beech Hill Road Water Tank to F.A. Gray, Inc. in the amount of \$19,495.00?
- C. Shall the Town Council appoint Councilor Arthur Grant as its primary representative and Councilor Annmarie Harris as its alternate representative to the Planning Board effective September 1, 2002?

Scott Hovey requested that items VIII.A. and VIII.B be removed from the Unanimous Consent Agenda for discussion.

The motion to approve Unanimous Consent Agenda item VIII.C. PASSED unanimously.

Scott Hovey stated that he felt the extensive restrictions and specifications for projects to be bid on might be limiting the reasonability of bid prices and amount of bids the Town receives.

Pete Chinburg MOVED that the Town Council award bid #02-08, exterior painting of the Foss Farm water tank to Target New England of Wolfboro NH for a cost of \$76,400. These funds are to be paid out of account #07-4900-1015-999-02. Mark Morong SECONDED the motion.

Arthur Grant stated that although he agrees somewhat with Scott Hovey's comment, he noted that the Town received 6 bids for the project.

Pete Chinburg stated that he felt the restrictions were to insure a certain level of competence and compliance.

Administrator Selig stated that he felt that if the bid package were compared to what would be sent out by Dover, Somersworth or Portsmouth, it would be substantially similar. He stated that he believes the bid prices are very competitive.

The motion PASSED on a vote of 7-1 (Scott Hovey was opposed)

Mike Pazdon MOVED that the Durham Town Council award bid #20-09, exterior painting of the Beech Hill water tank to F.A. Gray of Portsmouth, New Hampshire for a cost of \$19,495. These funds are to be paid out of account #07-4900-1015-999-02. Mark Morong SECONDED the motion.

Scott Hovey stated that he disagreed with the statement in the Council communication about this bid, that the painting market is favorable. He stated that he did not know why this project was moved a year ahead of schedule in the CIP.

Administrator Selig stated that preliminary pricing yielded very competitive pricing, and as a result the assumption was made that it is a very favorable market.

The motion PASSED on a vote of 7-1 (Scott Hovey was opposed)

IX. Committee Appointments - Shall the Town Council appoint Laurel J. Adams and Jennifer Smith as alternate members to the Conservation Commission?

Administrator Selig spoke briefly about the 2 candidates for appointment to the Conservation Commission.

Mark Morong MOVED that the Durham Town Council appoint Laurel J. Adams as an alternate member to the Conservation Commission to fill the unexpired term of Bobbie Jean Weiler, said term to expire on March 31, 2004, and that the Durham Town Council appoint Jennifer Smith as an alternate member to the Conservation Commission to fill the unexpired term of Richard Hallett, said term to expire on March 31, 2003. Scott Hovey SECONDED the motion.

Arthur Grant noted that the resumes of these two individuals are outstanding in field of conservation and science.

Mark Morong asked why the two appointments were not separate agenda items. Chair Sandberg stated that the appointments could have been separated, but moving them together was a matter of efficiency.

Mike Pazdon suggested that they write in the specifications that the applicants should attend the meeting during which their appointment is considered so that the Council can meet them. Peter Smith stated that he strongly agreed with this suggestion.

The motion PASSED unanimously.

X. Meeting with Legislative Delegation - Discussion with Durham's legislative delegation on various issues of interest to the Town

Chair Sandberg gave some brief introductory remarks about this discussion

Representative Majorie Smith introduced herself, Representative Judith Spang, Representative Iris Estabrook, Representative Janet Wall, and Representative Naida Kaen. Each of the Representatives spoke about each of the various committees that they are involved with and what they do on each of these committees.

Administrator Selig asked the Delegates what the best way was to communicate with them about issues or legislation affecting the Town between the times when they meet with the Council.

Rep. Majorie Smith spoke about the Municipal Association and about the effort made by the Delegates to communicate with the Town, and stated that the Council has not communicated back to the Delegates about its interest in pending legislation.

Rep. Estabrook suggested that the Council have a policy to reach out the Delegates when there is discussion or an official position on any legislative matter.

Rep. Spang stated that she would caution the Council against relying exclusively on the Municipal Association to represent the Town's position.

Peter Smith stated that he felt the Town's position has been well supported and represented this year by the Municipal Association. He spoke about this year's proposals to the Municipal Association, and stated that they were primarily focused on issues related to the University. He

asked the Delegates, with regard to the Town's interest in legislative action, if they felt their role would be to be reactive to the Town's request or proactive in advance of the establishment of an official position by the Council.

Rep. Estabrook stated although she would like to carry out the wishes of the Council, she feels it would be more productive to be involved before the Council reaches a decision. She spoke about her reaction to the UNH Police issue that was part of the proposals to the Municipal Association.

Rep. Smith stated that the University system has approached the Delegation for support on legislature relating to the UNH Police Dept, and the Delegation had unanimously agreed to not do anything until they knew the position of UNH and the Town Council and until both UNH and the Council were in agreement.

Rep. Spang spoke about her perspective on relations with the University and representing the Town.

Administrator Selig spoke about the Council's interest in updating the Right to Know law. Chair Sandberg noted that this topic is scheduled as an agenda item in Sept.

Rep. Estabrook stated that she was aware that this is an agenda item and was glad to see that a study committee was proposed to review this matter.

Rep. Smith spoke about her concerns about the use of e-mail and how she believes it violates the public's right to know.

Rep. Wall spoke about a bill that will be coming out this year for a study of the Right to Know law.

Rep. Smith spoke about her current position on the UNH Police Department issue and the problem she had justifying the existence of 2 separate police departments.

In response to a question from Rep. Estabrook, Administrator Selig spoke further about the scheduled discussion about the use of email, and the Municipal Association proposals.

Peter Smith spoke about the proposal before the Municipal Association about the Right to Know law.

Mark Morong thanked the Delegation for meeting with the Council and spoke briefly about his understanding of the importance of the Delegation particularly with respect to relations between the Town and the University.

In response to a question from Pete Chinburg, Administrator Selig stated that he keeps a hard copy of any e-mails that are forwarded to all members of the Council.

Chair Sandberg declared a 5 minute recess at 9:05 PM.

XI. Unfinished Business

- A. **Public Hearing (Continued):** 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

Mark Morong recused himself from the discussions on both items XI.A and XI.B.

Pete Chinburg recused himself from the discussions on both items XI.A and XI.B

Mark Morong left the meeting at 9:12 PM.

Pete Chinburg left the meeting at 9:12 PM.

Judy Chandler, 87 Packers Falls Road, read a statement representing the majority, but not all of the Plaintiffs in the Aquifer Boundary Line adjustment litigation, supporting the proposed development.

Neil Niman, 10 Cold Spring Road, gave a detailed presentation about calculations he had made relating to the student per household multiplier utilized in the Fiscal impact summary. He spoke about the multiplier presented in the Master Plan and why it should not be used to calculate the number of students that this development will yield. He presented his calculations predicting the number of students generated by the development and compared those numbers with numbers the developer had provided. He also spoke about the data that he had derived his calculations from. He presented calculations that he had made regarding the possible fiscal impact caused by the development. He stated that the conclusion he has made from his calculations was that the development would have a substantial negative impact on the Town.

Peter Smith MOVED to continue the discussion until 10:30 PM. Annmarie Harris SECONDED the motion.

Arthur Grant stated it should be indicated that the Council will not be able to conduct business on item XI.B., Public Hearing on the Sprucewood Planned Unit Development, as there will not be a quorum present after Peter Smith recuses himself.

Mike Pazdon proposed the discussion only be continued for another 15 minutes.

Peter Smith and Annmarie Harris considered this a friendly amendment.

The motion PASSED unanimously.

Nancy Smath, 89 Packers Falls Road, read a letter on behalf of Vin Morgan that expressed his disagreement with the sentiment of Beth Olshansky's letter of Aug. 16, 2002. Mr.

Morgan wrote that he did not believe that this development proposal should be supported on the basis that it was the better alternative than the previously approved development. Ms. Smath stated that she had prepared information responding to Mr. McNeill's rebuttal to information she had presented. She distributed and submitted to the public record the document entitled "Response of the Opponents to Written Submissions and Oral Testimonies Submitted to the Town Council on July 8, 2002." She stated that many of the arguments that have been made in the submitted document would apply to the proposed PUD and CUP as well as to a conventional "cookie-cutter" subdivision. She spoke briefly about the issue of turnover housing in the Town.

Dave Doren, 135 Packers Falls Road, spoke in support of the proposed residential Planned Unit Development because he believed it would be the better option for this land that he feels will inevitably be developed.

Malcolm McNeill stated that he had met with the Superintendent to verify the representation by the developer about the school costs. He spoke about the proposed amendment by the Planning Board to the Zoning Ordinance regarding Planned Unit Developments and how it relates to this application.

Mike Pazdon MOVED to close the Public Hearing. Scott Hovey SECONDED the motion.

Mike Pazdon MOVED to extend the discussion for 10 minutes. Annmarie Harris SECONDED the motion and it PASSED unanimously.

Mike Pazdon stated that they should close the Public Hearing because he feels there has been enough public input on this application and any additional information the Council needs on the application can be obtained without having the Public Hearing open.

Peter Smith stated that he is opposed to closing the Public Hearing because information provided in the presentation by Mr. Niman needed to be further explored and discussed which would require the Public Hearing to be open.

Arthur Grant stated that the Public Hearing should not be closed as he feels there are questions the Council still wishes to ask Mr. McNeill, Mr. Chinburg and various other people.

Scott Hovey stated that he feels that they should close the Public Hearing and not hold up the process on this application any longer.

Chair Sandberg stated that he is not in support of closing the Public Hearing because a substantial amount of information has been presented during the meeting that he wants to have the opportunity to ask questions about.

Annmarie Harris stated that she would vote against closing the Public Hearing so that people can be heard who wish to ask questions.

The motion FAILED on a vote of 2-4 (Annmarie Harris, Chair Sandberg, Arthur Grant, Peter Smith were opposed)

Chair Sandberg stated that the Public Hearing on this application will be Continued until the Sept. 9, 2002 meeting.

XII. New Business (Beginning NLT 9:45)

There was no New Business

Nonpublic Session (if needed)

There was no nonpublic session required.

Adjourn (NLT 10:00 PM)

Peter Smith MOVED to adjourn. Arthur Grant SECONDED the motion and it PASSED unanimously.

The meeting adjourned at 10:27 PM