

**DURHAM TOWN COUNCIL MINUTES  
MONDAY, SEPTEMBER 23, 2002 – 7:00 P.M.  
DURHAM TOWN HALL – COUNCIL CHAMBERS**

**MEMBERS PRESENT:** Malcolm Sandberg, Chair; Arthur Grant; Peter Smith; Katie Paine; Mike Pazdon; Mark Morong; Pete Chinburg (arrived at 7:08 PM)

**MEMBERS ABSENT:** Annmarie Harris ; Scott Hovey

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

**I. Call to Order**

Chair Sandberg called the meeting to order at 7:04 PM. He stated that prior to the meeting the Town Council had been meeting with the Town Attorney per RSA 91(A).

**II. Approval of Agenda**

Administrator Selig stated that item IX.A, Application to amend Sprucewood Planned Unit Development Conditional Use Permit, under Unfinished Business, should be removed from the agenda. He stated that the applicant has requested postponement of this item, and noted that there would not be a quorum present to conduct business on this item.

*Katie Paine MOVED to approve the agenda, with item IX.A, Application to amend Sprucewood Planned Unit Development CUP, removed. Mike Pazdon SECONDED the motion and it PASSED unanimously.*

**III. Special Announcements**

Chair Sandberg stated that there were no special announcements.

**IV. Approval of Minutes**                      September 9, 2002

**Minutes from September 9, 2002**

*Katie Paine MOVED to approve, as presented, the minutes from September 9, 2002. Arthur Grant SECONDED the motion and it PASSED 5-0-1 (Mark Morong abstained because he was not present at the September 9, 2002 meeting)*

*Pete Chinburg joined the meeting at 7:08 PM*

**V. Report of Administrator**

Administrator Selig reported on the following:

- He spoke about the draft CIP that has been forwarded to the Planning Board and will be distributed to the Town Council.
- Last Friday the Assessment Office sent out to property owners the revised assessment numbers that are based on physical inspections that have been conducted this year. Any member of the public with questions or concerns about the revaluation should contact the Assessor Robb Dix at 868-8065. He spoke briefly about the two part assessment process that will continue through next year.
- The National League of Cities has designated this week as the 3<sup>rd</sup> Annual Race Equity week, and they are declaring this a time to reaffirm the national commitment to eliminating all forms of racism in U.S. communities.
- He spoke about the work going on at Wagon Hill Farm that is funded by a grant from the Department of Environmental Services and the Coastal Program.
- The Town was on the verge of declaring a water emergency at the end of last week, but there has fortunately been enough rain to forestall such action.
- The Seacoast Region Smart Growth Roundtable is scheduled for September 26, and locally known Planner Mike Eyerman will be presenting a lecture entitled “Smart Growth, What Does it Really Mean.”

In response to a question from Peter Smith, Administrator Selig spoke about the number of homes that did not have interior inspections, and how the assessor might estimate the value of the homes that he is not able to physically inspect the inside of.

Peter Smith stated that he was concerned that someone might be able to take advantage of the property tax system, through hindering proper assessment of their property. He stated that if there was a substantial number of people with their property incorrectly assessed, this could substantially effect other taxpayers.

Mark Morong asked if anything was being done in the Town to celebrate Race Equity Week. Administrator Selig stated that the Town does not have anything planned, but he was not sure what UNH might be doing.

## **VI. Reports and Comments of Councilors**

Mike Pazdon stated that the packet that was submitted for the Durham Ambulance Corps Statement was exemplary, and should be used as a model to others showing what is needed for a financial statement.

Katie Paine stated that in the future she would be reporting to the Council the changes the DCAT Governance Committee is proposing be made to its policies. She stated that there has been a request to run DCAT onto the UNH Campus, and she spoke about how this might be possible. She stated that there is a show on the Gundalow that should be done soon.

Arthur Grant stated that he was presented with a petition that was signed by 22 residents of Wiswall Road. He read the petition, which requested that the Department of Public Works prioritize the repair and repaving of Wiswall Road. He submitted the petition to Administrator Selig.

## **VII. Public Comments**

Donna Brown, 34 Edgewood Road, stated that she was part of a group of citizens that formed in response to a need to address issues impacting Durham neighborhoods. She spoke about the group's main concerns regarding the impact of students and student rentals off-campus. She spoke about what the group has done, since they formed in June, to communicate with the University and the Town about these issues. She spoke about the group's request that non owner occupied multi-family units and duplexes in residential neighborhoods be limited or banned. She stated that the group would like to Council to appoint a committee to investigate the issues that they are concerned with.

In response to a question from Chair Sandberg, Ms. Brown spoke about the distinction between owner-occupied properties with rentals, and non owner-occupied multi-family unit/duplex rentals.

Arthur Grant stated that Ms. Brown should request to make a presentation to the Zoning Rewrite Committee or the Planning Board.

Administrator Selig spoke about the meeting of representatives from university/college communities that will be taking place. He stated that there is an initiative by the Town and UNH to meet and address issues such as student rentals and student impact. He suggested that some of the concerned citizens group might be able to contribute to that process.

Peter Smith spoke about the importance of addressing the issues that Ms. Brown spoke about as the Zoning Rewrite is in progress.

Mark Morong stated that although the Zoning Rewrite is derived from the Master Plan, he believes that when the draft Zoning Ordinance comes before the public, there can still be changes that accommodate the interest of the public.

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

Mike Pazdon requested that both items on the Unanimous Consent agenda be removed for discussion.

- A. Shall the Town Council approve the nonindustrial discharge permit application for the UNH Dining Hall?

Administrator Selig spoke about the non-industrial sewer connection approval process, and the review that this permit application has had.

**Arthur Grant MOVED that the Durham Town Council approve the University of New Hampshire's application for a non-industrial wastewater discharge permit for connection/extension to the new dining hall located adjacent to the Memorial union Building and authorizes the Town Administrator to sign the approved Wastewater Permit. Mike Pazdon SECONDED the motion.**

Mike Pazdon spoke about his concerns with the environmental impact of drawing water from the Oyster River above the dam, and discharging the treated water back into the river below the dam. He stated that the University has grown substantially since 50 years ago when this technology was implemented. He stated that he would like there to be consideration of updating this process to one with less impact.

In response to a question from Peter Smith, Bob Levesque, Town Engineer, spoke about the changes that he requested regarding surface water drainage from dumpster runoff. At the request of Peter Smith, He spoke about the difference between an initial assessment and an increased assessment the applicant must pay, per Discharge Permit Application.

Peter Smith spoke about the issue he had with line 3 on the Permit Application, requiring the applicant to “pay initial assessment or increased assessment.”

Bob Levesque stated that as the new Zoning, Water, and Sewer Ordinances are developed, the application forms will have to be revised, and that will probably resolve the issue with the form. He stated that this application form is not the actual Permit.

Arthur Grant asked, if there is a means by which future demand vs. the capacity of the Wastewater Treatment Plant can be measured, is there a similar process to measure the increased demand on the water resources. Bob Levesque stated that the water resources are restricted by the State, and there is often an issue with supply during 3 months of the year and plenty of water the rest of the year. He stated that he believed that solutions to address this issue need to be explored.

Pete Chinburg stated that the “million” after “10,462,380” in the financial details was incorrect and should be removed.

In response to a question from Mark Morong, Bob Levesque stated that the increased flow in the application is the net increased flow.

***The motion PASSED unanimously.***

- B. Shall the Town Council award the bid to Charwill Construction for Phase III baseline improvements to the Wastewater Treatment Plant?

Administrator Selig spoke about the proposed improvement of the Wastewater Treatment Plant.

***Mike Pazdon MOVED that the Durham Town Council authorize the Town Administrator to enter into a contract with Charwill Construction, Inc. of Meredith, NH for \$2,376,577.00 to complete the installation of the Wastewater Treatment Facility Baseline Improvements with the expenditure to be paid from Capital Fund 07-5000-1000-999-00. Pete Chinburg SECONDED the motion.***

Mike Pazdon spoke about issues that he had with the focus of the proposed improvement the Wastewater Treatment Facility, the cost impact on sewer customers, and the details of

the bid. He stated that he would like to see the bid specifications before considering the bid.

***Mike Pazdon MOVED to postpone consideration of the bid by Charwill Construction, pending the receipt of greater detail on the bid. Arthur Grant SECONDED the motion.***

Mike Pazdon stated that he would also like more detail on how the rate will be affected.

Pete Chinburg stated that he believed that postponing this item is unnecessary, as the details of the bids have been well reviewed.

In response to a question from Arthur Grant, Administrator Selig stated that they have investigated all of the possible grants to help fund this project. He stated that a large portion of the funding will be acquired through the State Revolving Loan Fund.

Bob Levesque stated that if this item were postponed, they would have to request an extension of time for the award, and the contractor might withdraw the bid.

Administrator Selig stated that he is concerned that if they postpone this matter, the low bidder might reconsider, and try to rebid the project at a higher price based on the other bids.

***The motion to postpone FAILED 1-6 (Peter Smith, Mark Morong, Katie Paine, Arthur Grant, Chair Sandberg, Pete Chinburg were opposed)***

***The motion to enter into a contract with Charwill Construction, Inc. PASSED 6-1 (Mike Pazdon was opposed)***

***Arthur Grant MOVED that the Durham Town Council authorize the Town Administrator to enter into a contract with Wright Pierce of Topsham, ME for \$365,000.00 to complete the engineering construction supervision contract for the Wastewater Treatment Facility Baseline Improvements with the expenditure to be paid from Capital Fund 07-5000-1000-999-00. Katie Paine SECONDED the motion.***

Administrator Selig spoke about the previous work at the Wastewater Treatment Plant that Wright Pierce has done, and the bid they offered to do the proposed work.

***The motion PASSED unanimously.***

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

- B. Report from the Town Administrator on policing issues facing the Town of Durham and the University of New Hampshire

Administrator Selig gave a presentation of the Durham and UNH policing issue. He spoke about the history of policing in Durham and the 1977 agreement between the University and the Town. He spoke about the 1990 International Association of Chiefs of Policing Report and the findings of the 1991 Town/Gown Study Committee with regard to the policing issue. He spoke about the State of New Hampshire v. Steven

Diamond case that took place from 1999-2001. He spoke about the policing setup other four year Universities in New England have. He spoke about if there is justification for separate police department and if there is cost savings by creating one department. He spoke about the recommendations of the 2001 Policing Study Group. He spoke about his recommendation to the Council that separate police departments be established. He stated that he would recommend that the Council consider having a Public Hearing on this issue.

Mark Morong asked about how the accreditation would be enforced for a separate UNH Police Department. Administrator Selig spoke about the possibility of there being strong opposition to requiring accreditation. He stated that the UNH has expressed the intent to obtain accreditation for the separate force in the proposed agreement.

Katie Paine stated that she would like to know more about the financial impact and cost comparisons of the policing options.

Administrator Selig stated that Paul Beaudoin has some more information about the proposed costs, but UNH is not in agreement that they will save money by combining Police Departments. He stated that the University would have to hire more security officers if the departments are combined, and that will cost the University more money.

Chair Sandberg asked if there was data available to help the Council understand the types and number of law violations that occur on and off campus.

Paul Beaudoin stated that the information he has received from both Chiefs of Police is that the number of calls for service are about the same for on campus as they are for off-campus. He spoke about how he figured the prospective cost of a combined police force and some of gray areas there are in considering the cost breakdown. He stated that the issue with calculating the actual cost to the University is as a result of the fact that it augments its security force with UNH police officers. He stated that he calculated that the combine police department would have savings for the University, but this calculation does not include what it will cost the University to hire addition security officers.

Administrator Selig distributed copies of the campus arrest statistics for 1998,1999, and 2000. He stated that these statistics are for arrests on-campus as well as in a footprint around the campus area where there are large amounts of students living.

Chair Sandberg asked if there was a similar report for the Town that could be compared to the campus report. Administrator Selig stated that it would be difficult to compare the campus arrest report to the Town arrest report because the campus report encompasses areas that are not on UNH property. He spoke about the Cleary Act and why the UNH arrest report encompasses a “footprint” area of the campus, that is not necessarily part of the campus.

Peter Smith stated that he believes that the comparison of the two reports will not be helpful unless the Chiefs of Police can certify that the data provided is based on the same standards.

Pete Chinburg stated that he is concerned that the Council might get bogged down with information, and never have a chance to address broader issues that are relevant to this matter.

Mike Pazdon stated that he believes some structure needs to be established to guide the Council's process of resolving the policing issue.

Chair Sandberg stated that it seemed that there is a void in the report with respect to financial issues. He suggested that it might be beneficial to enumerate the specific issues on which additional information is needed.

Peter Smith stated that he believed the immediate focus of the discussion should be the Administrators report and requesting of additional information needed.

Administrator Selig stated that issue is that the level of law enforcement needed by the University is different than that which is needed by the Town. He stated that unless the University and the Town are able to agree on certain issues, that it will not be possible to have a unified report.

Peter Smith asked if there is any other data beyond what is reported, regarding the conclusions that the Policing Committee reached last year. Administrator Selig spoke about the Committee's process of reviewing the policing issue, and stated that their recommendations were not based on financial issues. He stated that he has communicated in his report the essence of the conclusions of the Policing Committee.

Peter Smith asked if in the Administrator's Report an effort was made to define the policing functions of the University Police Department in comparison to the Town Police Department. Administrator Selig stated that although the report does not address this issue, he has considered it. He stated that the UNH Police Officer's joint function is as a security officer and a police officer. He spoke about both the Town and the University's respective positions on the utilizing of UNH Police Officers to perform security duties. Peter Smith stated that he would like to have any data that elaborates on the position of the University on this issue.

Arthur Grant spoke about the policing function of the UNH Officers that he has observed. He stated that this illustrates that there is an issue with defining the level of service needed by the University or by the Town, and that this is as a result of the two departments having different perceptions.

*Chair Sandberg declared a 7 minute recess at 9:07 PM.*

Peter Smith asked if the premise of last years Study Committee was that neither the University nor the Town would have to bear a greater amount of the expense if the proposal was to unify the departments. Administrator Selig stated that under the premise that the Committee could not guarantee that a unified department would not result in additional costs, they proposed having separate departments. He spoke about

the Committee's consideration of the Fire Department arrangement in determining if the unified Police Department might cost the Town more money.

Administrator Selig stated that there has not been communication with the University about how the cost for a unified department would be divided.

***Arthur Grant MOVED that the Durham Town Council approve Resolution 2002-22 endorsing proposed legislation to be introduced to the General Court of the State of New Hampshire identified as Attachment 3 attached hereto, for the establishment of separate statutory policing authority for the University of New Hampshire Police Force on UNH owned or leased property, as recommended by the Administrator. There was no SECOND to the motion and therefore it FAILED.***

***Katie Paine MOVED that the Durham Town Council direct the Administrator to craft a resolution terminating the so-called 1977 Agreement conveying policing authority from the Durham Police Department to the University of New Hampshire Police Department within one calendar year of the date of passage of the resolution, and further direct the Administrator to take the necessary steps for the creation of a single police force that will serve the entire Durham community, to include ascertaining and obtaining fair and just compensation from the University of New Hampshire and/or the State of New Hampshire to recompense the Town of Durham for this added tax burden on behalf of the residents and taxpayers of the Town of Durham. Pete Chinburg SECONDED the motion.***

Pete Chinburg stated that he supports moving towards a unified police department because it is a more reasonable solution than having separate departments.

Mike Pazdon asked if there would be a way to accommodate public input in this process.

Chair Sandberg stated that if amendments can be made to the current motion to refine it, then the Council can consider postponing consideration of the motion pending the receipt of input through a public hearing.

Peter Smith stated that he agrees that there should be a public hearing on this issue. He stated that he does not believe that the case has been made to support having separate departments. He stated that he is having difficulty in being certain with the choice of a unified department as a result of the lack of reliable fiscal data. He spoke about the importance of the University and the Town's willingness to communication in determining the feasibility of a unified department. He stated that he would not support a unified department if it was believed that doing so would result in an increased financial burden on the Town.

Arthur Grant stated that if the departments were unified, it was proposed that 10 additional Officers would be added, compared to the 20 police officers that are currently on the UNH Police force. He stated that he is concerned that the University will later request that additional officers be added to the Police Force at the Town's



expense. He stated that he believes it is presumptuous of the Town to think that it can establish the level of service and security needed by the University.

Pete Chinburg spoke about questions he had with the costs that are incurred to efficiently run the two separate departments. He spoke about questions he had with the number of Security Officers that the University proposed it would need to hire if a unified department was created. He spoke about issues he had with the conclusions of last year's study committee regarding the belief that the unified department will strain Town/Gown relations.

Katie Paine stated that she believed that there is a better solution than having separate departments. She stated that the University and the Town are not entirely separate because the University is a part of and greatly impacts the Town. She stated that a solution needs to be sought as a unified community.

Peter Smith stated that he has concerns with the current motion, and he would like to modify some of the language in the motion. He spoke about issues he had with the language of the motion stipulating a timeframe and specific action to be taken towards the creation of a unified department. He stated he would later be supporting a motion to update the 1977 agreement as an interim measure.

***Peter Smith MOVED to amend the motion to read as such "The Durham Town Council hereby directs the Administrator to take the necessary steps for the creation of a single police department that will serve the entire Durham community and to develop with the University of New Hampshire an equitable cost sharing plan for that department." Mike Pazdon SECONDED the motion.***

Pete Chinburg stated that he believed that a time frame should be included in the motion to prevent a resolution of this issue from being forestalled for an excessive amount of time.

Peter Smith stated that he believes a time frame does not need to be stipulated because there is a strong interest by the Town and the University to resolve the policing issue.

Mike Pazdon suggested that the policing issue item stay on the agenda all the time under old business.

Administrator Selig stated that he is concerned, because if the motion is amended and it passes, the employees of the University Police Department will start to seek other employment. He stated that if the University Police Department dissolves, then the Town will be forced to police the UNH Campus.

***Pete Chinburg MOVED to extend the discussion for 10 minutes. Peter Smith SECONDED the motion and it PASSED unanimously.***

Mark Morong stated that he supports the proposed amendment and that he would like to have the opportunity to receive public input on the issue.

***The motion to amend PASSED 6-1. (Arthur Grant was opposed)***

***Arthur Grant MOVED that the Durham Town Council postpone further discussion on the amended motion pending the receipt of input from a public hearing. Mike Pazdon SECONDED the motion and it PASSED unanimously.***

***Peter Smith MOVED that the Durham Town Council authorize the Administrator to sign an updated Memorandum of Understanding titled, "Interim Law Enforcement Agreement," between the University of New Hampshire and the Town of Durham, conferring policing authority to University of New Hampshire police officers in the Town of Durham (Attachment 4). Mike Pazdon SECONDED the motion.***

Peter Smith stated that he proposed the updated Memorandum of Understanding as an interim matter. He reviewed changes that he suggested be made to the draft Interim Law Enforcement Services Agreement (attachment 4).

***Peter Smith MOVED to extend the discussion for 5 minutes. Mike Pazdon SECONDED the motion.***

Peter Smith reviewed additional changes that he suggested be made to the draft Interim Law Enforcement Services Agreement (attachment 4)

Chair Sandberg suggested that, considering the time, they might postpone a decision regarding the agreement until the next meeting. He suggested that Peter Smith discuss with the Administrator editorial changes, so the Administrator can incorporate such changes into the document for review at the next meeting.

***Peter Smith MOVED to postpone action on the Interim Law Enforcement Agreement until the next meeting. Pete Chinburg SECONDED the motion and it PASSED unanimously.***

**X. Nonpublic Session (if needed)**

There was no nonpublic session required.

**XI. Adjourn (NLT 10:00 PM)**

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

The meeting adjourned at 10:15 PM.