

**This set of minutes was approved at the December 15, 2003 Town Council meeting.**

**DURHAM TOWN COUNCIL MINUTES  
MONDAY, NOVEMBER 24, 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; Patricia Samuels

**MEMBERS ABSENT:** Peter Smith

**OTHERS PRESENT:** Town Administrator Todd Selig; Business Manager Paul Beaudoin; other interested members of the public

Chair Sandberg noted there was not yet a quorum, so he could not officially bring the Council into session. He said that instead, Council members would speak informally about the Budget and CIP.

**I. Call to Order**

Chair Sandberg noted there was now a quorum, with Mr. Morong' arrival, and called the meeting to order at 7:05 PM.

**II. Approval of Agenda**

*Councilor Kraus Moved to approve the agenda. Councilor Harris SECONDED the motion and it PASSED unanimously.*

**III. Continuing Presentation and Discussion on the Proposed 2004 Operating Budget and the 2004-2013 CIP**

Administrator Selig gave a brief introduction, and noted that the operational budget was proposed at \$8,086,825 or an increase of 4.9% over fiscal year 2003. He said as projected it would increase the local tax rate from 5.85 per thousand to a proposed 6.02 per thousand, which would utilize \$360,000 in fund balance to arrive at that number, and would equate to a 2.9% increase in the local tax rate. He said the budget included a 0.34% increase in user fees in the water fund, and a 2.9% increase in user fees in the sewer fund.

He explained that the strategy this year was to talk about long-term and short-term budgeting issues, and explained that after having focused on the CIP the previous week, the Council would now be looking at the Operating Budget in detail.

The Council focused its discussion on pages 7 and 8 of the Operating Budget.

Administrator Selig explained that the increases in health and dental insurance and retirement increases were illustrated on page 8 as lump sums, as compared to showing them spread out over the various departments, with wage increases added in, on page 7.

Chair Sandberg said that short of a reduction of personnel, the Council only appeared to have flexibility in terms of \$5,000 in additional overtime for the Police Department, and the \$56,000 contingency for salary increases in the Fire Department.

Administrator Selig said the major budget changes had to do with health, dental, retirement, personnel, and were all very rational, so the choice for the Council was not necessarily whether to cut \$5,000, but rather, to consider what types of services the Police Department provided, and if they were to eliminate or add others, what the impact of this would be.

Councilor Niman said that the discussion highlighted the fact that 80% of the budget increase could be attributed to personnel expenses. He suggested the Council should therefore discuss the structural problems in the budget, which were that the Town's expenditures were growing much faster than its tax base. He said this was not because the Town was spending lavishly, but because it was the cost of doing business. He said if the Town continued on this path, the numbers would get further and further apart, and suggested that instead of going line by line in the Budget, Council members should talk about this structural problem and how they were going to solve it.

Councilor Niman distributed information from a report *Taxable Valuation per person in NH Communities, 1990-2000*, published by the NH Office of State Planning in October of 2001, and explained that the data for Strafford County, which compared the amount of taxable property to support each resident in each of the towns. He noted Durham ranked 18<sup>th</sup> in New Hampshire, with 1 being the worst. He said people tended to think Durham was a wealthy community, but it wasn't when one looked at the tax base and the number of people on the municipal side that the Town had to support with that tax base, including every UNH student that lived in a dorm but drove on the Town's roads. He noted that since September, there had been 384 arrests, over 200 of which were alcohol related. He said the expenditures were growing in excess of the tax base, and the tax base was too small to fund an \$8 million budget. He then compared Durham at \$40,521 per person with Portsmouth – ranked 200<sup>th</sup>, with \$123,457 per person and Rye, ranked 222<sup>nd</sup>, with \$205,311 per person.

Chair Sandberg said it was important to have an understanding of what population figures were used in developing these figures – seasonal, year round, etc.

Councilor Niman noted that Nottingham, which didn't have a seasonal population to speak of, had \$69,932 of property to support each resident. He also said the OSP report used 12,000 as the population for Durham, but the Town was providing municipal services to the entire population.

Councilor Paine noted that Lee and Madbury had higher ratings than Durham did, which had relevance to the school funding formula.

Councilor Kraus noted that Durham's rating had improved somewhat since 1990, but also noted Lee and Madbury had doubled their improvement.

Chair Sandberg said that with only \$40,000 of value per person, this was an inadequate tax base relative to neighboring communities.

Councilor Niman said this appeared to be the explanation of why taxes were so high in Durham.

Chair Sandberg asked what Councilor Niman would like to see the Council carry forward into its deliberations over the operating budget. Councilor Niman said he would like there to be a policy discussion about how much was fair and reasonable to ask of the property tax payers in Town to fund police and fire services.

Administrator Selig said he had received information from both departments with respect to comparably populated towns, but had some questions on this information so was not ready to present anything on it.

There was discussion about the accuracy of census population figures for Durham, and what the actual population of Durham was. Mr. Beaudoin clarified that the most recent census determined that the population was 12,600, and said this figure reflected whoever filled out the census, and included students living in dorms, apartments, as well as residents. He said it was really anybody's guess how this figure broke down in terms of full time residents and students. Council members agreed this census figure was fuzzy.

Councilor Harris said that a few years back she and Mr. Grant had estimated the number of year round permanent residents in Durham, and had come up with number of almost 7,000 residents.

Councilor Morong asked if the 7,000 included people living in apartment buildings as well as people living in single-family residences. Ms. Harris said she would have to check this. Councilor Morong said these two categories seemed to be the ones that should be used because they indicated the properties that paid taxes and should therefore receive services.

Chair Sandberg asked who would address this matter (i.e., the Legislature, the University, the taxpayers?).

Councilor Niman said he would like to go someplace else than the taxpayers with this to have the discussion as to what was reasonable for Durham to be spending, and how the Town was going to collect the difference.

Councilor Morong said currently the taxpayers of Durham were being held responsible first, and said the Council and Town staff needed to figure out how to turn this around.

Chair Sandberg stressed again the importance of deciding the right numbers to use, and of understanding with what level of confidence they could be used.

Councilor Grant said a possible way to determine this better would be to get a count from the census of single and multi family houses in Durham, which excluded numbers of people, and they could then compare this number with those of other towns.

Mr. Beaudoin agreed that the best way to look at this was with good numbers. He said that Councilor Grant's approach might be the best.

Councilor Niman said the Council didn't need an exact number. He estimated there were approximately 1800 single family homes in Durham, and estimated the average household size was about 3, which equaled around 5,400 people. He said there were probably about 1200

apartments, x 3 persons/household, for a total population of approximately 9000 year round residents.

Administrator Selig said when comparing communities, they generally looked at those with populations of a 6500-8500 people. He noted that when comparing towns within a range, this complicated things somewhat. He also noted that more than population had to be considered. He gave the example of Newmarket that had a volunteer fire department, and also had a different socioeconomic mix, and other characteristics, all of which tended to keep the costs of fire protection down, as compared to Durham. He also compared Durham to Newington, which also had a professional fire department, because of the relatively large number of industrial facilities in the town, but also had a much larger tax base because of these facilities.

Administrator Selig said the issue was how the Town identified the amount it should be compensated for. He said UNH's perspective was that yes, the Town spent more to provide safety services because of the students, but that this tended to be balanced out by the fact that there was a lot of land that was rental property because of the University, property that was not sending students into the local school system.

Councilor Kraus said the policy issues being discussed, although important, would take a long time to address, and that in the meantime the Council needed to address the bread and butter issues of the present budget. He also pointed out that as a university town, Durham had been dealing with these policy issues for a long time, and said even if the Town could put together an impeccable case that the structural problems needed to be solved, the University/State could say there was no money available to change things. He also noted that because the software for sorting by object code was not yet in place, so they still couldn't analyze the budget increases as effectively as was needed.

Chair Sandberg said Councilor Niman's point was well taken, and should be intrinsic to the budget process, but stressed that the Council had to look at what could be done today. He said if they were to pursue addressing the structural problems, they would need good numbers, and acknowledged that the variables that needed to be considered in looking at numbers boggled the mind.

Chair Sandberg also suggested the Council could take the approach that Durham could decide it could only afford a volunteer fire department, and a smaller police department, which is more appropriate for its true population size, and if UNH became distraught over this, there might be more motivation to work with the Town in addressing the structural problems.

Councilor Paine asked if UNH really cared about what happened on the streets of Durham if the Town didn't want to pay for it. She also commented that Administrator Selig had put together an excellent, lean budget, and one reason she was endorsing Councilor Niman's approach was that she was having a hard time finding anything to cut, other than levels of service.

Councilor Niman agreed it was a good budget, and he couldn't find many things to pick apart. He said they needed a simple model to work with regarding population, and then needed to consider what they were going to do, for example possibly going to the volunteer fire department model. He also noted an article about a recent Supreme Court case, where the State had leased some property, and then sub licensed space in it for profit, and the Town of Ossipee sent the

State a property bill. He said the Court ruled the Town could do this. He suggested that these kinds of approaches should be considered.

Chair Sandberg asked Administrator Selig what kind of directive would be needed to consider doing something like this.

Administrator Selig said if the Council and Town were to pursue something like this, they would have to be certain that they were justified in doing so, and they would have to have a strong sense that they would prevail in court. He said he was not yet confident that they would prevail.

Council Niman said he was not suggesting that the Town should send the State a tax bill, but he said he would like to explore what the options were, and put a conversation on the subject into play to see what happened. He said he had learned from his recent work on the school funding issue that figuring out what was fair, and asking people to do the right thing was a good approach to take.

Councilor Kraus said looking at comparable towns, without universities, and seeing what size police force, etc. they had could be used to determine what the extra cost to the university should be. He said that using this kind of methodology, they might have some impact with the Legislature, which the Town would need to go to in order to get support for getting this additional money to run the community and also provide services to UNH.

Chair Sandberg suggested the Council could go ahead and cut services, but it would be better to have a fair is fair conversation with the University.

Councilor Morong noted there were Towns in the State that had in recent years been forced to cut important services, and said it would be good if Durham could change course before having to do this.

Councilor Grant said Administrator Selig and Mr. Beaudoin had done a great job of presenting a minimal budget, and noted a very large percentage of the increase was for increased personnel expenses, although there were not increasing the number of personnel. He said it was very hard to find something to cut, and that unless the Council was prepared to do something drastic, their leeway was very small.

Councilor Grant said that as Administrator Selig had noted, Durham had a high level of expectation, some of which came from the University. He noted that there were expenses that came with having an industry – the University, and that the Town's problem was that it was a non-taxable industry, so did not provide tax revenues to the Town. He said Councilor Niman was right about the importance of looking at these policy issues, but said he was concerned that they wouldn't come up with solutions on these policy issues. He also said he didn't see there was much they could do to change the budget.

Councilor Paine said the Council's mission was set by the electorate, and that she did not see a swarm of citizens saying they were willing to do without town services in exchange for lower taxes. She said she hadn't heard them say things should be taken out of the budget. She questioned whether the Council would be fulfilling the public's demands by changing the levels of service.

Councilor Samuels said she understood Councilor Paine's concerns, but felt it was still the Council's job to be asking these larger questions. She said the situation was comparable to being on a sinking ship. She said the increase in her tax rate was unacceptable, and said that if she was feeling this, she couldn't imagine how it must be for people on fixed incomes. She said the only place she could see in the Budget to work with was the University and the Town's agreements with them. She acknowledged it was a hard process to deal with the University, but said the Town had to decide to do something. She suggested the idea of comparing Durham to 10 other comparable towns in New Hampshire, creating a budget based on that, giving that budget to the Town Administrator and Finance Manager, and saying that is all the Town could afford. She said this approach would change negotiations.

Chair Sandberg noted that the Council had had a goals session in April, 2003, ideas from which were incorporated into the present budget. He said the task before them right now was to look for ways to decrease spending, and increase revenue.

Councilor Kraus pointed out that the huge increases in school funding were supported by the Town's citizens. He said he hadn't seen anti-tax protests, and said people appeared to be aware that town officials and Council members were trying to do a responsible job.

Chair Sandberg noted, for members watching the Council meeting on television, that there would be a public hearing on the Budget and CIP at the next week's Council meeting, and this would be a good opportunity for citizens to express their views.

Councilor Kraus said if UNH was an industrial plant, and then left town, Durham would be a ghost town. He said the Town needed to be mindful of this, and said this reality made things much more complex to consider.

Councilor Niman said he was not trying to "beat up" on the University. He also noted that one of the reasons they were not hearing from citizens was that some were simply deciding to leave town, while others were disillusioned, and perhaps had given up. He said he would like to try to empower people to make Durham a better place. He agreed that people wanted services, but said at some point there should be a discussion on what services the Town wanted to have. He described a letter he had received from a member of the public, which pointed to the fact that the goal of decreasing taxes was not the only goal, but improving services, changing the mix of services should also be the goal.

Councilor Paine said the reality of the present budget process was that nothing they did in terms of cutting the municipal budget that night would stop people from leaving town.

Councilor Samuels said it still was the Council's job to look at the other factors, like the University, and economic development.

Chair Sandberg said ironically that increasing the tax base would impact the 50/50 formula. He said the conversation that evening had been excellent, and said he would like to now focus on the Fiscal Forecast in the Budget. He noted that as of 2007, the unexpended fund balance would drop to zero. He said he and Administrator Selig had agreed that the unreserved fund balance should be around \$1.5 million, and said he was very nervous about it going to zero. He asked what the options were for avoiding this.

Administrator Selig said the Town either needed to broaden the tax base or increase revenues, or both, or cut services.

Chair Sandberg asked how the 2.5 million dollars for purchasing land was spent in the budget. Mr. Beaudoin explained that it was taken out of the picture completely, in order to show the impact, and pay it back over several years.

Councilor Niman noted the fund balance could easily go to zero, and said he was very concerned about this.

Administrator Selig pointed out that the voters had approved the \$2.5 million bond knowing that the fiscal forecast was rather dire, and said it had only gotten worse because the bond was approved. He said in the long term preserving open space would make a very positive difference in Durham, but it did have a tax impact. He said he hoped people understood this when they voted for it.

He expressed frustration that with the school funding issue, and the UNH relationship, the amount that the Town could work with was insignificant. He said that although the majority of the increases in the municipal budget were personnel related, they were much less than they would have been if the Town hadn't taken such a hard line at the negotiating table with local employee unions. He said they were doing this because they knew what was coming down the line in future budgets.

Councilor Kraus commended Administrator Selig for bringing the reality of the Town's fiscal situation forward in the Budget and CIP documents for everyone to see. He said the long term was not always so clear, and the challenge was to make this clear to people.

Administrator Selig said another thing that was challenging was that citizens called either to complain about high taxes, or not enough municipal services. He said the fiscal forecast showed that the Town needed to make some choices, and he said the priority going forward next year should be negotiating agreements and finding more revenue for Durham, through economic development and UNH. He said that beyond that, it was possible to cut things like GIS mapping for the Town, but suggested this would be foolish because there were so many benefits of having this kind of layered information, for example, for empowering the Town Boards. He said he could give examples like this from every department that could be cut, but in the big scheme of things made sense to keep in the budget.

Chair Sandberg said he had not found much to cut in the budget, and questioned whether Council members needed to go through the budget line by line, when they already knew the money was not being spent in a frivolous way. He said it perhaps made more sense to focus on some key issues reflected in the budget that they should talk about. He gave the example of looking at the money the Town spent on legal advice, and considering the idea of having a lawyer who could attend meetings when needed to advocate for the Town.

Councilor Grant noted that comparing 2002 to 2004, the amount collected from property taxes would decrease by \$400,000. He said the flip side was that 2004 expenditures were up \$943,000 in two years, and said some of this difference had to be made up by the fund balance. He said

some of the costs were ones the Town had no control over, and said Councilor Niman was correct in taking the long-term approach.

Chair Sandberg said he was inclined not to use the fund balance like a credit card, and said to use it for every day operating expenses seemed to be short sighted. He said it should be use either for the internal workings of the Town or for emergency situations. He said it was important to find a way to keep the fund balance up at an appropriate level, and if it meant the tax rate had to go up, that was the reality.

Councilor Morong said he was also concerned about the fund balance, but said he liked to think the voters were far sighted in voting for the 2.5 million dollar land purchase, and saw that swallowing this bitter pill today would mean that further down the road there wouldn't be as many problems as the Town had now.

Councilor Kraus noted that the numbers indicated that a lot of the bitterness didn't come until later. He said perhaps they should take the view that costs far out should be paid sooner, which would raise the tax rate, so costs would come home sooner. He said that reflecting this might make people realize they had to anti up for land conservation. He said that if the Town artificially kept the tax rate down, this would not reflect the reality.

Chair Sandberg suggested this would allow the fund balance to stay more constant, and would indicate what was really happening.

Councilor Paine said another approach was to consider what they would be willing to cut, if they were happy with the tax rate, didn't want to use the fund balance, and had to cut \$360,000 out of the budget.

Chairman Sandberg called for a five-minute recess. After the break, there was a more detailed discussion about the Operating Budget.

### **Health/Dental Insurance / Retirement**

Administrator Selig gave a detailed description of these plans because they comprised such a large proportion of the budget. He described the 5 categories of positions in Town, and the types of insurance plans that were available. He said that historically non-union employees received less in the way of benefits than union employees received, and noted the Town was trying to correct this. He also noted that the benefits packages for department heads were still competitive with other towns.

### **Public Works**

Councilor Kraus noted that the Budget said the grader would no longer be used, and said he thought it had sometimes been very helpful for grading the snow when there was a lot of it. Chair Sandberg noted the grader was used to fill in when other equipment broke down.

Administrator Selig said he had gotten feedback from the departments that \$3,000 was too low a cost for contracting out the work that the grader did. He said he and Mr. Beaudoin were still looking at this Item, based on comments that had been received.



Councilor Paine said it had been suggested that because the grader wasn't used that often, Town personnel were not that experienced in using it. She also said she had observed that Durham roads were well cleared, compared to many other towns, so this did not appear to be an area where the Town needed to increase services.

### **Police**

Councilor Kraus said it was worthwhile to note the budget increase for the Police Department for overtime, as a result of the need for VIP protection with the upcoming Presidential election. Administrator Selig clarified that the Town got compensation if a candidate was coming for political reasons, but not if the person was coming as head of state. Councilor Paine said the University should pay this expense because the candidates generally gave speeches there.

### **Outside Agencies/Town Committees**

Councilor Samuels asked what the increases in the budget for Outside Agencies were for, and Administrator Selig explained that programs like Meals on Wheels had asked for increased reimbursement, because there had been an increase in calls for service.

Mr. Beaudoin explained that most of the funding for these organizations came from other places, and that only a small percentage came from local Towns.

Councilor Grant congratulated the Ambulance Corps for reducing its budget by a 2003 surplus and increased revenue from insurance billings.

### **General Government**

Administrator Selig noted a way in which the budget had been made more efficient was reducing the number of funded positions in the Town, and provided details on this. He stressed they were taking a hard line in various areas in order to keep costs down. He also discussed funding for legal expenses, noting that these funds were being spent wisely. He said there was a misunderstanding about this, and some people thought the funds were not being spent wisely. He pointed out that the Town had won the majority of its court cases, and said the reason they were fighting this battles was to support land use decisions, or aggressively enforcing the 3 unrelated people issue in neighborhoods. He also noted that some of the Town's legal costs were a result of negotiations with the Fire Department union.

Councilor Grant asked if it might be appropriate to call these kinds of legal expenses negotiation expenses, and charge them to the appropriate departments.

Administrator Selig said they did this for the Fire department but not for other departments because UNH shared in the cost of fire protection.

Councilor Kraus noted that current legal expenses were considerably lower than they had been at some times in the past.

Councilor Samuels said she would be willing to talk about the idea of hiring a Town attorney, and noted that the Town had at one time done this. She said she believed it changed because it was decided there was not enough value in doing this, because the Town still had to hire different lawyers for different types of issues.

Chair Sandberg said he wondered if an attorney working for several towns would really know town codes, staff and issues as well as one who was focused more on Durham. He also said having a Town attorney would mean the taxpayers wouldn't have to go out and hire their own attorney, and gave the example of the Stonemark case.

Administrator Selig said that unless there was a really good reason, lawyers weren't provided for Boards meetings. He said he thought it would be very helpful to Boards to have legal expertise readily available to them at meetings.

Councilor Paine asked if there was an advantage to working with one larger law firm, with various specialties, and said perhaps the Town could get a lower rate by doing this. Administrator Selig said he had found that the savings weren't there in taking this approach.

Councilor Kraus said he endorsed the present system, where the Town could pick and choose which lawyers they wanted for which issues. He pointed out that a lawyer who worked with other towns in addition to Durham could bring benefits to their dealings with Durham. He also noted an advantage of this system was that if they were not satisfied with a particular lawyer, they could easily switch to another one.

### **Police and Fire Departments**

Administrator Selig discussed additional areas the Council should be thinking about. He said the shift staffing at the Fire Department should be discussed, along with the way in which emergency medical services were provided. He discussed this issue in detail, and it was agreed that it would be good for the Council to have specific numbers on this issue.

He said if the Town was not successful in negotiating with the University in a fire agreement, it would be fair game to consider what the Town would need as a fire department, excluding the University, and to do some projections and take a few steps in that direction.

He said the Town had a difficult situation in terms of policing, noting that if the staff were reduced they would not be able to deal with the challenges facing Durham.

Chair Sandberg asked what the group consensus was on the best process to go through with the Budget, moving forward. He also noted Council members might still have key budget concerns they still wanted to discuss.

Councilor Kraus said the Council should devote one of their remaining budget meetings to developing a strategy for addressing the policy issues.

Administrator Selig said the Town was gearing up to negotiate UNH agreements, and that should be top priority. He said the key would be to balance taking on other projects with taking on these agreements.

He also noted that code enforcement issues were important to citizens in Town, and that money was being put into hiring a second code enforcement officer. He said there had been an excellent discussion with the Landlord Association concerning who should pay for this position, and said it would be good for the Council to address this. He said the core issue was whether people profiting from rentals should pay for enforcement of themselves, or if the entire community pay for this through property taxes to protect the Town's quality of life.

Administrator Selig noted there were also some capital projects that deserved discussion. Chair Sandberg said there would be some updates on these at the public hearing the following week.

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

Meeting adjourned at 9:30 pm

Victoria Parmele, Minute Taker