

DURHAM TOWN COUNCIL MINUTES
MONDAY, MAY 5, 2003
DURHAM TOWN HALL – COUNCIL CHAMBERS
7:00 P.M.

MEMBERS PRESENT: Malcolm Sandberg, Chair; Arthur Grant, Neil Niman, John Kraus, Peter Smith, Patricia Samuels, Mark Morong, Katie Paine, Annmarie Harris

MEMBERS ABSENT: None

OTHERS PRESENT: Todd Selig, Town Administrator; interested members of the public

I. Call to Order

Chair Sandberg called the meeting to order at 7:00 P.M.

II. Approval of Agenda (7:01 P.M.)

Councilor Niman MOVED to approve the agenda. The motion was SECONDED by Councilor Kraus and PASSED unanimously.

III. Special Announcements (7:02P.M.)

None

IV. Approval of Minutes (7:03 P.M.)

Councilor Kraus MOVED to approve the minutes of the non-public session held on March 17, 2000. The motion was SECONDED by Councilor Grant and PASSED unanimously.

Chair Sandberg stated that Councilor Smith could move to unseal the minutes from the non-public session on March 17, 2003 under other business.

Chair Sandberg stated that Councilor Grant could discuss observations regarding the Seacoast Hospice under Reports and Comments of Councilors.

Councilor Paine MOVED to approve the minutes of the non-public session held on April 7, 2003. The motion was SECONDED by Councilor Kraus and PASSED 8-0-1. Councilor Samuels abstained as she was not present at the meeting.

Councilor Niman MOVED to approve the minutes of April 21, 2003 as submitted. Councilor Grant SECONDED the motion.

Councilor Kraus requested that the minutes be amended to show the reason for Councilor Grant's abstention on the motion on page 6.

Councilor Smith MOVED to amend paragraph X.A. to delete the words "with AT&T Broadband." The motion was SECONDED Councilor Kraus and PASSED on a vote 7-0-2. Councilor Morong abstained as he was not present at the meeting. Chair Sandberg abstained as he had recused himself during the original discussion.

Councilor Smith MOVED to amend the second paragraph X.B. to delete the words "with AT&T Broadband." The motion was SECONDED Councilor Kraus and PASSED on a vote 7-0-2. Councilors Samuels and Morong abstained, as they were not present at the meeting.

Councilor Kraus MOVED that on page 7 before the line" Councilor Kraus MOVED to continue..." to add the statement, "Councilors John Kraus and Katie Paine also asked Reese to provide details of why it would cost \$1700 to bring cable to the homes that are not served under the new agreement." The motion was SECONDED by Councilor Paine and PASSED on a vote 7-0-2. Councilors Samuels and Morong abstained as they were not present at the meeting.

Administrator Selig stated that on the bottom of page 7, the name Terry Reese should read Jerry Reese

Councilor Smith MOVED that on page 4 to replace the words "...all the Town departments for their..." with the words "the Department of Public Works for its..." The motion was SECONDED by Councilor Kraus and PASSED on vote 7-0-2. . Councilors Samuels and Morong abstained as they were not present at the meeting.

Councilor Grant stated that on page 8, Councilor Grand should be corrected to read, Councilor Grant.

Councilor Smith MOVED to insert on page 8 after the words "Councilor Harris," The motion to amend PASSED unanimously. The motion was SECONDED by Councilor Kraus and PASSED on vote 7-0-2. . Councilors Samuels and Morong abstained as they were not present at the meeting.

The MOTION to approve the minutes of April 21, 2003 as amended PASSED

unanimously.

V. Report of Administrator (7:17)

As part of its Master Plan process, the UNH will be conducting a forum on May 7, 2003 from 4:30–6:00 p.m. in the Memorial Union Building Theater 2.

Durham celebrates spring the weekend of May 17 and 18 with three annual events.

1. Saturday, May 17, 2003 – Durham Garden Club Plant Sale – 9am – 12 noon with an auction at 1:30 pm at St. George’s Church on Main St.
2. Annual Friends of the Durham Public Library used book sale – held behind the Town Offices, Saturday, 9 – 5 and Sunday, 10 – 3
3. Sunday, May 18 – St. Cecilia Mass by Seacoast Singers at 4:00 p.m. at the Durham Community Church. There will also be concert performed at the Newington Holy Trinity Lutheran Church on Saturday, May 17 at 7:30 p.m.

A Smart Growth Conference sponsored by NH Office of State Planning will be held on May 12 from 7-9 p.m. that will be held at the New England Center in Durham and is open to the public.

The Durham Fire Department held its 75th anniversary celebration /open house on Sunday, April 27. Durham’s First Custom Fire Engine was featured and money is being raised to restore the engine.

An Emergency Planning Exercise was held on April 14, 2003. It was an excellent simulation of a storm event in Durham. Representatives from the University and Town departments were present. This was an opportunity to discuss how the town would respond in the event of a disaster.

The Code Enforcement Officer, Tom Johnson and Mike Hoisington from the Durham Fire Department are currently at a Federal Emergency Management Agency Quorum focusing on plan review at the National Fire Academy from April 28 until May 9, 2003.

The Wagon Hill Farm rental property is rented to a police officer that provides some security for the property. Mr. Selig stated that he would like to find some other use for the property, but until that occurs the Town will renew the rental lease for one more year.

Mr. Selig reported on some recent outstanding police investigative work involving

Police Officers Gabe Tarrants and Mike Bilodeau.

The UNH campus has initiated a seven-day per week service at the UNH-Durham Train Station. There is also an Amtrak Quick Track machine for the public in the lobby of the Whittemore Center.

Police Officer Catherine Lilly completed her State Police Academy Training.

Supervisors have been purging the voter checklists. The state requires that this be done every 10 years. It is anticipated that Durham will purge approximately 2400 names from the checklist, which are believed to be former students.

The Town has received bids back on the Landfill Closure Project. The low bid was \$270,000 over budget. If the Town cannot make alterations to the package, the project may have to be put off until next year so that the Town can budget for the extra funds.

The University of New Hampshire graduation will be held on Saturday, May 24, 2003 at 10:00 a.m. The speaker will be the actress, Meryl Streep. The ceremony is open to the public with no tickets required.

The annual bulky waste cleanup began on May 1, 2003 and will continue until the end of the week. Residents who have bulky waste items for the Department of Public Works should get them out quickly. Councilor Harris stated that those residents with TVs or refrigerators need to purchase stickers.

Mr. Selig reported that he has been selected for the Caroline Gross Fellowship. He will be attending the program for Senior Executives for state municipal governments on July 6 – 25 at Harvard University. Mr. Selig will be out of the office from July 7-25, 2003. Paul Beaudoin, Business Manager has been designated to act as administrator.

For this year's outdoor pool opening, the Town will issue 428 pool vouchers for residents to purchase at a cost of \$35 vouchers for children and senior citizens to use to offset the cost of the pool fee, which is \$80.

The UNH is forwarding packets of its Board of Trustees meetings to the Town.

The Town of Durham has been served in a court case from Stonemark Management Company.

The Town presently has 58% of the legal budget unexpended. The Business

Manager and Town Administrator will be watching the budget closely.

The Town overspent the snow budget but will be submitting a reimbursement for \$21,000 from FEMA for the February 17 – 18 snowstorm.

The NH State Supreme Court affirmed the Town's position regarding probationary employees.

VI. Reports and Comments of Councilors (7:35 P.M.)

In reply to a question from Councilor Grant, Chair Sandberg stated he would add the issue of Seacoast Hospice to the next agenda for discussion by Council.

Councilor Kraus stated that he had attended the Durham Integrated Waste Management Advisory Committee on Friday, April 25, 2003. One of the items discussed was the issue of stickers at the swap shop on weekends and the problems with this as raised by Citizens Hall, Horskin, and others. Councilor Kraus further stated that there would be some recommendations coming from the committee to better facilitate the issuance of stickers.

In response to a comment from Councilor Morong regarding a postcard received from the Governor's office with the greeting "Dear Customer," Mr. Selig stated that it was in response to a letter from the Durham, Lee, Madbury and UNH Police Chiefs sent to the Governor regarding the Durham District Court.

In response to a question from Councilor Paine, Chair Sandberg stated that he has spoken to Dick Dewing and that plans for the Memorial Day Parade are underway.

Councilor Samuels stated that she had attended a DCAT meeting and that the committee is in the process of doing guidelines and policies. She further stated leadership, history, and knowledge are needed in that process. Councilor Samuels requested that Councilor Paine be appointed to replace her as the Council representative. Chair Sandberg stated that this issue will be placed under "Other Business" for further action.

Councilor Grant requested that consideration of the appointment of Robert Doty as an alternate to the Conservation Committee be placed under "Other Business." He further stated that the Town Administrator has informed the Council that there is no conclusion as to whether or not a second alternate can serve on the Commission.

VII. Public Comments (7:44 P.M.)

Shirley Thompson, Bagdad Road, reported to the Council that the Fourth of July Committee will be meeting on the May 13, 2003 at 5:15 p.m.

William Hall, Smith Park Lane, expressed concern regarding pedestrians. He stated that he believes Durham has a bigger pedestrian problem than any other city in the state and that he feels someone will get killed. He stated that the Town needs to pass a jaywalking ordinance similar to the City of Concord. Mr. Hall also stated that more needs to be done concerning the way the police and the Town handle events such as the recent riot.

VIII. Unanimous Consent Agenda (7:48 P. M.)

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

- A. Shall the Town Council adopt the “Core Purpose, Values, and Goal Statement” established at the Town Council visioning sessions conducted in April 2003?

This item was removed from the Unanimous Consent agenda for discussion.

- B. Shall the Town Council approve the water and sewer warrant for the spring of 2003 and authorize the Town Administrator to sign said warrant?

Councilor Grant MOVED to approve the water and sewer warrant for the spring of 2003 and authorize the Town Administrator to sign said warrant. The motion was SECONDED by Councilor Kraus and PASSED unanimously.

The Council discussed Item VIII.A. above relating to the Core Purposed, Values, and Goal Statement.

Councilor Smith commented that he felt the phraseology (specifically the use of words “take action”) on page 1, 3rd bullet may need to be made clearer to avoid future misunderstandings.

Councilor Samuels MOVED that the Town Council adopt the “Core Purpose, Values, and Goal Statement” established at the Town Council visioning sessions conducted in April 2003. Councilor Kraus SECONDED the motion.

Councilor Smith MOVED that the Statement be amended by substituting the word “discuss” for the words “take action” on page 1, 3rd bullet. The motion FAILED for lack of a second.

Councilor Niman suggested that Councilor Smith meet with Administrator Selig and Administrative Assistant Berry to discuss his suggested changes.

Councilor Niman MOVED to postpone action on the proposal until the Council meeting on May 19, 2003. The motion was SECONDED by Councilor Paine and PASSED unanimously.

IX. Committee Appointment (8:08 p.m.)

Shall the Town Council appoint Gerald L. Smith, 1 Back River Road, to the July 4th Celebration Committee?

Administrator Selig explained that currently this nine-member committee has only three members, and that Gerald Smith has applied for a position.

Councilor Smith MOVED to appoint Gerald L. Smith, 1 Back River Road, to the July 4th Celebration Committee. The motion was SECONDED by Councilor Paine and PASSED unanimously.

Councilor Grant mentioned that Mr. Smith was a WWII pilot and POW. Councilor Smith stated that he was pleased that Mr. Smith applied to be on the committee.

X. Unfinished Business (8:10 P.M.)

A.&B. Public Hearing: Proposed amendment to Durham’s cable franchise agreement with AT&T Broadband to provide and install coaxial cable to the Oyster River High School and to provide DCAT services to residences served through the Lee, Madbury and Newmarket cable systems currently not receiving this service.

Chair Sandberg recused himself from the Public Hearing, as he is one of the residents affected by this amendment. Councilor Grant assumed the duties as Chair.

Councilor Samuels MOVED to open the Public Hearing. The motion was SECONDED by Councilor Kraus and PASSED unanimously.

Chair Grant asked if there were any public comments. No one from the public spoke. Mr. Reese stated that he had nothing further to add to the discussion.

Mr. Selig stated that the Town received new information that the residents on Adams Point Road do not currently receive cable, do not have access to DCAT, and that the Town Attorney had forwarded this information to Mr. Reese.

Mr. Reese stated that he had no knowledge regarding residents on Adams Point Road.

Mr. Selig reviewed the agreement. He stated that Comcast would install cable to the Oyster River High School. He further stated that there are 39 homes in Durham that do not receive DCAT. Eight of those homes have no cable and 31 homes receive their signals from Lee, Madbury or Newmarket, thus do not currently receive DCAT. Comcast has agreed to provide the broadcast signal through those towns so those residents will have access to DCAT. The agreement excludes the homes where there is currently no cable service. Mr. Selig stated that there are now 12 homes not receiving cable service: 2 - Spinney Road, 2 - Langley Road, 3 - Dame Road, 1 - Winecellar Road and 4 - Adams Point Road.

In response to a question from Councilor Paine, Mr. Selig stated that once the agreement is signed, the homes receiving cable signals from Madbury and Lee will receive DCAT within 60 days and those homes served by Newmarket will receive DCAT within 150 days.

Councilor Kraus stated that he found it troubling that Mr. Reese had nothing further to add to the discussion.

Mr. Reese stated that the company is making the best of a bad situation. The company has spent more than agreed to in the beginning. He also stated that he will have the company engineers check on the homes in the Adams Point area.

Councilors Grant and Smith expressed concern over the time required to provide the DCAT signal once the agreement is signed.

Mr. Reese stated that the signal may be received sooner than the time stated. In addition, in response to a question from Councilor Smith, Mr. Reese stated there will be no further answers on the cost issue of \$ 1700 to install cable in those homes that currently do not receive cable.

Councilor Samuels asked if the Council wished to delay the vote. Councilor Smith replied that he felt the vote should occur tonight

Kathleen Williams, Durham stated that she would like to commend Todd Selig for the agreement and that he did a great job dealing with a difficult situation.

Councilor Niman MOVED to close the public hearing. The motion was SECONDED BY Councilor Kraus and PASSED unanimously.

The public hearing ended at 8:28 P.M.

Councilor Smith MOVED to approve and to authorize the Town Administrator to sign the amendment to Durham's cable franchise agreement to provide and install coaxial cable to the Oyster River High School and to provide DCAT services to residences served through the Lee, Madbury and Newmarket cable systems currently not receiving this service. Councilor Paine SECONDED the motion.

In response to a question from Councilor Kraus, Mr. Selig stated that the franchise agreement expires in 2012.

In response to a comment from Councilor Morong, Mr. Selig stated that he did not know if independent contractors could be used to install poles to the 8 homes needing service, but he suspected that Comcast would insist they do the work to insure cable and installation was done according to standards.

Mr. Reese explained to the Council that permits would be needed from public service, and that payment for surveying and poles would be required. He further stated that rent would have to be paid on the poles in response to a comment from Councilor Smith that Verizon would replace the poles.

Mr. Selig stated that there was nothing to preclude the Town of Durham to fund the installation of cable service to households not currently served by the agreement.

Councilors Grant stated that was a fair approach as those residents that have not been served for the last 3 years do pay taxes for the service.

The motion to approve and sign the amendment PASSED on a vote of 6-0-1. Councilor Grant abstained from voting as he is a beneficiary of the agreement.

Chair Sandberg returned to the table at 8:35 P.M.

Chair Sandberg called for a 10-minute recess to set up for a power point

presentation.

XI. New Business (8:45 pm)

A. Discussion with School Funding Study Commission.

Chair Kathy McWilliams thanked everyone on the commission for their work and turned the presentation over to Mike to take the Council through the report.

Mike Everngam explained the charge given to the commission:

- Study the formula currently used by the Oyster River Cooperative School District to apportion education costs between Durham, Lee, and Madbury.
- Research and analyze the fairness and equity of the existing 50 % “membership”/50 percent equalized valuation formula.
- Make recommendations based on findings.

Current formula works as designed to work to apportion tax costs for education between the 3 communities that are members of the coop. The proportion of average daily membership (ADM) is 45, 40, and 15. Equalized valued, the other factor in formula is about 60, 29, and 11. The average of those 2 percentages together is 52, 34, and 15. The founding fathers thought that given the membership and equalized valuations of the community, tax costs should be apportioned on the basis of 52%- Durham, 34% - Lee, and 13% - to Madbury. This is what the 3 communities are supposed to pay out of their tax base to support the schools.

In response to a question from Councilor Morong equalized values have changed over the years.

In response to other questions it was stated that the percentages are calculated and money raised on assessed valuation not on equalized valuation and that valuation of the University is not included.

Moneys raised come from statewide property tax, adequacy grant and local property taxes. In order to determine what the local property tax, you have to add local and statewide tax together.

The founding fathers said the ratio should be 52, 34 and 13, but the actual ratio operating today is 59%, 29% and 12%. The reason is that the statewide property tax and the adequacy grant come from equalized valuation not on student membership. The calculation has a double-weighted equalized valuation and so

that the town with the largest equalized valuation is paying more.

Use of the statewide property tax and adequacy grants is not a favorable outcome for a cooperative situation.

In response to a question from Councilor Smith, Mike stated that sources of the adequacy grant come from the state's general fund money, i.e. sweepstakes. The state calculates an adequacy amount by looking at average performance but below average funding and then determines cost by that amount of money multiplied by the number of weighted students to determine the adequate education amount. Each elementary student by 1, each high school student by 1.2, each special education student receive other weights.

Durham has a high-equalized value in relationship to other communities and a relatively low number of students so Durham receives a little over \$1 million dollars in adequacy payments. Lee has a smaller equalized value and almost as many students as Durham and they receive an adequacy grant of over \$2.4 million. This reduces the amount of money to be raised for the community with the larger amount.

Mike believes that the agreement of 50 % "ADM"/50 percent equalized valuation is a lawful agreement. The addition of the cooperative agreement of the statewide property tax, which is largely directed by equalized valuation, has jiggled the formula so that the impact on the town is different from what should be there by the original agreement.

Findings from the commission are that the formula 50 % "ADM"/50 percent equalized valuation is inequitable. The cooperative needs to adjust the district funding formula so that total apportionment is distributed based on

Agreement is attempt to balance the need for education services against the ability to pay for educational services. In response to a question from Councilor Smith as to what in the formula was thought to influence or inform or instruct the issue of ability to pay the response was equalized valuation.

Given current trends the level of assessment on Durham will increase \$10 to \$12 million dollars whereas Lee and Madbury will not see much increase. The questions these figures show is to what extent should Durham help finance education costs in Lee and Madbury. Three reasons for some of the changes include:

- Durham no longer dominates

- Has older or younger not as many students
- Three towns have family with similar socio-economic

The commission recommends that until tax structures are changed that the impact of state property tax should be pulled back from the cooperative agreement.

Chair Sandberg suggested that findings from this report be placed on the agenda for the Joint School Board Meeting on May 20, 2003.

Councilor Grant MOVED to include the presentation from the commission at the May 20, 2003 meeting. Councilor Samuels SECONDED the motion.

Councilor Kraus stated that the report should be focused, no more than 10 minutes and show high points of commission report.

Councilor Niman stated the Council should take a position on funding issues.

Councilor Smith stated that he felt it would be an error for the council to make judgments.

Councilor Morong felt it was premature to take a strong stand without information being heard from the other towns and school boards.

Councilor Kraus stated the council should take an adamant stand.

Chair Sandberg felt a strong stand would stifle discourse between parties involved.

Councilor Niman stated that he does not feel this is an issue of fairness. He further stated that the town needs to look at the benefit of economies of scale. The student population in Durham is large enough to offer diverse programs. Durham is bearing disproportionate costs and it does not have the luxury of being able to pay the current school formula and that the formula needs to be re-negotiated. The benefits are not equal to the costs.

Councilor Grant stated that he agreed with Councilor Niman and that Durham members of the school board have not been able to exercise leadership on this issue.

Councilor Smith stated that the School Board does not make the decision, but the body politic. He further stated the Town needs to utilize calm negotiation to work out the issue and not walk in with a firm opinion.

Chair Sandberg stated that as Councilor Niman suggests the town needs to re-negotiate the formula. He further stated that the council continue the discussion at the meeting of the Council on May 19, 2003.

The motion to add the report to the School Board agenda PASSED unanimously.

Councilor Kraus MOVED to adjourn. The motion was SECONDED by Councilor Paine and FAILED 6-2-0. Councilors Kraus and Paine voted to adjourn.

Councilor Grant MOVED to continue the meeting. The motion was SECONDED by Councilor Morong and PASSED unanimously.

B. Other Business

Councilor Grant MOVED to receive the report of the School Funding Study Commission with appreciation to the members of the commission for the work that they do. The motion was SECONDED by Councilor Paine and PASSED unanimously.

Councilor Morong MOVED to change the council appointee to the DCAT committee from Councilor Samuels to Councilor Paine. The motion was SECONDED by Councilor Samuels and PASSED unanimously.

Councilor Grant MOVED to appoint Robert Doty as an alternate to the Conservation Commission. The motion was SECONDED by Councilor Kraus and PASSED unanimously.

Mr. Selig stated this would be a third alternate position.

Chair Sandberg stated that he will add three items to the agenda of the joint meeting of the school board: Report of School Funding Commission, CIP for the School District and discussion on how the school board builds its budget.

In response to a question from Councilor Samuels expressing concern about the changing of the gate to allow for frequent shuttles, Mr. Selig stated that the University is proposing a remote control system for the Mast Road Extension Gate. The transportation department suggested that the University send a letter to households affected by the change. The university did not do this but sent a letter to Mr. Selig requesting the Town take action to install a remote control gate.

the issue and to make sure that all parties involved have been spoken to prior to a public hearing.

XII. Nonpublic Session

None

XIII. Adjourn

Councilor Kraus MOVED to adjourn. The motion was SECONDED by Councilor Niman and PASSED unanimously.

Chair Sandberg adjourned the meeting at 10:17 P.M.

Barbara Stoddard, Recording Secretary