

This set of minutes was approved at the September 8, 2003 Town Council meeting

**DURHAM TOWN COUNCIL MINUTES
MONDAY, AUGUST 18, 2003
DURHAM TOWN HALL – COUNCIL CHAMBERS
6:30 P.M.**

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

MEMBERS ABSENT: Peter Smith

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

I. Call to Order

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

II. Approval of Agenda

Councilor Kraus MOVED to approve the agenda, as presented. The motion was SECONDED by Councilor Paine and PASSED unanimously.

III. Nonpublic Session

Councilor Kraus MOVED to enter into Nonpublic Session for the purpose of threat of litigation in accordance with RSA 91-A:3 II (e) relating to the Wagon Track Bike Trail project. The motion was SECONDED by Councilor Paine and unanimously APPROVED on a roll call vote of 7-0 as follows:

Sandberg, Aye; Niman, Aye; Samuels, Aye; Harris, Aye; Paine, Aye; Kraus, Aye; Grant, Aye

Councilor Morong recused himself from this discussion.

The Council entered into Nonpublic Session at 6:35 PM.

The Council returned to public session at 7:21 PM.

Chair Sandberg explained that the Council began the meeting at 6:35 pm, and went into non-public session to discuss a threatened lawsuit. He said the Council was now at Item IV of the agenda, "Approval of Minutes".

IV. Approval of Minutes for August 4, 2003

Councilor Samuels MOVED to postpone approval of the minutes of August 4th. The motion was SECONDED by Councilor Kraus and PASSED unanimously.

V. Report of Administrator

Administrator Selig reported on the following:

- The August 4, 2003 Council minutes will be ready for approval at the September 8, 2003 meeting.
- Construction on the Council chambers is progressing. Upon completion, the room will be a much more quiet and comfortable room in the summer months.
- Durham MainStreet Program hosted a successful Young Artists Showcase on August 16, 2003.
- Two sign boards welcoming back UNH students are being put up in Town to let students know they are considered part of the community, and that the Town appreciates their presence.
- Holloway Commons, the new dining facility on the UNH campus, will be hosting an open house on Aug 28, 2003 from 3:00-5:00 PM. Administrator Selig said he had taken a tour of the building the previous week and found it to be a truly magnificent facility. He strongly encouraged people to attend the open house.
- In addition to work on Town Council chambers, the Town is in the midst of several other projects including screening of the Store 24 parking lot and several paving efforts. Administrator Selig said that as of Friday, the entire topcoat pavement had been completed except for Sullivan Falls Rd., which would be completed with the final paving of the Packers Falls Bridge later in the summer. As of August 18th, the bridge was closed to two-way traffic, and should last 6-8 weeks. Notifications have been made to residents, school districts in that area, and Newmarket emergency responders. People on the Newmarket end of the road will be serviced by Newmarket as first responders over that period of time.
- Household Hazard Waste Day is scheduled for Saturday, August 22, 2003. The collection site is the Durham Public Works facility, not the transfer station, which is presently under construction as part of capping of the landfill and rebuilding of transfer station.
- The Town-wide revaluation is currently underway. Administrator Selig explained that prior to the revaluation, the total value of Town was \$389,000,000, including UNH property, and said that the proposed revaluation is \$781,000,000, which meant the value of the Town had more than doubled. This means that for people who have received revaluation notices whose proposed value is 100% or lower, they will likely be paying the same amount or slightly less as compared to last year's tax bill. He said this was because when the tax base doubled, since money used to fund the budget is based on taxable value of property, the Town has raised that much less to fund operations. When valuation doubles, the rate tends to drop by half. Residents who received an increase of more than 100% would probably be paying more than they paid last year. He asked residents having questions about this to contact him or Assessor Robb Dix. He noted the Assessor would be scheduling appointments with people over next few weeks, or longer if necessary, and would accommodate all those wishing to speak with him.

John Kraus noted that the tax rate would be set by the Council, and they would be very cautious about the concerns expressed by Administrator Selig in terms of rates tending to increase or decrease.

Administrator Selig said that was correct, and explained that as part of the approved budget, the Council resolution had set out a projected rate for tax year 2003, and the rate they would be talking about as part of upcoming budget season would be the tax rate for 2004. He said the subject was very confusing and there had been many calls.

- Durham Day is scheduled for Sept 14th, from 1-5 pm at the Wagon Hill Farm.
- Two historic district markers, coordinated and designed by the Design Committee of the MainStreet Program and the Public Works Department, have been hung along Main Street.

VI. Reports and Comments of Councilors

Councilor Kraus provided slides of two segments of the proposed Wagon track bike path. He said the slides showed differences between the western and eastern portions of the trail. The western portion begins just to the right of the Durham Evangelical Church and ends in Madbury on Freshett Rd. and is generally bucolic and scenic. The eastern segment of the track starts in the Bunker Lane trailer park. Councilor Kraus said this represented a different type of road, one that could be traversed by pickup truck, if not passenger cars.

Councilor Morong reported on a meeting of the Landlords Association, also attended by Councilors Sandberg, Harris and Smith, which he said was very well attended, and provided good information exchange between UNH, landlords and Council.

Councilor Morong also noted two petitions in the Council packets—one for Woodridge Road and the other for Bayview Road. He asked what the Council was doing about them. Administrator Selig said the Woodridge Road situation would be addressed in the road program presentation that evening by the Public Works Department. Concerning the Bayview road petition, he said the Council needed to get back to residents directly about their concerns. He noted the police department would be working to be responsive in that area, as well as in other pocket neighborhoods in the community.

Councilor Niman spoke of his continuing concern about the school funding formula and the way the State apportions taxes between towns in each school district. He said he had received a letter from the selectmen in Danville asking Durham to join a coalition of cooperative school districts to argue there was something wrong with the way the State apportions taxes, and that all school districts should go to 100% equalized value, which Councilor Niman said he would never be in favor of, under any circumstances.

Councilor Niman said the memo pointed to a Supreme Court case he was not aware of, and that after reading it, and RSA195:14, at least as an economist, he came to the conclusion that a portion of that statute is unconstitutional and violates the equal protection clause of the State Constitution. He said that with numbers he had available for

the 2001-2002 school year, had calculated that as a result of this “flaw”, it cost citizens of Durham \$838,207.15, which was not an insignificant amount of money. Councilor Niman said he would like the Council to discuss this, perhaps that evening or at the September 8th meeting, because he thought it was time the Town received legal counsel and petition the Court for relief.

Chair Sandberg asked Councilor Niman to provide a packet of information to be included in the September 8, 2003 Council packets.

VII. Public Comments

Tom Kelly, 63 Canney Road, commented on the Wagon track bike path. He distributed a letter dated August 19, 2003 and one dated March 3, 2003 which was read into the Town Council minutes of March 3, 2003 when the Council was addressing a resolution to stop work on the Wagon track bike trail. *(Both of the letters are on file with this set of minutes)*. He said the essence of the letter was that he found it difficult to comprehend that the Council would have to review again the open, participatory process that this project had gone through; the multiple publicly noticed meetings and walks along the trail, the votes by Council to move forward on preliminary design, and the memorandums of understanding agreed to clearly expressing public support for a project that served the public good. He recommended that in light of that open and the democratic process, as well as the Master Plan update process which itself was open, participatory, and called for completion of the trail under the Transportation chapter, that it was time for clear, decisive, ethical action on the issue.

Mr. Kelly said it was his understanding there were conflicting legal opinions around liability issues, and noted that lawsuits could come from multiple directions on the issue, not just abutters. He encouraged the Council to move directly to seek a declaratory judgment, so that instead of speculation on possible lawsuits, they would get the clarity required to make the right decision. He restated his recommendation that the Council take whatever action could be taken to clarify the conflicting issues, set the facts straight and move forward for the public good.

Administrator Selig said that Diane Freedman, 28 Laurel Lane, sent an email on this issue *(attached to this set of minutes)* because she was not sure she could attend the meeting. He read her message, which states she completely supported bike paths and felt that the case against the Town that property values would go down, and the Town did not have the right to use a road that is already a public road, was without merit. She said the bike path was the public way and that she supported paving of it, with a graveled shoulder, to make traffic easy for young and old but also to allow walkers and horseback riders.

Cameron Wake, representing the Seacoast Area Bicycle Route (SABR), said he had spoken to the Council before. He reiterated the value of bike paths. He said Route 4 was not suitable for the majority of cyclists because 20,000 cars a day drove it and there would likely be more in the future. He said there needed to be a safe alternative to Route 4. He said the last time he spoke before the Council, Councilor Grant had asked if SABR would be willing to purchase an insurance policy for the town in case the town was required to pay damages to abutters of the wagon track bike trail. He said SABR could

not accommodate that request, but suggested seeking a declaratory judgment, which would be better than an insurance policy. He said SABR was willing to pay up to \$5,000 toward Town expenses for seeking this judgment. Mr. Wake said this represented a no-risk course of action at little or no cost, and was the cheapest and most direct way to get clarity on the legal issues for all parties, including the Keefes. Mr. Wake said one of the worst possible outcomes would be to stop the project without all of the facts, because of the threat of a lawsuit. He said this would set a precedent for decisions in the future to be settled by threats of lawsuits instead of thoughtful, informed decision-making. He said it was the legal issue that would provide the foundation for an informed decision on the Wagon track bike trail, not one based on the threat of lawsuits.

Daniel Keefe, 59 Piscataqua Rd., encouraged the Council to kill the project as quickly as possible. He noted the legal opinion of the Town attorney, and asked them to follow through with it. He said that in his opinion, the project was a huge waste of money.

Leta Keefe, 59 Piscataqua Rd., said Durham could use the money planned for the Wagon track bike trail for other things such as a library or teen center. She said she had spoken to someone from the Department of Safety who noted that the existing bike path at Odiorne Point received relatively little use, despite efforts to encourage bike riders to do so, and that they used the road instead. She questioned the wisdom of spending town money, in a bad economy, on the bike path, when there were other needs.

Robert Keefe, 59 Piscataqua Rd., said that because of this argument over the bike path, his property had been in a state of animated suspension. He said the primary issue was the effect of the project on Durham taxpayers, which could be substantial. He said they were just one abutter, but that the project would land lock much of the acreage, and their attorney would have to seek reasonable legal address. He said Durham taxpayers would pay all the costs for maintenance when 83% of trail would be in Madbury, and it did not make sense to commit taxpayers for the cost of this project. He said he liked the land the way it was, had kept it that way for 26 years, and felt it was foolish to incur the costs that the Keefe's and other abutter might address the Town with.

Bill Woodward, 76 Madbury Rd., said his nephew uses a bike path to visit his family 17 miles away, and it sets a great example for a variety of people. He said the trail was something to contribute to posterity, a place to get reinvigorated, and an alternative means of transportation. He said he hoped the Town could be visionary about this, as other communities, past and present, had been. He said he sat on the Council for 3 years, during 1999-2002, and about 5% of the Council's time was spent on this issue. He said based on this time investment, and the fact that the democratic process was followed, it was a shame that time was still being spent on an issue that had already been resolved.

Rob Keefe Moscow, Idaho, explained that he grew up at 59 Piscataqua Rd, but was presently living in Moscow, Idaho and was home for a visit. He said he observed in Idaho that bike paths were common, and were used quite a bit. He said the difference was that the bike paths paralleled the roads, in fairly direct routes from town to town. He said they were planned well and were used for transportation. He said the wagon track bike path plan on a Class VI road across their land that looped around Route 4 seemed

like a silly idea because it was not a direct transportation route but was more of a recreational path.

VIII. Unanimous Consent Agenda (NLT 8:00 PM)

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

- A. Shall the Town Council approve a water abatement for property located at 18 Foss Farm Road?
- B. **Resolution #2003-16:** Authorizing the acceptance of the stated donations and unanticipated revenues in the amount of \$16,903.33.
- C. **Ordinance #2003-03:** Amending certain sections of Chapter 68 “Fire Prevention” of the Durham Town Code in order to adopt the 2000 editions of the Fire Prevention Code and the Life Safety Code published by the National Fire Protection Association, and adding the fees of this section into the Town-wide Master Fee Schedule (*Approval of this item will postpone further considerations of it until September 8, 2003*)

Councilor Niman MOVED TO APPROVE the unanimous consent agenda above. The motion was SECONDED by Councilor Kraus, and PASSED unanimously.

IX. Unfinished Business (8:01 PM)

Discussion and determination on the future of the Wagon track bike trail Bike Trail project

Councilor Morong recused himself on this Item, because his family owned property along the proposed Wagon track bike trail bike route.

Councilor Sandberg welcomed Councilor Morong to stay and listen to the discussion. He noted that a quorum remained.

He said it had been the Council’s policy to share information from the Town attorney to help them understand what the Town was dealing with on this issue.

Councilor Kraus MOVED to make public a letter from Town attorney, Walter Mitchell, dated August 4, 2003. Councilor Grant SECONDED the motion. The motion PASSED by vote of 5-2 (Councilors Paine and Harris voted against the motion).

Administrator Selig gave background on this issue. He said the last time the issue was discussed was on March 17, 2003. At that meeting, Resolution #2003-08 was introduced, which would have directed Administrator to discontinue development of the trail. The Council voted to postpone deliberation on the matter until the Administrator was prepared to make a subsequent presentation, in order to answer a number of questions for the Council. He recalled there had been a series of letters from attorneys regarding the issue.

Administrator Selig said there were two provisions under the Municipal Trails Act, RSA 231-A, for considering liability: 1) When a town constructs a municipal trail it has to give

consideration to damages to abutters along the trail; and 2) construction of a path, which is a 17-foot paved path along the existing right-of-way, limits access to property of abutters, which would lead to devaluation of property values, leading to liability to the Town.

He noted that the Council recommended that the Town Attorney think through the issue once more, based on additional letters from lawyers and other information, and make sure his perspective and position were solid.

Administrator Selig said there were three key aspects of the situation. First, he said an idea was introduced to have the attorneys from the three entities get together to find out if there could be a negotiated solution, a lesser path. However, his conversations with the Keefes indicated a lesser path would not be acceptable, so he felt it would be a waste of money to go through that process. Second, because it had been two years since the last cost estimate for the project, Public Works revised the cost estimate reflecting inflation. Lastly, to determine what the liability would be if the town proceeded with the project.

He quoted the most recent letter from Attorney Mitchell, dated August 4, 2003, which indicated that significant liability risks existed, regardless of whether RSA 231-A applied. After reviewing the various agreements related to the trail, Attorney Mitchell concluded that construction of the trail over the present right-of-way would to some extent interfere with rights of access by abutters over the Class VI road.

Administrator Selig also quoted Attorney Mitchell concerning the standing of SABR to sue the Town if the project was abandoned. Attorney Mitchell noted that SABR said it had standing because it had contributed time and money to the trail idea and that its members, as members of the public, were obviously intended beneficiaries of the agreement. Attorney Mitchell disagreed with this point.

Attorney Mitchell also suggested that a declaratory judgment filing was a good one, but recommended that if this approach was taken, the Town and not SABR should file the petition. He said that if SABR filed the petition, the counsel for the abutter would probably raise the standing question, and the petition would probably be dismissed without any guidance on the merits of the dispute. If the Town filed, there would be no questions about standing, and if SABR chose to intervene, there would be less concern, since essential parties would already be before the Court. Potential cost of such an action was \$1,500-3,000.

Administrator Selig said the Keefes have indicated they would pursue the matter straight to the US Supreme Court if necessary.

In terms of liability costs, Administrator Selig said the Town would need to hire an appraiser to do a market analysis on the properties to get an accurate number, but his very rough estimate was that the Keefe's acreage was worth 1.25 million dollars.

Administrator Selig said the Town of Madbury had been contacted concerning this on-going issue, and had indicated it was Durham's project, and that it would not pursue legal action if the Town abandoned the project. He also said the State of New Hampshire was

is willing to release the Town from its obligations concerning the project, given the prospect of additional legal costs, and costs for the project overall. He said the focus of the Council's discussion should be to decide how to proceed given the legal issues that have been raised. He noted historical issues regarding whether this was a good location for the path, the ongoing maintenance of a path that extends through another community, policing the path, and whether this was a good project to begin with. He said it was hard to separate out the main, legal question from these other, more emotional issues.

Chair Sandberg discussed procedural issues. He said the status quo was that the project had been approved. If the Council wished to allow the project to continue, there was no need for another vote. However, if the Council felt the approval should be amended or rescinded, it would be appropriate to have a motion. Chair Sandberg said he would call for a motion to adopt the resolution proposed in March, which could be debated, and amended if desired. He said the outcome was not a foregone conclusion. He said the current Council was dealing with a new set of issues not considered by the previous Council when it moved for approval.

Councilor Kraus MOVED, that in consideration of the foregoing information as itemized in draft Resolution #2003-08, the Durham Town Council, the governing body of the Town of Durham, New Hampshire approves Resolution #2003-08 directing the Durham Town Administrator to take any and all steps to discontinue completely and with finality development of the so-called Wagon Track Bike Trail, State Project 12136/Federal Project STP-TE-X-000S(151)/Transportation Enhancement Project 04, including termination of the heretofore mentioned agreements between the Town of Durham, the Town of Madbury, and the New Hampshire Department of Transportation, for the construction of 2.7 miles of bicycle path from Route 108 in Durham along the "old wagon track bike trail" through Madbury to the intersection of Watson Road and Back River Road. Councilor Grant SECONDED the motion.

Councilor Niman asked Administrator Selig if the bike path was to be a total of 17 feet wide, could a 6 foot bike path and 11 foot dirt road public right-of-way be created so logging trucks and other sturdy vehicles could drive on it. If so, he asked if that would still be considered as limiting public access.

Administrator Selig said the "devil would be in the details", but said the smaller the scope, the less the chance there will be liability for the Town. The Court would determine at what point the town would begin to limit access of abutters.

Councilor Niman also wondered if placing limits on public access was a result of the Memorandum of Understanding with Madbury. He asked if it would be possible to revise that so it would not limit public access. Administrator Selig said that was also questionable because if there were no limits to types of access along rights of way, and the 17-foot paved right-of-way was built, cars would start to use it and it would become less safe for bikers. He also said that if traffic was unlimited, and if the road was improved, the next argument to be made would be that this was not just a bike path, and the Town had improved a Class VI roadway to Class V or better. He said that would therefore open up over 400 acres of backland to development.

Councilor Kraus said he was looking at the merits of the issue. He said he knew the whole trail and that he was also a biker and had a good commitment to alternative transportation. He said the legal aspects of the issue were important, but he was looking at the issue in a fresh way. He said he saw the project as an unfortunate expenditure of time and energy, and it was unclear what the final cost would be. He said he was concerned with the public good for all. He said most of the track was in Madbury and that development of the trail would turn into a road that airplanes could land on. He said from experience he did not think Route 4 was unsafe for bikes and did not see how the bike path would improve transportation, since sections of it are connected to major roads.

Councilor Paine said she hoped the Council would ask for a declaratory judgment. She said she would like to see the decision made by a judge, not by opposing attorneys who are paid to say different things. She said it was unfortunate that the objections of one landowner can overturn years of public hearings, and she was deeply upset by this. She asked that the Council amend the motion to request that a judge develop a declaratory judgment.

Councilor Grant said he recognized that no Town Council can bind future town councils to actions through its own decisions, but was reluctant to turn against a project that was so long in development. He said he felt the project should have been significantly modified early in the development process, but was compelled, based on the twice stated opinion of the Town attorney and hearing the assessor's cost estimates of what damages and liability might be, that the Town should follow the attorneys opinion. He said Councilor Paine had suggested an alternative, as had the Town attorney, and he would not be opposed to that. He said that lacking such a move, he would support Resolution #2003-08.

Councilor Harris said she was very supportive of the bike path, for reasons beyond the possibility of commuting, and that one generation indicates to the next generation by its actions the possibilities of alternative transportation. She said that Route 4 did not provide realistic alternatives. She said she would support Councilor Paine's suggestion for declaratory judgment, and said the previous history of support over many years, which she had been a part of, deserved to get a judgment from another, higher level. She said she disagreed with the Town attorney's judgment that the bike trail would in any way limit access. In fact, the access was expanded at the request of the abutters and a less intensity bicycle path for use by the entire community, even beyond Durham, was very worthwhile. She said she would be saddened if the Council did not somehow develop a compromise pathway, through the declaratory judgment process.

Councilor Samuels said that as a new member of the Council, and was new to this conversation. She said she had reviewed all the material, and saw her role as considering what would be in the best interest of Durham residents. She said she thought her role was to represent them to the best of her ability, and consider the financial responsibility in this matter. She said she was concerned about construction and policing of the area, and also what it does to a landowners use of his or her own land. She said that based on the Town Attorney's opinion, she would vote to abandon the project, but would not object to a declaratory judgment, which seemed to be the fairest way to proceed.

Councilor Grant suggested that even if the liability issue went away, the issue of cost still remained and the Town would have to find additional money to support the project. Administrator Selig agreed, and said this would be a valid reason for abandoning the project. He said there were also possible wetlands issues with the project.

Councilor Samuels questioned if there are concerns about the project now, then why go through motions of seeking a declaratory judgment. Administrator Selig questioned if the Council felt the project was not something it wanted to proceed with, then why not stop it now.

Councilor Paine said she wanted to clarify that in the event a declaratory judgment said there was no liability, the Town would have the right to say at that point how it would want to build it, and would have the opportunity to come up with an alternative. Administrator Selig agreed but said that in order for the Town to avail itself of federal funds, the project would have to meet minimum specifications/criteria.

Councilor Kraus reiterated it was crunch time, and all a declaratory judgment did was postpone the issue.

Chair Sandberg said he had not heard one person in the entire process speak against bike paths, and that that was not the issue. He said the issue for him over the years had consistently been the rationale of Durham building a public road in another town and maintaining it in perpetuity in the condition it was built to. He said the project was very elaborate, and the Town had made a long-term commitment, which is contrary to the best interest of the citizens of Durham. He said he had no doubt that the current threat posed by the project was substantial, but that those who had doubts might wish to seek the declaratory judgment. He said that if the court came back and said the Town did not have liability, he would still vote against the project because he did not think it was in the best interest of the Town to have such an elaborate project.

Councilor Paine MOVED to amend Resolution #2003-08, Now, therefore be it resolved that the Town Durham directs the Town Administrator to seek a declaratory judgment on behalf of the Town with respect to the legal threat posed on behalf of the Keefe's attorney Scott LaPointe, to determine whether liability exists for the Town of Durham and the Town of Madbury, should the Town proceed with the so-called Wagon track bike trail bike path project. Councilor Harris SECONDED the motion.

Councilor Niman asked Administrator Selig, in terms of funding, if there was a requirement that if Durham put up funds, was there some match where they were obligated to spend a certain amount of money. Administrator Selig said it was an 80/20 match based on an amount of \$336,975 and 80% was about \$60,000 the Town planned to cover costs through the Town engineer's time, gravel from gravel pits and alumni parent fund money. However, his understanding is that the alumni parent fund money was no longer available.

Councilor Kraus compared these figures to what the Town was planning on spending for the entire 2004 pavement plan.

Councilor Niman said he could not support the use of additional tax dollars for this project.

Councilor Paine said it was her understanding that at this point, any form of this project would be contested, and therefore the Town needed the declaratory judgment to find out whether there was any merit to those claims. Another reason she stated for proceeding with a declaratory judgment was the fundamental law and precedent that would be set by this decision. She asked Administrator Selig if it was his sense that if the Town went to the State with a lesser project, would the State insist that the Town go forward with the larger project. Administrator Selig replied that he thought the State would leave it up to Durham to determine how it wanted to structure the path. He suggested that if the Town chose to seek a declaratory judgment, it was important to seek it on the specific proposal it had planned to move forward on, or it would leave the Town open to having to do again. Chair Sandberg agreed that any declaratory judgment should be very specific. He encouraged members of the public eager to have a bike path to work with abutters and come up with a project that was more affordable and approvable, and once this was accomplished it would be appropriate to seek a declaratory judgment on that smaller scale project.

Councilor Harris asked if the Town would lose the funding in that case, if the project was on hold. Administrator Selig replied that if the Town really wanted to proceed and was serious about it, he could convince people holding the funds to hold them awhile longer, but if they had the sense the Town was not serious, they would rather free up the funds.

The motion to amend Resolution #2003-08 to direct the Town Administrator to seek a declaratory judgment FAILED on a vote of 3-4 (Councilors Niman, Harris and Paine voted in the affirmative; Chair Sandberg, Councilors Grant, Samuels, and Kraus voted against the motion).

Councilor Niman said he wished to propose an amendment to the original motion.

Chair Sandberg said in order to be able to consider thoughtful, appropriate wording for an amendment, it might make sense to postpone the vote on the original motion to the next meeting.

Councilor Kraus said he found that inappropriate, and recommended going forward on the motion as it was. He said that if in the future the Council wished to revisit the issue and modify it in a more friendly way, that would be fine. He said he saw no reason to drag the issue out further.

Administrator Selig said he wanted to make it perfectly clear that if approved, the motion would kill the project dead. Notifications would be made to all appropriate parties.

Councilor Kraus asked if that would preclude \$10,000 of friendly gravel two years from now, and Administrator Selig said it would not.

In consideration of the whereas clause written in Resolution #2003-08 that the Durham Town Council, the governing body of the Town of Durham hereby approves

Resolution #2003-08, directing the Town Administrator to take any and all steps to discontinue completely and finality steps necessary to discontinue completely and with finality development of the so-called Wagon track bike trail Bike Path, State Project, 12136/Federal Project STP-TE-X-000S(151)/Transportation Enhancement Project 04-9, including termination of the heretofore mentioned agreements between the Town of Durham, the Town of Madbury, and the New Hampshire Department of Transportation, for the construction of 2.7 miles of bicycle path from Route 108 in Durham along the “old wagon track bike trail” through Madbury to the intersection of Watson Road and Back River Road. The motion to kill the project PASSED on a vote of 4-3. (Councilors Samuels, Kraus, Grant and Sandberg voted in the affirmative; Councilors Niman, Harris, and Paine voted against the motion).

Chairman Sandberg called a recess.

Councilor Paine left the meeting at this time.

Councilor Harris asked for the opportunity to move to reconsider, given that some of the funding information received was incomplete, and the vote was thus based on incomplete information. She asked that the information that was omitted be made public, and if any Councilors on the prevailing side would like to consider reconsideration, that they have that opportunity.

Administrator Selig explained that a member of the audience pointed out that some of the statements he had made regarding the financing were inaccurate. He said the clarifications were that the UNH Parents Fund did expend \$15,000 toward the development of the project, to date, and the UNH Office of Sustainability was prepared to donate an additional \$10,000 toward the project.

Chair Sandberg said if councilors who voted on the prevailing side wanted to reconsider their vote, now was the time to move to reconsider. No reconsideration of the vote was made.

Councilor Morong rejoined the meeting at this time.

X. Presentation Items (NLT 8:30 PM)

Councilor Morong MOVED to remove the NLT 8:30 pm time on item X, given that the previous discussion had taken longer than expected. The motion was SECONDED by Councilor Kraus and APPROVED unanimously.

A. Receive 2002 Audit Report – Greg Colby, Lead Auditor, Plodzik & Sanderson.

Mr. Colby reviewed the 30 page audit report, and highlighted key areas. He explained that the independent auditors report goal was to give the Town an independent opinion on the various financial statements. He said that with one exception noted in the report, the lack of a general fixed asset account, which was not uncommon in NH, the financial statements were in order.

Mr. Colby went through the various other sections of the audit report, and gave summary figures from the report. He noted the management letter at the end of the report, where significant areas that needed comment were to be addressed. He said he was pleased to note that nothing stood out as requiring reporting. He said this was the first time his firm had done an audit for Durham, and it was very unusual that the firm would not have comments for a town they had worked with for the first time. He said this was a true test of the excellent job the Town's business management staff is doing. Mr. Colby thanked them for their help in developing the audit report.

Chair Sandberg noted that the firm offered the Town a small refund in return for Town staff's efficiency.

Councilor Kraus commended the Town's Business Manager and Administrator for the excellent job they were doing, especially when one realized the Town had had great difficulty with financial control.

Paul Beaudoin, the Town's Business Manager, gave his staff much credit for their work.

Chair Sandberg asked Mr. Colby what he thought the size of the Town's unexpended fund balance should be, given the Town's size and other variables. He said the Town's balance was a good level, a bit lower compared to other towns, and said he would not want to see the town go much below that.

B. Receive Quarterly Financial Report - Paul Beaudoin , Business Manager

Mr. Beaudoin said that overall, the Town was in good shape. It was behind in some revenues but excelling in others. He said he did not expect surprises that would cause any changes in plans concerning revenue and spending.

Chair Sandberg asked if he anticipated needing to transfer funds from one department to another, and Mr. Beaudoin said he did not.

Administrator Selig said he had one concern, looking to the end of the year. He noted that the planning office had exhausted the funding budgeted for the consultant and was searching for additional funds so that person could stay on an "as needed" basis. He noted other expenses incurred in the planning office, with John Harwood doing contract work while the full-time planner was focusing significant time on the zoning rewrite process. Administrator Selig said the staff was looking for funding to offset these expenditures, and were following the situation closely.

Councilor Grant asked how the amount of fees being received in the planning office compared with previous fees. Mr. Beaudoin said that as of June 30, 2003, ZBA fees were up, but planning fees were down. He noted that building permits were far below what was expected this year.

C. Receive Report from Operations Division Mike Lynch

Administrator Selig gave background on the report. He said the focus of this discussion was on two issues. First, the long-term road program which was very important for the Council to understand as it approached the budget season. Second, an overview of the Packers Falls Bridge project, a major public works project in the Town, so the Council and community would know where the project is.

Lynch introduced Bob Levesque, the Town Engineer, and Doug Bullen, Director of Operations. He described Mr. Bullen as the engine that makes public works go, and said he was a terrific asset to the Town. Mr. Lynch noted there had been a reduction in staff and Mr. Bullen took on significant additional responsibilities.

Mr. Lynch reviewed the work the road program had been involved with in 2003, and also talked about future plans for 2004, and 2004-2017. Doug Bullen showed slides. Among items discussed was the reclamation program, where existing asphalt was crushed and made into a usable road base. He described specific roads in town where specific kinds of road work was being done. He described the planned 2004 road plan, noting that some of the plans were in response to comments from residents. He said the plans were not cast in stone, because weather and other variables affected the roads in ways that could not always be predicted.

Councilor Kraus asked about a specific road, Main St west, and said it was hard to believe the road would hold together until 2006. Mike Lynch agreed, and said the planning department and UNH had applied for grant money, a big portion of which would go into the Main Street Program. He said it was a town road, but the Town has taken the stance that wear and tear is UNH's responsibility, so they have negotiated that the Town would contribute 10% to the Transportation Improvement Program (TIP). He said UNH is interested in a much bigger picture, in terms of design. He said the road itself is being considered from a variety of perspectives, but that his department was considering ways to make the road work for the next few years.

Councilor Grant said he did not think that the upper end of Main Street would hold up until 2006. He said the road was in bad shape right now, and needed serious work. He said the patching does not last.

Councilor Morong asked if the Town checked the work that road contractors are doing. Mr. Lynch said that he and Bob Levesque did check the work on a regular basis.

Administrator Selig said that as part of the road program, he had asked public works to plan on approximately \$250,000 a year to invest in Town roads. He said for many years the roads were neglected, and many fell behind. He said that the Council would be asked to constrain spending in other areas in order to be able to fund the road program.

Councilor Grant said there had been tremendous wear and tear, perhaps due to construction at UNH, and perhaps they should commit to keeping the road in fairly good shape until the major road project is started.

Councilor Morong asked about the long-term effectiveness of road reclamation projects, and also asked if there was bonding of development projects, to cover damages to local roads from construction trucks.

Mr. Lynch said there was a bond on a road, and the road was videoed before work was done. He said that at the end of the project, the road was inspected and evaluated. He said there were presently bonds on Emerson Road, Coe Drive, Candy Road and Baghdad Road.

Councilor Samuels asked if there was bonding of roads UNH construction may be affecting, and Mr. Lynch said there was not. He said traditionally this had not been done. Administrator Selig said if there clearly was damage to roads from the construction, that could be addressed. But he said it was hard to tie the problems on Main St. to a particular cause.

Councilor Kraus moved to extend the meeting for 15 minutes. Councilor Grant SECONDED the motion, and it PASSED unanimously

Bob Levesque showed slides of the Packers Falls Bridge Construction, focusing on the deterioration problems, and the formwork, including the arch work that is being done, He said the bridge is closed to traffic right now, and they are at the end of November as the completion date.

Councilor Harris noted that the construction was preventing parking access for swimming, and Mr. Bullen said some fencing had been put up which delineated the area better. Mr. Lynch said that with the closing of bridge, workers could now park closer to the bridge, and that should free up parking at swimming area.

XI. New Business (NLT 9:30 PM)

A. Policy Issues with regard to water and sewer extensions

Administrator Selig said that at the previous Council meeting, there was a request from Stonemark Management to extend water and sewer lines. He said the Council had some questions from Town staff regarding what the vision and capacity was for the systems, and to follow up on this, a meeting was scheduled between himself, Jim Campbell, Bob Lynch and Mike Levesque, Paul Beaudoin. He said that these systems would help to delineate the future development of the Town. He said both systems exist in certain areas of the community and there is a great deal of repair work needed. The Master Plan speaks to development in certain areas of the Town, which means extensions will be needed in those areas..

Councilor Harris asked if the Master Plan recommendations had been taken into account.

Councilor Morong asked what the point was of picking up Woodridge if they are on septic systems that are functioning, unless one wanted to increase density out there.

Mr. Levesque said the thinking was that the life of septic systems was limited, and sewers would at some point be needed out there. Councilor Grant also noted that these properties were on private wells. Jim Campbell said the master plan had noted septic problems with the Woodridge area. Councilor Grant noted that because there was a concentration of homes there, if the line was extended, people would attach on and help support operation of the line each year.

Councilor Harris noted that Foss Farm Road, which had significant septic problems, was right next to the town's water supply – the river.

Chair Sandberg asked what the planning department had to say about these scenarios. Jim Campbell said that three of the areas were called for in the Master Plan. Then one that was not was the one on Newmarket Road. In terms of master plan for proposed zoning, they are looking at 108 as professional office, and office research down Mast Rd.

Chair Sandberg said he was concerned about the adequacy of the water supply, as more people are talking about using water for various kinds of new development. He asked what the long-term vision for increased water supply.

Administrator Selig said they did not have a firm number of what should be allowed within the Town's capacity, because that capacity varied so much. He said they needed to hone in on that more precisely.

Mr. Levesque said the water issue was more complicated than the sewer issue, because the Town used surface water, which was controlled by nature. He said the Town needed alternate water sources, and more storage for water, in order to think about enlarging water system. He spoke about Spruce Hole and Lee Well as a potential future groundwater source.

Chair Sandberg asked if water was an "Achilles heel" to growth and development in the town. Mr. Levesque said that once Spruce Hole was developed, the Town would be at the end of the road. He said he did not see Spruce Hole as a large aquifer. He suggested some applications, somewhat unconventional, that might be developed with the State, to use Spruce Hole as a recharge area, and to use the Lamprey River, during plentiful times to do the recharging. He said this was purely theoretical at this point and was years away.

Councilor Grant said the maximum the Town pumped out of the Lee Well is currently serving the Town's needs, but that as it grows, we have to buy more water from UNH, which increases costs.

Councilor Kraus MOVED to adjourn the meeting. The motion FAILED for lack of a second.

Councilor Niman MOVED to extend the meeting 15 minutes. Councilor Grant SECONDED the motion, and it passed on a vote of 5-2 (Councilor Kraus and Councilor Harris voting against the motion).

Councilor Grant suggested this was an involved topic, and significant additional discussion was needed on it. He recommended scheduling of further discussion on it for a future meeting, and also urged the Council to move on to Item B, since the party (Mr. Garvey and Stone Quarry Office Park) was under time constraints from the Planning Board for securing approval for its application.

It was agreed to continue the discussion on water and sewer systems to the September 8th meeting.

- B. Shall the Town Council accept for referral to the Water, Wastewater, and Solid Waste Committee an application from Rockingham Properties I, LP for a water and non-industrial wastewater discharge permit for connection/extension application for the Stone Quarry Drive Office Park as recommended by the Town Engineer?

Administrator Selig said the application was reviewed by the Public Works Department, and recommended the acceptance of the application and referral to the Wastewater Committee for further review.

Councilor Morong MOVED to accept a non-industrial water discharge permit and water service connection/extensions for the Stone Quarry Drive Office Park and refer application to the Water, Wastewater and Solid Waste Committee for review and recommendation. Councilor Grant SECONDED the motion.

Chair Sandberg asked if, when the recommendation came back, it would be a good idea to address the large issue of the limit of the Town's capacity.

Councilor Samuels asked whether this would open things up more readily to additional connections to the sewer and water system.

Councilor Grant said that he expected the Wastewater committee would find the impact of the office park would not be a serious impact but said would leave that to the committee to determine.

Councilor Harris said that since the Town was in the middle of a zoning rewrite, and there were questions about the ramifications of increased use of water and sewer systems, that there should be a policy decision before giving approval to the project, at this level.

Chair Sandberg asked if Councilor Harris was in favor of passing the project on to the Wastewater committee, and she said she was, but would like to be able to discuss it further afterward.

The motion PASSED unanimously.

- C. Discussion concerning whether there is need to consider a landlord permit ordinance.

John Harwood spoke provided background information on the issues, and described key features of model ordinances (From Hanover-NH, Newark-Delaware, and Gainesville-Florida) which might provide the basis for a similar ordinance in Durham.

Chair Sandberg recommended the Council needed to see an itemized list of what the problems were and what tools were available to address them. He said that if the Town went down the road of regulating this area in some way, they needed to be very clear on these things.

Councilor Harris recommend that the good landlords should be notified when there were problems with properties, so they had the opportunity to approach the landlords of those properties and perhaps help work out some kind of agreement.

Councilor Grant said he had a recent media inquiry about the status of a proposal to beautify rental properties. He urged that the Town not get into that kind of language with any future landlord related regulation, and instead stick to issues like fire, safety, etc.

Chair Sandberg said they would continue discussion on this issue at a future meeting.

Councilor Kraus MOVED to adjourn the meeting. Councilor Morong SECONDED the motion, and it PASSED unanimously.

The meeting adjourned at 10:57 pm.

Victoria Parmele, Minute Taker