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DURHAM TOWN COUNCIL MINUTES MONDAY, JANUARY 12, 2004 DURHAM TOWN HALL – COUNCIL CHAMBERS 7:15 P.M.

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

MEMBERS ABSENT: Patricia Samuels

ALSO PRESENT: Town Administrator Todd Selig, members of the public

I. Call to Order

Chair Sandberg called the meeting to order.

II. Approval of Agenda

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

III. Special Announcements

Chair Sandberg informed Councilors and the public that he had received a letter from the Town Clerk/ Tax Collector Linda Ekdahl announcing that she would be retiring this year. He noted that she had been an elected official in Durham for 35 years, and prior to that, had served for 3 years. He said it was with some emotion that the Town accepted this change, and noted that because of her departure there would be an opening in the election ballot for the remaining year of her 3-year term.

IV. Approval of Minutes

Chair Sandberg noted that the minutes from the previous week's meeting were not yet available, and would therefore be approved at the next meeting.

V. Report of Administrator

Administrator Selig said that on Monday and Tuesday of that week the Durham Police Department, along with NH Attorney General and the UNH Police Department, were hosting a seminar on riot control with national riot expert Richard Odenthal. He said the Attorney General's office was funding 90% of the cost for this, and the remaining cost was being split by UNH and the Town. Administrator Selig said he had stopped in at the

seminar and there were about 90 police officers from across the State in attendance learning the latest techniques in riot control.

Administrator Selig said that Monday, January 19, 2004, was Martin Luther King Civil Rights Day, and that in honor of this, the Town Offices would be closed.

He noted that at 9:00 pm that evening, the Council would be going into a non-public meeting to discuss collective bargaining issues with the Town Attorney. He said the regular Council meeting would be cut a bit short as a result of this.

Administrator Selig said the filing period for elected positions would run from January 21-30, 2004 and involved coming to Town Hall, bringing one dollar, and filling out the forms in the Town Clerk's office. He listed the following elected positions that would expire, and therefore had vacancies:

Town Council – 3 year term - 3 openings
Library Trustees – 3 year term - 3 openings
Library Trustees – 1 year term – 1 opening
Town Moderator – 2 year term – 1 opening
Supervisor of the Checklist – 6 year term – 1 opening
Trustee of the Trust Fund – 3 year term – 1 opening
Town Clerk/Tax Collector – final year of 3 year term, which will run from March 9th, 2004, Town Meeting Day, to the March 9th, 2005.

Administrator Selig said that Council members invited anyone interested in the Town Council positions to contact any of them to find out more about what the Council positions entailed. He noted that their phone numbers were on the Durham web site.

Administrator Selig explained that questions about the cost of the Route 4 Safety Study had been posed by Hillary Scott at the previous meeting and said the actual cost was \$149,920.22, noting that the Town had received an 80% grant from the State for this, and the Town share was about \$30,000.

Administrator Selig spoke about Item VIII C of the Unanimous Consent Agenda, "Authorizing the acceptance of private donations received by the Town between July 1st and December 31st, 2003". He listed the names of those who had donated money.

Howard and Jean Brooks:	\$300 for wagon maintenance at Wagon Hill Farm.
Various sources:	\$7,895.15 for 4 th of July celebration
Brian Ehle:	\$12.00 for Police Explorer post
Seacoast Growers Association:	\$100.00 in recognition of allowing them to use the Farmers Market site
Thomas and Clara Butler:	\$11,563 to provide air conditioning for the Historic Museum at the Durham Historic Society building.

Chair Sandberg thanked these generous donors for their contributions.

VI. Reports and Comments of Councilors

Councilor Morong said he felt compelled to clear up the seeming misunderstandings concerning the January 27, 2004 voting venue. He said that the previous week, Councilor Kraus had publicly alluded to members of the Council, including himself, as secretly pressuring Administrator Selig to move the venue to Heidelberg Harris. He said he wanted to assure citizens there were no secret meetings that he would not share with any interested party. He said there were Councilors including himself who spoke to Administrator Selig about considering other venues so that all voters could feel they were voting in a comfortable, neutral venue.

Councilor Morong said he had gone further than simply gleaning information from *Fosters Daily Democrat*, including looking at the floor plan of Heidelberg Harris and seeing that it had adequate facilities, and was no further from Town than the Evangelical Church. He also said it was on the COAST bus route for those who used public transportation. He said it had never been explained to him why the Evangelical Church was considered the superior location, and that since Heidelberg Harris seemed to be a suitable space, he had encouraged Administrator Selig to continue to consider it.

Councilor Morong said that concerning the pressure Councilor Kraus and the *Manchester Union Leader* had referred to, he had simply brought an email from Administrator Selig to all Councilors on December 23, 2003. Councilor Morong read this email, which expressed that Administrator Selig had weighed the pros and cons of all possible facilities, and would be very careful to make the fairest decision he could.

Councilor Morong read his own response to this email, which noted that the issue had taxed Administrator Selig's time, and conscience, and suggested that since the decision was ultimately up to the Council according to the Town Charter, and seemed to be a controversial issue, the Council could take the weight off his shoulders and make the final decision. He said he would like to be involved with the process and would go with the will of the Council. He said he believed Councilor Paine echoed these sentiments to the rest of the Councilors.

Councilor Morong said he tried to get this matter on the December 15, 2003 agenda, but noted there was an eleventh hour discussion about it that evening when Councilor Kraus made a motion, which failed for lack of a second, to have the venue at the Evangelical Church. He said he left that evening under the impression that Administrator Selig was not done exploring the possibility of using Heidelberg Harris, and that there would be further discussions when he had final information about the facility's availability.

He said he concurred with Councilor Kraus that this perhaps was not a decision that Administrator Selig should have had to make. But he said that from every conversation he had had with Administrator Selig, and every public statement he made, it seemed that, given the charge by the Council, he chose to make the final decision, no matter how controversial it got, even though according to the Town Charter, it could have been put to a vote of the Council. Councilor Morong said that ultimately the Council was responsible for the decision, and said he was pleased with decision, and also sensed that the Council has a whole was as well.

Councilor Morong said he wished that the Council had found a way of relieving Administrator Selig of the burden of making the decision and making the position of every Councilor a matter of public record on the issue. He said that when the *Manchester Union Leader* said that this was a political decision, he agreed, and also noted it was a political election. He said further, when a group of persons challenged the rights of another group of persons in this country, this went beyond the religious realm into the political realm. He said that perhaps it was not for the Council to decide who was right, and that this could be left to judges and history, but it was up to the Council to provide the Town's citizens with as neutral a venue as possible to cast their votes.

As to the charge that this there was a small group of people "muscling" the majority, Councilor Morong said he was not so sure. He said that from the support Administrator Selig had received for his decision, and from comments he personally had received, he wondered if it was a relatively small group opposing Heidelberg Harris. He said he though the inconvenience that most Durham residents were feeling was not being able to vote at the high school, and they wouldn't object to using either of the generously offered venues. But he said that for those who did care, it seemed that Heidelberg Harris offered everything needed in a completely neutral venue, that no one could object to.

Councilor Kraus said he wanted to make it clear that in his statement at the meeting the previous week, he had never said that what went on was secret, but that what went on was "out of public view".

Councilor Grant noted that later that evening there was an Item on the Unanimous Consent Agenda concerning the possibility of signing a lease agreement with Cellco Partnership DBA Verizon Wireless to construct a wireless telecommunications facility on the Foss Farm Water Tank. He said that the contract provided that the cellular company would pay a rental fee totaling \$877,000 over the next 25 years and this contract provision, negotiated by the Town Administrator and Business Manager, was excellent and they were to be commended.

Councilor Grant said that the revenues from this agreement would help to ease the burden borne by the Town's water users and also said the contract demonstrated the Council's efforts to secure increased revenues from non-taxed sources, noting that the Town held the right-of-way from UNH on this property, and that the cellular company would be using this right-of-way to reach the Foss Farm tank. He said that in accordance with current agreements with UNH, the Town would share the rental fees on a 50/50 basis with the University. He said that too was excellent because UNH, like the Town, needed to realize income from non-tax sources.

Councilor Grant pointed out that the Planning Board would be deliberating that week on the Omnipoint/T-Mobile application to put antennas on the Edgewood Road water tank. He said that to install and maintain the equipment, T-Mobile would need access via a public right-of-way, Strafford Avenue, a street the Town owned and leased to UNH. But he said that in this case, UNH would not be sharing the annual rental income it received from the cellular company. Councilor Grant said some purist might say the circumstances differed, but he said that both tanks were fundamental parts of a joint water system and both required access over rights-of-way held by the other party.

Councilor Grant said there was an important principal at work here. He said that if the Town was willing to share its revenues from the Foss Farm tank, the University should be prepared to share its rental revenues from the Edgewood Road water tank. He said he believed in sharing the wealth, and also was led to believe that some parts of the University's water tank on Beech Hill intruded on the Town right-of-way there and perhaps that merited consideration in terms of receiving possible revenues from that tower.

Councilor Grant said that based on the issues involved with the Edgewood Road tank, he was asking Administrator Selig to immediately seek negotiations with UNH to secure sharing of rental income for the cellular facilities at the Edgewood Road water tank. He said he had not wanted to remove Item B from VIII because he would like to see the Town receive this income.

VII. Public Comments

Katie Wheeler, 27 Mill Road, said she was there on behalf of the Durham professional firefighters, and as someone who lived near the campus she was well aware of the response by the Fire Department on the UNH campus. She said that from her work in the State Senate she knew many of the issues surrounding firefighters throughout the State. She said she was very concerned that the Fire Department, on which the Town was heavily reliant, was presently operating without a contract, and that this was not a healthy situation. Ms. Wheeler pointed out that the Fire Dept. was the Town's first responder to all kinds of problems, including false alarms, and that this took personnel and dedication.

She said that Durham was presently at the bottom of the 9 Seacoast communities in terms of comparative salaries, and as a result was losing its professional firefighters, after they had received excellent training in Durham. She said it was her understanding that a fact-finding report was overdue, but said one wasn't needed in order to know that the firefighters needed support. She said that increasing their wages was the kind of spending that citizens felt was justified, and she said that whatever portion of her taxes went to firefighters was money well spent.

Ms. Wheeler said she had heard the suggestions about possibly switching to a volunteer Fire Department but said this was a nonstarter for Durham because it was a big community, especially with the presence of UNH, which made the Town a special place and an expensive place. She urged that the issue be resolved and that the firefighters get a reasonable increase in salary and benefits, recognizing that what was reasonable was in the eye of the beholder.

Chair Sandberg noted that when there were labor issues, certain parameters had to be followed, under the law, and suggested for the benefit of the audience that Administrator Selig should briefly address the negotiation process the Town was presently engaged in with the Firefighters Association.

Administrator Selig said Durham and the Firefighters Association had been involved in negotiations since several months prior to the expiration of their bargaining agreement in December of 2001. He said that the Town and the firefighters had reached a tentative

agreement in mid 2002, but that the Council had not ratified it at that time. He explained that the Council had asked the Town's bargaining team to return to the bargaining table and address several key issues and said that these key issues had not yet been resolved.

He explained that the negotiations themselves were private, but said the key issues were health insurance benefits and pay, and also said there were some issues with working conditions, especially the status of probationary employees. He said it was not the Council that had requested the fact finding study, explaining that this was a normal offshoot of the negotiation process when they were at a standstill, and said it was no fault of the Council or the firefighters that the fact finding study had not yet been completed. He said the fact finder from the Public Employee Labor Relations Board had heard both perspectives, but the report was still not ready, noting that it was probably out of date at this point.

Administrator Selig said they intended to continue the negotiations, and would be meeting with the Town's labor attorney to discuss bargaining agreements. He noted that the Unanimous Consent agenda contained a ratification vote for the Public Works Department bargaining units, and that agreement had also been reached with the Police Association and mid-managers. He said they had still not found common ground with the firefighters, but would continue to look to find this common ground.

Tom Richardson, 11 Littlehale Road, said that Durham firefighters were the lowest paid firefighters in the state, which was upsetting when Durham was the 7th wealthiest Town in New Hampshire. He said that he and several other Durham officer firefighters would be retiring in the near future, and that every officer would be gone within 5-6 years, noting that this was greatly affected by what was going on. He warned that younger firefighters – well trained, future officers of the department who were eminently qualified to be captains, were also leaving. Captain Richardson also pointed out that other Durham employees were relatively well paid for their particular trade, so this was not fair and equitable.

Captain Richardson said there was no question that the Town was gutting and destroying the Fire Department and said that the quality of services would go down as personnel changes in the Fire Department continued. Captain Richardson said a tremendous amount of local and other of knowledge was required in order to be a firefighter, and all of that knowledge was leaving. He said the department recently had to begin considering how to run a department with two probationary officers on every shift and that the department was having difficulty attracting good employees because the word had gotten out.

Captain Richardson noted that Administrator Selig had said that the negotiation process had been dragging on, and said that this was ultimately the Council's responsibility. He said he wondered what the Council's hidden agenda was for doing this and why it seemed to want to destroy the Fire Department.

Councilor Kraus MOVED to extend the time for Item VIII from 7:30 to 8:00 pm. The motion was SECONDED by Councilor Paine and PASSED unanimously.

Councilor Harris requested, in the interest of time, that individuals who still wished to speak should provide information that had not already been voiced in public comments that evening.

Charles McLean, 5 Croghan Lane, said he backed the views expressed by other members of the public concerning the Fire Department. He also said the comment that the next step belonged at the Council table was very appropriate.

Mr. McLean asked what the difference in cost was between voting at Heidelberg Harris rather than at the Evangelical Church.

Administrator Selig explained that Heidelberg Harris was not charging the Town for use of its facility, but noted that there were more setup costs for using it, approximately \$1,000-2,000.

Mr. McLean said that money could have been saved if the Town had gone with the Evangelical Church. He said he had no idea the voting venue was going to be discussed at the December 15, 2003 Council meeting, and if he had known about it, he would have been there. He said he had talked to a number of people who were also concerned about the December 15th meeting. He said it wasn't right to reach a decision on an item that had been inserted after the meeting started, and noted that no one from the public was at that meeting concerning this issue except for the opposition.

Mr. McLean said the minutes indicated that the Evangelical Church was considered to be a good location, and said three quarters of the Town had been made to feel uncomfortable when Heidelberg Harris was chosen. He asked the Council to apologize to the Evangelical Church if it had not already done so. He also said he had received many phone calls on this issue and that he might even throw his hat in the ring for a Town Council seat.

Jerry Needell, 36 Bagdad Road, thanked Administrator Selig for his decision to hold the January election at Heidelberg Harris, and said he had done the right thing. He noted that he said sent an email to Councilors to that effect. He also said that if the Council was going to be discussing the voting venue for the March 9, 2004 elections that evening, he hoped the Council realized that there was no new information that would require a change of venue.

Mr. Needell referred to the article in the *Fosters Daily Democrat* noting Councilor Kraus' comments, and said he was puzzled by the report that comments were being made by phone, email, and private discussions with Council members. He said he didn't understand that this would be questioned, and said he wanted it to be clear that members of the public were not required to appear before the Council in order to provide input on issues. He said that private discussions with Council members were perfectly appropriate, and in fact citizens should feel welcome to do so. He said he assumed that Councilors received information through various means.

He said a main point of the venue issue related to voter participation and access, and to encouraging people to participate in Town government. He said it was a noble deed for

the Town to inconvenience itself, and said the Town should be proud of itself for enfranchising voters, even if there were some added costs.

Mike Hoffman, 300 Durham Point Road, said he was speaking on behalf of the firefighters, and tried to remain unbiased, as a community member who provided and received emergency services. He said fixing blame would not solve the problem, and said that if the Fire Department were a business, it would be considered to be on the road to failure. He stressed that when times were bad, it was important to invest in the people that did the work, pointing out that it made far more sense to invest in the employees than on equipment, because the firefighters were where the rubber met the road. He described the extensive knowledge and skills they needed, and noted their timely response meant that “saves” were more and more common.

He pointed out that the Town had spent \$6,000 on training a new firefighter, who ended up working in Concord, and also noted the cost of providing shift coverage. He also said he hoped the Town would not have to pay for the fact finding report, because it had no value at this point. He said there was not a single member of the department who was not discouraged, and that there was a really high cost of poor morale.

Lynn Allen, 148 Packers Falls Road, said it was sad when Durham’s firefighters couldn’t afford to live in the Town, and noted that despite this, the firefighters were involved in helping with many Town activities, and were the Town’s heroes. Ms. Allen told of a time when there was a fire at her mother-in-law’s house and firefighters risked their lives to save her. She said that one of the firefighters had consoled his daughter during this time, and she said she was forever indebted to this man and the other firefighters. She noted he had recently left the department, and said she was heartbroken that the firefighters of Durham couldn’t afford to make a living there.

Kristin Bishop, 1 Surrey Lane, said there had recently been a small fire near her house, and that firefighters from Dover and Newmarket were needed in order to put it out because Durham was low on firefighters that day. She said this was a life and death issue, and asked the Council to resolve it.

Wesley Smith, 26 Woodridge Road, said he had been a resident of Durham for 37 years and a member of the Fire Department for 26 years. He provided a chart to Council members and the public, which showed the breakdown of calls to the Fire Department in 2002 and 2003, and said these numbers made it apparent that Durham needed a fire department with trained personnel.

Mr. Smith also spoke about the base salaries of entry-level firefighters in Durham - \$12.29/hr, with the top salaries \$20.29, and an average of \$15.28/hr. He said that it disturbed him greatly to see a recent advertisement for plow drivers with Class B licenses in Durham offering \$14.51-15.17/hour. He said he had been watching this situation for three years, and had seen a total of 28 years of service lost when four of the department’s firefighters left.

He said Durham was a unique Town in terms of dangers and hazards, noting there was a University with chemicals and biological materials, a railroad and a major highway, both

carrying hazardous materials, and several waterways. He said Councilors were all responsible for the fire and medical safety and welfare of Durham residents as well as the faculty and staff of UNH.

Councilor Kraus MOVED to extend the Public Comment period until 8:30 pm. Councilor Morong SECONDED the motion.

Councilor Niman said he was concerned that if the Council continued the Public Comment period it might not have time that evening to deliberate on, and possibly make progress on the contract negotiations.

Councilor Harris MOVED to amend the motion, to extend the Public Comments period to 8:15 pm. The motion was SECONDED by Councilor Grant and PASSED unanimously.

The motion, as amended, to extend the Public Comments period to 8:15 pm, PASSED 7-1, with Councilor Niman voting against the motion.

Richard Many, 73 Newmarket Road, said he had lived in Durham for 23 years and had been a call firefighter for 25 years. He said he had heard discussions about the possibility of having a volunteer Fire Department, and noted he was the only call firefighter in Durham who actually lived and worked in Town. He said with the number of calls that came in every year, it was not possible that members of a volunteer force could respond to these calls and also work in the community. He said the Town needed a paid Fire Department.

Mr. Many also said there was a general feeling that the Council was unwilling to sign a contract with the Firefighters' Association. He said that those firefighters who were still working in Durham were disgruntled, and noted it was not a good idea to have disgruntled employees. He said that what the Association was asking for was not unreasonable, and said he was willing to pay for good services. He said that the Council needed to take action and make compromises that were fair to the firefighters.

Joleen Hansen, 22 Faculty Road, said she was surprised that the Town Council was going to make a decision for her about a religious issue. She said it was important that Durham was a diverse community, and said the newspaper article made it sound like the Town wanted to stay away from a Church building because of those kinds of people. She also said she was concerned about voter turnout, and said that Heidelberg Harris was hard to find, compared to the Church location. She also said she was concerned about the extra cost of voting there and she hoped the Council would use a more convenient location in the future.

Kim Wesson, Surry Lane, urged the Council to offer the Firefighters Association a contract they couldn't turn down. She noted that one of her two children had severe medical needs, and said she was terrified at the thought of losing such valuable employees.

Peter Brown, 35 Sandy Brook Drive, said he was the Chair of the DCAT Governance Committee, and noted that DCAT could train members of the community who wanted to get the word out on various community issues. He said he would be sending letters out to interested groups, and also said information on DCAT was available at the Town website.

Mr. Brown also said it was impressive that someone who had just become a new US citizen had spoken out against the voting venue. He also said he was a professional pilot, who knew that experience counted in an emergency situation, and was willing to pay more for firefighters who knew what they were doing.

Pete Chinburg, 32 Woodridge Road, pointed out that the Town had already lost 25% of its firefighters, and there was a good chance the Town would be losing more. He said there was a hang-up on the copay issue, and that this was an important element of any contract. He also said there had been discussion about the four-person crew vs. five-person crew, and said that if the Town kept going in the same direction, it would get to a four-person crew by default. Mr. Chinburg said that if the Town could find money to buy Smitty's, and conservation land, it should be able to find money to pay the firefighters more.

Townsend Zwart, 5 Garrison Road, said that it was in the Town's interest to solve the problem with the firefighters, and pay them a competitive wage.

Administrator Selig said he had received a letter from Jesse Gangwer in support of the firefighters.

Bill Coty, 21 Littlehale Road, said that he had been involved with union contract negotiations and if the desire were there to solve the problem, it would occur. He said the issues were clear, and the contract should be settled fairly because the implications of experienced firefighters leaving the department were significant. He said it didn't make sense to make a big deal out of paying an extra \$1,000-\$2,000 for a change of voting venue and then throw away \$6,000 on training a firefighter, which could also translate into many hidden costs down the road. He urged the Council to solve the contract problems.

Councilor Morong noted that he too would like to see a signed contract as soon as possible.

VIII. Unanimous Consent Agenda (NLT 7:30 PM) *(Requires unanimous approval. Individual items may be removed by any councilor for separate discussion and vote.)*

Chair Sandberg asked if Councilors wished to remove any of the Items from the Unanimous Consent Agenda.

Councilor Smith requested that Agenda Item VII B be removed.

- A. Shall the Town Council ratify the American Federation of State, County and Municipal Employees (AFSCME) bargaining unit agreement for the period January 1, 2003 to December 31, 2006 as recommended by the Town Administrator?

- C. **Resolution #2004-04:** Authorizing the acceptance of private donations received by the Town of Durham between July 1 and December 31, 2003.

Councilor Kraus MOVED to adopt Items VII A and C. The motion was SECONDED by Councilor Morong, and PASSED unanimously.

- B. Shall the Town Council authorize the Town Administrator to sign a lease agreement with Cellco Partnership DBA Verizon Wireless to construct a wireless telecommunications facility on the Foss Farm Water Tank as recommended by the Town Administrator?

Councilor Smith said that even if there were no questions concerning this Item, he would still have requested that it be removed from the Unanimous Consent Agenda, based on the Sprint case. He asked Administrator Selig why 3% was the best rate the Town could get with Verizon.

Administrator Selig explained that there were two carriers on the tank already, and these agreements were for 25 years, and called for a 4% increase in payments to the Town every year, compounded. He said the Town had broached this with Verizon, which said the market had changed, and would therefore be unwilling to go higher than 3%. He said it appeared that 3% was not unreasonable, noting Verizon had cancelled some of the agreements at higher rates it had previously negotiated with other towns.

Councilor Smith asked if the antenna structure that was planned on the tower was the same as the present structures – flat against the tower, not going above the top level, and painted the same color so it would not be more obtrusive than the existing structure.

A Verizon representative said the structure would meet all of those requirements.

Town Administrator Selig also noted the agreement was contingent upon site plan review by the Planning Board.

Councilor Kraus MOVED to authorize the Town Administrator to sign a lease agreement with Cellco Partnership DBA Verizon Wireless to construct a wireless telecommunications facility on the Foss Farm Water Tank as recommended by the Town Administrator. The motion was SECONDED by Councilor Paine and PASSED unanimously.

IX. Unfinished Business

Status report and discussion on the issue of the School Funding Formula

Administrator Selig explained this was a continued discussion from the previous meeting, and that Council Niman had not been at that meeting. He said there were still unanswered questions concerning House Bill 1281, which would be heard that week in Concord.

He explained that House Bill 1281 would accomplish, to a certain degree, what the three towns had talked about – allowing the communities that comprised the cooperative school district to utilize adequacy funds received from the State in a different part of the

equation from the place the Town currently plugged in those funds in order to more fairly reflect Durham's usage of the school system.

Administrator Selig said that in discussions with Madbury and Lee, the agreement around the table was that such a provision would be acceptable to all of the towns if each Town had veto power over the way in which these grant funds were utilized. He said that position was different from the House Bill in that the bill did not allow that veto power by each Town. He said his discussions with the School Superintendent indicated he would be going to the hearing, and would recommend passage but with an amendment to allow this veto power.

Administrator Selig gave some political background on House Bill 1281, and said there were questions as to whether the timing of the bill was right, given the uncertainty of education funding statewide, and that the legislation might be sidelined because of education funding issues before the Legislature, including a constitutional amendment proposed by the Governor. He summarized the various options available to the Council concerning the bill, and Council members discussed possible approaches to take.

Councilor Smith MOVED to endorse House Bill 1281 as long as two amendments could be made to it: 1) the addition of a veto provision; and 2) language to clarify that the five-year rule would not apply. The motion was SECONDED by Councilor Kraus.

Councilor Grant said he would vote against this motion because of the amendment to add a veto provision, and said he would offer a motion without it.

Councilor Grant MOVED to support House Bill 1281 with one amendment that the language to clarify that the five-year rule would not apply. Councilor Harris SECONDED the motion. The motion FAILED on a tie vote of 4-4, with Councilors Kraus, Smith, Niman and Paine voting against it.

The original motion, to endorse House Bill 1281 as long as two amendments could be made to it: 1) the addition of a veto provision; and 2) language to clarify that the five year-rule would not apply, PASSED 7-1, with Councilor Grant voting against the motion.

Councilors discussed whether it would be worthwhile for Administrator Selig to attend the hearings on House Bill 1281, and it was agreed that he should attend. Administrator Selig said he would make it happen.

X. New Business

Discussion with respect to selecting a voting venue for the March 9, 2004 Town election and signing of the March 9, 2004 Town election warrant

Administrator Selig said that at the present time, there was no confirmation that Heidelberg Harris would be available for this date. He said he was told to check with them in January, and had done so, but there had been no response yet. He explained that that he had been hoping to see how things went at Heidelberg Harris before making a decision concerning the March elections, and the reason the matter had to be decided

upon then was because the Oyster River School Board election warrant must be posted and copies available to the general public on or before the last Monday in January, or Monday, January 26, 2004, in accordance with State statute. Therefore, in order to meet the posting requirements, the School Board must approve its warrant to include the date, time and location for voting in Durham, Lee and Madbury at its next meeting on Wednesday, January 21, 2004.

He said the Evangelical Church was available for the March elections and that the Council could wait to hear back soon from Heidelberg Harris, or could opt to have the March elections elsewhere.

There was discussion about where the School Board was planning to hold its election, and Administrator Selig explained that the School district usually held its elections wherever the Town did, and that this had not been a problem in the past when elections were always held at the school. He noted that the school gymnasium would be available for all elections by the fall of 2004.

Councilor Kraus MOVED that the Town of Durham elections on March 9, 2004 be held at the Evangelical Church. Councilor Grant SECONDED the motion.

Councilor Kraus said it had been clearly stated that the Evangelical Church was the superior location, in terms of convenience for citizens and officials. He also said he was making this motion because he felt strongly that Councilors should vote on this matter, and Administrator Selig should not have to wrestle with it.

Councilor Harris suggested that switching the election to a different location didn't make sense. Councilor Paine said she agreed with Councilor Harris, as a professional event planner. She said that having now switched to Heidelberg Harris, it made sense to hold the March elections there as well, and that the second time would be easier. She said her discomfort with the Evangelical Church continued, and she firmly endorsed Heidelberg Harris.

Councilor Smith said that although he respected Councilor Kraus' right to free speech, he disagreed with his motion. He said his own view on using a church, any church, as a voting venue, was public, and had been made clear previously. He said he had had numerous conversations with Town Administrator Selig concerning this issue, and urged Administrator Selig continue to pursue Heidelberg Harris for the March elections.

There was discussion on whether the logistics for setting up the Heidelberg Harris facilities for voting would be difficult, and Administrator Selig explained that they had worked out a workable floor plan that would not require moving significant amounts of equipment and furniture.

Councilor Morong said it was no secret that he would prefer that the March elections be held at Heidelberg Harris, noting one reason was to minimize confusion for voters.

Councilor Niman said the present situation reflected intolerance in two directions, and said that in December he had chosen to allow Administrator Selig to make this difficult

decision because he trusted him with the responsibility. He said the issue of possible voter confusion issue was compelling, and said he therefore supported having the March elections at Heidelberg Harris. But he said he was all right with holding the elections at the Evangelical Church if Heidelberg Harris was not available.

Chair Sandberg said that the last time he voted in the Church, he saw the sensitivity among some voters about this. He said Administrator Selig had done a remarkable job in trying to find a voting venue that would work for everyone, and noted that no one would be disenfranchised by voting at Heidelberg Harris. He said he supported this, but also said he was not averse to using the Evangelical Church. But he said the Council needed to make a decision that would give Administrator Selig clear direction. He suggested an amendment to Councilor Kraus' motion – that if Heidelberg Harris were available, voting would be there, and if it was not available, voting would be at the Evangelical Church.

Councilor Smith said he would have to vote against a motion that said the Council had no problem with voting at a Church.

Councilor Kraus said his motion was not intended as one that would have amendments tacked on to it.

Councilor Morong said he would like to move on the motion.

Chair Sandberg explained that the motion had been called which requires the Council to vote on whether or not to stop the debate and would require a 2/3 vote.

Chair Sandberg asked for a vote of calling the question. The vote to call the question PASSED unanimously.

Chair Sandberg called for a vote on the motion to hold the March 9th ORCSD election and the Town election at the Durham Evangelical Church. The motion FAILED 6-2, with Councilors Kraus and Grant voting in favor of the motion.

Councilor Smith MOVED to instruct Administrator Selig that the March 9th ORCSD election and Town election should be held at Heidelberg Harris, and if this was not acceptable by Heidelberg Harris, to locate another venue, with every effort being made to insure that it was not a religious facility. The motion was SECONDED by Councilor Harris.

Councilor Smith said passage of this motion would establish Heidelberg Harris as the first choice, and would instruct Administrator Selig to find another non-religious venue, if Heidelberg Harris was not available. Councilor Smith said that if that was not possible, the Evangelical Church or any other church should be chosen as the voting venue. He explained that he wanted to ensure that the election would not be called off because no place was available.

Councilor Kraus said it was redundant to have such a motion, explaining that if the March elections couldn't be held at Heidelberg Harris, by default the election should be

held at the Evangelical Church as he understood the investigation that has been pursued at great effort previously.

Councilor Harris said that because the March elections would be much smaller, other locations were possible, including churches such as the Community Church.

Administrator Selig agreed that the smaller election size allowed more flexibility, but encouraged the Council to either consider that churches were fair game, or were off limits as voting venues. He said that having to make value judgments about churches was an untenable position.

Chair Sandberg said the more straightforward approach was to say that the Heidelberg Harris site made sense, but if it was not available, the Evangelical Church should be used as the voting venue.

Councilor Paine said she felt it was not appropriate that voting be held in religious venues, regardless of which one it was.

Chair Sandberg noted many towns held voting in churches because this was the only place that was available.

The motion FAILED 2-6, with Councilors Smith and Paine voting in favor of the motion.

Councilor Grant moved that the March 9th ORCSD election and Town election be held at Heidelberg Harris, assuming the facility is available, and if not, elections would be held at the Evangelical Church. The motion was SECONDED by Councilor Kraus.

Councilor Paine said she was against this, because she trusted Administrator Selig to make the right decision.

Councilor Niman said he would like to put this issue to rest.

Councilor Morong said he would prefer that the voting be held at Heidelberg Harris, but also would like to see hearing concerning this issue in Durham.

The motion PASSED 6-2, with Councilors Smith and Paine voting against it.

Chair Sandberg noted that the task before them was to adopt the draft Warrant, and that they all had had a chance to read it.

Councilor Grant MOVED to approve that the Town Council hold the March 9, 2004 ORCSD and Town elections and approve the original election warrant and the two copies attesting that they are true copies of the original warrant, which was provided to Councilors for this evening's meeting. Councilor Paine SECONDED the motion and it PASSED unanimously.

XI. Nonpublic Session (if required)

XII. Adjourn (NLT 9:00 PM to hold a consultation with legal counsel in accordance with RSA 91-A:2 I (b) and (c) with respect to collective bargaining)

Chair Sandberg said the Council would be adjourning the meeting, and following this, would be meeting with the Town's labor attorney.

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

The meeting ADJOURNED at 9:35 pm

Victoria Parmele, Minute Taker