

Approved at the January 20,2003 meeting

DURHAM TOWN COUNCIL MINUTES MONDAY, NOVEMBER 18, 2002 – 7:00 P.M. DURHAM TOWN HALL – COUNCIL CHAMBERS

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

MEMBERS ABSENT: Katie Paine; Mike Pazdon

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

I. Call to Order

Chair Sandberg called the meeting to order at 7:03 P.M.

Chair Sandberg stated there was no quorum and called for a recess until Councilor Chinburg arrived.

Councilor Chinburg arrived at the meeting at 7:04 P.M.

II. Approval of Agenda

Councilor Morong MOVED to approve the agenda. The motion was SECONDED by Councilor Smith and was unanimously APPROVED.

III. Special Announcements

IV. Approval of Minutes

Councilor Grant MOVED to approve the Monday, October 7, 2002 minutes. The motion was SECONDED by Councilor Morong.

Various non-substantive changes were made to the minutes.

Chair Sandberg entertained a motion to approve the amendments to the minutes.

Councilor Harris SECONDED the motion to amend the minutes and it was unanimously APPROVED.

The Council unanimously APPROVED the amended minutes of Monday, October 7, 2002.

Councilor Grant MOVED to approve the nonpublic minutes of Monday, October 21, 2002 (Continued to Monday, October 28, 2002) that took place at 9:35 P.M. – 9:58 P.M. The motion was SECONDED by Councilor Harris and was APPROVED on a vote of 4-0-2 as follows: Chair Sandberg, Aye; Councilor Grant, Aye; Councilor Harris, Aye; Councilor Morong, Aye; Councilor Chinburg, Abstained; Councilor Smith, Abstained.

Councilor Grant MOVED to approve the minutes of Monday, October 21, 2002 (Continued to Monday, October 28, 2002.) The motion was SECONDED by Councilor Morong.

Various non-substantive changes were made to the minutes.

Chair Sandberg entertained a motion to approve the amendments to the minutes.

Councilor Harris SECONDED the motion to approve the amendments to the minutes of Monday, October 21, 2002s (Continued to Monday, October 28, 2002.) The motion was APPROVED on a vote of 4-0-2 as follows: Chair Sandberg, Aye; Councilor Grant, Aye; Councilor Harris, Aye; Councilor Morong, Aye; Councilor Chinburg, Abstained; Councilor Smith, Abstained.

The Council APPROVED the minutes of Monday, October 21, 2002 (Continued to Monday, October, 28, 2002) on a vote of 4-0-2 as follows: Chair Sandberg, Aye; Councilor Grant, Aye; Councilor Harris, Aye; Councilor Morong, Aye; Councilor Chinburg, Abstained; Councilor Smith, Abstained.

Councilor Morong MOVED to approve the minutes of Monday, November 4, 2002. The motion was SECONDED by Councilor Grant.

Various non-substantive changes were made to the minutes.

Chair Sandberg stated he was entertaining a motion to approve the change to the minutes.

Councilor Smith SECONDED the motion to amend the minutes of November 4, 2002 and it was unanimously APPROVED.

Councilor Smith MOVED to approve the minutes of Monday, November 4, 2002 as amended. The motion was SECONDED by Councilor Morong and was unanimously APPROVED.

V. Report of Administrator

Administrator Selig reported on the following:

On Thursday, November 21, 2002 and Friday, November 22, 2002 UNH will be having its inauguration celebration for President Hart.

The Durham Professional Firefighters Association is having a toy drive for Lee, Durham and Madbury. Toys may be left in the container located at Town Hall.

The Town has received its confirmed tax rate from the State Department of Revenue Administration. For 2002, the Town tax rate will be \$11.35, the county tax rate will be \$3.17, the local school rate will be \$19.27, and the State school rate will be \$7.69. The total 2002 tax rate will decrease \$.85 from the 2001 rate of \$42.33 to the 2002 rate of \$41.48. The decrease is due to the partial revaluation the Town has done this year.

The tax warrant is available to the public. The Town plans to send out tax bills on Wednesday, November 20, 2002 and will be payable by Friday, December 20, 2002.

The MainStreet Light Up Durham celebration will be held from December 5, 2002 to December 7, 2002.

The Town has received complaints from citizens on Cedar Point Road regarding the misuse of the boat ramp. The Department of Public Works has installed a sign on the property regarding how the Cedar Point Boat ramp may be used.

The Town has received a resignation letter from Town Moderator Mike Everngam. He will serve through the March election.

In response to a question from Councilor Smith, Administrator Selig stated the owners of Colonial Plaza had undertook to clear land in the back of the Plaza to increase the size of their parking lot and the Town has issued a cease and desist order to prevent the Plaza from moving forward. He stated the matter was referred to the Planning Board to go through a site plan review process. The Town has contracted with Strafford Regional Planning Commission to look at the 1978 site plan of the property. Strafford Regional found that there were differences between the 1978 approved plan and what was found on the property. Mr. Selig stated the Planning Board has turned down the owner's request to modify the site plan and the Code Enforcement Officer has issued a permit to the Plaza for paving only in the area that was approved on the 1978 site plan. He stated the Code Enforcement Officer will make sure the Plaza complies with the differences on the plan.

In response to a question from Councilor Smith, Administrator Selig stated the paving of a new part of the parking lot was allowed by the Town not only to prevent runoff into College Brook but that the 1978 site plan required the paving to be allowed and that the 1978 site plan was still valid.

In response to a question from Councilor Morong, Administrator Selig stated there was still area at the Plaza that was unpaved and that the Plaza was working to keep the runoff from that area out of College Brook but it had not been decided if the unpaved area should be receded or if the Plaza owners should be required to use fill to recreate the hill that was there prior to construction.

Councilor Harris stated the Planning Board had requested the area be restored to its original condition.

VI. Reports and Comments of Councilors

Councilor Morong stated the Conservation Commission met and is moving ahead with the dredging of the Mill Pond. He stated there is a citizens group looking at the long and short-term impacts of the property, and on November 23, 2002 there will be a site walk at the Mill Pond that will be opened to the public.

Councilor Grant stated the School Funding Formula Study Commission had its meeting postponed and it will be rescheduled.

Councilor Chinburg stated the Durham Rental Housing Commission will be meeting December 3, 2002 at 4:00 P.M. at Town Hall.

Chair Sandberg stated he will be representing the Town at the UNH inauguration.

VII. Public Comments

William Hall, 1 Smith Park Lane, spoke about the budget and about the proposed aluminum fence that would be placed around the Leathers Cemetery.

Betsy Horskin, 3 Smith Park Lane, spoke against Ed Valena becoming a Council member and about the loading zone at the Durham Community Church.

Laurie Potter, 1 Deer Meadow Road, spoke in favor of Ed Valena becoming a Council member and about the proposed aluminum fence that would be placed around the Leathers Cemetery.

Bruce Bragdon, 7 Colony Cove Road, spoke in favor of Ed Valena becoming a Council member.

Mike Hoffman, 300 Durham Point Road, stated that William Hall's comments were inaccurate.

Brian Geiger, 13 Davis Avenue, spoke about the proposed aluminum fence that would be placed around the Leathers Cemetery.

Robbi Woodburn, 6 Cormorant Circle, spoke in favor of the MainStreet program receiving funds.

VIII. Unanimous Consent

Councilor Smith stated he had an objection to item C.

Chair Sandberg removed item C. from Unanimous Consent.

Councilor Grant MOVED to approve the following:

- A. Shall the Council approve the Special Events Permit application to close a portion of Main Street for the Light Up Durham celebration on December 6, 2002 from 5:00 – 9:00 P.M., as requested by the Durham MainStreet Program?
- B. Shall the Council authorize the Administrator to sign the 2002 Tax Warrant upon written confirmation by the Department of Revenue Administration?
- D. Shall the Council appoint Annmarie Harris to the Integrated Waste Management Advisory Committee?

The motion was SECONDED by Councilor Morong and was unanimously APPROVED.

- C. Shall the Council approve the industrial sewer connection permit application submitted by Heidelberg Web Systems?

Councilor Chinburg MOVED to approve Heidelberg Web Systems Inc.'s application for an industrial sewer discharge permit at 121 Technology Drive with conditions outlined in the industrial wastewater permit and to authorize the Administrator to sign the permit. The motion was SECONDED by Councilor Morong.

After some discussion, the Council unanimously APPROVED the motion.

IX. Committee Appointments

- A. Appointment of citizen to fill the Council vacancy created by Scott Hovey.

After some discussion, Councilor Grant NOMINATED John Kraus to serve as a member of the Council until the March elections. Councilor Harris SECONDED the nomination.

Councilor Chinburg NOMINATED Ed Valena to serve as a member of the Council until the March elections.

After further discussion, Councilor Grant WITHDREW his motion to nominate John Kraus to serve as a member of the Council until the March elections. Councilor Harris WITHDREW her second to the motion.

Chair Sandberg stated nominations were open.

Councilor Grant NOMINATED John Kraus.

Councilor Chinburg NOMINATED Ed Valena.

After some discussion, Councilor Harris MOVED to close nominations. The motion was SECONDED by Councilor Morong and was unanimously APPROVED.

After further discussion, the Council voted for John Kraus to serve on the Council until the March election on a vote of 4-2 as follows: Councilor Grant, Kraus; Chair Sandberg, Kraus; Councilor Harris, Kraus; Councilor Smith, Kraus; Councilor Morong, Valena; Councilor Chinburg, Valena.

- B. Shall the Town Council appoint Nick Isaak as an alternate member to the Planning Board?

Councilor Smith MOVED to appoint Nick Isaak as an alternate member of the Planning Board until March 31, 2005. The motion was SECONDED by Councilor Harris and was unanimously APPROVED.

- C. Swearing in of new Councilor and alternate Planning Board member by the Town Clerk – Tax Collector

Chair Sandberg called for an 8 minute recess at 8:47 P.M.

Chair Sandberg reconvened the meeting at 8:56 P.M.

- X. Unfinished Business (NLT 8:00 PM)

- A. Public Hearing and Action: 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

Councilor Grant MOVED to open the public hearing. The motion was SECONDED by Councilor Smith and was unanimously APPROVED.

The follow citizens spoke at the public hearing:

William Hall, 1 Smith Park Lane, provided information on the matter.

Rob Wyand, Canney Farms Association, spoke in favor of amending Chapter 175.

After public testimony, Councilor Harris MOVED to close the public hearing. The motion was SECONDED by Councilor Morong and was unanimously APPROVED.

After some discussion, Councilor Grant MOVED to approve 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. The motion was SECONDED by Councilor Morong.

After further discussion, Councilor Harris MOVED to postpone action on the ordinance until the Council was provided with a document which reflected the wishes of the original request for stop signs made by the Canney Farms Association. The motion was SECONDED by Councilor Smith and was unanimously APPROVED.

- B. Public Hearing and Action: Ordinance #2002-09 repealing Chapters 43 and 118 of the Durham Town Code and establishing a new Chapter 118 entitled “Solid Waste,” which will implement changes to the Solid Waste Program

Councilor Smith MOVED to open the public hearing. The motion was SECONDED by Councilor Grant and was unanimously APPROVED.

The following citizens spoke at the public hearing:

William Hall, 1 Smith Park Lane, provided suggestions on the matter.

Ed Valena, 313 Durham Point Road, provided suggestions on the matter.

Bruce Bragdon, 7 Colony Cove Road, provided suggestions on the matter.

Bonnie McDermont, 80 Dover Road, provided suggestions on the matter.

Jessie McKone, Integrated Waste Management Advisory Committee, spoke in favor of the ordinance.

Richard Gallant, Integrated Waste Management Advisory Committee, spoke in favor of the ordinance.

Diana Carroll, Integrated Waste Management Advisory Committee, spoke in favor of the ordinance.

After public testimony, Councilor Chinburg MOVED to table discussion on the ordinance for five minutes. The motion was SECONDED by Councilor Morong and was unanimously APPROVED.

Councilor Grant MOVED to table item X. - E. on the agenda until the next meeting. The motion was SECONDED by Councilor Harris and was unanimously APPROVED.

Councilor Grant MOVED to table X. – F. on the agenda until the next meeting. The motion was SECONDED by Councilor Harris and was unanimously APPROVED.

After some discussion, Councilor Harris MOVED to remove from the table the discussion of the Solid Waste Ordinance from the table. The motion was SECONDED by Councilor Smith and was unanimously APPROVED.

Councilor Grant MOVED to close the public hearing. The motion was SECONDED by Councilor Harris and was unanimously APPROVED.

After some discussion, Councilor Harris MOVED to approve Ordinance #2002 – 09 repealing Chapters 43 and 118 of the Durham Town Code and establishing a new Chapter 118 entitled “Solid Waste” which will implement changes to the Solid

Waste Program as amended and to take effect on January 1, 2003. The motion was SECONDED by Councilor Morong.

After further discussion, Councilor Morong MOVED to amend the first sentence in section 1, under item H. to read “The Durham resident or taxpayer or agent using this facility must purchase one SWMF entrance sticker for every taxable property with a structure.” The motion was SECONDED by Councilor Smith.

Chair Sandberg called for the order of the day, which was to end the meeting at 10:00 P.M.

Councilor Grant MOVED to extend the meeting until 10:30 P.M. The motion was SECONDED by Councilor Morong and was unanimously APPROVED.

After further discussion, Councilor Chinburg MOVED to change the penalties to property owners that leave refuse on and around the property to \$50 for the first offense, \$100 for the second offense and \$150 for the third offense. The motion was SECONDED by Councilor Morong.

After further discussion, the motion FAILED on a vote of 1-5 as follows: Chair Sandberg, Nay; Councilor Grant, Nay; Councilor Harris, Nay; Councilor Morong, Nay; Councilor Smith, Nay; Councilor Chinburg, Aye.

Councilor Morong MOVED to postpone discussion on the ordinance until the next meeting. Councilor Smith SECONDED the motion and it FAILED on a vote of 2-3-1 as follows: Councilor Smith, Aye; Councilor Morong, Aye; Councilor Chinburg, Nay; Councilor Grant, Nay; Councilor Harris, Nay; Chair Sandberg, Abstained.

After some discussion, Councilor Grant MOVED to change the first sentence in section 1, under item H. to read “The Durham resident or taxpayer or agent using this facility must purchase one SWMF entrance sticker for every taxable property they own, excepting vacant lots.” The motion was SECONDED by Councilor Harris.

After further discussion, the motion unanimously FAILED.

After further discussion, Councilor Smith MOVED to delete item H. from section 1. The motion was SECONDED by Councilor Harris and was unanimously APPROVED.

After further discussion, Councilor Smith MOVED to change the word “must” in the ordinance and Administrative Rules to “shall.” The motion was SECONDED by Councilor Harris and was unanimously APPROVED.

After further discussion, Councilor Harris MOVED to change the last sentence in item K., under section 1. to read “A bulky waste coupon shall be presented at visit to SWMF for up to a pick up truckload for bulky waste disposal.” The motion was SECONDED by Councilor Smith.

After further discussion, the motion FAILED with a vote of 0-5-1 as follows: Chair Sandberg, Nay; Councilor Smith, Nay; Councilor Grant, Nay; Councilor Chinburg, Nay; Councilor Morong, Nay; Councilor Harris, Abstained.

After further discussion, the motion to approve Ordinance #2002-09 repealing Chapters 43 and 118 of the Durham Town Code and establishing a new Chapter 118 entitled "Solid Waste" which will implement changes to the Solid Waste Program as amended and to take effect on January 1, 2003 was unanimously APPROVED with the following amendments: Item H. from Section 1. was stricken; and the word "must" throughout the ordinance was changed to "shall."

Chair Sandberg called for the order of the day, which was to end the meeting at 10:30 P.M.

Councilor Harris MOVED to extend the meeting until 10:45 P.M. Councilor Morong SECONDED the motion and it was APPROVED on a vote of 5-1 as follows: Chair Sandberg, Aye; Councilor Grant, Aye; Councilor Morong, Aye; Councilor Harris, Aye; Councilor Smith, Aye; Pete Chinburg, Nay.

Councilor Grant MOVED to approve the rules, regulations and procedures for implementing the provisions of ordinance #2002-09 "Solid Waste" of Durham, New Hampshire as amended and to come into effect on January 1, 2003. The motion was SECONDED by Councilor Harris.

After some discussion, Councilor Smith MOVED to amend the regulations to remove item H. under section 1. and to change the word "must" to "shall." The motion was SECONDED by Councilor Harris and was unanimously APPROVED.

After further discussion, Councilor Smith MOVED to amend the title of the document to strike the words "rules" "and procedures" and to strike the same words from the 1st paragraph of page 9 directly under the title. The motion was SECONDED by Councilor Harris and was unanimously APPROVED.

After further discussion, the motion to accept the regulations as amended was unanimously APPROVED.

C. Public Hearing: Proposed 2003 Operating Budget and 2003 - 2012 Capital Improvement Program

Councilor Grant MOVED to open the public hearing. The motion was SECONDED by Councilor Smith and was unanimously APPROVED.

The following people spoke at the public hearing:

Ryan Thomas, 74 Ledge View Road, Rochester, spoke in favor of providing the MainStreet organization with funding.

Walter Rouse, 64 Adams Point Road, provided suggestions on the matter.

Mike Hoffman, 300 Durham Point Road, provided suggestions on the matter.

After public testimony, Councilor Grant MOVED to continue the public hearing to the next meeting. The motion was SECONDED by Councilor Smith and was unanimously APPROVED.

At 10:15 P.M., the meeting ADJOURNED to 7:00 P.M. on Monday, November 25, 2002.

Michael Bornstein, Minute Taker