

D-R-A-F-T

**DURHAM TOWN COUNCIL
MONDAY, SEPTEMBER 8, 2003
DURHAM TOWN HALL – COUNCIL CHAMBERS
7:00 PM**

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

MEMBERS ABSENT: None

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

I. Call to Order

II. Approval of Agenda

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

III. Special Announcements

IV. Approval of Minutes

August 4, 2003

Page 3 – Under Reports and Comments of Councilors, 2nd paragraph – reword – “He said the committee also is inclined to recommend that next year there will be no leaf pickup in the fall, and that persons who want to bag leaves will need to take them to the dump. Councilor Kraus said this strategy is viewed by the committee as environmentally significant and as providing significant assistance”.

Page 4 – reword 2nd paragraph under VII-Public Comments – “Mr. Hall provided pictures of various vehicles parking illegally in fire lanes...”

Page 7, 2nd paragraph, reword “those could be addressed up front”.

Page 8 – 6th paragraph, “it would make sense to have a separate hearing that was noticed”; also on that page, 2nd paragraph from bottom should read “ ..given the enormous presence of the University in terms of the fire safety operation”

Page 9 – 2nd paragraph from bottom, should read “but this was very different than saying the Town can announce to UNH that it will give them a particular service”

Page 10- last sentence should read “through the police because it is a traffic violation”.

Page 11 – 3rd paragraph should read “property owner for written permission to be placed on file; 5th paragraph should read “..additional costs associated with the new ordinance and Chief O’Keefe responded.”; 6th paragraph should read “Councilor Smith asked for the law stating that any property”; also 6th paragraph should read “..is the first route to take to get cooperation. However, if they refuse, the department should do it anyway. 7th paragraph. Last paragraph should read “...he had not been communicating with upper

level administration concerning the prospect of including UNH fire lanes in a Town ordinance, because this has not been the practice followed up until now”.

Page 12, 1st paragraph should read “..specifications about fire lanes at the University”.
4th paragraph should read Councilor Niman suggested making this into a two or three part process. He said the Board could improve the language of the existing ordinance, and vote on just that piece at the next meeting, so they could move forward with providing for the safety of the Town. They could adopt at the next meeting a revised version of what they had before them, with the commitment that they would work out other issues with UNH in the coming months. He also said there needed to be a policy document about how we will enforce fire lanes, and that it would be irresponsible not to have an explicit policy document concerning checking and enforcing fire lanes at various places, for various size events. He suggested that perhaps the cost for this could be built into the cost of the event; they could then sit down with the UNH and Durham police departments and say this was their expectation for these specific situations. He said if there was a policy, and enforcing agencies worked together with the fire department, they could perhaps resolve some of the issues Mr. Hall has presented.

Page 12 – 2nd paragraph from end of section X, should read “Councilor Smith said he would like to give the administration...”

Page 14 – 3rd paragraph “..consideration needed to be given to soliciting Councilors’ views early

Councilor Niman MOVED to insert amendments as proposed by Councilor Kraus and Councilor Sandberg. The motion was SECONDED by Councilor Kraus, and PASSED 8-0-1 (Councilor Grant abstained because he had not attended the meeting.)

August 18, 2003

Page 1- at bottom of section III. Nonpublic Session, insert the following:

“Councilor Morong recused himself.” Also, change roll call vote to 7-0, and delete Councilor Morong’s name from the record.

Page 3 – under Reports and Comments of Councilors, 1st paragraph should read “The eastern segment of the track starts in the Bunker Lane trailer park.”

Page 4, second paragraph from bottom, should read “”He read her message, which states she completely supported bike paths”

Page 9, top paragraph, fifth line should read ”that development of the trail would turn it into a road”

Page 11, top line should read “Councilor Niman said he could not support the use of additional tax dollars for this project”.

Page 12 , insert at end of Section IX, “Councilor Morong re-joined the meeting”.

Page 18, 3rd paragraph should read “Councilor Grant said he had a recent media inquiry about the status of a proposal”.

Councilor Kraus commended Victoria Parmele for doing a wonderful job on the minutes. He noted the meetings were very difficult, with a lot of substance that needed to be conveyed.

Councilor Grant MOVED to insert the amendments made to the minutes. The motion was SECONDED by Councilor Niman, and PASSED 8-0-1 (Councilor Smith abstained because he had not attended the meeting.)

V. Report of Administrator

- The annual fall leaf pickup will be conducted on November 10, 2003. Paper bags will be used this year, which are available at Houghton's Hardware. The Integrated Solid Waste Management Committee will have a list of other places to obtain the bags.
- Two dead crows testing positive for west Nile virus have been reported within the last two weeks. One was found at the intersection of Denbow Road and Pinecrest Lane, and the other was collected at Davis Avenue. Administrator Selig recommended that the public avoid standing pools of water where mosquitoes breed, and to wear protective clothing and anti-mosquito spray when outdoors.
- The annual Oyster River cleanup, hosted by the UNH Office of Sustainability, will be held on Saturday, September 20, 2003 from 9:00-12:00 PM. The day will also include a river walk with a local ecology expert. Interested citizens should meet at the Durham Town landing at 9:00a.m.
- The UNH student government will be hosting a student summit the weekend of September 19, 2003, promoting responsible student celebrations. Administrator Selig said there would be a presentation on this topic at the Council meeting.
- Durham Day will be held on Sunday, September 14, 2003, at Wagon Hill Farm from 1:00-5:00 pm. Administrator Selig said it had been a wonderful time the previous year, and welcomed residents and students to participate.
- Administrator Selig will be attending the International City/County Management Association Conference in Charlotte, North Carolina beginning the weekend of September 19, 2003. He noted that Business Manager Paul Beaudoin would be available to provide assistance at the Town Council meeting on September 22nd.
- The Durham Tax Collector executed a tax lien on unpaid 2002 property taxes as of 5:00 pm August 11, 2003, in the amount of \$179,728, with an additional approximately \$14,000 in interest. The lien amount and number of parcels is consistent with past years.
- The annual "University Day" will be held on Tuesday, September 16, 2003, beginning at 12:30 pm in the Granite State Room of the MUB. UNH President Ann Weaver Hart will be giving State of the University address, followed by a picnic from 3:30-6:30 pm. Members of the public are invited.
- The Town has received an executed agreement between the municipality and the State Dept. of Administrative Services concerning the use of the Durham District Court. Administrator Selig said it was a two-year agreement totaling \$30,562 per year in rent to the Town, with an optional two year extension. He said it was a positive outcome that the Court would remain in Durham in the near future.
- Administrator Selig noted the upcoming anniversary of September 11th, and said on that day, the Durham Fire Dept. would be conducting a very low key service at the Fire Department, beginning at 9:45 am.
- Administrator Selig said that in an effort to reach out to Durham residents and keep them informed, a new listserv had been created. This is a receive-only service, and in order to respond, members of the public need to use specific email addresses of town personnel. To subscribe, people should go to www.ci.durham.nh.us, select the online services menu at the top of the screen, and then go to the mailing list sign up section on the left side of that screen. Administrator Selig thanked Councilors Paine and Niman for their involvement and noted the service would allow residents registering on the listserv to receive periodic updates from the Town.

- Administrator Selig said that he and Public Works Director Mike Lynch met with members of the descendants of the Leathers family at the grave site, and agreed to install a 6" tall aluminum fence to surround the cemetery up against the existing fence. He said this was a solution that is acceptable to the descendants and playground supporters and addresses two primary needs - to protect children who might otherwise stray in to the cemetery, and to protect the historical grave site from desecration. He said all of the descendants would be signing off on the final agreement.
- Administrator Selig noted improvements at the intersection of College Road and Main Street, which had been approved by the Council a year ago and were funded by UNH. He said there would be a new right turn eastbound lane, a new campus connector stop, westbound; upgraded pedestrian walks signals and an upgraded traffic signal system. He said this would hold the town over until the complete rehabilitation of Main Street in two years.
- Administrator Selig noted a request from a member of the Council on the status of the Craig Supply property, and said that the Town, UNH, OSP, and Dept. of Environmental Services were working together on the issue. He said grant funds had been secured to study the extent of contamination at the site. He said he expected an update in the next 2-3 months on the testing, and noted a decision would have to be made in the near future on the future use of the site. He said the University had also been addressing the issue in its planning process.
- The Town's Special Event Permit forms will be improved to make it clear that the person signing off on the event application had the authority to do so.

VI. Reports and Comments of Councilors

Councilor Smith said he had attended a significant meeting approximately a week earlier with the University, the Secretary of State's office and the Attorney General's office to discuss the voter registration matter, and what constitutes residency. He said there had been a very good discussion on the problems faced. Councilor Smith said the Assistant Attorney General agreed to create a document with rules on how residency would be determined by the supervisor of the checklist on voting day. He said it was expected this information would be available to the University by mid-September, which will then review the document, develop an educational program and work with the Town. He said the hope was that the operation would be much smoother on election day, and that this would be tested with the NH primary.

Councilor Smith also noted that the Legislature voted to create a legislative study committee on the issue of the Right-To-Know law and how that interfaces with electronic communication. He said the commission had been appointed, that he was one of the appointees, and noted he would be reporting on the issue to the Council from time to time.

Councilor Paine said the DCAT meeting had gone well that day, and noted they had decided to change some of programming, in an effort to expand the range of it. She said as part of this, some of the government meetings would be moved to alter in the day, and prime time would be used for more public programming in order to balance things out more. She said a new schedule would be coming out shortly, on the website, and asked for feedback on the programming changes.

Councilor Paine also said DCAT was in the process of revising its rules relative to actual logistics and management of the two different systems, and noted the committee would be discussing this at its next meeting on October 6, 2003, if people wished to provide input. She noted the discussion would include membership fees for offsetting the costs of training.

Councilor Grant gave details about the upcoming Durham Day at Wagon Hill on Sunday, September 14th, from 1-5 pm. He said there would be free food, boat rides on the river, live music by a fiddle band, and more and gave details on the bus shuttle. He said the rain date in case of heavy rain was September 21st.

Chair Sandberg said he would be attending a meeting at the Dept. of Transportation on Thursday concerning the proposed safety improvements on Route 108 that go through the historic district. He noted he had been asked by the HDC to attend to insure that their concerns were addressed in the planning of the improvements.

VII. Public Comments

William Hall, Smith Park Lane, expressed concern about the severe lack of understanding of the recycling issue. He said the town contract to pick up recyclables downtown, in his opinion a poor one, was not in the best interest of the Town, and was not cost effective. He said last year at budget time, Administrator Selig told the Town Council the Town could save a million dollars at the dump over time by involving Waste Management, who had also been involved in the previous recycling effort. Mr. Hall said this concerned him and others greatly, especially after the problems there had been with the previous recycling program. He also said that once they reversed the decision not to use the bailer, and are now using it, it appears the prior decision not to use it may have been costing the town \$50,000/year. He said that, plus the salary that no longer needed to be paid for a waste management employee who made the decision, added up to about \$250,000 that would not have to be budgeted over the next two years. Mr. Hall said this made more sense than what the Town staff had been planning previously. He questioned why the Recycling committee had not been more involved in making sense out of the situation. Mr. Hall also noted the dump ticket cost had gone up, and said he didn't feel people should be charged whatever the traffic would bear.

Bill Krause, Executive Director for the Mill Pond Center for the Arts, noted that the Center had existed since 1981, but only last year had purchased the building. He said the Center offered the community a unique and interactive cultural experience, by providing quality arts programs in a scenic natural setting that reinforced and supported existing programming in Durham. He said they were open to the public, and committed to preserving the natural tranquility and historic legacy of the grounds. He also said they looked forward to partnering with the Town in the master planning process in creating a conservation area, a possible site for the new library, pedestrian walkways; and community meeting space (13,000 sq. ft) for all kinds of activities. He said the Center was looking forward to doing more with the public schools - outreach, artists in residence, etc. and said they wanted to complement other arts groups, and provide collaborative space for artists, as well as offer intern opportunities. He said they planned on adding more performance and studio space, and said the Center's goal is to have a self-sustaining organization. Mr. Krause said he hoped the Center would be an

increasingly valuable place for the Town in the coming years. He offered an invitation to the Board to come visit the Center.

Councilor Kraus asked if there would be a fee if a Town event were held at the Center. Mr. Krause said a small fee would be charged simply to allow them to maintain the facility.

Chair Sandberg encouraged Mr. Krause to stay in close touch with the planning office as he looked at various possibilities for the center.

Megan MacPherson, External Affairs Chair for UNH Student Senate, provided a brief overview of the upcoming Student Summit for Promoting Responsible Celebrations. She introduced Mark Rubenstein, Vice President of Student Academic Services and Bruce Mallory, Provost and Executive Vice President of Academic Affairs, and other UNH personnel. She explained that the summit would have representatives from 11 schools and the NCAA coming to examine the growing trend of large group civil disruptions in campuses and their communities. She said the goal was to exchange ideas and develop constructive solutions to the problem, and to look at this problem on a national scale. She said the UNH team was 60% students, 40% members of community and would be held from Sept 19-21. She welcomed the Town Council and Durham residents to attend two of the sessions, one at Friday at 7:30 pm in Huddleston Hall, where Daniel Wann, an expert on these kinds of civil disruptions would give the keynote speech; and the other on Sunday in the Strafford Room of MUB at 11:00 am— where Provost Mallory would give a summary and report on the weekend. She said a follow-up summary on the summit would be available in approximately 3 months, and also said information on the event could be found at *UNH/edu/studentsummit* , and that the follow-up summary and other relevant information would also be available at this site, including an electronic discussion group on the issue.

Chair Sandberg said he would not be able to attend the summit, but noted that Councilor Grant had graciously agreed to attend, as a team member. Chair Sandberg said he was very pleased they had been invited and wished Ms. MacPherson the best of success with such a worthwhile project.

Councilor Kraus asked about another conference on this issue being sponsored by the Justice Works program. Bruce Mallory replied that the conference Councilor Kraus referred to would present social science research on these kinds of mass disturbances, fueled by circumstance, alcohol, athletic events, etc. He said the student summit was organized by student leaders and would be a problem solving analysis working on long-term solutions, while the Justice Works represented a scholarly inquiry in the phenomenon.

Councilor Smith MOVED to extend the Public Comments Section for an additional 15 minutes. Councilor Kraus SECONDED the motion, and it PASSED unanimously.

Administrator Selig asked if plenary sessions of the student summit would be taped so that those who could not attend could watch them at a later date. Ms. MacPherson said the tapes would be available a few weeks after the conference.

VIII. Unanimous Consent Agenda – 7:49 pm

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

- A. Shall the Town Council approve supplemental warrants for water and sewer at 5 Mill Road Plaza and authorize the Town Administrator to sign said warrants?
- B. Shall the Town Council approve the Special Events permit application submitted by the UNH Public Programs & Events department requesting that a portion of Main Street be closed to conduct the annual University Day Picnic on Tuesday, September 16, 2003 with a rain date of Wednesday, September 17, 2003?
- C. Shall the Town Council approve the Special Events permit application submitted by the UNH Browne Center requesting that a portion of Strafford Avenue be closed to conduct a NASCAR teambuilding event on Wednesday, September 10, 2003?
- D. Shall the Town Council approve the Special Events permit application submitted by the UNH Campus Recreation department requesting that a portion of Main Street be closed to conduct the annual UNH Homecoming 5K Road Race on Saturday, October 11, 2003?
- E. Shall the Town Council approve the Special Events permit application submitted by UNH requesting that a portion of Main Street be closed for the UNH Marching Band during home football games on the slate of dates indicated?
- F. **Resolution #2003-17:** Accepting a Homeland Security Grant from the State of New Hampshire Department of Safety, authorizing an appropriation of \$29,270.71 to the Fire Department Capital Equipment general fund account, and authorizing the expenditure of said funds for the purchase of specialized equipment to enhance the capability of local government agencies to prevent and respond to possible events of terrorism as outlined in the grant.

Item C was removed from the Unanimous Consent agenda and addressed and voted on separately.

Councilor Kraus MOVED to approve Items A, B, D, E, and F. The motion was SECONDED by Councilor Paine, and PASSED unanimously.

Item C

Councilor Niman MOVED to approve the Special Events permit application submitted by the UNH Browne Center requesting that a portion of Stratford Avenue be closed to conduct a NASCAR teambuilding event on Wednesday, September 10, 2003?. Councilor Kraus SECONDED the motion.

Councilor Harris noted that the application requested closure in front of New England Center for four eighteen wheelers, from 9:00-3:00 pm, and also said she didn't understand the purpose of the event.

Councilor Niman explained that Strafford Avenue wasn't a major thoroughfare, and the event would take place during the day and would benefit charities.

Administrator Selig read the brochure on the event, which noted teams, with about 100 participants, would be changing tires, washing windows, etc. on real race cars and the

engines would not be started. He said the 18 wheelers would unload the cars, and Town and UNH police, fire and public works had reviewed event and had signed off on it. He said there was a fire department restriction to keep a lane open at the New England Center for emergency purposes, and that off duty officers would be used for traffic control (funded by UNH). He said the sense was that it was not a main road that was being used, the event was being held at an acceptable time of day, and would primarily impact local University traffic.

Councilor Paine asked for clarification concerning the teams, and also noted that the New England Center would be the facility that would be impacted but their signature wasn't on the permit application. Administrator Selig asked Pam McPhee, the event coordinator to address questions from the Council.

Ms. McPhee explained the purpose of the event, which included promotion for the New England Center, raising money for charities, and team building activities for students. She said the event represented a partnership between the New England Center and the Brown Center.

Responding to a question raised by Councilor Kraus about where the 18 wheelers would be parked Ms. McPhee said the trucks would be parked on Spinney Lane after they had dropped off the race cars.

Councilor Harris asked why Strafford Avenue was chosen for the event instead of a parking lot, for example, near the Alumni Center, since it seemed like a very constricted area. Ms. McPhee explained that the event was being held there because it was part of a promotional effort for the New England Center.

Councilor Harris noted that the New England Center is a business that is tax free in Durham, and said she had some trepidation, in that regard.

The motion PASSED unanimously.

Councilor Kraus noted the importance of Councilor Harris' question about the use of Strafford Avenue for the event, and asked Administrator Selig to keep an eye on the situation in case there were any "unique discoveries" on the day of the event.

IX. Committee Appointments (NLT 8:00 PM)

- A. Shall the Town Council appoint George Kachadorian, 9 Carriage Way and Kathleen Kentner, 69 Mill Road, and, as members to the Durham Cable Access Television (DCAT) Governance Committee?

Mr. Kachadorian said he was employed by ABC News and was a producer, camera man, editor and documentary filmmaker and had gotten his start in community access TV in Burlington VT, a situation he said was similar to what Durham hoped to accomplish. He said he loved the process of doing video and working with other people who were excited about video, and said he saw a lot of potential for the station to interface with UNH.

Kathleen Kentner said she was the librarian at the Oyster River High School, and believed cable access is key to enhancing communication and improving community access to information. She said she looked forward to serving on the committee.

Councilor Kraus MOVED to appoint George Kachadorian to the DCAT Governance Committee. The motion was SECONDED by Councilor Paine, and PASSED unanimously.

Councilor Paine MOVED to appoint Kathleen Kentner to the DCAT Governance Committee. The motion was SECONDED by Councilor Samuels, and PASSED unanimously.

The Board thanked both individuals for volunteering for the DCAT committee, and also for the work they had already done for the committee.

- B. Shall the Town Council appoint Robert Rush, 20 Edgewood Road, and Stephen Roberts, 174 Packers Falls Road, as members to the Economic Development Committee?

Administrator Selig noted at the previous meeting, it was asked whether it would be appropriate to have a representative from the Planning Board serve on the Economic Development Committee. He said the charge of the committee didn't specify this, but there appeared to be nothing preventing it.

Mr. Rush said he had served as Deputy Director of Harbor Development for the Boston Redevelopment Authority, and also had been the Economic Development Director for the City of Springfield, MA. He said he had lived in Durham for 5-6 years. He said he had served a few years back on the Main St. program subcommittee dealing with economic development, and would be happy to serve on the Economic Development Committee.

Chair Sandberg asked Mr. Rush to share some of his vision of what economic development in the Town of Durham might look like.

Mr. Rush said he had learned from experience that including planning and economic development on the same committee was a good idea because a lot of things got talked out in the committee rather than in a more challenging public situation. He noted that Durham had UNH, a large non tax paying entity, in the Town, and said this situation was similar to his experience in Boston, where several universities, including Harvard, Boston University etc. had planning and economic development processes which were very aggressive and created problems for the city. He said this background gave him some insight into similar problems Durham was facing.

Councilor Kraus MOVED to appoint Robert Rush to the re-established Economic Development Committee. No term expiration is assigned to this appointment. The motion was SECONDED by Councilor Morong and PASSED unanimously.

Chair Sandberg thanked Mr. Rush for his willingness to serve.

Councilor Kraus MOVED to appoint Stephen Roberts to the re-established Economic Development Committee. No term expiration is assigned to this appointment. The motion was SECONDED by Councilor Paine and PASSED unanimously.

Councilor Smith noted that Stephen Roberts had stated he had received assurances there would be no conflict serving on the Economic Development Committee in addition to serving on the Planning Board. He asked Administrator Selig if there would be a conflict of interest if Mr. Roberts were involved with discussions with a prospective business, and then that business had to appear before the Planning Board for site plan review or any other purpose.

Administrator Selig said there appeared to be no prohibition in State statute against a Planning Board member also serving on an Economic Development Committee. He said that, still, if Mr. Roberts was on the committee and had been actively involved in courting a prospective business to come to Durham, and that a developer came before the Planning Board, Mr. Roberts would have to decide if it was appropriate for him to recuse himself. Administrator Selig said one criterion for deciding this might be how involved Mr. Roberts was in the process; in other words, was he the one actively courting the business, or was he merely involved in the vision that eventually led to the company coming before the Planning Board.

Councilor Smith said that, in other words, there was nothing in Mr. Roberts' memo that would preclude making that consideration at that time, as Administrator Selig understood it. Administrator Selig that was his understanding.

Councilor Samuels said she had thought the charge of the economic development group was to be completed in January 2004, when a report with recommendations would be presented. She noted that until that point there would be no potential conflict, but beyond that, it might be a concern.

The motion PASSED unanimously.

Chair Sandberg thanked Mr. Roberts for his willingness to serve, and noted that it was in fact possible for people to serve on the Planning Board and other committees at the same time.

- C. Shall the Town Council appoint Myleta Eng, 216 Packers Falls Road, as an alternate member to the Zoning Board of Adjustment?

Ms. Eng said she had lived in Durham since 1981, and did not have experience in zoning issues. She said that Mark Morong and Neil Niman had recruited her, and that she would like to serve the town.

Councilor Smith asked Ms. Eng a question he said he intended to ask anyone who planned to serve on the Zoning Board of Adjustment. He explained there were training programs run by the NH Municipal Association and the NH Office of State Planning for service on town boards, including the ZBA. He said he had reached the conclusion over the years that especially for the ZBA, it was very important before joining to receive training, and asked Ms. Eng if she would be prepared to take the training course. He

noted that if there was any charge for this training, the town would be prepared to cover it.

Ms. Eng agreed to take the training.

Councilor Morong said he had encouraged Ms. Eng to join the ZBA, knowing the ZBA was in desperate need of members. He said he had known her for several years, and found her to be a thoughtful, conscientious person who would do well in the position of alternate. Councilors Kraus and Paine said they knew her at the University and also endorsed her.

Councilor Paine MOVED to appoint Myleta Eng, 216 Packers Falls Rd., as an alternate member to the Zoning Board of Adjustment with a term expiration of March 31, 2006. The motion was SECONDED by Councilor Grant and PASSED unanimously.

Chair Sandberg congratulated Ms. Eng, and thanked her for her willingness to serve the Town.

- D. Shall the Town Council appoint a Durham representative to the Apportionment Formula Study Committee? **8:15 pm**

Councilor Paine MOVED to amend the agenda to spend up to 15 minutes on this Item. The motion was SECONDED by Councilor Samuels, and PASSED unanimously.

Administrator Selig said he had received a letter from Jack Quinn, Chair of the Oyster River School District School Board, asking the Council to appoint a representative to serve on a study committee which would be reviewing the Oyster River Cooperative School District apportionment formula. He said the study committee would have representatives from each town in the school district and from the school board, and would be addressing the following: the definition of fairness, evaluation of the existing formula, and proposal of alternatives, if appropriate.

Chair Sandberg said that a Durham representative needed to be chosen by the Town Council.

Councilor Samuels MOVED to appoint Councilor Niman to represent the Town on the Apportionment Formula Study Committee. The motion was SECONDED by Councilor Paine.

Councilor Samuels said Councilor Niman had been very active in this area, has all the facts and figures, is dedicated and passionate on the issue, and she is delighted he would be the torch-bearer in the quest for fairness and equality in how the Town of Durham pays for its school portion of the tax.

Councilor Smith said he was reluctant to speak publicly on the nomination, but said he had two issues to address. He said the first had to do with procedure, and explained he was distressed that a series of emails was sent among a majority, if not a quorum, of Council members on this issue, which was scheduled on the evening's agenda. He said

he hoped the Council would not engage in this kind of pattern while this matter is being worked on in the coming months, and that these matters need to be discussed publicly. He also said that on the merits, he could not support Councilor Niman. He said he agreed with Councilor Samuels that Councilor Niman has been passionate on this subject, a quality he admired, but that this instance, he felt the passion is too great, and that the appearance of someone whose mind appears to be made up already was not appropriate.

Councilor Niman said he agreed he had not been silent on this issue, but differed concerning the point that he did not have an open mind. He said the record of his published research would show that his opinions on some things had changed over the years, and he did not consider himself to be a dogmatic person. He said if someone was able to shed new light on the apportionment issue, he would certainly consider it and would perhaps change his views.

Councilor Niman said his concern was that if the path the school district traditionally had followed continued, that information would never become public and the real issues, numbers and consequences for Durham would never be known. He said the report generated by the subcommittee that studied the issue a few years back, after voters expressed their concern over taxes for education, was not fair and balanced, and didn't carefully study the issue in detail. He said as a result of this, the situation continued to frustrate the citizens of Durham, who felt their concerns were not heard or addressed by the school board. He also noted this frustration motivated Councilor Grant, to a certain extent, to push forward with the formation of the School Funding Study Commission.

Councilor Niman said it was important that a strong advocate of Durham be involved at this point, and he welcomed the opportunity to be able to bring forth relevant information on the issue. He said if there existed information that showed the present situation was fair, he would like to see it. He said he doubted such information existed, but if it came forward he would perhaps change his mind. He said if the Town was serious about keeping the school district together, and resolving the issue for the citizens of Durham, now was the time to do it. He said to rely on past information sources, and past ways of doing things would not resolve anything.

Councilor Morong said he shared some of Councilor Smith's concerns, while being impressed with Councilor Niman's understanding of this complex issue, his ability to articulate it, and his passion. He said that he had "one to one" conversations with Councilor Niman, although not by email, and felt that in looking at the fairness picture, Councilor Niman would represent him, and that fairness also means looking back to the original formula and taking that into account.

Councilor Kraus said that Councilor Niman was the torch-bearer on this, but that his passion might be his greatest handicap. He said that some council members realized that on the one hand passion would push him forward to carry the day, but they didn't want that same passion to cause him to be ostracized for appearing to have a closed mind.

Councilor Grant said Councilor Samuels had asked him if he wished to be the representative to the study committee, but he believed Councilor Niman had a superior grasp of the facts. He said he had confidence in him, and wanted him to serve with passion, to articulate, and to sell.

Councilor Kraus MOVED to extend the discussion for five minutes. The motion was SECONDED by Councilor Samuels, and PASSED unanimously.

Councilor Harris asked if Councilor Smith could recommend someone else for the position that would represent the Town openly and fairly. She said she couldn't think of another person, that Councilor Niman would do an excellent job, and said she believed he would be open to presentations from others on the committee.

Councilor Grant MOVED to limit debate on the motion. Councilor Paine SECONDED the motion and it PASSED unanimously.

The Motion to appoint Councilor Niman to represent the Town on the Apportionment Formula Study Committee PASSED 7-1, with Councilor Smith voting against the motion.

X. Unfinished Business - 8:34 pm

A. Continued discussion on policy issues with regard to sewer and water extensions

Town Engineer Bob Levesque continued his discussion from the previous Town Council meeting on present and future potential water supplies in Durham. He referred to the July 2000 Water Resources Management Plan done by Dufresne-Henry, and provided some more recent data as well. Mr. Levesque emphasized that with increasing demands, limited water supply sources, and increasing regulation of water resources, a plan for wise management of these water resources was critical. He said an important part of the management plan was providing more storage, and development of the Spruce Hole Aquifer, so as not to rely as much on surface water. He also said the most important aspect, from a public works perspective, was to start looking at developing an ordinance for the system, which would require coordination with the University.

Mr. Levesque said this year, the capacity was sufficient, but that the previous year, the town's water supply had almost reached an emergency state. He said that at this point there was still 33,000,000 gallons behind the dam, which represented a 45 day water supply.

Chair Sandberg said the Town needed to insure that the water supply would be sufficient in the future, and asked Mr. Levesque for his perspective on this. Mr. Levesque said that when the Town was at 80% of capacity, it was important to have a clear plan where it was going. He said Durham was at this capacity, even though 9 months out of the year it didn't get anywhere near that capacity.

Councilor Smith asked what an ordinance concerning long-term water supply issues should include. Mr. Levesque said it should contain specific standards and criteria for water and sewer, and require impact fees because of the need to think long term in order to find additional applications and alternative water resources.

Councilor Smith asked if this was inviting new statutory provisions to an impact fee charge. Mr. Levesque said that was correct, but an ordinance would need to include more than that.

Councilor Niman asked if there was a plan to bring the Spruce Hole aquifer on line, and if any costs on this had been calculated.

Mr. Levesque said Dufresne-Henry had looked at this previously, and that the upcoming Capital Improvement Plan included money to continue to look at engineering aspects of this.

Councilor Niman asked if it made sense to move this up from 2005, in order to start looking into the water supply issue right away

There was additional discussion on the Spruce Hole aquifer. In answer to a question from Councilor Samuels, Mr. Levesque said this aquifer would not be used as a water storage area. He said the possible water storage area was a sand and gravel aquifer area off from the environmentally sensitive Spruce Hole site. He said a possible scenario for the recharge might involve a sprinkler application of clean water from the Lamprey River

In answer to a question from Councilor Kraus, Mr. Levesque said that despite increased growth, water use has remained relatively level because there had been giant leaps in conservation. But he said the increased efficiency from water conservation had reached its peak.

Councilor Grant asked if the recommended actions in the Dufresne-Henry plan had been carried out. Mr. Levesque said about 50% had been carried out.

Chair Sandberg asked Council members at what point they needed to start thinking, as a legislative body, about restricting the rate of growth or increasing the Town's water supply.

Mr. Levesque said UNH was also dealing with this reality, and he said their public works people were on board to look into the Spruce Hole aquifer.

In answer to a question from Councilor Kraus, Mr. Levesque explained that the Lee well aquifer acreage was purchased by the Town of Durham from Lee several years back, and the current capacity is 5,000,000 gallons/day. He noted that Lee was given the right to 10% of the water.

At the end of the discussion, Mr. Levesque provided a diagram to show where potential water supply lines could be extended in the Town.

- B. Shall the Town Council approve 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 Water, Wastewater and Solid Waste Committee?

Administrator Selig gave an overview of the project, and said the Town of Durham Water, Wastewater and Solid Waste Committee had reviewed the application, and recommended that the application be approved.

Councilor Kraus MOVED to approve Rockingham Properties I, LP's application for a water and a non-industrial wastewater discharge permit for connection/extension for the Stone Quarry Drive Office Park, and authorizes the Town Administrator to sign the approved wastewater permit and use and occupancy agreement with the State of New Hampshire. The Motion was SECONDED by Councilor Paine, and PASSED unanimously.

C. Continued discussion on School Funding Formula issue - **9:12 pm**

Councilor Niman said he had come across a potential legal issue while reading some Supreme Court decisions recently in his continued study of the school funding issue. He recommended that the Council hire a law firm with experience in educational/tax issues to determine whether his perception that there might be a potential legal problem was correct. He said that based on that legal opinion, the Town might choose to move forward or not to move forward. Councilor Niman emphasized he was not interested in suing anyone, but that for quite some time the numbers had bothered him. He acknowledged he was not a lawyer and his reading of the law might be incorrect, which was why he felt obtaining a legal opinion was important.

Councilor Niman MOVED to instruct the Town Administrator to seek legal counsel for the express purpose of determining whether or not makes sense to petition the court for relief from portions of RSA 195:14. The motion was SECONDED by Councilor Kraus.

Councilor Niman presented a detailed discussion on the Supreme Court cases and their implications for Durham.

Councilor Smith asked what exactly the motion meant. He asked specifically who the opposing party in this would be if the Town decided to seek relief.

Councilor Kraus moved to continue the discussion for 15 more minutes. Councilor Samuels SECONDED the motion, and it PASSED unanimously.

Councilor Niman said he would defer answering Councilor Smith's question until the Town obtained a legal opinion.

Chair Smith said seeking such a legal opinion was not a wise expenditure, unless he could see that something positive came out of it. He said the statement that the Town might need to seek relief essentially meant it would have to file suit against the State of New Hampshire, because there was no alternative method for seeking relief.

Councilor Samuels asked if there might be some way to seek such relief at the legislative level.

Councilor Grant said that if the Council went the route Councilor Niman suggested, the attorney would provide a number of options on how the Town could proceed.

Councilor Harris said if this legal problem was affecting the Oyster River Cooperative School District, it would also be impacting other cooperative school districts, and so there might be more general interest in resolving the problem.

There was discussion on who the Town might hire to look at this legal question, and how much it would cost.

Councilor Kraus said that, having seconded the motion but also having listened to Councilor Smith's comment, he was really interested in knowing whether an attorney could tell if Councilor Niman was right or wrong.

Based on discussion among Council members, Councilor Kraus made the following motion to replace/amend the previous motion made by Councilor Niman:

Councilor Kraus MOVED that the Durham Town Council hereby instructs the Town Administrator to seek legal counsel for the express purpose of determining whether or not RSA 195:14 violates the equal protection cause of the NH State Constitution, and if so, to advise the Town as to potential courses of action available to it. The motion was SECONDED by Councilor Paine.

Chairman Sandberg noted the time and asked for a motion to extend the discussion on this matter, if the Council so desired.

Councilor Kraus MOVED to extend the discussion for five minutes. The motion was SECONDED by Councilor Grant, and PASSED unanimously.

Councilor Smith said that since passing the above motion means spending Town money, he wanted to know whether the Council wished to put a limit on how much it is prepared to pay to obtain an answer. He said he was not prepared to spend any money at this time but urged the Council that if it was ready to spend funds, it should place a limit on the amount.

Chair Sandberg said he was confident that if the amount to research this question would go beyond what is already budgeted, to a drastic extent, that Administrator Selig would advise the Council accordingly.

Councilor Kraus said the spirit of the motion is that the Town Administrator would come back before the Council before proceeding to spend any money on this issue.

Samuels agreed with Councilor Kraus and said she had confidence in Administrator Selig that he would come back to the Council for advice before proceeding to spend further funds.

The motion PASSED unanimously.

XI. New Business (NLT 9:30 PM)

- A. **First Reading on Ordinance #2003-04:** Amending Sections 132-1 and 132-3 of Chapter 132 "Tax Exemptions and Credits" of the Durham Town Code to increase exemption amounts for the elderly and blind due to the overall increase of property values within the Town of Durham as a result of the 2003 Town-wide revaluation.

Administrator Selig explained that about a year and a half ago, the Town evaluated all of the existing exemptions, deferrals, credits, and put all of the different code/mechanisms to assist the poor, elderly, or other people in need in one place so this information would be easier for everyone to find. He said that at that time, the exemption amounts were also updated to reflect new state statute and social security information.

Administrator Selig said that with the ordinance change, it is proposed to look at those numbers on an annual basis, to determine if they are appropriate based on changes to the economy and changes to social security benefits (which increase over time because of inflation). He also said that as a result of the evaluation being done in Durham, the overall value of Town property has approximately doubled, which means that the previous exemption amounts will be changed when the new tax rate is set, so they essentially will be half of what they were. He said that in order to keep them current he tried to establish the minimum exemption as being 10% off the average cost of the average home in Durham, and that those amounts will be doubled to reflect the fact that real value in Durham has essentially doubled.

Administrator Selig noted what the increases would be from the current income and exemption amounts to the proposed amounts contained within the ordinance for the blind, disabled and elderly exemptions.

Administrator Selig said the goal was to do establish this in the ordinance before establishing the new tax rate, because if the Town waited, people who would otherwise qualify for the increased amounts would have to file for an abatement.

Councilor Paine MOVED to pass Ordinance #2003-04 on first reading, amending Sections 132-1, 132-2 and 132-3 of Chapter 132 "Tax Exemptions and Credits" of the Durham Town Code to increase exemption amounts for the blind, disabled and elderly due to the overall increase of property values within the Town of Durham as a result of the 2003 Town-wide revaluation, and to adjust income qualification criteria based on current social security beneficiary information, and to schedule a public hearing for September 8, 2003. The motion was SECONED by Councilor Kraus

Councilor Kraus clarified that the income limits meant that someone that had income or assets over the given amounts would not qualify for the exemptions.

Councilor Smith asked if the changes would apply to tax bills going out in December of this year, or the following December. Administrator Selig said he believed this would be applicable to the 2003 tax bill because the values will double for this cycle.

Councilor Grant asked Administrator Selig to provide an estimate of what the impact will be – in terms of numbers of people, and dollars. He said that someone would surely ask about this at the upcoming public hearing on this ordinance.

Councilor Samuels said several people had expressed to her they were concerned and confused about the doubling of the real value in the Town, and whether their taxes would therefore double. She told Administrator Selig it would be good to clarify this at some point, because some people are very nervous.

The Motion PASSED unanimously.

XII. **Nonpublic Session (if required)**
None

XIII. **Adjourn (NLT 10:00 PM)**

Councilor Paine MOVED to adjourn the meeting. Councilor Paine SECONDED the motion and it PASSED unanimously

The meeting ADJOURNED at 10:00 PM.