

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

**DURHAM TOWN COUNCIL MINUTES  
NOVEMBER 4, 2002 – 7:00 P.M.  
DURHAM TOWN HALL – COUNCIL CHAMBERS**

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

**OTHERS PRESENT:** Todd Selig, Town Administrator; Mike  
Lynch, Director of Public Works; Jim  
Campbell, Town Planner; David Kurz;  
Police Chief; Ron O’Keefe, Fire Chief;  
Paul Beaudoin, Business Manager; Tom  
Johnson, Code Enforcement Officer;  
Interested members of the public

**I. Call to Order**

Chair Sandberg called the meeting to order at 7:07 P.M.

**II. Approval of agenda**

***Katie Paine MOVED to adopt the agenda as written. The motion was SECONDED by Peter Smith and was unanimously APPROVED.***

**III. Special Announcements**

Chair Sandberg stated there were no special announcements.

**IV. Approval of Minutes**

***Arthur Grant MOVED to adopt the October 7, 2002 minutes as written. The motion was SECONDED by Mark Morong.***

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

Page 6, 4<sup>th</sup> paragraph which begins “Beth Olshansky stated” the word “currant” was changed to “current.”

Page 8, 4<sup>th</sup> paragraph which begins “Mr. Selig stated” the word “permit” was inserted after the word “business.”

***Arthur Grant MOVED that approval of the October 7, 2002 minutes be postponed until the transcription of the CUP and PUD portion of the minutes was revised and proofread. The motion was SECONDED by Pete Chinburg and was unanimously APPROVED.***

V. Report of the Administrator

Administrator Selig reported on the following:

On Thursday, November 7, 2002 at 4:00 P.M., UNH will be opening its newest residence hall, Eugene S. Mills Hall.

The American Legion is trying to reorganize a Durham post. More information will be forthcoming.

On Wednesday, November 6, 2002 from 8:30 A.M.-2:00 P.M., John Parson's class will be helping the Department of Public Works plant trees along the shoreline at Wagon Hill Farm.

The Town received a complaint three weeks ago from a citizen who unexpectedly came across the UNH Marching Band on Main Street. The marching has been on-going since 1996 each time UNH has a home game. Mr. Selig stated his opinion that UNH should seek a parade permit for the event but due to short notice, he has approved parades for November 9, 2002 and November 16, 2002. On those days, citizens should avoid the stretch of roadway on Main Street that passes through UNH from 11:30 A.M.-12:00 P.M.

There is an alternate vacancy on the Planning Board. Interested citizens may pick up forms at Town Hall.

There is a vacancy on the Town Council. Interested citizens may pick up forms at the Town Hall.

The Town is working on starting a newsletter.

The election polls will be open from 8:00 A.M.-7:00 P.M. at Oyster River High School.

VI. Reports and Comments of Councilors

In response to a question from Mark Morong, Administrator Selig stated regarding the UNH parades that the Council will approve one permit that will cover all of the parades for the year.

Katie Paine stated there is a vacancy on the DCAT Committee. Interested citizens may pick up forms in the Town Hall.

## VII. Public Comments

Scott Knightly, 25 Park Court, read a letter from Dorothy True, 21 Park Court, which was in favor of stop signs in Park Court. Mr. Knightly stated he, too, favored the installing of stop signs in Park Court.

John Aber, 4 Sumac Lane, stated he was in favor of the Town obtaining all of the Route 108 Sunoco property and that the property may serve as the Town's last chance for a Town center.

Bill Schoonmaker, 24 Mill Road, stated if the Town could not purchase all of the Route 108 Sunoco property for Town use, the Council should consider giving citizens a chance to sit down with the Town to discuss what part of the property would serve the Town best.

Dee Grant, 261 Mast Road, stated a major concern to the Town is that prohibiting liquor sales under current zoning regulations could have the Town end up in court at a cost to taxpayers. She asked what controlling 500 rioters on Main Street cost the taxpayers and she was concerned about injuries. She stated the November 1, 2002 disturbance began at 1:00 A.M. when the businesses that serve alcohol closed. Ms. Grant stated a proposed addition to the Liquor Commission's list of consideration for granting a liquor license is the inclusion of Town zoning laws and she believed to remove the standing Town ordinance before the State prepares new language is premature. She stated the Town should be concerned about the message sent to UNH students if Town sanctioned and unregulated expansions of available alcohol sales locations are allowed.

Rob Wyand, 20 Sumac Lane, member of the Canney Farms Association, stated the Traffic Safety Committee changed the proposal the Association provided regarding stop signs. Mr. Wyand stated it should be changed back and he will be presenting evidence as to why at the public hearing regarding the stop signs.

## VIII. Unanimous Consent

- A. Shall the Town Council accept the resignation of Councilor Scott Hovey, express its sincere appreciation to Councilor Hovey for his devoted service to the Town and declare the vacancy of this position to be filled by a qualified citizen by appointment, on November 18, 2002 in accordance with the Durham Town Charter?
- B. Shall the Town Council accept the industrial sewer connection permit application submitted by Heidelberg Harris and refer the application to the Water, Wastewater and Solid Waste Committee for its recommendation and public hearing?

***The Council unanimously adopted both items.***

IX. Unfinished Business

- A. Action on Ordinance #2002-10: Amending various sections of Chapter 175 “Zoning” in the Durham Town Code by deleting references to the sale of alcoholic beverages in various zoning districts of the Town

AND

Resolution #2002-24: Adopting the process and application form for reviewing applications submitted by establishments applying for state liquor licenses and authorizing the Town Administrator to periodically review and amend said application form as necessary

Administrator Selig stated it was his opinion that the Town’s zoning regulations are preempted by State regulations. He recommended the Council strike references within the Zoning Ordinance to the sale of alcohol and replace them with an application process that would let the Town decide if the location of the sales would be appropriate. The Town would look at the nature of the business and neighborhood, the number of businesses in the community, if the establishment would be in compliance with regulations within the community, how transportation would be affected, what fiscal impact the establishment would have and if the Town would have to provide any services. The application is in the form of a checklist and the Code Enforcement Officer, Town Planner, Police Chief, Fire Chief, Public Works Director and the Town Assessor would sign it. The completed application would be sent to the State for consideration.

***Mike Pazdon MOVED to adopt Ordinance #2002-10 as presented amending Chapter 175 “Zoning,” Sections 175-29 (C) (20,) 175-30 (d) (9,) and 175-31 (C) (18) of the Durham Town Code by deleting references to the sale of alcohol in various zoning districts of the Town. The motion was SECONDED by Pete Chinburg.***

In response to a question from Arthur Grant, Administrative Selig stated there were no prohibitions in the residential zone. If there was an application to sell alcohol in the residential zone the Town would argue why it would be inappropriate for any business to be in that district.

Arthur Grant stated the proposed Zoning Ordinance calls for 15 different districts but only 3 would be residential districts. He stated it was his opinion that language could be proposed in the Zoning Ordinance that would provide for the orderly control of selling alcohol but without completed zoning criteria, it will be difficult to determine what falls under acceptance in a residential district and what does not. Mr. Grant stated he believed to adopt the ordinance would be premature.

In response to a question from Chair Sandberg, Arthur Grant stated he believed Country Clubs and alcohol are permitted in the residential district under the current Zoning Ordinance.

In response to a question from Katie Paine, Administrator Selig stated while the Town may want to address in the Zoning Ordinance where it is appropriate to sell alcohol, it would still be preempted by the State and it may be better to decide such things as if the Town wants retail sales on Route 108.

Peter Smith stated it was the belief of the State Supreme Court that regulations by Towns are preempted by the State, and as that is State law, the Town must abide by it. He stated to solve the issues regarding alcohol in Town the Council will have to go beyond measures of influencing who in Town receives a liquor license and more work with UNH needs to take place.

Administrator Selig stated the State wants to make it clear that it will have the final word regarding the granting of liquor licenses and is giving thought to the other issues with alcohol that surround Durham.

In response to a question from Chair Sandberg, Administrator Selig stated he was unclear if the Town became a dry Town, as it once was, if that would revoke the existing licenses or if they would be vested.

Arthur Grant stated he was urging the Council to use every means possible to control the number of establishments in Town that sell alcohol but that he was not advocating a dry Town.

In response to a question from Arthur Grant, Administrator Selig stated he did not believe the Town could prohibit the sale of alcohol but could carefully dictate what kind of uses would be allowed in certain districts.

Mark Morong stated he did not want good restaurants considering opening in Town to be turned off by the ordinance and that he wanted to see more good restaurants and less pizza places.

Annmarie Harris stated that she wished the Zoning Re-write Committee was further along before the Council gave the ordinance consideration.

Chair Sandberg stated that if the ordinance changes, the Zoning Re-write Committee may want to rethink its approach.

Peter Smith stated changing the ordinance gives the Planning Board the opportunity to make adjustments in the proposed Zoning Codes. By law, the Planning Board must take the ordinance under consideration.

Arthur Grant stated that if the language is removed from the ordinance, the present establishments are still vested and every district would become open to the sale of alcohol.

Peter Smith stated that the Town needs to write a new Zoning Code that complies with the law and go from there.

***The ordinance was ADOPTED with a vote of 5-3 (Arthur Grant, Katie Paine and Annmarie Harris voting against.)***

***Mike Pazdon MOVED to adopt Resolution #2002-24, adopting the process and application form for reviewing applications submitted by establishments applying for State liquor licenses and authorizing the Town Administrator to periodically review and amend said application form as necessary. The motion was SECONDED by Peter Smith.***

Peter Smith stated his opinion that the resolution did not interfere with the State's preemptive authority yet it allowed the Town to gather information to present to the State.

***Katie Paine MOVED to amend the motion to require a public hearing before any application is completed and the minutes from the public hearing be attached to the application. The motion was SECONDED by Arthur Grant.***

Administrator Selig stated he could amend the Town's application process based on the outcome of the State's rule making process but he was concerned about the requirement of the applicant to notify the Town of their intent 14 days prior to submitting the request to the State, as there was no guarantee the State would require an applicant to notify the Town 14 days before a meeting with the Liquor Commission. He stated the most current proposed rules from the Liquor Commission he had seen required the State, once it had been notified of an application, to send a certified letter to the Town, giving the Town 10 days to respond. The Town has requested the State extend that response time to 14 days but if a public hearing is held the Town would not have enough time to send input on an application to the State.

Peter Smith stated he believed it was appropriate for the Town to hold a public hearing on the resolution itself but not on each application.

Katie Paine stated, if not a public hearing, there should still be some way for citizens to provide input.

Administrator Selig stated if the Town registers an objection, the State will hold a public hearing and that may be a better way for citizens to provide input.

In response to a question from Mark Morong regarding abutters, Administrator Selig stated he was concerned the Town would be putting a process in place that it would be unable to follow through on.

***The motion to amend FAILED with a vote of 2-6 (Katie Paine and Arthur Grant voting in favor.)***

***Mark Morong MOVED to amend the motion to include the requirement that abutters be notified upon receipt of the application. The motion was SECONDED by Arthur Grant.***

In response to a question from Mark Morong, Administrator Selig stated the process was established to provide input to the State but if a fee was charged the State would respond in a negative way.

In response to a question from Peter Smith, Administrator Selig stated he believed the Town had enough time to notify abutters and the Town would provide the address to the Liquor Commission. He will incorporate this into the wording of the resolution and a vote was not needed on the amendment. He stated he will work to keep the Council up to date on the resolution and its applications.

***Mark Morong WITHDREW his amendment to the motion. Arthur Grant WITHDREW his SECOND.***

***The resolution was unanimously ADOPTED.***

- B. Shall the Town Council approve the Findings of Fact for the Conditional Use Permit application submitted by Jones & Beach Engineers, Inc. on behalf of J.R. Collier Corporation in the Rural District for property located on Packers Falls Road, as recommended by the Town Administrator?

Katie Paine, Mark Morong and Pete Chinburg recused themselves from the discussion.

Arthur Grant stated the Council did not have a quorum to discuss the matter.

Chair Sandberg stated the matter would be postponed until the next meeting.

Katie Paine, Mark Morong and Pete Chinburg returned to the meeting.

X. New Business

- A. Receive Quarterly Financial Report as provided by Business Manager, Paul Beaudoin

Paul Beaudoin stated he believed the Town was in good shape regarding its finances. Spending is below budget and revenues are above budget.

Mr. Beaudoin stated the Town is working with 3 different software companies to take care of a software glitch that will force the tax bills to go out late but it should have little impact on the Town's Tax Anticipation Note.

In response to a question from Arthur Grant, Administrator Selig stated if the glitch is not taken care of, an alternative may be to use last year evaluations but that should not have to happen.

Chair Sandberg declared a 10 minute recess at 8:33 P.M.

The meeting reconvened at 8:42 P.M.

- B. Presentation of the proposed fiscal year 2003 operating budget and 2003-2012 Capital Improvement Plan and adopt the proposed budget and CIP discussion schedule

Chair Sandberg stated that the Town Charter states that if the Council does not approve a budget by December 31, 2002 the budget prepared by Administrator Selig would become the default budget.

Administrator Selig and Paul Beaudoin gave an overview of the proposed budget and the CIP.

Chair Sandberg stated a public hearing on the proposed budget will take place at the next meeting and the copies of the budget and the CIP can be obtained at the Town Hall and at the library.

- C. First Reading: Ordinance #2002-13: Amending Chapter 175, "Vehicles and Traffic," Section 153-43 "Stop intersections" of the Durham Town Code by creating a stop intersection at Daisy Drive, Sumac Lane, Bucks Hill Road, Partridge Berry Lane and Park Court

Administrator Selig stated the Police Department has received petitions from citizens requesting the stop signs.

In response to a question from Chair Sandberg, Police Chief David Kurz stated another stop sign had been asked for at the intersection of Partridge Berry Lane and Bucks Hill which would have resulted in two 3-way stops close together. He stated the Traffic Safety Committee believed that it was unreasonable to put a 3-way stop intersection on a street where there were only 3 houses and the requested 3-way stop intersection for Partridge Berry Lane and Bucks Hill was left out of the ordinance.



***Pete Chinburg MOVED to adopt Ordinance #2002-13 on first reading as presented: Amending Chapter 175, "Vehicles and Traffic," Section 155-43 "Stop intersections" of the Durham Town Code by creating a stop intersection at Daisy Drive, Sumac Lane, Bucks Hill Road, Partridge Berry Lane and Park Court and schedule a public hearing for the next meeting. The motion was SECONDED by Katie Paine. The motion was unanimously APPROVED.***

- D. Shall the Town Council approve the use of the Town Hall location for construction of a library as requested by the Durham Public Library Board of Trustees?

Administrator Selig stated the Trustees have requested the Council dedicate the land behind Town Hall as the site for a new library.

John Aber, Library Director, stated the Trustees believed the site behind Town Hall was the most cost efficient site and would create a Town Center atmosphere. He stated the Town could count on the price of construction going up \$700,000 if the library were built elsewhere.

In response to a question from Chair Sandberg, Mr. Aber stated it was his desire that the Council and Trustees work together to obtain all of the Route 108 Sunoco property and then construct the library on that site. He stated the Council should disregard the architectural design submitted by the Trustees a few months ago and the Trustees would like to enter into a discussion with the Council to develop a new design if there was more land to work with.

Katie Paine stated there was still a cost to the land if the Town owns it or not.

In response to a question from Peter Smith, John Aber stated the property was the Trustees number one choice, with it being in what they believed to be was the right part of Town for a library and that the decision to pursue the property was influenced by not having to raise more money to purchase land.

The Council decided to take no action on the matter until the Town decides what to do with the Route 108 Sunoco property.

***Arthur Grant MOVED to extend the meeting for 15 minutes. The motion was SECONDED by Peter Smith and was unanimously APPROVED.***

- E. Update from Town Administrator on Motion for Rehearing and Appeal of the Town Council's decision on October 7, 2002 and approve an application for a Conditional Use Permit and Planned Unit Development located on Packers Falls Road, submitted by Robin Rousseau

Administrator Selig stated the Town will have to decide if anyone besides the applicant has the right to request a hearing, if Robin Rousseau has any standing in the

matter, as she is not an abutter to the property, and if Ms. Rousseau can request the Council to reconsider the procedural issues stated in her request. These questions were asked to the Town Attorney and should be answered by the next meeting.

In response to a question from Peter Smith, Administrator Selig stated the ordinance calls for the Council to take action within 45 days of the public hearing on an application and that the 45 days for the application has passed and the Town has lost its opportunity to ask questions on its own as the recommendation of the Planning Board, by default, becomes final.

Peter Smith stated he wanted to know if the 45 day window had been lost, if that would make Robin Rousseau's request to the Council obsolete since it has lost the power to consider anything, and if that was the case, the only forum for the matter would be another legal entity. He stated he believed the matter of the Council's power to reconsider, as he understood it, could only be brought up by those that supported the motion that was made.

***Pete Chinburg MOVED to adjourn. The motion was SECONDED by Katie Paine and was unanimously APPROVED.***

The meeting ADJOURNED at 10:15 P.M.

Michael Bornstein, Minute Taker

