

DRAFT

DURHAM TOWN COUNCIL MINUTES MONDAY, OCTOBER 6, 2003 DURHAM TOWN HALL – COUNCIL CHAMBERS 7:00 P.M.

MEMBERS PRESENT: Malcolm Sandberg; Arthur Grant; Neil Niman; Patricia Samuels, John Kraus; Katie Paine

MEMBERS ABSENT: Annmarie Harris; Mark Morong, Peter Smith

OTHERS PRESENT: John Harwood; Donald Bliss, State Fire Marshall; Durham Fire Chief Ron O’Keefe; Paul Berton; UNH students; other interested members of the public

I. Call to Order (7:00 pm)

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

September 22, 2003

Page 10, 2nd paragraph, should say “Councilor Grant noted that the Council”

Page 12, 2nd paragraph, should say “Councilor Samuels agreed with what had been said”

Councilor Grant MOVED to approve the minutes of September 22, 2003. The motion was SECONDED by Councilor Samuels, and PASSED unanimously.

V. Report of Administrator

- Administrator Selig said the Town had received a donation from a private benefactor for the installation of central air conditioning for the museum located on the 2nd floor of the Durham Historical Society building (court house). He noted the air conditioning would be in place in plenty of time for next summer. He also noted repairs were being done on the chimney of the building, and the roof was also being replaced, as planned in the budget.
- Administrator Selig noted Arbor Day was celebrated this year with the planting by the Dept. of Public Works of two eighteen foot sugar maple trees at the intersection of Main Street and Jenkins Court. He said the trees were donated by the Durham Great Bay Rotary Club, and thanked them.

- Administrator Selig said a series of work parties had been involved in cleaning up Mill Pond, and said two more work sessions were planned - Sat Oct 11th and 25th – 9:00-11:00 am. He invited citizens to help with this cleanup effort.
- Administrator Selig said the annual leaf pickup was scheduled for November 10th. He said this year, citizens needed to use paper bags if they wished to have the Public Works Department pick up the leaves.
- Administrator Selig said Council members had received the Draft version of the 2004-2013 Capital Improvement Program (CIP) for the Town, as required by the Town charter. He said the formal plan would be brought forward with the annual budget, so both would be aligned. Mr. Selig said he and Paul Beaudoin would be meeting with the Planning Board on Wednesday to discuss the document and get their input on it. He also said that as part of the formulation of the draft CIP and the budget, he would be scheduling site visits to the various town departments, and said he would be inviting Council members to attend if they were interested, to look at equipment, buildings, etc. that are being considered for replacement.
- Administrator Selig noted that on September 10, 2003, Carl Gilbert scheduled a meeting in Concord, regarding Group II retirement benefits for UNH police officers. He said that since that meeting, members of the legislative delegation had made a number of requests to the Council that it take a position regarding Group II in Durham. He said there had been assurances from the University that although Senator D'Allesandro was willing to introduce legislation in Concord to address this issue, there seemed to be some recognition that giving the Town the chance to address this locally is appropriate. Mr. Selig said he was hopeful that Council members would express their opinions on this at the meeting.

VI. Reports and Comments of Councilors

- C. Historic District Commission - Councilor Sandberg noted the commission had met the previous week, and had scheduled a public hearing for October 23, 2003, on the proposed hotel project at the intersection of Main Street and Church Hill, which would be partially within the Historic District.
- E. Planning Board - Councilor Grant noted that the Planning Board Zoning Rewrite Committee had its last meeting the previous Wednesday, and had deferred until November the proposed second series of public hearings on the proposed revisions to the Zoning Ordinance. He explained that some sections were yet to be completed, and required further research, and said the Planning Board anticipated having the entire package ready to present at a public hearing in mid November.

There was discussion among Council members about a roundabout planned by the University and the fact that the location of the proposed roundabout was not yet clear. Chair Sandberg said the upcoming Traffic Safety meeting would clarify what was proposed.

- G. DCAT – Councilor Paine said the committee had met that afternoon, and was continuing its revisions of guidelines for DCAT. She noted the master schedule was being revised to

allow for exciting new programming, and said the committee was considering reducing the number of government meetings and repeats of these meetings. She asked for input from the public concerning this possible change, and noted the live meetings would still go on as scheduled. Councilor Paine said the last portion of the meeting was devoted to watching the end of a wonderful piece on the Durham Day Picnic that would be shown on the local station.

- H. Economic Development Committee - Councilor Niman said the second meeting of this committee was lively and covered 3 key areas: community development, especially how to make Durham more of an endpoint/destination to spend some time and money in; economic development, with the committee considering areas in town that could attract research and other office firms that might employ students; and student housing. Councilor Niman said the committee was considering the idea of matching landowners and apartment building developers.

Councilor Paine asked if the group was having any discussions with the Mill Pond Center. Councilor Niman said they were planning on doing this, and that this connection was part of the impetus for focusing on community development. He noted the Mill Pond Center was possibly going to build a 400-seat theatre, which could tie in well with community development efforts.

- I. Integrated Waste Management Committee - Councilor Kraus showed the Council and the public an advance copy of the *Down to Earth* newsletter, put out by the Public Works Department and the Integrated Waste Management Advisory committee. He said this represented a cooperative effort, and volunteer work at its best. Councilor Kraus also introduced the leaf bags that are now available in Town, at a typical price of 5 bags for \$1.99.

VII. **Public comments**

Paul Runcy, President of the Stagecoach Farms Homeowners Association, said he had come to encourage the Council to approve the acceptance of the Ross Road and Ellison Lane as public right-of- ways.

William Hall, Smith Park Lane, said the discussion on the impact of the southern connector route had been disappointing. He also commented in general, and in particular, about significant fire lane problems still facing the Town.

Chair Sandberg said he didn't believe the Council had discussed the southern connector that evening, but had been discussing a proposed roundabout.

Councilor Niman asked if Section VI of the Agenda could include comments on issues other than those related to the different committees. Chair Sandberg said it did, and that it was totally appropriate to go back to that Agenda section if desired.

Councilor Niman gave Council members an update on the school funding apportionment committee, of which he had been a member. He said the first meeting had taken place

the previous week, and would be meeting again on October 8th. He said 4-5 meetings were scheduled, depending on whether or not a consensus was formed. He said the meeting went well, and that three key issues had been identified: 1) ability to pay – does equalized valuation represent a good measure of ability to pay, or should other factors be taken into account; 2) should the contribution of number of students/ demand for services be part of the formula; 3) what should be apportioned, once there is an agreed upon formula - should it be the total cost of the school district, or should it be the cost over and above an adequate education.

Councilor Niman said he provided a 28 page handout to the committee as some preparation for the discussion, and noted Council members had seen most of this material already. He passed out additional materials Council members had not yet seen, which included information on Forest Park. He said one of the benefits of having the committee was the opportunity to clear up some misperceptions, for example that the Town of Durham is reimbursed by the Forest Park students and is getting rich as a result, and hence its is fair that Durham should pay more. He said the spreadsheet developed by Paul Beaudoin showed that the cost of Forest Park Students to the Town is about \$185,000 a year.

Councilor Niman described additional handout material as a crude attempt to determine what it costs the Town to host the University of New Hampshire. He noted he had a graduate student doing independent study on this issue. He said a rough number of \$2.3 million had been calculated, but pointed out that not all variables were factored in to this, and he said this figure would be revised when additional variables were included. Councilor Niman said he hoped to have a report on this to the Council by the end of the semester.

Chair Sandberg suggested there should be a detailed presentation on this topic at the October 20th meeting, so Councilor Niman could get feedback from Council members.

Chair Sandberg next addressed the Group II question. He said he had spoken with the president of the University, who indicated Senator Lou D'Allesandro was willing to introduce legislation to establish Group II in the university system, but preferred that the university address that as local issue with the Towns of Durham and Plymouth, before proceeding with legislation. Chair Sandberg said the Council would need to consider whether they would support such legislation, or instead preferred to handle the issue locally.

Administrator Selig said the local delegation had been unanimous in arguing in Concord that this is a local issue, and should be dealt with at the local level. He said the delegation wanted to ensure that the Council supported that position, and said this was his purpose in bringing up the topic at the Council meeting.

Chair Sandberg said the Council would have further discussion on the Group II issue under Other Business.

VIII. Unanimous Consent Agenda

- A. Shall the Town Council approve the Special Events permit application submitted by the UNH Campus Activities Board requesting that a portion of Main Street from Mill Road to the UNH Field House be closed to conduct the annual University Homecoming Parade on Friday, October 10, 2003?
- B. Shall the Town Council approve the purchase of a 4-wheel drive sidewalk tractor with plow as requested by the Public Works Department?
- C. Shall the Town Council approve a road acceptance for Ross Road and Ellison Lane as public right-of-ways?

Councilor Kraus MOVED to approve Items A, B, and C by unanimous consent. The motion was SECONDED by Councilor Paine and PASSED unanimously.

IX. Unfinished Business (7:37 pm)

- A. **Public Hearing and Action 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 said there were two reasons for bringing this forward: 1) the revaluation of property in the Town, where on average the value of property has doubled; 2) revision of the Town's elderly, disabled and other exemption programs and tax credits. He explained that since the value of properties had doubled, in order to maintain the exemption amounts and make them as meaningful this year as they were last year, it was recommended that the exemption amounts be doubled. He gave the example that someone who qualified previously; who had a home previously valued at \$100,000 would have been eligible for a \$16,000 exemption if they were in the 65-74 age category. He said with the new values, it is likely the home would be valued at \$200,000, so the exemption should also be doubled – to \$32,000.

Administrator Selig explained that the second part of this process, which will be done on an annual basis, will be to ensure that the income limits established for elderly and disabled citizens remain current with social security beneficiary information.

Councilor Paine MOVED to open the public hearing on Ordinance #2003-04, as presented, 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, and to adjust income qualification criteria based on current Social Security beneficiary information. The motion was SECONDED by Councilor Kraus, and PASSED unanimously.

Councilor Grant MOVED to close the public hearing on Ordinance #2003-04, as presented, 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, and to adjust income qualification criteria based on current Social Security beneficiary information.. The motion was SECONDED by Councilor Kraus, and PASSED unanimously.

Councilor Paine MOVED to pass Ordinance #2003-04, as presented, 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, and to adjust income qualification criteria based on current Social Security beneficiary information. The motion was SECONDED by Councilor Samuels.

Councilor Paine asked if other exemptions, for example for veterans, would also be changed.

Administrator Selig said the scope of this analysis only covered elderly and disabled citizens. He noted the tax credit amount had been doubled for eligible veterans the previous year, and said legislation had been introduced in Concord at the most recent session allowing municipalities to increase beyond \$100 the credit available to veterans. He said he did not know the outcome of that bill, but would be looking into it, and might be bringing this issue forward in the future.

Councilor Grant suggested, for purposes of clarification, that Administrator Selig describe the income limits established to determine eligibility for exemptions.

Administrator Selig provided the following:

Income Limit

Single –\$19,800 – increased to \$20,700

Married - \$28,700 increased to \$30,300

Asset Limit - \$100,000

Exemption

65-74 yrs	\$16,000 increased to \$ 32,000
75-79 yrs	\$32,000 increased to \$ 64,000
80-older	\$64,000 increased to \$128,000
blind -	\$15,000 increased to \$ 30,000
disabled	\$16,000 increased to \$ 30,000

Councilor Kraus clarified for members of the public that the doubling of the valuation of property in no way meant that taxes would be doubling.

Administrator Selig also noted that 14 elderly exemptions were issued in 2002, and 4 blind exemptions were issued.

The motion PASSED unanimously.

- B. **Action on 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.

Administrator Selig said the ordinance was intended to do two primary things: 1) conform the local Durham code to the State code, so that the same statutory scheme would apply whether the fire department was dealing with a building on UNH property or a building in the Town of Durham; 2) evaluation and improvements to existing ordinance provisions concerning fire lane safety in the Town. He said that as part of this second area, Fire Chief Ron O’Keefe had identified fire lanes on the UNH campus that needed to be marked appropriately and actively enforced.

He reminded Council members that the previous time this issue was presented, a number of questions arose concerning the proposal, including one as to whether the changes being made to the local ordinance were or were not more restrictive than the State fire code. He said the State Fire Marshall had clarified that the Town has some leeway in how it deals with fire safety issues, but cannot do this in a way that is less restrictive than the State code requires.

Administrator Selig questions concerning the second issue had to do with actual designation of fire lanes on the UNH campus, and how the Durham fire chief obtains his authority to enforce fire issues, including fire lanes, on the campus. He said the Town attorney had given his opinion on this, as did State Fire Marshall Don Bliss. Mr. Selig noted State Fire Marshall Bliss and Durham Fire Chief Ron O’Keefe were present at the meeting to answer questions on this latter issue. Mr. Selig said that with respect to fire lanes on campus, the mechanism being recommended was not to identify UNH fire lanes in the ordinance, but rather for the fire chief, under his authority, to designate where the fire lanes are on campus, to post them (mandated by State statute), and include that list of fire lanes in the University’s own parking and traffic rules. He said a reference to this information would be included in the Durham fire code.

State Fire Marshall Don Bliss told the Council it was 32 years ago this month that he had joined the Durham Fire Department, while a student at UNH. He spoke briefly about the revised Durham Fire code, and said it was consistent with the most recent State fire safety provisions.

Chair Sandberg explained that fire lanes in specific areas of Town had been included in the ordinance, so that the citizens can see that not only the fire chief designated these fire lanes, but they also have the full endorsement of the Town Council. He said his understanding was that this council endorsement was not required, and asked State Marshall Bliss about this.

Mr. Bliss said this was a critical piece of the process. He explained that when new development came in, typically the establishment of fire lanes was started by a recommendation from the fire chief to the planning board, as part of the site plan. He said this eventually became part of an ordinance or some other enforceable document and enforcement shifted to the police department, which relied on this legal authority when issuing tickets.

Chair Sandberg asked what the critical document was concerning university fire lane designations that would empower the police authorities to enforce the rules. Mr. Bliss said the University parking regulations, empowered under a different state statute, give them control over their parking lots. He said when a new building on campus was contemplated, his office sat down with the fire chief who identified fire lane access, hydrant location, etc. the fire department would need.

Chair Sandberg summarized that the fire chief need to provide a written statement as to the specific fire lane areas, and then it was up to the University to incorporate them. He asked if they were required to do so.

Mr. Bliss said their statute said they had the authority to do that, and his experience was there had been no problem getting them to assign fire lane criteria to areas. He acknowledged, however, that congestion problems made it more difficult for fire lane planning and enforcement efforts.

Councilor Kraus noted the previous discussion on this subject raised the concern about potential liabilities for the Town in fire lane situations. He said it was his understanding that the Town might be liable for not enforcing a particular fire lane, and asked Fire Marshall Bliss if that was correct.

Mr. Bliss, noting he was not a lawyer, said he did not see that the Town had any specifically greater liability in this area than in its general liability under existing statutes. He said the Town actually had a lot of discretionary authority about this, as long as there was no maliciousness in the way the ordinance was being applied, - for example, enforcing fire lanes at one location but not another. He said that if it was determined that because of other priorities, there were not enough police officers to enforce fire lanes 24 hours a day, that was a valid decision for the Town to make.

Councilor Kraus asked if there were a problem concerning a fire lane the University designated, whether responsibility would fall to the University exclusively, and would not in any way involve the Town.

State Fire Marshall Bliss said that although he was not an attorney, he assumed that what happened on State property was their responsibility.

Councilor Niman said he appreciated Mr. Bliss's comments about discretionary authority, but asked if there was some rule of thumb about standard practices concerning fire lanes.

Mr. Bliss said this was a local control issue and varied considerably from town to town, but noted the focus on fire lane safety had generally evolved over time.

Councilor Samuels asked Fire Chief O'Keefe if the list of fire lanes being given to the University for enforcement had existed before.

Fire Chief O'Keefe said that until the previous year, there had been no formal list. He noted the lanes on this list have been designated and labeled properly, and the list itself will be incorporated into the University's fire safety rules. He said although enforcement of these lanes is the responsibility of the University, if Durham fire officers see violations, they will do enforcement as well, by asking people to move their vehicles, or reporting the violation to University police.

Councilor Paine MOVED to adopt Ordinance #2003-03, an ordinance 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. The motion was SECONDED by Councilor Kraus.

Councilor Samuels stated this was a good ordinance, and improved the Town's understanding of fire safety issues.

Administrator Selig said that fee schedules are part of this document, and that these fees can be reviewed easily to make sure they are at the proper level. He noted many of the fire safety fees have been increased, which is in line with the goal of revenue enhancement.

Council members provided comments/minor corrections to the wording, and fees listed in the ordinance.

Chair Sandberg suggested the fee schedule in the ordinance would come up for renewal as part of the budget process, so the suggested editorial refinements could be made by that time.

Councilor Grant asked Chief O'Keefe if oil burner installation always required a permit. He was told it did, and questioned whether the furnace man explained this to homeowners when he installed a furnace. Chief O'Keefe said the furnace installer should be the one getting the permit.

Councilor Niman said he was hopeful that places of assembly were going to be monitored more carefully. He suggested that since this would place a greater demand on fire personnel to do more inspections and enforcement, perhaps the permit fees for assembly should be increased.

Chief O'Keefe explained to Councilor Niman and others that enforcement has been stepped up over the years, and to pay for this, when someone is taken to court, they are

charged for restitution to the fire department. He said the department had been quite successful in getting this restitution.

Chief O'Keefe also noted State Marshall Bliss was retiring. He thanked him for coming that evening, and also for his support.

The motion PASSED unanimously.

X. Presentation Items (8:13 pm)

A. Receive report by Zoning Board of Adjustment – Henry Smith, Chair

Mr. Smith described the ZBA's reason for being and its mandate. He noted the board had five regular members, appointed by the Town Council, and according to the Zoning Ordinance could have three alternate members (although State statute allows five). He said the ZBA currently had two alternates and would like to have a third.

Mr. Smith said the current ZBA was a very independent minded group, and acknowledged it was a challenge, although a good challenge, to maintain order. He said that weighty agendas had necessitated having two rather than the usual one meeting per month, for four of the last eight months. Chair Smith said a 10:00 pm limit had been put on hearing any new issues, to avoid having to make decisions later than this hour. He also said the Board was being more careful than ever in abiding by the 5 criteria for making decisions, and that individual board members were specifically citing the criteria used in making their decisions.

Mr. Smith next described the kinds of issues the ZBA has recently been dealing with:

- Issues involving the RCD - residential coastal district; he said because this was a precious area, the Board had to be especially careful about any further encroachment into the shoreline area, and noted two site visits had been made in this district recently.
- The issue of allowing no more than three unrelated people in a given single-family detached dwelling (for RA, RB, RC and LD districts); he said there had been several discussions about this issue, and there was not always agreement among board members. He said this was likely to be an on-going issue
- The issue of whether a structure is a single-family home with an accessory apartment, or a duplex; he noted this was also an ongoing issue, because of student housing needs and the problems related to this.
- The issue of multi-unit housing in Durham's downtown central business district. He said there had been several requests for rehearings over this issue.
- Setback issues, generally less contentious.

Mr. Smith said that because Durham is a highly desirable place to move to, intense pressure is being put on the Town's resources and existing housing. He said that in light of this, the ZBA saw itself, in the context of the master plan and town ordinances, as ensuring "that development is commensurate with the character and physical limitations of the land, for the promotion of the health, safety and general welfare of the Town of

Durham and its residents". He said the Board was sensitive to and struggled with these goals, and hoped to make good decisions to promote them.

Councilor Niman asked Mr. Smith if it would be helpful if the Town had a person present at ZBA meetings to serve as an advocate, to help field legal questions that arose from applicants, and their lawyers. He wondered if perhaps the Code Enforcement Officer should serve less as a neutral party, and more as an advocate for the Town.

Mr. Smith said he appreciated the question, but did not feel the Board needed such an advocate. He said the Town attorney could be invited to attend, but noted the Board tended not to need his presence, because it was a quasi-judicial board, that was not intimidated by attorneys.

Councilor Grant pointed out that a large number of Items on the ZBA agendas seemed to be concerned with nonconforming lots. He asked Mr. Smith if the ZBA had had the opportunity to provide input to the Planning Board on whether that area of the Zoning Ordinance needed clarification, in order to decrease the number of agenda items on nonconforming lots.

Mr. Smith agreed that nonconforming lot Items appeared frequently at ZBA meetings. He said he thought one of the reasons for this was that the Code Enforcement officer was doing such a conscientious job. He said he did not know about the input being provided to the Planning Board regarding nonconforming lots in the zoning rewrite process, but acknowledged it would certainly be desirable to see fewer nonconforming lot Items on agendas.

Chair Sandberg asked Mr. Smith if there were aspects of the Zoning Ordinance that he thought needed to be made clearer as to its intent in order to lessen the number of appeals made before the ZBA.

Mr. Smith said that based on the Zoning Ordinance, many lots were considered nonconforming, and he said he didn't know if the zoning rewrite committee could change this.

Chair Sandberg said it seemed to him that a variance should be an extraordinary event, representing a definitive, extenuating circumstance, and should not be routinely granted. He asked Mr. Smith if he was finding that variances were routinely denied, or approved, and if there were any numbers indicating the trends.

Mr. Smith said he thought there was previously an attitude that the ZBA should prove why an applicant should not be granted a variance. He said it seemed to him that it was up to the plaintiff to prove that the variance should be granted. He noted that the ZBA did not routinely approve variances, and said those that were approved often had conditions of approval attached to them.

Councilor Kraus told Mr. Smith their had been a fruitful discussion about the ZBA at the previous Town Council meeting. He noted the independent, quasi-judicial nature of the

ZBA, and said it was important to understand that although ZBA members might do things that Councilors or others did not like, they had the judicial authority to do so.

Councilor Grant passed on to Mr. Smith a suggestion made by a citizen at a Council meeting that other Town boards should allow time for public comments. Mr. Smith said he would be willing to discuss this idea with the Board.

Administrator Selig noted the budget was being developed, and asked Mr. Smith if the Town should be doing more in terms of providing educational opportunities, or more frequent structure forums developed by the Town attorney on ZBA issues.

Mr. Smith said the training provided by the NH Municipal Association, which is now held both in the spring and the fall should be sufficient. He said the new ZBA member would be attending this training.

Chair Sandberg thanked Mr. Smith and the other ZBA members for their work, and said this was an especially difficult board to serve on.

Recess at 8:42

- B. Continued discussion concerning whether there is a need to consider a landlord permit ordinance – John Harwood

John Harwood provided additional background information on this issue. He said problems with student rental properties had increased over the years, and that the location of these properties had extended well beyond the central business district, and was infiltrating several single-family neighborhoods. He said suggestions had been received from citizens on how other communities had dealt with this problem, and the Town had started to look into these solutions. He outlined four different goals of a landlord permit ordinance.

1. insure rental stock is safe and meets codes
2. monitor conversion of single-family homes and other housing to rental housing, and enforce occupancy limits
3. effectively pursue chronic disorderly tenants and/apartments in an attempt to reduce disruptions
4. provide better control of public gatherings resulting in disruptive behavior

Mr. Harwood said there were three ordinances which came closest to what Durham was interested in addressing.

Hanover, NH ordinance. He said as part of this ordinance, the Town of Hanover recently enacted a maintenance and rental property registry, which required permits for renting of dwelling units that would be issued subject to inspection. He said this process gave the community a good sense of how much rental housing was in the community and whether this housing was safe for the community and the tenants.

Mr. Harwood said the Gainesville, Florida ordinance specifically attempted to address the disorderly tenant/apartment issue. He said when there was a complaint, the person charged was fined and the property owner was notified. He said with a second offense, both the tenant and landlord were fined, and that by the fourth offense, the landlord was in jeopardy of losing the right to rent the apartment. He noted this final step in the process was quite lengthy and cumbersome.

Mr. Harwood said the Newark, Delaware ordinance was similar to Gainesville's, but did not include the last step of losing the right to rent the housing unit. He said it involved fines for tenants and landlords, but the landlords could appeal the fine if they showed they were in the process of evicting the tenant.

Mr. Harwood said it was not likely that there could be one ordinance that contained all the needed enforcement capabilities. He noted the Town attorney looked at the provision in the Gainesville ordinance denying the landlord the right to rent their unit based on previous behavior of their tenant, and said it was too extreme to be allowed by NH State law. The Town attorney did say however that penalizing the landlord financially would be allowed.

He said he and other staff had attended the Rental Housing Commission meeting in August and asked for their opinion on the development of a landlord ordinance. He noted many comments were negative, and several people had said the needed laws were already on the books. Mr. Harwood acknowledged this was true, but said there was generally limited enforcement of fire and safety codes in the town. He said development of a rental registry would give the fire inspectors the ability to inspect the whole property.

Administrator Selig explained that the next step in the process would be to ask Council members if they thought these three ordinances contained potential solutions. He said if they did, the next step would be to be to craft an ordinance, or ordinances with department heads to approach the issues in a way that would make sense specifically for Durham. He said landlords present at the Rental Housing Commission meeting had suggested the Town should proceed in a cooperative way with the landlords instead of through an enforcement approach. He said they suggested the responsible landlords could put pressure on those that were not being responsible.

Councilor Paine commented that the complaint she heard most frequently was that the character of former single-family neighborhoods was changing, and they were turning into student housing neighborhoods. She asked if there was evidence on how the ordinances Mr. Harwood described were working.

Mr. Harwood said he had not yet talked to staff in those communities, and Administrator Selig said they would be looking into this if the process moved forward. Councilor Samuels agreed that the effect on neighborhoods was an important issue. She said she agreed with the four goals, and would like to see a combination of the ordinances. She noted the landlord committees had not been successful in solving the problems, despite significant effort, and said she endorsed a rental housing ordinance that had some teeth in it. She said this was not meant as a punishment, but was intended to

regulate a legitimate business in the town. But she said she would not want to go as far as taking away the landlord's ability to rent.

Councilor Kraus said enforcement was the key issue. He acknowledged the research done so far, but said the Town already had some applicable laws on the books. He referred to a previous incident in Town involving rental housing where corrective action, backed with sufficient fire power, was taken. He also suggested that case studies of situations where properties/ tenants had become a problem should be studied to assist in developing solutions.

Councilor Grant noted that the definitions of disorderly conduct in the Newark ordinance seemed very broad, and questioned whether this definition would be allowable under NH law. He also commented on a personal experience with student housing in his neighborhood where a potential problem was averted. He said the landlord was a member of the Landlord's Association and was also involved in the Rental Housing Association, and perhaps had gotten the message from them. Councilor Grant urged the Council to use these two organizations more actively, suggesting that when complaints were received by the Town, these complaints should be passed on to both organizations. Councilor Grant said that for situations where such peer pressure wasn't effective, the Town needed to boost the persuasiveness of these organizations.

Councilor Niman said he did not see why the idea of public disruption belonged in the landlord ordinance, and saw it as inviting legal action. He said blaming landlords for disruptions made him uncomfortable, and suggested it would be more appropriate to regulate disorderly assemblies separately. Councilor Niman also emphasized the role of underage drinking problem in the problem of disorderly conduct. He noted that much of the selling of alcohol was taking place informally, and said a possible law enforcement solution was to find creative ways to catch the people who were buying and then re-selling beer to underage drinkers.

Councilor Niman agreed that a landlord ordinance was important for protecting the health and safety of tenants. He also said the provisions of the Zoning Ordinance concerning prohibiting more than three unrelated people from living in a single-family detached house should be vigorously enforced. He suggested that if it became less profitable to stuff so many people into a house, this would help significantly in preserving the character of neighborhoods.

Chair Sandberg said the proposal being discussed that evening related specifically to licensing landlords, and would not make all the Town's problems regarding disorderly conduct go away. He said this was a huge problem and would require the efforts of everyone in the community. He said he was concerned about how to preserve the Town's neighborhoods, and was looking at the issues of chronic illegal parking, trash, noise, and rowdiness, at certain rental properties. Chair Sandberg said the bad landlords should be made to worry about their future enterprise, although he said he was not interested in putting anyone out of business. Chair Sandberg suggested there should be an ordinance that allowed the Town to help landlords devise an enforceable lease agreement, perhaps involving a security deposit for such things as police calls. He said this way, the people

ringing their hands would be the people violating the code, and individuals would be held responsible for their own behavior. He asked John Harwood to find out what the landlords in Gainesville did when their ordinance was passed.

Councilor Paine said that as a landlord, she made it economically painful for tenants to cause problems by taking the cost for police calls and complaints from neighbors out of security deposits. She said she never had any problem with tenants as a result of this, and agreed that it needed to be economically painful for to violate the local codes.

Chair Sandberg said it was clear Council members were interested in further considering this issue, and noted the distinction between police power and code enforcement power would need to be looked at in greater detail as the process moved forward.

Administrator Selig said he and Mr. Harwood would continue the exploration process, and as part of this would be contacting the communities with the landlord ordinances, and would also get input from the Landlord's Association. He noted Paul Berton was present, and asked if the Council wished to get input from him that evening.

Councilor Samuels MOVED to amend the agenda to extend the discussion for five more minutes. The motion was SECONDED by Councilor Niman, and PASSED 5-1 (Councilor Paine voting against the motion).

Paul Berton briefly addressed aspects of the 4 major goals of a landlord ordinance outlined by Mr. Harwood. He said insuring rental stock is safe and meets codes was not a major issue for Durham landlords. He also said the association did not have a handle on sabbatical rentals. He noted there was not much common ground at the Rental Housing Commission meeting in August except around the idea of a code of conduct for the student population. He suggested a code that would hold students' status at the university over their heads as leverage for better behavior was a huge piece of solving the problem. Concerning the effectiveness of the Rental Housing Commission, he said it had not been effective in dealing with individual property owners because no one came to them on this, but it had been effective in getting greater involvement from UNH.

Councilor Kraus MOVED to amend the agenda to extend the discussion for five more minutes. The motion was SECONDED by Councilor Grant, and PASSED, 6-0.

Robert Sullivan, Woodman Road, said it was important that the Council take a strong position on this issue. He said it should be clear that the Town will not tolerate the kinds of negative behavior that have been taking place. He said he had been at universities where this had made clear, and the bad behavior did not occur. He agreed that putting the responsibility largely on tenants was crucial, and said all parties should know what the code is.

Chair Sandberg said the Council would continue to explore this issue, and there would be plenty of opportunity for townspeople to speak on it.

Gwendolyn Howard, Bay View Road, thanked Councilors for addressing this topic, and said all four goals being explored were important. She said all decent landlords would be likely to support some kind of ordinance, but also said the disorderly conduct aspect needed to be addressed at least in part by giving greater enforcement powers to the police.

Councilor Kraus said he was not among those who thought a landlord ordinance should definitely be developed. He said he would like to see the results of some case studies on how some difficult student housing situations were handled, as background, before considering endorsement of the ordinance approach.

XI. New Business (9:40)

- A. Review and discuss proposed Town Charter amendments for the March 2004 election ballot as presented by the Town Administrator

Administrator Selig said the Town operated under a Town charter and said State statute provided a process for amending this document. He said two years ago the Council had asked him to develop recommendations for improvements to the Charter, if needed, and said suggestions from Council members had been received over the last two years, many of which had been incorporated into the proposed revisions to the Charter.

Councilor Grant said since three Council members were absent, it might be wise to defer the discussion to the next meeting. Councilor Kraus said the charter revisions could be aired that evening, and absent Councilors could contribute their perspectives at the next meeting.

Chair Sandberg suggested that because Councilors had already read through the proposed amendments to the charter, and there would be public hearings in the future on them, it made sense for councilors to simply ask any questions they had.

Councilor Grant asked why the Town would want to totally eliminate the informational town meeting. He said some of the "show and tell" aspects of the meeting could be cut down, but the meeting itself was symbolic of the fact that Durham was a small community and citizens should have the opportunity to get together once a year and ask good questions.

Councilor Paine suggested, in all seriousness, that the informational town meeting should take place at the Durham Day picnic. She said the only people who attended the informational town meeting were board members, Council members and Town staff, and said she supported new ways of communicating information in the community.

Councilor Samuels asked for clarification concerning Article V.

Administrator Selig said the reason for this change was that in recent years, PLEASE
HAVE TODD CLARIFY THIS

He also said noted that revisions to Article 11 would require that in order for the Council to make appointments to boards and committees, there would have to be at least six affirmative votes. Council members discussed implications of this Article, and Chair Sandberg suggested it would need to be thought through carefully.

Councilor Kraus said it was important that the Council outline for the public what the proposed changes to the charter were, and what the options were, since the Townspeople ultimately would be voting on them. He also said it was important to scrutinize the charter from the perspective that if a particular Town Council wasn't working well together, there might be something in it that could allow a council member to trip up the process.

B. Other Business

Chair Sandberg asked if there was consensus of Council members that the Group II issue should be addressed locally. He said he thought the University should come to the Council and explain why they want what they want, and then seek the Town's endorsement.

XII. Adjournment

Councilor Kraus moved to adjourn the meeting. The motion was SECONDED by Councilor Paine and PASSED unanimously.

The meeting Adjourned at approximately 10:00 PM.

Victoria Parmele
Minute Taker