

D-R-A-F-T

DURHAM TOWN COUNCIL MINUTES MONDAY, JANUARY 5, 2004 DURHAM TOWN HALL – COUNCIL CHAMBERS 7:15 P.M.

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

MEMBERS ABSENT: Neil Niman

ALSO PRESENT: Town Administrator Todd Selig, Representative Marjorie Smith, Deputy Chief Rene Kelly, members of the public

I. Call to Order

Chairman Sandberg called the meeting to order at 7:15 PM. He explained to members of the public that the Council had been meeting in private session with the Town Attorney and appreciated their patience.

II. Approval of Agenda

Councilor Kraus MOVED to approve the Agenda. The motion was SECONDED by Councilor Paine.

Councilor Grant Moved to amend the Agenda to remove Item XA - Public Hearing on the Application for a Conditional Use Permit submitted by Fall Line Properties; and XB - Deliberation and discussion on the Findings of Fact and Conditions of Approval for a Conditional Use Permit application submitted by Fall Line Properties.

Councilor Grant explained that the Council had just received an advisory opinion from the Town Attorney regarding participation in the Public Hearings on Agenda Item X A and B and said the Council needed time to get clarification concerning that communication.

Chair Sandberg told Administrator Selig that other Council members had not yet received a copy of the communication Councilor Grant was referring to and asked him to speak about it.

Administrator Selig explained that on December 29, 2004, the Town had received a letter from Attorney Malcolm McNeill requesting that Councilors Grant and Sandberg recuse themselves from participation in this application. He said the letter was faxed to the Town's attorney at the Mitchell and Bates law firm, immediately after receiving the

request, and that he and Council members had just received an opinion from the attorney on it.

Administrator Selig noted that Chair Sandberg and Councilor Grant had received copies of the letter before the Council meeting, but it had not yet been distributed to other Council members. He said he and the Council members had therefore not had time to digest the information in the letter and noted he had some questions for the Attorney.

Administrator Selig also noted that the Council had met with the Attorney concerning labor issues before the Council meeting.

The motion to amend the Agenda was SECONDED by Councilor Samuels and passed unanimously.

The motion to approve the Agenda as amended passed unanimously.

Chair Sandberg said the Public Hearing on the Conditional Use Permit for Fall Line Properties would be scheduled for some time in the near future. He said that people who had come to speak on the application would still be able to do so during the Public Comments portion of that evening's meeting.

III. Special Announcements

Chair Sandberg spoke about the voting venue, which he noted had been an issue of great concern to many of Durham's citizens. He noted that at the last Council meeting the Council chose, by failure to take any action, to have Administrator Selig make the final determination on where the election venue should be for the January 27, 2004 election. He explained that after a great deal of deliberation, Administrator Selig had determined the election would be held at Heidelberg Harris, located at the Town's Industrial Park.

Chair Sandberg explained that there was only a specific plan to use that venue for the January election. He said his sense was that at the first Council meeting following the election, the Council would consider whether the March elections would be held at the same location. He emphasized that Administrator Selig's decision could not be changed, but he and Council members were very sensitive to the issues raised on both sides of the issue. Chair Sandberg said the Town needed to move on, and would address the issue again in the future. He also said a great deal of effort would be made to provide directions and other information that would make it as convenient as possible for citizens to vote in the election.

Chair Sandberg also spoke about the filing periods for elected positions in the Town of Durham, which were voted on at the March Town Meeting. He said he wanted to be sure everyone knew what the vacancies were this year.

Town Council – 3-year term (3 vacancies)
Library Trustees – 3-year term (3 vacancies)

Town Moderator – 2-year term (1 vacancy)

Supervisor of the Checklist – 6-year term (1 vacancy)

Trustees of the Trust Fund – 3-year term (1 vacancy)

Chair Sandberg urged anyone contemplating serving in any of these positions to talk to Council members about the various positions and what they entailed. He said the period for putting names on the ballot was a small window (January 21-30, 2004) and involved coming to Town Hall, bringing one dollar, and filling out the forms in the Town Clerk's office.

Chair Sandberg also noted that the Fire Department was developing its long-term community strategic plan, and was having a planning session on January 31, 2004. He said there were a number of people in Town with an interest in the functioning of Fire Department, and that Chief O'Keefe had said he would welcome five or so citizens participating in this session. Chair Sandberg said that those interested should contact the Chief directly.

IV. Approval of Minutes

December 8, 2003

Councilor Kraus MOVED to approve the minutes as submitted. The motion was SECONDED by Councilor Paine.

Page 10 – \$ should be inserted before 5,000, in Councilor Grant's motion toward the bottom of the page. Also, insert under that motion: "The motion failed for lack of a second".

Page 17, should read "Councilor Morong said he would like to ask Mr. Beaudoin for information on how raising the fund balance figure would change the tax figures."

Councilor Smith also provided non-substantive changes to the minutes.

Councilor Paine MOVED to approve the amendments to the minutes. Councilor Harris SECONDED the motion and it PASSED unanimously.

The motion to pass the minutes as amended PASSED unanimously.

December 15, 2003

Councilor Morong MOVED to approve the minutes as submitted. The motion was SECONDED by Councilor Kraus.

Page 2, third line of VI. Public Comments, should read "...and were recommending the Evangelical Church.....".

Page 16, the motion should read “Councilor Morong **MOVED** to change the Fund Balance...”

Also on Page 16, for clarification, insert after this motion, “[modification of original motion made at December 8, 2003 meeting; see minutes, p. 17]”

Page 17, 7th paragraph, insert after the first sentence of that paragraph, “He said these bridges are Durham’s cathedrals, and we need to really understand that these are pastoral places that have a great deal of sanctity for people.”

Councilor Kraus explained this was verbatim from the meeting, and noted it was being picked up and used in other documents, so he felt it was important to include it in the minutes.

Page 18, should read “and whether \$250,000 was adequate for road resurfacing, noting...”

Also Page 18, last line should read “.....consideration of the Packers Falls Bridge improvements,...)

Page 20 Should read “***Councilor Morong MOVED to extend the meeting to 11:00 PM....***”

Page 22, for clarification, insert after the motion made by Councilor Kraus in the fourth paragraph from the bottom of the page, “[modification of original motion made at December 8, 2003 meeting, see minutes, page 3; also see page 17 for postponing motion]

Page 23, first paragraph, should read “Councilor Kraus explained that having experienced budgetary problems in the past where we rush budgets through just to accomplish it, and where we haven’t actually had an opportunity to personally read it, he believed a little more deliberation was needed to be sure everything was all right. He was abstaining on process.” Councilor Kraus said he had checked the video to determine more precisely what he had said.

Councilor Kraus MOVED to adopt the amendments as proposed. The motion was SECONDED by Councilor Grant, and PASSED 8-0-2 (Councilor Paine abstained due to her absence from the December 15, 2003 meeting; Councilor Samuels abstained due to her early departure from the December 15, 2003 meeting).

The motion to approve the minutes of December 15, 2003 as amended PASSED 8-0-2 (Councilor Paine abstained due to her absence from the December 15, 2003 meeting; Councilor Samuels abstained due to her early departure from the December 15, 2003 meeting).

V. Report of Administrator

Administrator Selig explained that the Town had received a request from homeowners on Fairchild Drive, Madbury Road, and Davis Avenue regarding this land, which was

located off of a cul-de-sac at the northerly end of Fairchild Drive. He said the request was that the land be released and discharged from public servitude by vote of the Council and also said the Town had gotten a request from the developer, who had brought a proposal before the Planning Board regarding the stub of land and some property off of Fairchild Drive, to have the Council dedicate that land as a Class V highway for development purposes. He said this issue would come up for Council discussion in February.

Councilor Smith asked Administrator Selig to explain what “releasing a stub of land from public servitude” actually meant.

Administrator Selig explained that if the Town was agreeable to the request, it would release the property from any claim the Town had upon it and it would revert back to the abutters on either side of the center-line of the property.

Councilor Harris asked if it would revert to the abutters, or to the homeowners association, so it would be land held in common.

Chair Sandberg said this would be explored when the issue was discussed.

Administrator Selig explained that copies of the Town’s recently completed property valuation would not be mailed out to all households anymore, because this information was now on the Town’s web site for all citizens to potentially access. He said this was in part an effort to save money, and also noted that there was a hard copy of the information for public viewing at Town Hall and at the Library. He noted that the information would be sent without charge to citizens who did not have Internet access.

Administrator Selig spoke briefly about the Town’s listserv, and explained that directions on how to subscribe to it were at www.ci.durham.us. He said there were about 150 people on the listserv at present, and the goal, expressed by DCAT and also recently by the Council, was to use the listserv as a tool to communicate widely with the citizens of Durham.

Administrator Selig said the Unanimous Consent Agenda contained requests for the Council to endorse two pieces of legislation, one brought forward by Senator Iris Estabrook of Durham and the other by Representative Margie Smith of Durham. He said both bills pertained to making the State laws dealing with inappropriate riotous behavior more stringent, in order to help deal with the problems Durham had been faced with over the past year.

Administrator Selig explained that the bill being introduced by Representative Smith would allow a judge, if someone were found guilty of violating the State statute, to prohibit that person, if a student at a public university, from setting foot on university property except for very specific reasons. Administrator Selig said the goal was to make sure there was a serious consequence for students attending public universities in NH

who behaved riotously in their host community within a certain number of feet from the campus.

Administrator Selig said the bill being introduced by Senator Estabrook clarified State statute concerning what constituted inappropriate behavior during a riotous situation, so that when someone threw a projectile, whatever it was, at a police officer that was a chargeable offense, with serious consequences.

VI. Reports and Comments of Councilors

Councilor Kraus said he was pleased to report that former Councilor Scott Hovey had been given a special shirt for his excellent work at Durham Day. He noted the Council had previously agreed this would be good thing to do.

Councilor Kraus also read the following prepared statement and asked that it be transcribed verbatim into the meeting minutes:

“The issue of election venue at the Durham Evangelical Church, I now believe, should have been voted on by this Council and resolved as soon as its contentiousness became evident, addressing the matter directly and saving time and energy. Most importantly, in such public discussion, Councilors’ positions would have been on record. That, however, was not the case. While I endorse the use of Heidelberg Harris as a viable alternative venue, I do not endorse the way this result was forced.

The selection of Heidelberg Harris as the election site for the January primary election, and potentially for future elections this year, is classic pressure politics. A vociferous minority has dictated the outcome in an orchestrated campaign to shun the Durham Evangelical Church for statements made about homosexuality. In a substantial diversion of time and energy responding to intense pressure, Administrator Selig and the Town Moderator, Assistant Moderator and the Supervisor of the Checklist looked for an alternative location. After a thorough review, on Dec. 8th, Mr. Selig ruled for the DEC venue. The minority fumed further. They prevailed on December 24th despite Mr. Selig’s admission that “..the Durham Evangelical Church is a superior location..” The printed e-mail record is available at the Town Office.

The day before Christmas was a said day for openness and toleration in Durham. My personal apologies to Mr. Selig and to our election officials for their time and energy expended on this matter.

Most of the activity demanding this change was conducted by telephone calls, letters, e-mails and personal visits, and was out of public view. The Durham citizen should know that Councilors Paine and Smith were the principals, with Councilor Morong also. If citizens wish to express either pleasure or displeasure with the outcome, and the way it was achieved, I suggest that they contact these Councilors directly rather than further trouble Mr. Selig or our Town election officials.

I fault myself for failing to bring this matter to the fore at an early Council meeting. I will not make that mistake again. Fellow Councilors and citizens, be assured that from henceforth, as long as I serve, I will relentlessly press for such issues to be immediately discussed and decided in the public forum of Town Council meetings. Open, representative government must prevail in Durham.”

Councilor Paine said the DCAT Governance Committee had met that afternoon and noted the training sessions planned for December did not happen because there were not enough people signed up. She said the training had been rescheduled for February, and encouraged groups and individuals wishing to get their news on the air or use the DCAT facilities to sign up for the training sessions, noting that the way to get things on the air was to get involved.

She explained that DCAT had limited funds because the Town did not get funding through cable companies like some other towns did, so staff and volunteers handled only local government meetings. She explained that all other programming was therefore community driven, noting that educational programs were frequently done by Paul Gasowski and his students at the School. Councilor Paine asked those interested to get in touch with her at KDPaine@kdpaine.com, 868-1550, or to contact Peter Brown, Craig Stevens or Administrator Selig.

Councilor Paine noted that DCAT would be doing a candidates forum of some kind in February for candidates for local boards and that a forum of school board candidates would also be held at the high school in February.

VII. Public Comments

Representative Marjorie Smith said she hoped the year would be successful, with a lot of good and amicable work done. She said Administrator Selig had provided a good overview of the legislative bills she had come to discuss, but said she would make some basic points about them.

Representative Smith said first, it was hoped that there was never behavior that would require that either of the bills would have to be acted on in a court. She also noted that the two bills differed slightly and were developed with a lot of consultation with Police Chief Kurz, Deputy Chief Kelly, and the Strafford County attorney. She explained that in the bill she was sponsoring a judge had the option, once someone was found guilty, to add an additional penalty if the act took place within 5,000 feet of the university campus. She said the significance was that the situation would be out of the hands of UNH or other public universities, but noted she believed the University would support the bill. She said she hoped the bill would help the university system make clear to students that they were part of the community, that the community cared about them, but that there was no protection from the penalties of inappropriate behavior.

She said Senator Estabrook’s bill was slightly different, dealing with the reality that students had previously thrown objects that weren’t generally characterized as being able

to cause serious damage, but could cause such damage, so the bill widened the definition of these objects.

Councilor Morong asked why Senator Estabrook's resolution couldn't be broadened to include firefighters and public works employees, since the objects had been thrown at various public servants.

Representative Smith first noted that Senator Estabrook was out of Town, and apologized for her absence. She said she believed the legislation covered a broader group of officials, but recommended talking with Deputy Chief Kelly about this, and also said Senator Estabrook would be happy to amend the bill if necessary. In addition, Councilor Smith asked that Chair Sandberg share the legislation with counterparts in other New Hampshire with public institutions of higher education.

Charles McLean, 5 Croghan Lane, said he normally didn't get involved with Town politics but said he wished to express his concern with the voting venue that had been chosen. He said he was dismayed at the actions of the Council in terms of switching from the Evangelical Church to the Heidelberg Harris facility. Mr. McLean said that when a small group of people could convince whomever that the change should have been made, this was a disservice to the Evangelical Church and to other citizens who would like to see an objective decision by the people. He said the Church simply offered a place for those who objected to the ordination of the gay bishop to have a speaking platform. He said he had no hatred for gays, but did not support the homosexual agenda.

Mr. McLean said he understood it was too late to change the decision, but said he wanted to go on record as opposing what took place. He said he agreed with Councilor Kraus' comments and did not think the Town would recover from this for as long as it had memory. He said an apology was due to the Church, and asked if this matter had been on the December 15, 2003 agenda.

Chair Sandberg said a motion had been made by Councilor Kraus that the Council should say the election would be held at the Church, but the motion failed for lack of a second. He explained that because no action was taken on this, the Council left it up to Town Administrator Selig to continue to discuss the various options with Heidelberg Harris and the Evangelical Church.

Mr. McLean asked if it was too late for the change and was told it was, for the January election. Mr. McLean said again that the Church was owed an apology and that the Town needed to be more objective in approaching this kind of issue. He thanked the Council for the opportunity to speak.

Hillary Scott, 20 Davis Avenue, said she supported an idea that someone on the listserv had suggested concerning having a pooper scooper ordinance in Durham. She also noted that the ZBA had recently been presented with an application for a variance concerning a property whose owner described it as being located in an isolated place that was not a neighborhood, and did not attract families. She said that the property was located on

Route 4, and fell within the residential corridor that was looked at as part of the Route 4 Safety Study that was finalized in 2000.

Ms. Scott spoke about the vision statement of the study, which was to provide a corridor that was safe, and preserved scenic, environmental and cultural features of the area. She said that preserving the scenic features included keeping the area attractive to homeowners, specifically the residential section from Route 108 to the Scammel Bridge, and noted that there were neighborhoods there, but they were fragile and needed protection. She said one of the focuses of the Safety Study was on the excessive speed that was occurring throughout the study corridor, and noted that several short-term, high priority ideas relating to speed issues were listed in the implementation section of the study.

Ms. Scott explained she was bringing this up because she believed focusing on speed issues on Route 4 would help in preserving the residential corridor. She acknowledged that some improvements had been made, and asked the Town if there were plans to implement some of the short-term, high priority ideas from the study, noting they were relatively inexpensive and would provide significant benefits to the Town and the homeowners along the corridor.

Ms. Scott also asked if there was any potential development currently concerning the Arthur Grant Circle land parcel.

Administrator Selig addressed Ms. Scott's three issues. He said there had been a resident who expressed concern over the pooper scooper issue, and he had forwarded it to the Council, but said to date, no one from the Council had brought forward a proposal to enact such an ordinance. He said two years ago he and Councilor Smith had a brief discussion on the issue, relating to Wagon Hill Farm, and the decision had been made to wait until the public came forward about it. He said this evening was the first time this had happened.

Chair Sandberg said Ms. Scott's comment was noted.

Administrator Selig asked for clarification about her comments on the parcel on Route 4, and she explained that the parcel was described at a ZBA hearing as being isolated, and not part of a neighborhood. She said she was disturbed by the description, but understood the area was fragile, which led to the larger questions as to whether the Town had plans to implement short-term, high priority ideas from the Route 4 Safety Study.

Administrator Selig said a number of improvements had been made to that stretch of Route 4, and more were planned, but he suggested Ms. Scott contact Bob Levesque or Mike Lynch at the Public Works Department to get a better idea of where implementation of the study's recommendations stood.

Concerning the Arthur Grant Circle Business Park, Administrator Selig said there had been talks with Seacoast Hospice, which was interested in establishing its headquarters

there. He said there were some positives and negatives to the idea. The facility would have a low impact on the area, but the organization was tax exempt, which defeated a major purpose of the business park. He also noted there had been another recent inquiry regarding the park, but no formal proposal had been received.

John Lannamann, 156 Packers Falls Road, said he supported other concerns expressed about the aesthetic issues regarding the Packers Falls Bridge but perhaps a more persuasive argument, in terms of budgeting, was that he had realized there were significant safety issues with the bridge after almost colliding with a car when he turned onto Packers Falls Road from Bennett Road the previous evening. He said he had been unable to see the headlights until they were about 50 feet from the car, and showed photos to illustrate how the guard rails blocked the view of cars on the bridge. He also provided a list of intersection sight distances recommended for various speeds by the University of Oregon Traffic Safety Institute. He noted the speed limit sign on the bridge said 15 miles per hour, but said he challenged anyone to find someone who drove that slow, noting the standard speed was about 30 miles per hour. He said at 19 miles per hour, the recommended sight distance was 207 feet, which was greater than the distances he measured on the bridge. Mr. Lannimann proposed that the Town should check to see if the bridge met DOT standards for sight line distances, but said that even if it did, it was an accident waiting to happen.

Chair Sandberg thanked Mr. Lannimann for the work he had done on this issue.

Diana Carroll, 5 Croghan Lane, said she was there to speak about Item VIII regarding town-wide use of recycled paper. She demonstrated the sign that had been used in Town for the last few years to let students know that Durham was a Town that recycled. She said the Resolution represented an important policy statement that in addition to recycling, it was important to buy products with recycled material in them, and that Durham was a Town that took recycling very seriously.

Chair Sandberg explained that Unanimous Consent Agenda Items were supposed to be considered not later than 7:30 pm, so a motion to extend the agenda to allow additional Public Comments was required.

Councilor Kraus MOVED to amend the Agenda to extend the Public Comment session until 7:45 pm. The motion was SECONDED by Councilor Paine and PASSED unanimously.

David Watt, 6 Sullivan Falls Road, read a letter from **Lisa McPharland** regarding the Packers Falls Bridge, which recommended dealing with the several problems that lead to the outcome. Ms. McPharland said the bike path was never at issue at the public sessions of the Council, and it was not clear at what point and by whose approval the change was made. She explained that the bike path was counterproductive at that location, and increased the likelihood of accidents. She also said the bridge renovations were flawed in terms of design and safety, and violated the letter and spirit of the public record, and was a Town project that had failed in its goals. She said she joined with her neighbors in

asking that the places where miscommunication and neglect led to the outcome should be explored, and said it should be systematically determined what options were available to deal with the design problems. She also said neighborhood representatives should be involved directly in these deliberations, and ended by saying that the rural zone and a federally designated wild and scenic river deserved the same degree of design consideration given to downtown development.

Richard Dewey, 191 Packers Falls Road, said he was born in 1912, the same year as the bridge. He said he was surprised to see the color of the guard rail, which headlights wouldn't pick up. He said he was happy that the person who designed the barriers downgrade were not in charge of the fence that went around Niagara Falls, and also asked why the barriers on the east side of the pedestrian path were so high, when there had previously been a beautiful view there.

Chair Sandberg said that question was one that the Council would be looking at.

Tracy Wood, 1 Littlehale Road, said she was a member of Durham's Integrated Waste Management Advisory Committee, a resident who recycled, and a human being concerned about natural resources. She said she would like recycling and waste reduction to be more of a means to an end than just an end itself, and said her personal vision was to see recycling efforts as steps toward a more sustainable society. She noted that an important step was a healthy market for products made from recycled materials and asked why the Council should encourage, if not mandate recycling, if it was not wholly committed to a complete succession of recycled materials. She encouraged Councilors to approve Resolution #2004-01 establishing a policy for the town-wide use of recycled paper, because passing it would be a great step forward in the new year, and also because the Council's leadership on this issue encouraged members of the community to follow suit.

Paul Allen, 148 Packers Falls Road, spoke about the Packers Falls Bridge and agreed with other residents about the problems with the bridge. He said he had lived in the area for a long time, and questioned whether the design for the bridge was somehow swapped with another design for a bridge intended to be in Manchester, where it might look more appropriate. He agreed the guard rail blocking the view was a safety problem, and said he supported whatever could be done to remedy the situation.

Virginia Stuart, 3 Falls Way, read a letter to the Council, noting she had lived near the bridge for 12 years, and had often felt this proximity to the bridge added greatly to the value of her property. She said one of her greatest pleasures had been to drive over the bridge and see the daily changes to the river. She said many people walked and road bikes over the bridge, and many drove over it every day, some of whom were neighbors, but others who were commuters taking a back road as an alternative to the traffic on Route 108. She said she realized that some would say that spending money to rectify the current situation could not be justified, but she said that as with any conservation project, spending money today to restore the area would have an intangible effect of

immeasurable value that would last for many years, and impact more than just the concerned citizens there that evening.

Julie Newman, 38 Mill Pond Road, noted that the Packers Falls Bridge issue and the recycled paper issue were not unrelated in that both concerned how citizens valued natural resources. She said as a member of the Integrated Waste Management Advisory Committee, she requested the Council's unanimous support for Resolution #2004-01 submitted by Councilor Kraus, and said it was time for the Town to become a responsible consumer and choose recycled paper that was also chlorine free, noting there were numerous choices in the market which the Committee could advise the Town about. She provided information on recycling conserved trees, energy and landfill space and noted it was up to state and local governments to set a standard concerning purchase of chlorine free paper. She said if the Town committed to 80% post consumer paper, it would cost approximately \$700 annually across the board.

Representative Judith Spang, 55 Wiswall Road, said there were two additional components of the Packers Falls Bridge issue. She said one was the impact on the abutting property owner, noting there were drainage problems resulting from the work on the bridge and surrounding area. She also said it was her understanding that there were two mill stones taken out of the historic cellar holes on the site, which were worth a great deal of money. She said she had spoken to Mike Lynch about this who said the contract said the contractor could use materials found on the site and this was being interpreted to mean they could take any materials found there. She said she was initially resigned to this, but the more she thought about it, the more she thought that the contractor should not have taken these mill stones off of the site, which was an historic location on a wild and scenic river. She said the Town should correct the situation, and if the stones were not returned to the site, they should be put someplace else in the Town as an historic artifact. She said at the very least, the Town should document where the mill stones were found and what they looked like.

Administrator Selig said he was not aware of the drainage issue, but said the mill stone issue had been brought to his attention. He said he was aware that at least one mill stone was removed, and said the contract indicated it was appropriate for the contractor to take it because it was essentially considered debris. He said he was not aware there may have been two mill stones but Town staff was looking into this based on new information brought to their attention.

Councilor Kraus clarified that the mill stones were the big granite wheels used in grinding grain in old mills.

Councilor Harris said she recalled very clearly that there was authorization to re-use existing stones in the bridge and surroundings for the rebuilding of the bridge but not to take away any material.

Chair Sandberg said the Agenda needed to be amended to allow further Public Comments until 9:00 pm.

Councilor Smith MOVED to extend the Public Comment session until 9:00 pm. The motion was SECONDED by Councilor Paine, and PASSED unanimously.

Richard Lord, 85 Bennett Road, showed several views of the Lamprey River downstream, and noted some historical pictures of the bridge. He said that by scaling the old and new pictures, it could be seen that the new railing turned out to be about twice the height of the previous railing. He said the pedestrian walkway was overbuilt, and also showed pictures that demonstrated how the view was now significantly obscured for pedestrians.

Myleta Eng, 215 Packers Falls Road, said her house was about a quarter mile from the Packers Falls Bridge. She said she had gone to previous meetings on the bridge, and her main concern now was being able to view the bridge upstream and downstream. She explained that the horizontal viewing space was now blocked by the structures on the bridge, noting other bridges in the area with relatively high barriers for pedestrians that one could still see through because they had thin, vertical bars. She asked how the contractor could have deviated so much from what the public was told would be done.

Chair Sandberg said the Council would be looking at this question and others later on at the meeting.

Ms. Eng also spoke about snow on the bridge and how this could cause additional problems. She also said she wanted the cause of the problems with the bridge to be determined so the mistakes would not carry forward into future work on bridges in Durham, and encouraged the Council to take time and care in finding solutions to the problem.

Beth Olshansky, Packers Falls Road, informed the Council members that since the last meeting she had read over minutes of previous meetings as well as newly transcribed portions of tapes, and had also listened to tapes from the evening when the Council voted to move forward with the Packers Falls Bridge project. She said she found that in May of 2000, Hoyle Tanner had put forward to the Council and the public that they were going to build a bridge like the Scammel Bridge. She said in June of that year, there was another hearing where there was discussion about the height of the rails, and it was decided there would not be a bike path that required a 54-inch rail, but it would be a pedestrian walkway, with a State requirement of a 42-inch rail. She said it was also agreed at this meeting that the roadside railings would be 36 inches, to meet the State requirement of 34 inches.

Ms. Olshansky said the transcripts indicated that the Council voted to have Hoyle Tanner move forward after this discussion, that there was a lot of discussion at this meeting about maintaining the beauty of the area, and that Hoyle Tanner promised to build a concrete rail that was low and attractive, like the Scammel Bridge. She also said the 2001

blueprints noted a pedestrian walkway, not a bike path, so the excuse that there was a 57-inch rail because there was a bike path did not make sense. She also noted that at a March 2003 Town Council meeting, several citizens had recommended that a smaller, understated project would serve the Town even better than what was being planned.

Julian Smith, 246 Packers Falls Road, spoke about work that had been done on the Bennett Road Railroad Bridge. He said he watched the work done there and talked to contractors working on the bridge, and heard workers ask why the work was being done because in 5-6 years, it would have to be ripped out so a higher bridge could be put on Bennett Road. He said there was a scam to use Federal money to raise bridges all over New England, on old road beds, so double-decker transport trucks could tear down the highway. He said he hoped to get something in writing from the Town Administrator and Public Works as to what the plans were for the Bennett Road Bridge.

Chairman Sandberg declared a 5-minute break at 9:00 PM. The meeting resumed at 9:05 PM.

VIII. Unanimous Consent Agenda *(Requires unanimous approval. Individual items may be removed by any councilor for separate discussion and vote.)*

Chair Sandberg noted that Items A, C and D had been removed from the Unanimous Consent Agenda. He said the remaining Item was Item B, regarding use of recycled paper by the Town.

- B. **Resolution #2004-01**: Establishing a policy for the Town-wide use of recycled paper as proposed by Councilor John Kraus.

Councilor Kraus MOVED to approve Resolution #2004-0 establishing a policy for the Town-wide use of recycled paper. The motion was SECONDED by Councilor Morong and PASSED unanimously.

- A. Shall the Town Council approve a non-industrial sewer connection/extension application for Perley Lane as recommended by the Water, Wastewater and Solid Waste Committee?

Councilor Grant said that in the materials provided, there was information in a communication from Town Engineer Bob Levesque pertaining to the permit that had a deeper significance to the community. He said the memorandum endorsed approval, noting the application was an extension of an existing wastewater permit, the additional flow would not impact the system a great deal, and the project was approved by the Planning Board six months ago, and was the last wastewater permit outstanding. Mr. Grant said Mr. Levesque said the application would be the last one acted on prior to a review of the Dufresne Henry Water Supply report, and said the Council and public needed to know that steps were to be taken to look at water supply issues in the Town.

Councilor Grant MOVED to approve a non-industrial sewer connection/extension application for Perley Lane as recommended by the Water, Wastewater and Solid Waste Committee. The motion was SECONDED by Councilor Kraus.

Administrator Selig recommended approval, and said the Town was very concerned about water availability, especially in the summer months, when the rivers were dry and the Town relied solely on the Lee well. He explained that the approved budget contained funding for undertaking a water system study, and said that he recommended that before reviewing any more permits, the Town have that study in hand. He noted the water supply issue had come up frequently, and was being taken very seriously.

Councilor Paine asked why this permit was the last being approved before the study was to be done. Administrator Selig said the question before the Council had been: When was enough enough?" and that there had not been a satisfactory answer. He said the decision was made to do the study in order to determine this, and this appeared to be an appropriate juncture to make the cutoff so the study could be done.

Chair Sandberg asked if the fact that the application concerned wastewater, not water, was the reason that approval was being recommended. Administrator Selig said the reason was more complicated, but noted hookups for water and wastewater both came under the wastewater ordinance.

Councilor Samuels noted for citizens watching the meeting that the Perley Lane application was not that large, and was not itself driving the questions over the adequacy of the Town's water supply.

Councilor Smith said that although this was a wastewater permit application, a great deal of water was used in removing waste, so it did affect the water supply. He asked if the planned study would be focused on studying water capacity, or would also be looking at wastewater processing capacity. Administrator Selig said the study would look at the availability of water supply only.

Councilor Smith said it seemed that previous memos concerning applications had addressed wastewater capacity, and noted that water and wastewater capacity issues were both important in terms of what the Town could support. He said he was curious as to why the study would not be looking at both ends of the process. He also questioned that this would be the last project to be acted upon before the study was done. He asked Administrator Selig if the line being drawn was the appropriate line to draw.

Administrator Selig said the reason why only the water capacity was being studied was that there was already a concrete understanding of the wastewater system capacity, and it was known that the Town only utilized about half of it at peak flow. But he said there was not a firm idea of what the water capacity was. He said that based on feedback from the Council, he had asked the Public Works Department to evaluate more thoroughly what the limits of the present system were, so this would be available when the Council considered future applications. He again said this appeared to be an appropriate cut off point.

Councilor Smith asked if this would be the last application.

Administrator Selig explained that the Fall Line Properties application would ultimately require a connection to the water and sewer system, and if the Council agreed with the recommendation to not approve any further permits until the study was done, the Council would not approve that hookup application. He noted that approval would be coming sometime down the line anyway, after granting the Conditional Use permit, and fulfilling other permit requirements. He said at that point, whether the system could handle that additional capacity would come up, and the Town would like to have the water capacity study in hand.

Councilor Samuels noted that the Town would be in competition with UNH for use of the water, and asked if the Town had a project that was tax producing versus a new dorm, how would they parcel out the water. Administrator Selig said those questions would have to be answered down the line.

Councilor Samuels asked if the University would be subject to the Town's regulations if it needed water for a new dorm, and Administrator Selig said the Town could decide not to grant the hookup if necessary, but were hopeful that through careful analysis of water supply issues the Town would not find itself in that position. She also asked if Fall Line Properties had been made aware that the study was pending, and that they would be subject to this.

Administrator Selig said that it was only that day that the issue was coming forward, and he was simply noting that Fall Line Properties could be impacted. He said if the Conditional Use Permit was ultimately approved, there would be a period of time when construction would take place, and it was very possible that by the time they requested a hookup, the study would have been completed.

Councilor Samuels said there should be a process in place so that businesses planning to build in Durham were not suddenly hit with something like this. She said it was not good process.

There was discussion about how long the study would take.

Councilor Morong agreed with Councilor Samuels that it was absurd that this was coming up now, instead of early in the process.

Chair Sandberg said the Town had been aware that there were water supply issues, and noted it was important at some point to start the analysis of whether there was sufficient water supply. He said the question before them was this application, although the other dimensions of the water supply issue were important, and the comments were well taken.

Councilor Grant said he brought this issue up to assure the public that the Council recognized the manner in which they were proceeding. He also said there was a substantial body of reports on water capacity, and the planned study should not take a year.

Councilor Kraus endorsed Councilor Samuels' comments and said the Council should not be, or even have the appearance of being arbitrary or capricious concerning what developers had to experience as part of the planning process. He noted the Public Hearing on the Conditional Use Permit for the planned hotel had been postponed, and now this issue was coming up, and someone listening might make conclusions that weren't necessarily correct. He said the Council should be careful about how it handled this application.

Administrator Selig noted again that the study was being planned because of a great amount of concern expressed over water supply issues. He said this seemed like the natural transition point, and was not arbitrary.

Councilor Samuels suggested that any project that the Planning Board had approved and was in the process of coming before the Council should not have to wait for the water study if the applicant had not been made aware of this up front.

Administrator Selig said that as part of the planning process, the Public Works Department would make the Planning Board aware they were doing this study, and it was likely that the Planning Board's Conditions of Approval would reference that this study would have to be completed before moving to full fruition, and the applicant would know this up front.

The motion PASSED, with Councilor Morong abstaining.

Councilor Morong noted he did work as a subcontractor for Smithfield Construction and would have recused himself, but felt most of the discussion was not about the motion on the floor.

- C. **Resolution #2004-02:** Supporting Legislative Service Request #3233 sponsored by Senator Iris Estabrook which will add the act of throwing or propelling any object or substance at a law enforcement officer as a class B felony under the riot statute

Councilor Morong said he had asked that the Item be taken off the Unanimous Consent Agenda because in looking at it, he didn't see where firefighters and public works employees were protected. He also recommended an amendment to the legislation to address throwing objects at vehicles, animate and inanimate, noting specifically that objects had been thrown at horses during the riots.

Administrator Selig clarified that the Council was being asked to endorse the bill, but did not have authority to amend it. He said the Council could urge that more verbiage be added to cover other circumstances. He explained that the bill was being proposed as a result of a conversation with the County attorney, and was intended to address the specific shortcoming the attorney identified in the current law.

Chair Sandberg said that the endorsement could express concern for other public officials, and private property.

Councilor Morong said he recognized that the amendment he was recommending was to the supporting resolution, not the bill itself. He said the amendment to the motion should read “that Senator Estabrook further this legislation to include firefighters, public works crews, and vehicles, animate and inanimate.”

Councilor Smith asked that the Council hear from Deputy Police Chief Kelly, regarding why this action was being put forward in light of certain actions taken by a judge a few weeks ago, and also concerning the appropriateness of expanding the bill, in terms of possible legal concerns.

Deputy Chief Kelly said emergency services personnel were supposed to be included, although public works employees weren’t specifically discussed. He said that during the most recent incident, officers were hit with numerous objects, including objects not typically considered dangerous, but when thrown off of roof tops, became deadly weapons. He said the legislation broadened the definition, and noted that the language “emergency services” would be included, but public works employees would not be included because they were not really on the front lines when there were problems.

Councilor Smith clarified with Deputy Chief Kelly that in an appropriate circumstance, a public works employee assisting during a riot would be construed as an emergency service worker. He said that language therefore covered all those who needed to be covered.

Councilor Grant MOVED to approve Resolution #2004-02 supporting Legislative Service Request #3233 sponsored by Senator Iris Estabrook which will add the act of throwing or propelling any object or substance at a law enforcement officer as a class B felony under the riot statute. The motion was SECONDED by Councilor Kraus.

Councilor Smith MOVED to include an amendment at the end of Resolution #2004-02 that read “and directs the Town Administrator to arrange for an appropriate delegation of town officials to present testimony in support of Legislative Services Request #3233 before the committees of the general court that would hold hearings on this legislation. The motion was SECONDED by Councilor Kraus.

Councilor Smith said this should be part of the Council’s resolution to make it clear how strongly it felt about this issue, and said it was very important that a town delegation give testimony.

The motion to amend Resolution #2004-02 PASSED unanimously.

Councilor Morong said that if Deputy Chief Kelly and Representative Smith would be addressing his language concerns, he was satisfied.

The motion as amended to approve Resolution #2004-02 PASSED unanimously.

- D. **Resolution #2004-03:** Supporting House Bill #1361 sponsored by Representative Marjorie Smith relative to sentences for certain offenses committed on or near a public college or university campus

Chair Sandberg noted this Item was removed from the Unanimous Consent Agenda by Councilor Smith.

Councilor Smith MOVED to adopt Resolution #2004-03 supporting House Bill #1361 sponsored by Representative Marjorie Smith relative to sentences for certain offenses committed on or near a public college or university campus. The motion was SECONDED by Councilor Kraus.

Councilor Smith MOVED to include an amendment at the end of Resolution #2004-03 that read “and directs the Town Administrator to arrange for an appropriate delegation of town officials to present testimony in support of House Bill #1361 before the committees of the general court that would hold hearings on this legislation. The motion was SECONDED by Councilor Paine, and PASSED unanimously.

IX. Unfinished Business (NLT 8:00 PM)

Continue discussion on the Packers Falls Bridge Rehabilitation Project and provide guidance to Town Administrator

Chair Sandberg drew attention to the Council communication concerning this matter, and said what staff needed to know was whether or not it should proceed with determining resolutions to the problem and considering modifications to the existing structure. He asked Council members to briefly summarize their opinions about the Bridge; to possibly direct Administrator Selig to determine the causes of the problems so they would not happen again; and to suggest what steps should be taken.

Councilor Smith said he felt there were two categories of judgments the Council needed to make. He said the first went specifically to the issue of whether the finished product was unacceptable and the Town should not accept it as it was. He said his inspection of the bridge found that the complaints made by the public concerning aesthetics and safety were not frivolous, and there was good reason to look into that issue. He said the second issue, for the Town at large, was whether this was a case where the Town had slipped up. He said it was important to know this so it could learn and avoid similar problems in the future. Councilor Smith said he wanted to see information that examined the role of the public generally, the role of the Council including current members, town employees, and contractors. He said that from what he had seen so far, there was substantial reason to do this investigation.

Councilor Harris said the bridge was not what they were led to believe it was going to be, and noted she had reviewed minutes of meetings, including language in motions. She said the Feb 17th 2003 communication contained a summary of previous communications

on the issue, and included an erroneous statement that the Council had endorsed a bike path on June 5th. She said there was no motion of this on the motion on that date. She also said Jenny Berry had done a transcription of the tape that said there was agreement the rail height was 42 inches for the sidewalk, and the concrete rail for the travel way for cars was 36 inches, although there was mention at one point of a 54-inch railing followed by a correction of this made clearly at the meeting. Councilor Harris said that in that same meeting, pedestrian pathway or walkway was mentioned 27 times. Chair Sandberg clarified that Councilor Harris agreed with Councilor Smith that an investigation was required to determine whether the project reflected what the Town thought it had purchased.

Councilor Kraus said he would prefer that the Council have a more forward focus, in terms of how it would resolve the problem. He said he had looked into the history of the project, and saw a great deal of conflicting information in communications and minutes concerning it. He said this was an awkward and difficult problem, and if they did a kind of “star chamber” investigation to fix blame, a huge amount of energy would be expended. He said it would be better to put energy toward agreeing there was a serious problem, recognizing the people in the area were profoundly unhappy with how the Bridge had turned out.

Councilor Paine said if the Council didn’t investigate the situation the Town might be doomed to repeat it. She said it was important to figure out how mistakes were made, also noting it was not clear who would bear the costs, and said she didn’t think it was appropriate to simply tack on the cost to future generations. She noted there were all kinds of charges out there, and if the Council didn’t have a thorough investigation, these kinds of discussions would continue.

Councilor Morong said the Council had gotten good information from the public and other Councilors that should be used in looking into the problem. He agreed that causes, costs and options should be looked at.

Councilor Samuels said the process of how the problem occurred needed to be looked at, so the stage(s) where the breakdown occurred could be determined. She said she agreed that the viewscape of the area should be reviewed, noting she had looked at other bridges in the area. She said she had asked what the cost of taking down the cement would be, and what the Town’s options would be from there. Councilor Samuels also said that if various options were developed, citizens in the neighborhood should be involved in discussing them.

Councilor Grant said this was a very troubling situation for all of them, and he favored Councilor Kraus’ approach. He said residents were anxious to know how the problem would be corrected, and were less concerned about how it came about, noting that part was up to the Council to figure out, so the Town’s processes could be improved. He said in the future, he would like to see conceptual drawings of design plans, noting that they should have had them for the Packers Falls Bridge project. He asked Administrator Selig

to prepare as quickly as possible a proposal of what could be done to solve the problem, the cost to correct it, and the time schedule.

Councilor Kraus moved to extend the discussion for 15 minutes. The motion was SECONDED by Councilor Samuels and PASSED unanimously.

Chair Sandberg said he agreed with what others had said that the bridge was an abomination and needed to be fixed. He said he was not interested in finding blame, and that it was important that while the issue was hot, the Council should direct staff to work with the engineers to find solutions. He said it should be negotiated that whoever was responsible for the errors should pitch in and help rectify the problem. Chair Sandberg said a second issue was how the situation ever got to this point, which was an internal issue. He said the staff should go forward with confidence that the Council shared the concerns of the members of the public who spoke on the issue, and would find a solution to the problem.

Councilor Smith said he believed there might be some possibilities, on the solution side, to work with the contractor, even assuming the drawings were followed correctly, because the contractor may have made at least another error that would cost some money to repair. He said perhaps something could be worked out concerning this. He also said that while it was a distinctly separate issue from the problems with the bridge, he was disturbed about the mill stones being taken. He asked how this could have been allowed, and said documenting this would not be sufficient; the Town needed to get them back.

Chair Sandberg told Council members that Administrator Selig was prepared to move ahead, given their input.

It was agreed that Councilor Harris would show pictures on the Packers Falls Bridge at the end of the meeting, because Items X C. and D. still needed to be discussed.

X. New Business (NLT 8:45 PM)

- A. **Public Hearing:** Application for a Conditional Use Permit submitted by Fall Line Properties, Portsmouth, NH, for the construction of a 68-room hotel located at Dover Road and Main Street, shown as Tax Map 4, Lots 50-0, 50-1, 50-2 and 50-3, and sited in the Limited Business District (LBD) zoning district

Postponed

- B. Deliberation and discussion on the Findings of Fact and Conditions of Approval for a Conditional Use Permit application submitted by Fall Line Properties, Portsmouth, NH, for the construction of a 68-room hotel located at Dover Road and Main Street, shown as Tax Map 4, Lots 50-0, 50-1, 50-2 and 50-3, and sited in the Limited Business District (LBD) zoning district

Postponed

C. What action shall the Town Council take in preparing for the March 10, 2004 Informational Town Meeting agenda?

Administrator Selig noted that the past two years the goal had been to make the meeting into a forum where the Council could raise major issues facing the Town and get some good dialogue with the public, so it would be more than simply an enumeration of the Town reports. He said he wanted to find how the Council might want to modify last year's agenda for this year's meeting.

There was discussion about how DCAT would cover it, and Councilor Paine suggested that what was on the agenda would affect this. It was also agreed that reading the various reports of the various committee had been abandoned.

Councilor Paine suggested the land preservation issue should be updated, noting it had been a year since the land conservation bond had passed.

Councilor Smith said he did not disagree with Councilor Paine on this, but noted that very little information that would be interesting to the public was available, because it was too early to provide this.

Councilor Grant noted that the Land Protection Working Group planned on coming in for the January 12th Council meeting, and suggested that they instead give their presentation at the Informational Town meeting.

There was discussion, and it was noted that if the meeting was held at the Town Hall, it could be presented live.

Councilor Samuels said the Informational Town meeting should be a place for an interchange of ideas with citizens. She said there were a number of topics that were pertinent that could bring people out to talk.

Councilor Kraus recommended that Council members could email their suggestions for topics for the meeting, if this was appropriate.

Chair Sandberg said if Council members could trust the responsibility to Chair Sandberg and Councilor Grant to get these ideas to Administrator Selig that could be done. It was agreed that this should be done.

D. Status Report and Discussion on the issue of the School Funding Formula

Councilor Kraus said that this Item should be postponed, especially because Councilor Niman was not present.

Chair Sandberg explained that Bill 1281 said essentially what the Town wanted to draft, and because the Legislature would be looking at it a week from Wednesday, it was timely

to decide whether Administrator Selig or someone else should testify on it and voice support.

Councilor Smith said there was an important difference between this legislation and the consensus that came out of the meeting with the three towns and the School Board, not in terms of substance but in terms of procedure and strategy. He said if the bill went ahead and came crashing down, and didn't have an important feature in it, the opportunity to pass a future bill that took a different approach might be affected.

Council Harris moved to extend the meeting for another 10 minutes. The motion was SECONDED by Councilor Samuels. (The motion was not voted on.)

Councilor Harris said she would like her slide show to be on the record, and did not want the Council to adjourn until after it was shown. It was agreed this would be done.

There was additional discussion as to the differences between the legislation and the consensus opinion between the three towns. There was also discussion as to whether the bill would be put forth in the present session of the Legislature, what support there would be for it in the Town's legislative delegation, and how all of this should affect the Town's strategy concerning the legislation.

Councilor Smith said the point he was trying to make was not what the better course was, but that there were very different courses, involving different political strategies, with each one implicating the other. He said the decision needed to be made carefully, and if the decision was made to back the present bill, the Council would be taking a position that was directly contrary to the position agreed to in that meeting.

Chair Sandberg said he did not believe the Council was prepared to make a determination on this that evening and could discuss it at the January 12, 2004 and then would have time to prepare testimony if the Council wished to proceed. He said Council members should come prepared to discuss this Item at the next meeting.

Councilor Harris ended the meeting by showing slides of the Packers Falls Bridge, from a variety of angles, and of views of surrounding areas from the bridge. She also showed slides of other bridges in the area with what she called better designs (the Scammel Bridge, bridges in Newmarket) and also showed Beard's Creek on Route 108, near gasoline alley, where a pedestrian guardrail was 27 inches high.

Councilor Kraus thanked Councilor Harris for the work she had put into these photographs.

XI. Nonpublic Session (if required)

None

XII. Adjournment

Councilor Kraus moved to adjourn the meeting. Councilor Paine SECONDED the motion.

Chair Sandberg said he would work with Administrator Selig and Councilor Grant on the Agenda items for the Informational Town meeting.

The motion PASSED unanimously.

The meeting **ADJOURNED** at 10:30 PM.

Victoria Parmele, Minutes taker