

These minutes were approved at the Monday, November 18, 2002 meeting

DURHAM TOWN COUNCIL MINUTES

OCTOBER 28, 2002

(CONTINUED OCTOBER 21, 2002 MEETING)

6:30 P.M.

TOWN COUNCIL CHAMBERS – DURHAM TOWN HALL

MEMBERS PRESENT: Malcolm Sandberg, Chair; Mark Morong
Arthur Grant; Annmarie Harris; Katie Paine;
Mike Pazdon (absent on October 21, 2002)

MEMBERS ABSENT: Scott Hovey (Mr. Hovey resigned from the
Council on October 23, 2002, effective
immediately;) Peter Smith, Pete Chinburg

OTHERS PRESENT: Todd Selig, Town Administrator; Mike
Lynch, Director of Public Works; David
Kurz, Police Chief; Interested members of
the public

I. Call to Order

Chair Sandberg called the meeting to order at 6:30 P.M.

II. Approval of Agenda

Arthur Grant MOVED to adopt the agenda. Annmarie Harris SECONDED the motion and it was unanimously APPROVED.

III. Nonpublic Session

Mike Pazdon MOVED to go into nonpublic session regarding land matters in accordance with RSA 91-A:3 (II) (d); which is the authorization to discuss the consideration of acquisition, sale or lease of real or personal property, which if discussed in public may benefit a party or parties whose interests are adverse to the general community. The motion was SECONDED by Annmarie Harris and was APPROVED on a ROLL CALL VOTE of 6-0 as follows:

Mike Pazdon: Aye.

Annmarie Harris: Aye.

Chair Sandberg: Aye.

Arthur Grant: Aye.

Katie Paine: Aye.

Mark Morong: Aye.

The Council entered nonpublic session at 6:43 P.M.

Katie Paine MOVED to re-enter public session. The motion was SECONDED by Arthur Grant and was APPROVED on a roll call vote of 6-0 as follows:

Mike Pazdon: Aye.

Annmarie Harris: Aye.

Chair Sandberg: Aye.

Arthur Grant: Aye.

Katie Paine: Aye.

Mark Morong: Aye.

The Council exited nonpublic session at 7:09 P.M.

Chair Sandberg called a recess at 7:10 P.M.

Chair Sandberg reconvened the meeting at 7:13 P.M.

Arthur Grant MOVED to seal the nonpublic session of the Monday, October 21, 2002 meeting (continued to Monday, October 28, 2002.) The motion was SECONDED by Mike Pazdon and was unanimously APPROVED.

IV. Special Announcements

Chair Sandberg stated Scott Hovey had resigned. Chair Sandberg suggested the Council place the acceptance of his resignation and declare a vacancy on the November 4, 2002 agenda and fill the vacancy at the following meeting. Chair Sandberg stated the citizen who fills the vacancy would serve until the March 2003 election.

V. Approval of Minutes

Katie Paine MOVED to adopt the October 7, 2002 minutes. The motion was SECONDED by Mark Morong.

The following changes were made to the October 7, 2002 minutes:

Page 3, 3rd paragraph which begins "Mark Morong stated" the word "conference" was changed to "meeting."

Page 5, 2nd paragraph from the bottom which begins “Katie Harris MOVED” the word “Harris” was changed to “Paine.”

Chair Sandberg MOVED to put in the minutes the complete discussion held by the Council on the PUD and CUP. The motion was SECONDED by Arthur Grant and was unanimously APPROVED.

Arthur Grant MOVED to postpone adopting the minutes until the Council receives a revised version of the minutes. The motion was SECONDED by Katie Paine and was unanimously APPROVED.

VI. Report of the Administrator

Administrator Selig reported on the following:

The Town has received an AA 3 bond rating from Moody’s Investment Services that is reflective of the healthy fiscal condition of the Town.

If the Council authorized Administrator Selig to sign a revised Interim Law Enforcement Services Agreement between the Town and UNH, it would not eliminate the need for a public hearing but it would update the 1977 agreement.

Administrator Selig and Fire Chief Ron O’Keefe attended a budgetary meeting of the Town Ambulance Corps two weeks ago with other representatives from Lee, Madbury and UNH. The Town’s share of the budget will be in the Administrator’s 2003 proposed budget the Council will receive next week.

The Council will receive the Administrator’s proposed 2003 budget and the 2003-2012 Capital Improvement Plan at the November 4, 2002 meeting.

The judge in the law suit regarding John H. Farrell has approved the Town’s motion to dismiss.

Elections will be on November 5, 2002. Candidates have been putting signs along Town right-of-ways. Signs can only be on private property and must meet size restrictions.

The Department of Public Works will be placing a sign at the Mill Pond which will read “Do not feed the wildlife/water fowl. Help Preserve the Health of the Pond.”

The next Municipal Law Lecture Series will be on Wednesday at 7 P.M. The discussion will center on smart growth and growth management.

The Department of Public Works has completely resurfaced a section of Wiswall Bridge and Wiswall Road after receiving a petition from citizens to improve these items. More improvements to the bridge are listed in the Capital Improvement Plan for 2004.

The State Department of Transportation has placed the Bennett Road Bridge under construction. It is scheduled to reopen on November 18, 2002. The Town, for planning purposes only, has scheduled an overhaul of Bennett Road Bridge for 2012 but the Council is not sure it will accept the bridge from the State. The Town does not, at present, have plans to replace the bridge with something else.

The Town is planning to go to Strafford County Superior Court on Thursday, 9 A.M. regarding the Jenkins Court case.

The Police Department has distributed its community survey. There is a sticker on the form that lists who is returning it but citizens can take the sticker off.

Eagle Scout candidate Brian Collopy has created American flag collection sites in Town to have citizens deposit their used American flags. Mr. Collopy will perform an appropriate disposal ceremony on Veterans Day.

VII. Reports and Comments of Councilors

Katie Paine stated the DCAT Committee has a vacancy. She stated Oyster River High School students will be putting on various programs. This month, they are holding a State Representative candidates debate. Other programs may include the revaluations and the budget. The Committee is looking at changes in its DCAT procedure.

In response to a question from Mark Morong, Administrator Selig stated Mike Lynch has been working with Public Service regarding the clearing of trees on Durham Point Road.

Mike Lynch stated the trees will be cut to the ground.

Arthur Grant stated the Planning Board has a vacancy for an alternate member. Applications can be picked up in the Administrator's office.

Annmari Harris stated it costs the Town \$3.00 per bag when citizens put their leaves out on the curb. She suggested composting the leaves or putting them in biodegradable bags.

VIII. Public Comments

Chair Sandberg stated there were no public comments.

IX. Unanimous Consent Agenda

- A. Shall the Town Council approve and sign the water and sewer warrant for the fall of 2002?

- B. Shall the Town Council approve water and sewer abatements for the spring 2002 billing and refund a customer for incorrect billing since the fall of 2000?
- C. Action on Resolution #2002-13 establishing the policy for naming public facilities, trails, forests or trees
- D. Shall the Town Council accept the accounting firm Plodzik and Sanderson to provide the Town with auditing services for the next three years as recommended by the Auditor Selection Review Team?
- E. Shall the Town Council authorize the Town Administrator to sign the draft police Memorandum of Understanding dated October 16, 2002, titled "Interim Law Enforcement Services Agreement" to supersede the so-called August 8, 1977 Agreement between the Durham and UNH, conferring policing authority from the Durham to UNH police officers in Durham?

In response to a question from Arthur Grant regarding item D, Administrator Selig stated the audit, that would be done in the third year of the contract, would remain open as to its scope if Administrator Selig signed the agreement.

The Council unanimously APPROVED items A. through E.

X. Unfinished Business

- A. First Reading: Ordinance #2002-09 repealing Chapters 43 and 118 of the Town code and establishing a new Chapter 118 entitled "Solid Waste" which will implement changes to the Solid Waste Program

Administrator Selig stated the ordinance would change the cost of permits from \$5.00 a year to \$25.00 a year. A citizen would receive two coupons with a permit purchase. The Town would require an electronic/appliance sticker at a cost of \$10.00 per item to dispose of them properly. There would be a required temporary construction permit at a cost of \$50.00. The permit would be valid for six days from the date of issuance. The ordinance would call for a landscaper's temporary permit. The permit would be free as long as it was given to a citizen of Durham or a taxpayer. Mr. Selig stated it has been estimated that the \$25.00 permit fee would offset the cost of bulky waste items brought to the Transfer Station.

Mr. Selig stated the Town would be taking two older ordinances and consolidating them into one to make it easier for people to find out what the rules are. At the same time, the Town would be modernizing the ordinance and making it easier to use.

Mr. Selig stated the ordinance addresses the terrible aesthetic state of some of the housing provided by UNH and at some large apartment buildings. The ordinance would impose fines to property owners who do not keep their property clean, and the ordinance requires the screening of containers that hold solid waste in the community.

Mr. Selig stated all of the rules, regulations and procedures in the ordinance would only be effective upon consent from the Council, including any changes. The fees are included in the Administrative regulations and are not in the ordinance itself.

In response to a question from Arthur Grant, Administrator Selig stated the Town provides each building with two 30 gallon containers for recycling.

Mark Morong stated he believed the ordinance read that anyone living in an apartment in Town could claim to be a resident. He stated regarding a married couple, each person could purchase a permit.

Administrator Selig stated an earlier version of the ordinance indicated that only Town taxpayers could purchase a permit but the wording was changed to accommodate single families renting a house, as was the advice from the Town attorney. Regarding UNH students and those that live in an apartment, the Town will utilize the same criteria used for elections to determine if a person is a citizen of the Town. If they are found to be a citizen, a permit will be issued. Mr. Selig stated there was no downside to UNH students purchasing a permit, as they will still be paying \$25.

Mr. Selig stated there was nothing in the ordinance to stop an apartment owner from trying to save money by asking tenants, such as students, to purchase more permits for them but that the tenants would be committing perjury during the criteria process if they were not from Durham.

In response to a question from Mark Morong, Administrator Selig stated while a person may bring in a ton of items to the Transfer Station for the cost of a \$25 permit, not everyone brings in such a large amount.

In response to a question from Chair Sandberg, Administrator Selig stated there was no guarantee when someone brings items to the Swap Shop that they will be taken away by someone else. If the items are not taken, the Town is left with the responsibility of disposing of them. The Swap Shop will still take the person's coupon and Mr. Selig stated it would be better for a taxpayer if they waited until they had many items to bring to the station, and not only one.

Mike Pazdon stated he could not support having an attendant at the Transfer Station deciding what level of trash a person has. There should be criteria set.

In response to a question from Mark Morong, Mike Lynch stated a homeowner could pass on a coupon to a contractor doing a legitimate job but the price difference in the coupons and temporary construction permit is there to confine contractors suspected of doing work out of Town but trying to use the Transfer Station. He stated the only time the coupons would be collected is when bulky items are dropped off that most likely would not be picked up by someone else.

Chair Sandberg stated he would like to see consistency as to when a coupon would be needed. He believed, as the ordinance was now written, it would cost more to dispose of smaller items than it would bulky ones.

Katie Paine MOVED to endorse the proposed new solid waste fee schedule, hold a first reading for the proposed revised "Solid Waste" ordinance and to schedule a public hearing. The motion was SECONDED by Mike Pazdon.

Annmarie Harris stated she would like the ordinance to be used in the interim while the Town looks into purchasing a weight device to measure the amount of trash brought into the Transfer Station.

The motion was unanimously APPROVED.

- B. Action on Ordinance #2002-11 amending certain portions of Chapter 153 "Vehicles and Traffic" Section 153-29 "Metered Parking areas" of the Town Code by increasing the current parking meter fees from \$1.00 per hour to \$1.50 per hour

Administrator Selig stated the ordinance would increase the hourly rate of parking to increase Town revenue, reduce the number of hours someone can park in the Pettee Brook parking lot from 12 hours to 2 hours, and it eliminates references to the business permit system. He stated the ordinance was conceived partly due to the changes UNH is making in its own parking permit system.

Annmarie Harris MOVED to adopt ordinance #2002-11 as presented. The motion was SECONDED by Mike Pazdon.

Katie Paine stated she did not agree with the increased parking fee but agreed with reducing the time allowed for parking in the Pettee Brook lot.

Mike Pazdon stated he would support an amendment to not increase the parking fees but keeping the reduction of parking time in the Pettee Brook lot.

Mark Morong stated he, as well, could not support the fee increase but did support the shortening of parking time. He stated the Town could look at not only shortening the time in the Pettee Brook lot but in the Store 24 lot, from an hour to 45 minutes. Town revenue could be enhanced by increasing the fine for parking too long.

Arthur Grant stated he believed the fee increase was a little high but he supported the rest of the ordinance.

Administrator Selig stated the Council could amend the ordinance to eliminate the fee increase and maintain the current rate, or the Council could strike all references to the cost rate in the ordinance. The Council could set the rate through a resolution and could, each year, adjust the rate in the Town fee structure.

Chair Sandberg stated if the Council changed the rate through resolution, a public hearing would not be required but the public would still have a chance to speak to it, as the resolution would be on the agenda and would be a part of the budget process.

Arthur Grant MOVED to have Administrator Selig rework the ordinance and take into consideration the Council discussion. The motion was SECONDED by Katie Paine.

In response to a question from Mark Morong, Administrator Selig stated if the Town increased the cost of parking tickets, UNH students and others may be more reluctant to pay for them and the Town would have to figure out how to track down all of these people.

Chair Sandberg stated he had no problem with the increased parking fee in the ordinance. He stated at the public hearing there was no one from the business community that had strong objections to the fees.

In response to a question from Annmarie Harris, David Kurz stated the business community did not want meters in the Store 24 parking lot. The business community sees the lot as where the turnover is. He stated the other metered areas in Town are being used mostly by those outside of the business community.

In response to a question from Chair Sandberg, Administrator Selig stated he could modify the ordinance and draft a resolution that would affect parking times and rates.

The motion was unanimously APPROVED.

- C. Action on Ordinance #2002-12 amending Chapter 153 "Vehicles and Traffic"
Article IV "Metered Parking" of the Town Code by creating Section 153-30 entitled "Business Permit Parking Areas" and initiating a parking permit system on a portion of Madbury Road, Cowell Drive and Pettee Brook Road parking lots

Administrator Selig stated the ordinance would establish a business permit system and would establish the east side of Madbury Road, the north side of Cowell Drive and the east and west sides of Pettee Brook Lane parking lots as business parking permitted parking only. For parking along Madbury Road the cost of a permit would be \$100 a year and the cost for parking in the Pettee Brook Road lots and Cowell Drive would be \$125 a year. Administrator Selig stated employees of the Agricultural Department, housed on the second floor of the Post Office, have expressed concerns about the ordinance. Most of the employees are parking along Cowell Drive. Currently, anybody may park on Cowell Drive but with the ordinance the employees would only have to compete with other permit holders.

Administrator Selig stated the employees currently park for free and he suspected they did not want to have to pay for a permit. He reminded the Council that enhancing revenue was the intention of the ordinance and that the Post Office is tax exempt.

Mike Pazdon MOVED to adopt ordinance #2002-12 amending Chapter 153 “Vehicles and Traffic” Article IV “Metered Parking” of the Town Code by creating Section 153-30 entitled “Business Permit parking Areas” and initiating a parking permit system on a portion of Madbury Road, Cowell Drive and Pettee Brook Road parking lots. The motion was SECONDED by Katie Paine.

In response to a question from Arthur Grant, David Kurz stated a handicapped space could be provided on Cowell Drive.

Chief Kurz stated on November 1, 2002, the ordinance preventing overnight parking in the permit areas goes into affect for the winter but overnight parking is allowed in the permit areas during the summer.

Administrator Selig stated the permits are only valid from 6:00-12:00 A.M.

Arthur Grant stated people who park overnight on Cowell Drive and Madbury Road are tying up parking spaces for those coming to work early in the morning.

Chief Kurz stated anyone without a parking permit at 6:00 A.M. would be eligible for a ticket but officers may not be able to ticket cars right at that time.

Chief Kurz suggested reviewing the ordinance that does not allow parking at any time of the year on certain streets to see if changes should be made.

Katie Paine stated the permit area was not big and if tickets were enforced, people would understand not to park there.

In response to a question from Chair Sandberg, David Kurz stated the ordinance would give exclusive parking to permit holders for Cowell Drive and Madbury Road, and would exclude everyone else.

Chair Sandberg suggested the Town remove 28 spaces that are useable by the “hunters” searching for a parking space. If the spaces were excluded from the “hunting grounds,” the unmetered strip on the left side of Pettee Brook Lane could become open “hunting ground” and that may be more tolerable to those without a permit. He stated meters would have to be built on that side of Pettee Brook Lane with the same time limit as the others. It would be easier for those coming to Town to do their business if the permit holders were more outlined.

Administrator Selig stated the ordinance increases the number of permit spots and the number of permits provided but if the Town did not increase the number of issued permits, it would free up more spaces in the Pettee Brook lot. If spots were still not being utilized, the Council could then decide to increase the number of issued permits.

In response to a question from Chair Sandberg, Administrator Selig stated the ordinance does not determine how many permits the Town is issuing but the administrative rules do. If the ordinance is approved, the number of permits issued for parking in the Pettee Brook lot and along Cowell Drive would increase from 90 to 110. The number of permits for Madbury Road would increase to 25.

Mark Morong stated he did not believe \$125 for a permit was that much more, as it increased the number of permit holder spaces and the spaces were in better locations.

Administrator Selig stated \$125 for a permit was a low number and the Town could continue to increase it but to increase the price to \$150 or more, currently, was too steep.

Annmari Harris stated relative to what other towns charge, \$125 for a parking permit was too low.

The motion was unanimously APPROVED.

Chair Sandberg called for a five minute recess at 9:00 P.M.

Chair Sandberg reconvened the meeting at 9:06 P.M.

XI. New Business

A. Presentation by Scott Mitchell representing Harold Smith, owner of the Route 108 Sunoco property

Administrator Selig stated the Town has been trying to reach a decision on if it will purchase all or part of the property, if the Town has no interest in the property, or if the Town should swap land for the property.

Scott Mitchell stated he has been hired by Harold Smith to market the property. Irving Oil has become interested in reconstructing a gas station on the property. Mr. Mitchell stated if the Town decides to allow Irving Oil to develop a gas station, they will try to work with the Town to somehow create parking for the court house.

Mr. Mitchell gave an overview of the Irving Oil gas station projects completed in other towns. He stated Irving Oil would be willing to work with the Town to create the right atmosphere for the gas station.

In response to a question from Mike Pazdon, Mr. Mitchell stated the easement on Route 108 would be an active driveway that would be utilized by both Irving Oil and the Town.

In response to a question by Mark Morong, Mr. Mitchell stated it was a possibility that the right-of-way could be moved to be in between both Town property and the Sunoco property to be used by both.

Mr. Mitchell stated Irving Oil has never done a brick face store but that it may look attractive in Durham.

Mr. Mitchell gave an overview of what the gas station would look like in Town and what it would look like if the Town chose to swap its property for part of the Sunoco property. The property the Town would swap would be the shed area next to Town Hall, which would include the Oyster River Youth Association building and the old Public Works open bay garage.

In response to a question from Katie Paine, Administrator Selig stated the Town would gain parking if the swap took place but it would have to find new locations for the salt shed and the Oyster River Youth Association.

In response to a question from Arthur Grant, Mr. Mitchell stated the width of the right-of-way was 30 feet but it may be able to be narrowed down to 24 feet.

In response to a question from Mark Morong, Mike Lynch stated if the salt shed was moved to the Department of Public Works, an issue would be the locked gate and they would have to find a way to provide access for the public to the shed.

Scott Mitchell stated Irving Oil would like to have a minimum of one acre of land to develop and maintain its business on the property. He stated one acre of property is what Irving Oil's current proposal calls for.

In response to a question from Administrator Selig, Mr. Mitchell stated it was his desire to work with the Town to provide parking for the court house and Irving Oil has approved the layout of the property and the division of land if a swap should take place. Mr. Mitchell stated Irving Oil would not negotiate with the Town if it acquired the parcel of land but eliminated the right-of-way. He believed the value of the property would change greatly without the right-of-way.

In response to a question from Mark Morong, Mr. Mitchell stated without counting the land, it would most likely cost Irving Oil \$1.5 million to build the gas station.

In response to a question from Administrator Selig, Mr. Mitchell stated Irving Oil will work with the Town when it came to architectural design but Irving Oil would not allow the Town to dictate to them how everything on the property would look.

B. Other Business

Chair Sandberg stated there was no other business.

XII. Nonpublic Session

Arthur Grant MOVED for the Council to move into nonpublic session regarding land matters in accordance with RSA 91-A:3 (II) (d), which is the consideration of the acquisition, sale or lease of real or personal property, which if discussed in public would likely benefit a party or parties whose interests are adverse to those of the general community. The motion was SECONDED by Mike Pazdon and was APPROVED on a roll call vote of 6-0 as follows:

Mike Pazdon: Aye.

Arthur Grant: Aye.

Annmarie Harris: Aye.

Katie Paine: Aye.

Mark Morong: Aye.

Chair Sandberg: Aye.

The Council entered nonpublic session at 9:35 P.M.

Arthur Grant MOVED to re-enter public session. The motion was SECONDED by Katie Paine and was APPROVED on a roll call vote as follows:

Mike Pazdon: Aye.

Arthur Grant: Aye.

Annmarie Harris: Aye.

Katie Paine: Aye.

Mark Morong: Aye.

Chair Sandberg: Aye.

The Council exited nonpublic session at 9:58 P.M.

Arthur Grant MOVED to seal the minutes of the October 21, 2002 (continued to October 28, 2002) nonpublic session. The motion was SECONDED by Katie Paine and was unanimously APPROVED.

Mike Pazdon MOVED to ADJOURN the meeting. The motion was SECONDED by Katie Paine and was unanimously APPROVED.

The meeting ADJOURNED at 10:03 P.M.

Michael Bornstein, Minute Taker