

DRAFT

DURHAM TOWN COUNCIL MINUTES MONDAY, NOVEMBER 03, 2003 DURHAM TOWN HALL – COUNCIL CHAMBERS 7:00 P.M.

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

MEMBERS ABSENT: None

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

I. Call to Order

II. Approval of Agenda

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

III. Special Announcements

Administrator Selig said the plan had been to introduce the Town's new firefighter, Keith Dawson, but this had been postponed because Firefighter Dawson was unable to attend the meeting.

Councilor Kraus MOVED to postpone the introduction of Firefighter Keith Dawson until the November 17, 2003 meeting. The motion was SECONDED by Councilor Samuels, and PASSED unanimously.

IV. Approval of Minutes - October 20, 2003

Councilor Kraus MOVED to approve the minutes of October 20, 2003 as submitted. The motion was SECONDED by Councilor Paine.

The following amendments were offered:

Page 3, should read "Councilor Smith said the legislative commission ..."

Page 4, under VIII, the motion should read "...and PASSED unanimously, with one grammatical change."

Page 10, 3rd paragraph from bottom should read, "...whether or not it was appropriate to have a meeting under that Section."

Page 10, last paragraph, should read Councilor Smith noted an additional provision of RSA 91-A, the phraseology of which used the word terrorism, indicated it was passed..” It was also noted that 9/11 should be used instead of 911.

Page 11, 4th paragraph should read “..to talk about their response as they go forward.”

Page 12, 2nd paragraph, should read, “She said she didn’t want to waste time on debating these terms.”

Page 12, 3rd paragraph, should read “He said that is what the Council should be discussing, not micromanaging the situation..”

Page 12, 4th paragraph, should read “He agreed that, given what had been discussed, that a non-public session might be unnecessary. There was also the question of whether it would be correct or not under the amended RSA.”

Page 13, 2nd paragraph, should read “He said he personally wanted to get back to the fairness issue..”

Page 14, 3rd sentence, should read “Councilor Morong said he appreciated the way Councilor Niman was handling the situation..”

Councilor Kraus MOVED to adopt the proposed amendments to the minutes. The motion was SECONDED by Councilor Paine, and PASSED, with Councilor Samuels abstaining due to her absence from the October 20, 2003 meeting.

The minutes as amended PASSED, with one abstention from Councilor Samuels due to her absence from the October 20, 2003 meeting.

V. Report of Administrator

Administrator Selig updated the Council on recent Town activities:

- Administrator Selig said the fall leaf and brush cleanup would begin on Monday, November 10, 2003 and noted that all leaves had to be curbside by 7:00 am. He stressed that the leaves should be placed in paper leaf bags available at Houghton’s Hardware in Durham.
- Administrator Selig noted that the “no winter parking” ban on Town roads and property, between the hours of 1:00-6:00 am, had gone into effect as of November 1, 2003 and would remain in effect through April 1, 2004.

Councilor Harris asked for clarification concerning what “on town roads” meant. She asked how this applied to cars parked half on the curb and half on the road.

Administrator Selig said he understood that cars should be off the right-of-way, and in deep winter, should be off the road completely because they otherwise would inhibit snow removal.

- Administrator Selig said UNH would be hosting its annual community breakfast on November 20, 2003 at Huddleston Hall, between 8:00-9:30 am. He noted that this year, residents would have the opportunity to meet students working in the community through the UNH PROVES (Pre-orientation Volunteer Experience and Service) program.
- Administrator Selig said the Durham Business Association and the MainStreet Program would be holding their annual holiday gala on Thursday, November 6, 2003, from 5:30-8:30 pm, and that this event would be open to the public.

- Administrator Selig said Town offices would be closed on Veteran's Day – November 11, 2003.
- Administrator Selig noted he had attended a very productive meeting that day organized by Dick Houghton which brought together alcohol purveyors in Durham and Town staff to discuss some of the recent disturbances in the community. Mr. Selig reported that the purveyors said they were very willing to close establishments if the police department felt it was imperative to do so, and he said they explained in detail how hard they worked to insure that underage sales did not take place. He said both Police Chief Kurz and Deputy Police Chief Kelley were present and encouraged the business owners to let the Town know when it appeared that an of-age person was purchasing alcohol for underage people outside their businesses.
- Administrator Selig noted that the tax warrant was on the "Unanimous Consent" agenda, and said approval of this Item would allow the Tax Collector to move forward with issuing tax bills. He said he would like the opportunity to outline the projected tax rate changes.

Chair Sandberg recommended withdrawing this Item from the "Unanimous Consent" Agenda and addressing it as a separate Item so Mr. Selig could outline the projected tax rate changes at that time.

VI. Reports and Comments of Councilors

- Councilor Kraus said that after a mix-up concerning the availability of leaf bags at Durham Marketplace, the bags could now be purchased there, as well as at Brooks Pharmacy and Houghton's Hardware.
- Councilor Kraus also asked the Council, on behalf of the Integrated Waste Management Committee, to consider as a matter of philosophy and policy, the use of recycled paper by the Town of Durham. He said it was recognized that this paper might cost more, but explained that the Committee was concerned that the Council should hold an open discussion on this issue and take a position on it, so the public would understand where the Council stood. Chair Sandberg suggested that a resolution concerning this issue could be developed by the Council.
- Councilor Paine noted there had been a DCAT meeting that day and that the committee had developed a budget. She noted that the previously scheduled evening training classes would be held in December instead of November, and encouraged anyone interested in these classes to let DCAT know. She also noted that DCAT was running into some scheduling problems, explaining that because of the present technological capacity of the DCAT system, it was unable to run much programming other than the live government programming. She said the committee was in the process of figuring out how to resolve this problem.

Councilor Smith asked Mr. Selig about the status of the Town's trash bin policy.

Administrator Selig said a cooperative trash bin program had been in effect for approximately a year, which included informing businesses and the public of the new ordinance that had been passed, sending reminders urging them to take action, and involving the Public Works Department and the Durham MainStreet Program to promote and assist with the effort. He noted that about 80% of properties had complied with the

new regulations, but said there was presently not sufficient staff available to enforce these regulations for properties that had complied inadequately or not at all.

He noted that the screening requirements had been intentionally kept vague so people could develop customized solutions for their particular properties. But he said that because some of these solutions had been inadequate (hanging up shower curtains to hide dumpsters, for example) the Town therefore needed to clarify the requirements in the ordinance. Mr. Selig said the Town was responsive to complaints about particular properties but because of limited resources was not aggressively looking for the code problems.

Councilor Harris noted there had been voluntary efforts to document with photos some of the properties that had not complied with screening, including their overflowing dumpsters that were not only an aesthetic problem, but also represented perpetual health and safety concerns.

Councilor Kraus suggested that photographing the properties with the trash bin problems was an excellent idea, considering the Town's staffing constraints.

Councilor Morong asked Administrator Selig about the Gibbs Gas Station application for liquor license. He asked if there had been feedback from other Town departments on this application. He also asked whether the Town was taking a stand on the licensing and what kind of information was being given to the State Liquor Commission about the appropriateness of liquor sales at the Gibb station.

Mr. Selig said a lot of concern had been expressed by neighbors about this location for liquor sales, and said abutters were putting together a petition to urge that the application not be approved. He noted that he and Councilor Grant, a year ago, had spoken before the State Liquor Commission to argue that the Commission should consider Durham's local zoning when considering the issuance of alcohol licenses. He said it was determined at that time that the Town was pre-empted from forcing the State to consider local zoning when considering liquor license applications. He said the previous application for Cumberland Farms caused the Town to have to rescind some of its zoning relating to this, and noted the store had been selling alcohol without incidence at that location. He explained that the Town had now taken on more of an advisory role, and that the State had agreed not to process a liquor application until the Town had the chance to review it and comment on it.

Mr. Selig said it would be a real challenge to make an argument against the application because it was hard to identify this impact. He noted that Town departments were not especially concerned about the application because the needed infrastructure was in place, and the Police Department didn't see a need for additional personnel at the proposed location. He concluded by saying that once the Town received feedback from abutters and others, that information would be forwarded to the Liquor Commission.

Councilor Morong said he wanted to be sure that whoever wanted to weigh in on the application would still have time to do so before it went to the Liquor Commission.

Councilor Harris asked if there was anything in the Zoning Ordinance concerning setback distances of such establishments from residential neighborhoods. Mr. Selig said those provisions had been removed, and that the only way the Zoning Ordinance would come in to play would be if the commercial sale of alcohol (or anything else) was proposed for a residential neighborhood.

Chair Sandberg clarified that members of the public who wished to be heard should direct their correspondence to Administrator Selig, who would forward this information to the Liquor Commission.

VII. Public Comments

William Hall, Smith Park Lane, noted a previous presentation concerning fire lanes by the Fire Chief and State Fire Marshal. He distributed photos showing the Fire Marshal's car parked in the fire lane at the Whittemore Center during a hockey game. He also showed photos of trailer trucks parked in these fire lanes. Mr. Hall said that the fire lane signs had been removed at one point from behind the Whittemore Center, but that he was able to get the University to put the signs back. Mr. Hall said there was a serious problem with fire lane enforcement, and said he believed campus police had no intention of enforcing any fire lanes or writing tickets. He suggested the Council ask the UNH Police how many tickets they had written. He said something needed to be done about this situation, which had been going on for at least three years, and that the people charged with this responsibility were being irresponsible.

In answer to a question from Chair Sandberg, Administrator Selig said that the State Fire Marshall has stated that as long as the fire lanes were posted and included in the University's parking policies, these fire lanes were enforceable.

Ed Valena, Bagdad Road, noted that the idea of recycling paper was a good one. He then spoke about events of the weekend, which briefly focused the eyes of the world on Durham. He stated that during the activities, the Durham Evangelical Church took a strong moral stand concerning the private lifestyles of many fellow residents. Mr. Valena said the church tried to couch its condemnation by focusing on the sin, not the sinner, but its viewpoint flew in the face of the majority, inclusive philosophy of the Town. He said he did not fault the church on its beliefs, and also noted the Town was free to associate or not with any organizations that voiced opinions contrary to the Town. He noted the Town had used the Church's facilities for various events in the past, but said that because of recent events, the Council should direct the staff to seek alternative facilities in the future, that were not hosted by groups voicing social opinion in opposition to that held by the general population. He said separation of church and state was probably a good idea on every level.

Chair Sandberg thanked Mr. Valena, and noted his sentiments had been expressed by numerous other residents since the weekend.

VIII. *Unanimous Consent Agenda (NLT 7:45 PM)*

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

Councilor Grant MOVED to remove Item D from the Unanimous Consent Agenda. Councilor Kraus SECONDED the motion and it PASSED unanimously.

- A. Shall the Town Council accept for referral to the Water, Wastewater and Solid Waste Committee a non-industrial connection/extension application for Perley Lane?
- B. Shall the Town Council adopt a schedule of meeting dates to begin the process of deliberating the proposed FY 2004 Operating Budgets and 2004-2013 Capital Improvement Plan?
- C. Postpone deliberation on the proposed FY 2004 Operating Budgets and 2004-2013 Capital Improvement Plan until the special Town Council meeting on Monday, November 10, 2003.

Councilor Kraus MOVED that the Durham Town Council hereby approves Unanimous Consent Agenda Items IX A., B., and C. The motion was SECONDED by Councilor Harris, and PASSED unanimously.

- D. Shall the Town Council authorize the Town Administrator to sign the 2003 Tax Warrant as confirmed by the Department of Revenue Administration?

Administrator Selig explained that about a year ago, the process of establishing an operational budget was carried out by the Town, county and school district, and those projections had resulted in corresponding increases in the tax rate. He reviewed the changes to the tax rate from 2002 to 2003.

He noted that as a result of completing the revaluation of the Town, property values had increased by approximately 100%, and had resulted in the previous tax rate dropping by about half. He then explained that the 2002 tax rate had been translated into a revised 2002 tax rate utilizing the new property values established in Town, and these values had then been used, along with the budgets approved by the Town, County and School, in developing the 2003 tax rate. Mr. Selig then discussed the percentage increases from 2002 to 2003 in the tax rates for each of the entities.

Mr. Selig explained that when the tax rate for the Town had been established the previous year, it was understood that there would be some substantial increases in the school side of the tax rate because of the high school addition, and it was also clear that the recessionary economy was impacting taxpayers. He noted that the Council had therefore worked hard to keep the increase in the tax rate as small as possible. But he said the Town portion of the tax rate was one of the smaller portions of it, and with a 23.9% increase in the County rate, and a 22.9% in the School rate had resulted in a total increase for Durham taxpayers of 13.48% in the warrant the Council was being asked to approve.

Mr. Selig said it was imperative to approve the warrant, in order to obtain the tax dollars needed to support the budget that had been approved by the Town, County and School districts. He said that he was saddened to report the increase in the tax rate, and noted that some taxpayers, particularly business owners who owned property downtown, those owning rental apartments in the community, and owners of waterfront property, would see substantially greater increases.

He explained that for property owners whose assessed values increased by something less than 100%, the difference between their rate and 100% was being absorbed by those whose assessed values had increased by more than 100%, who would therefore be seeing an increase in their tax rate of more than 13.48%. He said homeowners whose property values went up less than 100% would see somewhat less of an impact, but said the overall impacts for everyone were significant, and was something the Town had been carefully evaluating in the preparation of the proposed 2004 budget for the Council.

He said the dilemma the Town was presently facing was that because it only had control over a small portion of the overall tax rate, the Town's attempts to be frugal didn't have a really meaningful impact when people received their tax bills. He said he was noting this, while understanding the importance of education and the adequate support of it.

Councilor Paine MOVED that the Town Council authorize the Town Administrator to sign the Town of Durham's 2003 Tax Warrant directing the Tax Collector to collect taxes in the amount of \$18,193,698, as confirmed by the NH Department of Revenue Administration for the Town's 2003 tax rate. The motion was SECONDED by Councilor Niman.

Councilor Samuels asked how the increase in the tax rate at the County level could be limited, to keep it within a specified range. Mr. Selig said the Town could send a letter to the County Commissioners asking that they stay within certain guidelines.

Councilor Smith noted that while the County budget was the smallest component, the amount it went up was enormous. He noted that this budget was approved by the County Legislature, composed of people elected to the State Legislature from Strafford County. He said it was his understanding that the amount of information given to these people in order to make meaningful decisions concerning the County budget was extraordinarily small, and made it very difficult for them to make responsible decisions.

Councilor Smith noted two items which had caused the soaring County budget. First, the major addition to the Strafford County Correctional Facility, which he said he and many others had said was a huge waste of money. Second, budget decisions were adopted after a great struggle between the governor and the legislature, which determined that many expenses previously handled at the State level would be pushed down to the County level. Councilor Smith said this "handing down" could be expected to get worse in the future, so that it was not only important to address the County Commissioners about this, but also the Governor and State Legislators.

Councilor Samuels requested that before this process started, the legislative delegation should be asked to keep the budget within a certain percentage, which might give the

delegation more to go on. She suggested that perhaps other towns in Strafford County would like to do the same thing.

Chair Sandberg said perhaps a letter to the Governor should be drafted.

Councilor Paine said it was her understanding that the increase was the first in a number of years, and suggested the Council could invite the County Administrator to speak about the increase. She also noted that the County budget increase did not include the addition to the jail, explaining this had not been factored in yet.

Councilor Kraus said that using the 2002 adjusted tax rate, against the 2003 actual tax rate showed that the increase from \$9.66 to \$11.91 (\$2.25) in the school tax rate represented 80% of the total difference between the 2002 adjusted tax rate and the 2003 actual tax rate (\$2.79).

Councilor Grant said he hoped Durham taxpayers receiving their tax bills would understand the context of what was being said that evening, and would recognize that the Town Council had not been irresponsible in setting the Municipal portion of the budget for the past year, and that it would also approach the 2004 budget responsibly. He noted that at least three of the Councilors had attended budget meetings of the local school district the past year and tried to raise questions and encourage a more responsible attitude toward the setting of that budget and the increases that were proposed. He said unfortunately there were very few other taxpayers who attended those hearings, and the pleadings of those who did attend were totally unheeded.

Councilor Grant asked if the warrant required a unanimous vote, because he in good conscience could not vote to authorize a warrant that increased the tax rate in Durham by 13.48%. He said on the other hand, he did not want to disrupt the financial processes of the Town, School and County. He said he did not understand the process by which the Council got to send the tax bill, but did not get to control the bill.

Administrator Selig explained that the Council had the fiscal obligation to move forward with this warrant, as long as there was not a substantive problem with the numbers that went into calculating the warrant (he said he had been assured by staff that there were not).

Councilor Grant said he would vote for adoption of the warrant, but recommended that if the Council sent a letter to the County officials, it should also send a letter of similar note and tone to the School Board and Superintendent.

Councilor Kraus said that many school warrant requests by the School Board were on the ballot this past spring, and all of them passed by a reasonably substantial majority, having been voted on by those members of the community who chose to go to the polls. He said he was feeling the same concern of Councilor Grant and others concerning the ballooning school budget. He suggested that as calls came in complaining about the tax increase, that Mr. Selig should remind people of these warrants that had been passed and also remind them that the bill for those warrants was not yet finished, so they could look forward to continuing increases of this kind from the Oyster River School District.

The motion PASSED unanimously.

IX. Unfinished Business

Shall the Town Council adopt the proposed Charter amendment wording and timeline to be placed on the March 14, 2004 election ballot, and set a public hearing date for said Charter amendments for December 1, 2004?

Administrator Selig noted that proposed changes to the charter had been discussed at length at the previous meeting. He provided follow-up concerning these.

- The wording concerning modifications to the bonding portion of the charter had been dropped entirely, after the Department of Revenue read the opinion of the Town's bond counselor.
- Wording on the way alternate library trustees would be appointed had been amended to clearly state it would be the Council that made those appointments.
- Wording concerning ex-officio Planning Board members was modified.
- Terms of office of members of boards and Committees were established as beginning on May 1st and ending on April 30th. Mr. Selig also said it would be spelled out in the charter that appointments would have to be done no later than May 1st, following the annual election, which would give new Council members an opportunity to get adjusted before making such appointments.

Councilor Paine MOVED that the Town Council schedule a public hearing for the proposed amendment wording to the various sections of the Durham Town Charter, as proposed by the Town Administrator, to be placed on the March 9th, 2004 election ballot, for Monday, December 1st, 2003. The motion was SECONDED by Councilor Harris.

There was discussion concerning Article 11, Sections 11.3 through 11.5. Councilor Smith pointed out some redundancy in Section 11.4. There was also discussion about Section 11.5 and the meaning of the words "Elected Office". Administrator Selig said the new Section 11.5 was intended to deal specifically with vacancies in elected office.

Councilor Smith asked if there was any wording in the Charter which specifically states that the Council has the authority to make interim appointments to Town boards and commissions because of vacancies opened up during the course of a term. He suggested specific language developed by Councilor Kraus be put into Section 11.5, so that it said "...in the event of a vacancy in an elected office or an appointed board or commission of the Town...", and also change the title of the Section to read Section 11.5 Vacancies in Elected and Appointed Office".

Administrator Selig said the problem with addressing vacancies in appointed boards and committees in Section 11.5 was that these vacancies did not necessarily end at the next town election, and would run through the end of the term of the person. Councilor Paine noted this showed inconsistency between 11.4 and 11.5 concerning the term ending on April 30th, or at the time of the next town election.

Chair Sandberg noted there would be additional opportunities to refine this and other details, both before and after the planned public hearing on the Charter.

Councilor Smith suggested that the wording concerning alternates to the Planning Board from the Town Council should read “..to serve, respectively, as primary and alternate ex officio members” which signified that these roles were not interchangeable, except to the extent that if one was not present, the other would serve.

Councilor Samuels suggested that it might be valuable if a kind of Informational Town Meeting could be held a week or two prior to voting. She said it was her sense that the meetings had not been more successful because they were held after the election, so had no real substance. She said if the meeting was held before the election, candidates could speak, and issues the town would be voting on could be discussed, so it would be more of a reason for citizens to come to the meeting. Councilor Samuels said she would love to hear from the public on this idea.

Chair Sandberg noted that at the previous meeting, the question had been asked as to whether the public wanted the Informational Town Meeting any more. He said that if the public hearing went forward with the charter language concerning the Informational Town meeting removed, and as a result of seeing that, as well hearing Councilor Samuels suggestion, members of the public recommended that the language be changed to say the meeting would be held earlier, then that could go forward as the ballot item. It was agreed that the public hearing provided the opportunity to rethink the concept.

Councilor Morong said he liked Councilor Samuels’ idea, but questioned whether language on such an Informational Town Meeting even needed to be in the Charter. He suggested that it could be decided to have an informal town meeting at any time of the year.

Councilor Kraus said that if the meeting was held before the election, and consisted of the Councilors, it might appear to be putting candidates running for Council office at a disadvantage, because sitting Councilors would have more of a forum to speak their mind than a citizen candidate.

Chair Sandberg recommended that the public hearing be scheduled so that the Council could hear from the public and deliberate on these excellent points.

The Motion PASSED unanimously.

Chair Sandberg called for a 5-minute recess at 8:30 PM.

X. New Business

A. Update on Apportionment Formula Study Committee – Neil Niman

Councilor Niman said the committee had reached a consensus on a proposed new funding formula, and would be meeting the following evening for the final time to finalize the report that would be going to the School Board. He explained that the School Board would then have the option of accepting the report and choosing to place a warrant article

on the ballot that adopted the new formula, or they could choose not to do this. He said if the new formula made it to the ballot, it would be up to the voters next March to decide if the School District as a whole would adopt it.

Councilor Niman said that two fundamentally different perspectives were represented on the committee, and that at some point, this would have to be addressed. He explained that there were two people on the committee from each of the three towns, and five of the members of the committee firmly believed that equally valued houses should pay the same. He said that when the towns joined the Oyster River School District, they became a community, and as such, everyone should pay the same amount based on the value of their property.

Councilor Niman explained he was the only member who took the position that they were each towns that entered into a partnership, looking to provide a better education for their kids at perhaps a lower cost, that there were benefits for all, and that payments should be based on the benefits received. He noted that he had therefore advocated going to 100% Average Daily Membership (ADM) (you pay based on the number of students you send to the School district), a position expressed in the Durham Master Plan.

He said the committee had reached the consensus that reasonable people could disagree, but if the goal was to keep the cooperative school district together and work together, they needed to meet somewhere in the middle. He explained that there was some concession among other members that Durham brought more value to the table, and found itself in a unique situation based on various factors. He said he conceded that Durham received a number of benefits from participating in the School District, and did have more property than the other towns, so perhaps could pay a little more.

He said there were two fundamental issues here, one of which was that Durham had historically subsidized the other two towns, an issue which has been on the table for the last 50 years. He said the other issue was that prior to 1999 everything seemed to work alright, and there was a system everyone could live with. But he said that in 1999, when the state got involved, things got out of whack, and the tax burden increased in Durham relative to the other two communities.

He said he proposed a number of middle-of-the-road solutions, but what was finally decided on was a compromise where the 50/50 formula would continue to be used, but the formula would be based on the costs over and above what was required for an adequate education, and not on the total school apportionment. He said that essentially, state aid would be taken off the top, and the 50/50 formula would be applied to the remaining costs. Councilor Niman said what that would mean for the Town of Durham for the 2003-2004 was a savings of \$865,000, or \$1.11 off the tax rate. He said this would keep Durham's tax rate close enough to Lee and Madbury that those towns could live with the compromise, and would also generate enough savings for Durham so that he could sign on to the formula. He said this compromise essentially put Durham back to where they were before, although it did not solve the underlying philosophical issues.

Councilor Niman said there were two potential roadblocks that the Town's citizens needed to come together to address. He said the first challenge would be to get the

School Board to support the consensus of the committee. He reminded everyone that what started the current process was the School Board's notion of fairness, and the belief that equally valued houses should pay the same. He said that with the new formula, equally valued houses would not pay the same, noting that this was how things were done for 45 years before 1999.

He explained that after the School Board hopefully adopted the recommendation, it would become a warrant article, and there would be a great need to educate the citizens of all three towns, that it was fair, represented a good solution, and was important to the continued health of the cooperative school district. Councilor Niman noted that if the warrant passed in March, the Town's would not be able to change the formula for five years.

Councilor Niman said another potential stumbling block was that the Superintendent was reluctant to move forward because he was not convinced of the legality of creating a school funding formula that first deducted the State's contribution and then apportioned the remainder using the 50/50 formula. Councilor Niman noted he was not a lawyer, but did not read the statute as saying this approach would be illegal. He said he was very concerned at the last meeting when the consensus had been reached but then this legal issue came up, and some committee members seemed inclined to want to wait to proceed with the recommendation because of legal uncertainties. He said the net financial effect for Durham of putting this off was approximately \$1 million per year, and said he told the Superintendent at the last meeting that Durham would commit itself to working with him to try and resolve the legal uncertainties so they could move forward. Councilor Niman said the Town might have to dedicate some resources to resolving these legal issues.

Chair Sandberg noted that the School Board had its own legal counsel, and asked Councilor Niman if there was any reason why it would not use this to resolve the legal questions raised.

Councilor Niman said it was expressed that getting a legal opinion wouldn't necessarily mean anything, and could somehow lead to litigation. He suggested to Council members the possibility of seeking a declaratory judgment on the issue, which would eliminate the legal issue.

Councilor Grant thanked Councilor Niman for his work on this issue. He noted that he did not consider the proposed formula a new formula, but rather, considered it the old formula, and noted that the formula presently being used had not been voted on.

Councilor Niman said he could find no reference to equally valued houses paying the same until 1999, when a School Board subcommittee convened to look at the apportionment formula. He said the idea appeared to gain favor at this time, and came to be considered fair, so the feeling had devolved that, "why should we go back to the way things used to be?"

Chair Sandberg said the question at hand was that the 50/50 formula was adopted 45-50 years ago, and had not been officially changed by any vote, so was there really a need to change the formula by ballot now if it was not changed by ballot in 1999?

Councilor Grant noted that the 1999 committee report had recommended no change in the existing formula.

Councilor Smith said it was true that there was no vote to change the formula in 1999. He said the original formula was adopted in 1955, when the school district was first created, and was authorized by State statute. He said that as he understood Councilor Niman's presentation, changing the formula, which is what the State statute provided provisions for, was not what the Apportionment Committee had now compromised on. He said he had spoken with the chief legal counsel of the NH Municipal Association regarding a specific paragraph of the statute, who interpreted it as creating an explicit requirement that the money be taken and applied in the way specified in the statute.

Councilor Smith said he raised the question of what would happen if all the communities within a cooperative school district said they wanted to compromise and agreed on another way of how to apply the state money; was there anything in the Statute from preventing these communities, if they reached their own agreement, to then select this method? He said the opinion he had gotten from the Municipal Association counsel was that this option was presently precluded by the existing language. He said the more optimistic side of this was that legislation could most likely be introduced to allow the compromise among towns in a cooperative school district.

Councilor Smith said he raised another question with Municipal Association counsel as to whether, if all the towns agreed, the matter of what was in State law become somewhat academic, in the sense that if the towns just did it, what party would actually have the legal right to dispute this. He said that issue was very complicated because of the different methods of government existing in the three towns.

Chair Sandberg summarized from what Council Smith had said, that the proposal developed by the apportionment committee would not stand the test of law, and the legal concerns expressed by Niman were valid.

Councilor Samuels said she felt it was totally unacceptable not to change the existing situation. She said she believed 100% ADM was the only way to go, and the consensus arrived at was a compromise solution, although she applauded the efforts of the committee in working toward it. She asked, if the compromise turned out not to be legal, and the other two towns didn't agree to go forward to the Legislature, what Durham's choices would be.

Chair Sandberg noted that the Town Council was not an authority that had a role to play directly in this issue, because it was the general population, by way of the school district meeting that spoke to the School Board. He said that if the citizens of Durham chose to have something placed on the ballot, the first question was what it took to do that.

Administrator Selig said that if the Town was not satisfied with the outcome of the committee's work, or the compromise was not found to be acceptable by the School Board, then the citizens of Durham could do nothing, or they could petition the Board to have an article on the school warrant to change the formula, possibly ADM. He outlined

the process that would be needed to accomplish this, and stressed that petitioners would have to insure that sufficient Durham residents appeared at the School Board meeting to insure that the wording of the petition was not amended, and would also have to insure that there was substantial turnout at the election, to offset votes in Madbury and Lee that might be against the petition.

Councilor Grant suggested there was a third option. He said the voters of Durham in their Town meeting ballot could vote to create a committee to explore the benefits and disadvantages of withdrawal from the School District. He said the Council had been told of severe financial consequences of doing this, but said he was not convinced that those costs were any more prohibitive than what the Town was already involved with. He said it would behoove the Town of Durham to have an intensive investigation of the pros and cons of staying in or getting out of the School District.

Councilor Niman asked why the Town could not get around the legal issues raised if the cooperative school district proposed that each town be responsible for the cost of an adequate education, plus 50/50 of the cost over and above an adequate education. He said his reading of the Statute allowed this.

Councilor Smith asked if the provision in State statute had been discussed at any of the apportionment committee meetings. Councilor Niman said that it was not. He said the committee should look at the legal questions and not act as if they did not exist.

Chair Sandberg said the Council would keep its ear to the ground on this issue, and said that perhaps at the next meeting on the following Monday there would be an update on the issue.

Councilor Morong noted the phrase “equal houses pay equal amounts” was misleading. He said the phrase made it sound like houses of similar value in Durham and Madbury paid the same amount toward the School District. He said it was his understanding that Durham as a whole was paying more because it had more total valuation in real estate than the other two towns, even though the value of comparable individual properties in each of the towns was not that much different.

Chair Sandberg thanked Councilor Niman again for his work on this issue.

B. Other Business

None

XII. **Adjourn (9:30 PM)**

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