

This set of minutes was approved at the March 1, 2004 Town Council meeting.

**DURHAM TOWN COUNCIL MINUTES
MONDAY, FEBRUARY 16, 2004
DURHAM TOWN HALL -- COUNCIL CHAMBERS
7:00 PM**

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

MEMBERS ABSENT:

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

I. Call to Order

Chair Sandberg called the meeting to order. He noted the Council had been in nonpublic session with the Town attorney until 7:15 pm.

II. Approval of Agenda

Councilor Paine MOVED to approve the agenda as submitted. The motion was SECONDED by Councilor Harris, and PASSED unanimously.

III. Special Announcements

Chair Sandberg said there were no special announcements.

IV. Approval of Minutes - There were no minutes

V. Report of Administrator

Administrator Selig encouraged residents to join the Durham listerv, by writing to him at administrator@ci.Durham.nh.us. He said the listerv was being used, among other things, to send out announcements regarding issues impacting neighborhoods.

VI. Reports and Comments of Councilors

Councilor Morong told Council members that the Rental Housing Commission had recently met, and had appointed some students to their board. He also said the Commission had reviewed Administrator Selig's memorandum suggesting three options for working with landlords in Durham in lieu of permitting, which would give the Town more enforcement tools for behavior issues.

VII. Public Comments

Michael Hoffman – Durham Point Road spoke on behalf of the skateboard park effort. He gave some background on the skateboarding issue, noting there had been some concern about it in various neighborhoods, downtown and on University properties. He said his group had met with Chief Kurtz, who suggested the idea of creating a skateboard park, and the group had taken that idea forward. He said they had met with various other local groups about the concept, and had identified a location across from the skating rink on Old Piscataqua Road, which was ideal because it was a recreational area.

Denny Burn, 2 Foss Farm Road said from a recreational perspective, the skateboard park had a lot of value for the University, the Town and especially the kids who didn't have a good place to skateboard. He said this kind of recreational facility was more and more common, needed little supervision, and could be done with movable, temporary arrangements that look like street elements, so the cost could be kept down.

Administrator Selig explained that he had suggested that the three main organizers of the skateboard park effort briefly present their plans to the Council. He said he was planning to move forward with the written proposal from the committee which he had provided to Council members, unless concerns were expressed about the park's planned location, in which case, additional time to discuss this would be needed.

Chuck Cressy spoke about the financial aspects of the proposed skateboard park. He said that if they were given the green light, active fundraising would begin, and they would ask the community for both monetary and in-kind donations. He said the group believed it could cut the cost of the park to half of what other Towns were spending, by using in-kind donations for materials, etc. He said the downtown business association and MainStreet Association had been involved in the effort from the beginning, and the University had loaned them interns to write a grant proposal for the park.

He also said they had received full support directly from UNH president Ann Weaver Hart, and noted there had been discussions with the Whittemore Center about having a skateboard jamboree, which would raise money and also showcase the sport to the greater community. Mr. Cressy said they would like to open the skateboard park by the fall of 2004, and said this could happen with the support of the Council.

Chair Sandberg said the Council would look forward to seeing the final proposal from Administrator Selig.

Richard Kelly, 47 Stagecoach Road said his name would appear on the ballot for Town Council. He urged the Council to ratify a fair and equitable contract with the firefighters that would bring their compensation in line with their fellow firefighters serving in neighboring communities. He said they were an important resource to the community, and it was sad that a community whose residents paid so much in property taxes paid its firefighters so little.

He said he supported and encouraged the Council's efforts toward revenue enhancement and tax stabilization, in particular the school funding formula, the economic development committee, and dialogue with UNH. He also said he supported the Master Plan and the revised Zoning Ordinance, noting that as an engineer, he was keenly aware of the importance of sound regulations. He said he had partially reviewed the revised ordinance, and said he was in favor of using lot size by soil type as a way to manage growth. Mr. Kelly said he believed that a build-out analysis, based on the proposed zoning ordinance, would demonstrate the effects of growth on present and future infrastructure needs. He also said it was important that the Master Plan and the Zoning Ordinance worked with the UNH master planning process.

Mr. Kelly said he realized the relationship with UNH ebbed and flowed, and urged Council members to be recognizable by face to the UNH administration, and to have an on-going dialogue with it at regularly scheduled meetings. He also suggested that the Council explore the idea of a payment in lieu of taxes with the University system, noting Durham was in the unusual situation of having to bear the burden of the State University system as well as the local school system.

Jeff Furlong, spokesperson for the Durham Professional Firefighters said the contract negotiations process had been long and hard, because both sides had near and dear issues. He said the previous week a tentative agreement had been reached where neither side got everything it wanted, but said it was a fair compromise. He said it was no secret that the firefighters had sought public support, and the support received was very much appreciated. But he said that unfortunately, Council members took some pounding because of this. He noted there had been references to 911, an emotional issue, and stated that the Durham firefighters had not, and never would, ride on the coat tails of the 911 tragedy. He said they did not question the patriotism of Council members, and though they might disagree with the Council on issues, they realized the hours that Council members put into serving their community. He said he hoped the Council would move to ratify the agreement that evening.

Chair Sandberg thanked Mr. Furlong, and said his comments were very much appreciated.

William Hall, Durham passed out copies of a letter to the editor in Fosters from the pastor of the Evangelical Church. He said perhaps the road the Town had gone down with this issue could have been handled more carefully so things didn't get quite so far out of hand, and said some healing was needed between the Town and the Church.

Mr. Hall also said there was belligerence concerning the use of facts in Durham, and gave several detailed examples of how this had affected events in the Town. He said there was a serious problem with how the Town staff did their jobs.

VIII. Unanimous Consent Agenda

Items A, B and E were removed from the Unanimous Consent Agenda. Items C and D were kept in the agenda.

- C. Shall the Town Council authorize the award of the bid for the FY 2004 road program as requested by the Public Works Director?
- D. Shall the Town Council extend the appointment of George Rief as the Town's representative on the Strafford Regional Planning Commission (SRPC) to June 30, 2004 as requested by SRPC Executive Director Cynthia Copeland?

Councilor Grant MOVED to approve Unanimous Consent Agenda Items C and D. The motion was SECONDED by Councilor Morong, and PASSED unanimously

- A. Shall the Town Council ratify the Durham Professional Mid Managers Association (DPMMA) bargaining unit agreement for the period January 1, 2004 to December 31, 2006 as recommended by the Town Administrator?

Administrator Selig explained that the Town had been in negotiations with the association, and explained that the employees involved were those who were second in command in the various departments, as well as some secretarial personnel and the Town engineer. He said the agreement extended from Jan 1, 2004 through Dec. 31, 2006, and addressed the issue of a co-pay on insurance, and in exchange provided what the Town believed to be generous salary increases over time which stayed within specific financial parameters. He recommended approval of the agreement.

Councilor Kraus MOVED that the Town Council approve the collective bargaining agreement between the Town of Durham and the Durham Professional Mid Managers Association for the period of Jan. 1, 2004 through Dec. 31, 2006. The motion was SECONDED by Councilor Paine.

Councilor Grant asked Administrator Selig to provide more information on the contents of the contract, particularly in 2004.

Administrator Selig explained that this was a 3-year agreement, and in each year of it, a 3-year cost of living adjustment had been made to the existing salary schedule. He said that in addition, they had allowed employees who had currently maxed out to continue to get step increases, through the life of the contract. He also said an agreement had been

reached on the co-pay issue, and the contract provided for a phased in co-pay, He provided details on how this would be done. He said there were also provisions in case members wished to buy up to a more expensive plan.

Administrator Selig said the document would accomplish one of the Towns' objectives, to make certain that employees were helping to pay for their insurance. He said the reasoning behind this was that they would be more selective and prudent in the way they used that insurance, which should help contain costs. He also noted that the salary increases were competitive.

The motion PASSED unanimously.

Chair Sandberg congratulated the bargaining team and both groups for the successful and rapid settlement of that agreement.

- B. Shall the Town Council ratify the Durham Professional Firefighters Association (DPFFA) bargaining unit agreement for the period January 1, 2004 to December 31, 2006 as recommended by the Town Administrator?

Administrator Selig said the contract negotiations had been long and difficult, but they had reached an agreement reflecting a middle of the road approach for both sides. He said the previous agreement had expired in 2001, and a number of issues contributed to the fact that an agreement had not been reached since that time. He said one major issue was the co-pay on insurance, and explained in detail how this issue had now been resolved. He said there would be a phased in co-pay over the next three years.

Administrator Selig said another concern had been the pay scale, noting that because the contract had expired two years ago, the fire department was not paid competitively with the market at the present time.

He explained that the firefighters made a decision early in the process that it was to their advantage to hold out on the insurance issue, and to forego wage increases in the hope that they could eventually arrive at a contract that best met their needs. He noted it had been difficult to retain quality employees because the wages were lagging, and said this phenomenon had worked against both sides. Administrator Selig said they had arrived at a wage scale that was fair and reflective of the market, and should stop firefighters from leaving Durham.

He noted a third issue in the negotiations was probationary employees, explaining that the Town had taken the position that these employees were not covered by the collective bargaining agreement that had expired, while

the firefighters thought they were covered, and had filed a grievance that went to the Public Employee Labor Relations Board. He said the Board ruled in favor of the firefighters, the Town appealed that decision to the State Supreme Court, and after a lengthy waiting period, the Court ruled in favor of the Town. He said the issue was one that continued to be challenging during contract negotiations, but said a compromise had been reached.

Administrator Selig said another issue in the negotiations was the merit program, which had been part of the previous firefighters' agreement. He gave some history of the program, and explained that it had not worked out the way that a true merit program was meant to work. He said the Town had determined over time that it made more sense to fold the merit funds into the salary schedule, because the funds were essentially already being treated as though they were a part of it.

He explained that the Firefighters' Association had expressed the desire to move to the 24 hour shift, a trend happening elsewhere in the country, noting that the fire department presently functioned with 10 and 14 hour shifts. He said the 24 hour shift allowed firefighters to plan their schedules better, and in many ways would save the Town money. Administrator Selig said there had been much debate over this issue, and he had now given the Firefighters' Association his word that he would implement the 24 hour shift, but if this approach resulted in real problems, the Town would have the flexibility to discontinue it, with appropriate notification to the Association. He also said he had given his commitment to the Association that if there were differences over various issues, the Town would not arbitrarily cancel the program.

Administrator Selig said the last issue in the negotiations was the retroactivity amount. He said there would be no retroactivity in the agreement for the first two years of the contract, and said this had been hard for the Association to swallow, but because a middle ground had been reached in general on the contract, they had approved this item.

Administrator Selig said he strongly encouraged the Council to approve the contract document, describing it as a generous offer, and a fair package that rewarded dedicated employees in Durham.

Councilor Morong MOVED that the Town Council ratify the collective bargaining unit agreement between the Town of Durham and the Durham Professional Firefighters Association, for the period January 1, 2001 to December 31, 2006. The motion was SECONDED by Councilor Paine.

Councilor Smith noted this had been a contentious matter, and said the Council had played an important role in the negotiations, but only one role, that of passing on the fiscal impacts of the contract. He said the other matters had to be negotiated, and said Town Administrator Selig and Business Manager Paul Beaudoin were incredibly able participants in that negotiation process, along with Fire Chief O'Keefe and the Town's labor lawyer, Joe McKittrick.

Councilor Smith also thanked Jeff Furlong for his sincere comments, and said members of the Council appreciated them. He said he would vote to approve the contract because he believed a successful middle ground had been reached.

Councilor Kraus thanked Senior Fireman Furlong for his kind and conciliatory remarks, and said as a retired reservist, he found them very appropriate. He said Mr. Furlong was true to his surname because he had taken them many furlongs forward to restore the good feelings between the fire department and the Town. He also said Council members appreciated the fire department's skill and dedication.

Councilor Samuels said she was sorry that some firefighters had felt they had to leave the department, and said they would be missed. She thanked those firefighters who had stayed and had agreed to the contract.

Councilor Paine said she had been troubled that the firefighters' contract had not been approved in 2001, and said she was thrilled that it could be approved now. She said she had had several occasions to greatly appreciate the work of the fire department, and said it made her very happy to know she was leaving the Council in good hands, with a great contract. She thanked all those who had made this happen.

Councilor Grant said comments from the public in recent weeks had suggested there was some animosity, if not a vendetta, between the fire department and the Council. He said he wanted to reassure the firefighters and the public that this was not the case at all. He noted that the Council had reaffirmed the 5 man shift the previous summer, as requested, and in December voted a \$170,500 increase in the 2004 Operating Budget for the Fire Department, representing a 7.9% increase, which was the largest increase in the budget. He said there had been a 25% increase over the past two years, and noted that since 2001, there had been significant increases for capital improvements for the department.

He said the Council had tried to show their support for the fire department, and thanked the firefighters who had come that evening, particularly Mr. Furlong, for easing some of the sting of comments made by citizens in previous weeks. He said it was not fair that the Council be seen as being

against the firefighters or fire department, and said he wanted the record to reflect this.

Administrator Selig thanked present members of the firefighters' bargaining team for their help: Dave Emmanuel, president of the Association; Dick Stevens, Vice President; Jeff Furlong; and Glen Miller.

The motion PASSED unanimously.

- E. Adoption of the Town and UNH "Shared Statement of Civic Commitment" dated February 2, 2004.

Chair Sandberg explained that action on this item had been postponed at the last meeting in order to further edit the statement.

Councilor Grant MOVED that the Town Council approve and authorize the Town Administrator to sign the final draft of the February 2, 2004 version of the Town of Durham and University of New Hampshire "Statement of Shared Civic Commitment" which has been endorsed by UNH President Ann Weaver Hart and her cabinet. The motion was SECONDED by Councilor Smith.

Councilor Smith said this was an important statement, and said the Council believed it was an important step forward in the Town's relationship with the University, representing the first time UNH and the Town had come together in a statement to all members of the University community, particularly the students.

He said the statement reflected the fact that the University and the Town each recognized each other, as having an important cooperative role to play with the other, and were asking all citizens to join in that cooperative role. He said the University leadership was to be commended for supporting this, and said the statement would appear prominently in materials sent to students. Councilor Smith said it was an approach that had not been taken in previous years, and he was grateful the University had now done so, which portended better relationships in the future.

Councilor Niman said his previous concerns with the language in the statement had been resolved.

The motion PASSED unanimously.

There was a five minute recess at 8:05 pm.

IX. Unfinished Business

- 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

Chair Sandberg explained that this was an application that had been presented to the Planning Board and had received approval, and had also received approval from the Historic District Commission. He asked the Planning Board representative to make an introductory presentation on the application before opening the public hearing, also noting that at 9:15 pm, the Council would have to move on to Item IX C.

John Harwood explained that he had been the planner on staff when the hotel project began. He provided history on the project, and said it involved 4 existing lots located at the corner of Main Street and Dover Roads, which would be merged so that a 3 story hotel could be constructed on the vacant portions of the site.

He said the applicant was first sent to the ZBA because there were nonconformance conditions on some of the lots that needed to be addressed in order to develop the site. He provided details on this. Mr. Harwood said that after ZBA approvals were received, the Planning Board reviewed the request for the Conditional Use Permit and the Site Plan simultaneously, and held public hearings, starting in May, 2003 with approval granted in August of 2003. He said that during this period, the Planning Board looked carefully at public comments that were received.

Mr. Harwood said that upon approval by the Planning Board, the applicant was advised to seek approval from the Historic District Commission for those elements of the project that lay within the Historic District, - as proposed, the new parking lot entrance and street improvements. He said the HDC also held a public hearing in November of 2003, although not required to do so, and considered the issues of lighting fixtures, fencing, piers, landscaping for screening, and signs. He said approval was granted by the HDC at this time.

Mr. Harwood said the Town Council was now charged with reviewing the fiscal impacts the project might have on Town services. He noted that as part of the site plan review process, Town staff had determined that no constraints would be put on current Town services by the project.

Councilor Smith MOVED to open the public hearing on the Conditional Use Permit application submitted by Fall Line Properties and

recommended by the Planning Board at its August 27, 2003 meeting, for the property 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. The motion was SECONDED By Councilor Kraus and passed unanimously.

Attorney McNeill represented the applicant, noting they appreciated the opportunity to speak, and said Peter Stanhope, a real estate appraiser, would also speak on the effect of the project on the neighborhood. He also said engineer Michael Sievert was there to speak on technical issues, if necessary, but noted that the issues before the Council were very limited, and were not land-use related. He said Mr. Berton was present, as he had been in Durham for 15 months processing the first major commercial development in the community for many years.

He said he had filed a motion for recusal of Chair Sandberg and Councilor Grant, but said that since they were present, he presumed they had decided to sit on the case. He said the applicant took exception to this, but would proceed with the hearing.

Attorney McNeill said they were present to seek a conditional use permit, and noted it was unique in New Hampshire that a legislative body heard a land use case. He said the use was permitted in the Limited Business District with a Conditional Use permit, and all other permits had been attained, were final, and could not be appealed. He said the Planning Board had recommended approval after an exhaustive process, which consumed many public hearings, and noted that at the end of the process, the Conditional Use permit was recommended, with only one dissenting vote.

He said the Council could approve the project, but if it wished to reverse the decision of the Planning Board, it could only do so with a 2/3 vote. He noted some Council members had sat on the Council when the previous conditional use permit concerning the Allen Farm was heard, and said at that time Council members had sought advice from Town Counsel concerning their authority to review conditional use permits. He said it had been clarified that the only matters before the Council were compliance with Sections 175-10 k 5 & 6.

Attorney McNeill provided history and site details about the proposed hotel location, and said what was proposed for the site was a 3 story, 68 room hotel, with 125 parking spaces, no restaurant, a small meeting room, 2-3 full time employees, and part time staff. He said access would be multifaceted, and had already been approved by NHDOT and all appropriate parties in Durham

He said a landscaping plan had been developed for the entry-ways in order to enhance the appearance of access into the site, and said this plan had been thoroughly reviewed by the HDC and the Planning Board. He noted the applicant had expended significant effort to get various approvals, including the development of traffic and drainage studies.

Attorney McNeill said the building had been tastefully designed to not overwhelm the site and to be compatible with the area, and to be something the Town could be proud of as part of the gateway to the community. He said various aesthetic components had been thoroughly looked at, especially by the HDC, relating to the style of lights, fencing and other site components.

He said it was believed the construction would be the most significant done in Durham in many years, and noted the Council packet contained an estimate of taxes, done by the Town Assessor, of revenue that would be produced by the hotel. Attorney McNeill said the tax revenue from the hotel property would be substantially higher than from the existing vacant lots, and more than former service station uses. He said every component of the site spoke to the positive fiscal impact of a positive, new building for the community.

Attorney McNeill provided history on the application process before the ZBA and the Planning Board, and noted that a condition of approval from the Planning Board was that no patron could stay at the hotel no more than 10 consecutive days within a 30 day period. He noted that the possibility that student housing would take over this site in the future had been a dominant concern, and the site plan review approval and the conditional use permit approval included various provisions to protect against this.

He said the proposed use would not affect public parks and streets, and would not add children to the school system. He also provided details on how the Planning Board had determined that the project would have a substantial, positive effect on neighborhood properties, and had the potential to be a catalyst for the rejuvenation of this commercial area.

He said that concerning Section 175-10 K:5, which was specifically within Council jurisdiction, Town facilities had been found to be available and adequate for the designed use, based on review and comment from Town staff..

He said the Planning Board's review process had considered whether the project was financially viable. Attorney McNeill said he did not feel this was appropriate, but noted Mr. Berton had agreed to engage in this discussion. He gave details provided by Mr. Derocher concerning the economic viability of the proposed hotel.

Mr. McNeill noted the findings in Feb 14th 2002, from the Town Attorney concerning the proper role of the Town Council as being limited to fiscal matters, and said the Council could not change the ordinance interpretation administratively, to allow itself to assume a broader role. Mr. McNeill provided additional detail on the legal interpretation of wording in the Zoning Ordinance as it pertained to the Council's proper role.

Mr. McNeill then addressed in detail the criteria the Town Council had the authority to review: the availability of services and facilities - water and sewer; stormwater drainage, fire protection, police protection, streets, parks and schools, and the impact on property values. He then introduced Mr. Stanhope to speak on the issue of the potential impact of the hotel project on property values.

Mr. Stanhope said his study initially looked at the definition of market value – what the typical buyer would pay for a property in the vicinity of the site, and what would be the impact of any proposed changes to the site. He said variables considered were density, noise, odors, visual impacts, etc. He said he looked at hotel locations in the seacoast area that exposed residential and other less intensive uses to the hotel use, and said he found that when located near residences and apartments, there was no negative impact on real estate values. He cited as examples the Exeter Inn and the Holiday Inn in Portsmouth.

Mr. Stanhope also said he found no indication in tax records, in towns where properties were exposed to hotels, that reflected a granting of an abatement for lesser taxation as compared to properties that were further away from the hotels. He said he had concluded that, should the Council grant approval of the relocation of the apartments currently existing on the site and construction of the hotel, there would be a substantially lower impact than the surrounding impact that currently exists there. He also said the project would stabilize the neighborhood in the long term because it would create a permanent use of the site which did not exist today.

Attorney McNeill also noted a comment from C.B. Richard Ellis relating to the hotel use, which said Durham would greatly benefit from a hotel that was within walking distance to downtown, which would obviously be good for the business district, and more importantly would help with the diversification of amenities which would ultimately attract new businesses to Durham.

Attorney McNeill noted that the amount of Town expense required for the site under any circumstance was nominal, and the tax revenues would greatly exceed this expense. He estimated that the total benefit of the site, including the apartments, was approximately \$90,000 per year.

Attorney McNeill closed by saying the applicant was asking the Council to do what the Planning Board had done, - to look at the project within its area of expertise, guided by Town staff, by the fact that every permit had been received and every component of the project had been reviewed by everyone with the authority to review it, and by the fact that there had been broad input from the public.

Jim Jalmberg noted that he and his wife had never been opposed to the hotel, per se, and said he sincerely hoped the hotel would do well. But he said they were concerned that if the hotel failed because of a soft market, the building would revert to student rentals, and noted they had been consistent in expressing this concern throughout the review process. He quoted the Master Plan language that said that the pocket neighborhoods in the area needed to be protected from disruptive and unregulated student housing, and introduced Attorney Peter Loughlin to speak on this issue.

Attorney Loughlin said his clients were there to speak in favor of the application, provided that it remained a hotel, and did not under any circumstances become student housing. He said one of the purposes of zoning was to separate incompatible uses, and said student housing could be a difficult matter, and could be very much incompatible with traditional single family housing. He noted the Planning Board had wrestled with this issue for many months, which was not an irrational concern because other hotels had become student housing. He said the Board worked with the neighbors, Town Attorney Mitchell and the developer to come up with Conditions and Findings of Fact that would protect the Town and prevent the transfer of the property to student housing.

Mr. Loughlin said that on behalf of the Jalmbergs and other neighbors, he respectfully requested that any Conditional Use Permit approved by the Council incorporate the recommendations made by the Planning Board, and reinforce and restate the message that it should be unequivocally understood, and signed off on by the developer, that this hotel would be approved only on the condition that it would never become any form of alternate housing for the University, and to accomplish this goal, there would be a limit on occupancy by anyone for more than 10 consecutive days.

Chair Sandberg noted it was 9:17 pm, and recommended continuing the public hearing to the next Council meeting.

Councilor Grant MOVED to continue the hearing until March 1st 2004. The motion was SECONDED by Councilor Kraus, and PASSED unanimously.

- B. Deliberation and discussion on the Findings of Fact and 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

Chair Sandberg said this Item on the agenda (IX B) would not logically follow until the Public Hearing was closed, so would not take place that evening.

- C. Deliberation on the proposals submitted by the law firm of Griffin, Pudlowski & Jenkins, P.L.L.C. on behalf of property owners on Fairchild Drive, Madbury Lane and Davis Avenue and Stonemark Management Company, Inc. with regard to the “stub” of land located at the end of Fairchild Drive

Administrator Selig reviewed the previous meeting’s presentations and discussion. He explained that based on the information presented, he had developed four potential motions for the Council to consider using. He outlined these options:

1. Directing the Administrator to begin the process of preparing a motion for future Council action, with appropriate legal review, that would result in the Town releasing and discharging from public servitude the “stub” of land located at the end of Fairchild Drive from public servitude to preclude its future use as a roadway.
2. Directing the Administrator to begin the process of preparing a motion for future Council action with appropriate legal review that would result in authorizing use of a “stub” road located at the end of Fairchild Drive as part of a Class V highway system to be extended from Fairchild Drive to Madbury Road.
3. Directing the Administrator to begin the process of preparing a motion for future Council action with appropriate legal review that would result in the Town preserving its legal interest in the “stub” of land located at the end of Fairchild Drive, but granting an easement to ensure that the land always remained in its present natural state and could be used for recreational purposes effectively precluding its future use as a roadway.
4. Taking no action which would result in no change to the current status of the “stub” of land located at the end of Fairchild Drive.

Chair Sandberg asked Council members if they wished to comment on these proposed motions.

Councilor Smith said he thought that unless the Council was inclined to have a public hearing to get more input, it should move ahead with this issue. He suggested that the Council focus on option #3. He said that having carefully listened to the presentations from the attorneys at the previous meeting, he had reached the conclusion that actions they would be taking now were actions occurring subsequent to the expiration of the 20 year period under the statute in question.

He said there appeared to be no legal constraint on the Council to take any action it wanted to take, and said that based on what he had heard at the previous meeting, he had found no credible arguments in favor of keeping the status quo so that the land could be used as originally set forth when the development first occurred. Councilor Smith said there had been a great deal of water over the dam that created a dramatically different picture now.

He said his first inclination was to do nothing, but had changed this view. He noted a letter in Councilors' packets from the Baldwins which proposed something similar to option #3, but which was a more interesting approach than the one presented by the Attorney who represented the neighborhood at the previous meeting. He suggested research should be done on this approach to determine if it was feasible, and said he would be in favor of having a public hearing.

Council Paine said she would like to see Administrator Selig pursue option #3, noting her concern after the meeting was that she was uncomfortable turning the land over to the neighborhood, simply because by doing this the Council would be creating a situation that was not a permanent solution. She said the issue should be settled permanently.

Councilor Niman said he preferred option #1 because the tax map showed there was common land next to the strip of land in question. He suggested increasing the amount of common landing in the existing neighborhood development, by deeding it over to the development, and in this way the Town would not own it and would not be liable for it.

Councilor Kraus said he had been to the site, and had read various legal opinions on this issue. He said common sense indicated this land could not be a road way, and said he would be comfortable with either option #1 or #3, but he stressed that in no way should the land be opened up to become a thoroughfare.

Chair Sandberg noted the tax map had an error in it, explaining that the common area shown on the approved plat was not consistent with the tax map, and the land actually came around to the Town's stub of land, so it appeared that the Town's land in fact could become contiguous with the

common land. He said because this was not clear from the drawing, both options #1 and #3 might need to be explored. He asked, concerning Councilor Smith's suggestion, if it was the sentiment of the Council that the issue should be put to rest so that no one would have to worry about whether the land would become a road; that Administrator Selig should prepare the documents that would cause that to happen; and that a public hearing could be scheduled if needed.

Councilor Smith MOVED to direct the Town Administrator to begin the process of preparing a motion for future Council action, with appropriate legal review, that would result in the Town either releasing and discharging from public servitude the "stub" of land located at the end of Fairchild Drive, to preclude its future use as a roadway, or that would result in the Town preserving its legal interest in the "stub" of land located at the end of Fairchild Drive, but granting an easement to ensure that the land always remained in its present, natural state, and could be used for recreational purposes, effectively precluding its future use as a roadway. The motion was SECONDED by Councilor Paine.

Councilor Smith asked that as part of the research to be done, Town Administrator Selig explore to whom or what entity the easement could be given.

Councilor Samuels said she would like to know if the Council, in moving forward with this approach, would be making the developer's property landlocked, which would mean he could not develop it.

Chair Sandberg gave details on this, and said that in talking with the assessor about the property, it did not appear that it was landlocked.

Councilor Samuels suggested the Town should get a legal opinion on this.

The motion PASSED unanimously.

D. Discussion on budget goals and objectives – Neil Niman

Councilor Niman said he would like to see the Council reach agreement on how to move forward in solving the Town's budget problems. He noted that part of the problem might be solved by getting additional revenues, and hoped that by re-negotiating many of the agreements with UNH, additional revenues would be forthcoming. But he said he was concerned that if the Council left it at that, November would come, and perhaps those agreements would not have been resolved, there would not be additional revenues, and the current problems would be worse, because nothing had been done nothing to solve them. He noted the reality that after a year, there was still no fire agreement with the University.

Councilor Niman said if the Town couldn't re-negotiate some of the agreements that had very important budget ramifications, the Council needed to begin to pursue an alternate strategy for generating additional revenues. He said that strategy might include partnering with other "host" towns, Keene and Plymouth, to develop some kind of joint effort to ask the State Legislature for assistance in resolving some of the difficulties the three towns were having making ends meet because they hosted one of the State's institutions. He said he understood the Legislature was not necessarily receptive to increasing funding to local municipalities because of their own budget problems, but said if they never asked, they would never get anything.

He said it was hoped the Town could work locally with UNH to resolve these issues so they would not have to go to Concord, but said if things dragged on, he was concerned there would be no resolution.

Councilor Niman said he would like to see some kind of timeline that Council members agreed they would like to see for completing various agreement negotiations. But he also said he would like the Council to look at the expenditure side of the budget to see if it made sense to restructure the way the Town did business, in order to generate greater efficiency, or to tap into help from other areas to cover some expenses.

Councilor Niman noted recent police statistics which demonstrated that although the Town was paying \$1.7 million a year for police protection, the most recent police report had indicated that 80% of the arrests were for people between the ages of 18 and 23. He also said that use of force statistics indicated that the large majority of incidents occurred within this age group, and all of them had occurred downtown. He also noted the same problem concerning the fire budget, especially noting the significant amount of overtime needed.

He said it was important to have this conversation and ask whether there was a better way to address the problem, and said that if they didn't have this conversation, it would become more and more difficult to meet expenditures, and they would be less and less able to have a conversation about how to make Durham a better place to live.

Councilor Niman noted data he had provided to Councilors to try to debunk some myths in Town, one of which was that the existence of the University in Town had created so much property wealth that the Town was wealthy, and the University was an economic asset. He said he would agree the University was an asset in a number of ways, but said on balance it was not an economic asset. He noted that typically in a one company town, like Durham, the company paid taxes and taxable property was developed to support that company. He said together the two typically

created enough economic value so that the residents could enjoy a proportionately lower tax rate. He said this was not the case in Durham because the University didn't pay property taxes.

He said that using census data, he had developed a cost/benefit analysis concerning hosting UNH, and described in detail the variables and thought process he had used to do this analysis. He said the results of the cost/benefit analysis indicated that the development that had come to Durham had not generated the taxes needed to offset the additional expenditures that hosting the University required.

Councilor Niman said that if the University were not in Durham, the Town would be similar to Lee and Madbury. He especially noted that because of University faculty neighborhoods, there was greater density, and explained that the ramifications of this in terms of infrastructure needs, smaller lot sizes, children in the school district, and property values needed to be weighed against the property taxes generated.

He said that every time the landlords came to the Town and said, - we've created these apartments which are not putting kids in the local schools, the Town needed to be able to respond that it was spending a significant amount of money on police, etc.

Councilor Niman said that although he was glad that UNH was in Durham and understood that in many ways it was an asset to the Town, if the Town and University were going to talk about being partners and members of the same community, it was time to ask UNH to make a bigger contribution. He said if the University was unwilling to do this, it was time to ask the State Legislature to make a bigger contribution. He said currently, Durham residents were subsidizing benefits that existed for the entire state, noting that a colleague who lived in Lee received all of the benefits of having UNH nearby, but paid much less than he did in taxes.

Chair Sandberg thanked Councilor Niman for making an excellent presentation. He pointed out that the Council had asked Administrator Selig to tackle this topic the previous April, and said the Council needed to hear what the progress had been on this. He then noted the time, and asked how Council members would like to proceed.

Councilor Niman said he would like to pin down a date when the Council could continue the discussion in more detail and get some concrete information and schedule on the negotiations with UNH.

Chair Sandberg suggested a dual plan, where the Council would see the results from negotiations by a certain date, say July 1st, which would then

allow enough time, if needed, to propose legislation that got the Legislature involved.

Councilor Kraus said Councilor Niman had presented an excellent abstract assessment of the problem, but noted the University was a benevolent tiger, and did not have enough revenue to do what it wanted to do, so would protest if asked for more funds. He noted he had said before that presenting some alternate Town budgets that assumed, for example, a 3% cut, would show some hardship, and would help the citizens understand what it would be like in Town if some cuts were made, some of which would have an impact on the University.

Councilor Samuels recommended another meeting on this soon, and said Councilor Niman's presentation was an effective, more objective way to look at the situation, and would have to be looked at more closely. She said goals concerning the issue could be set, and said the case would probably have to be made to the Legislature.

It was agreed that it was important to keep the momentum on this issue going, and Town Administrator Selig said time could be made for this at the next meeting.

- E. Update on the work of the Economic Development Committee – Neil Niman

Discussion on this Item was postponed.

X. New Business

XI. Nonpublic Session (10:05 pm)

Councilor Kraus MOVED to enter into non-public session under RSA 9-A:3 II (a) relating to the annual evaluation of the Town Administrator. The motion was SECONDED by Councilor Morong, and PASSED unanimously by voice vote (9-0).

XII. Adjourn

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

Victoria Parmele, minutes taker