

DRAFT

**DURHAM TOWN COUNCIL MINUTES
MONDAY, MARCH 1, 2004
DURHAM TOWN HALL - COUNCIL CHAMBERS
6:45 PM**

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

MEMBERS ABSENT: Katie Paine; Peter Smith

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

I. Call to Order - 6:45 pm

II. Approval of Agenda

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

III. Nonpublic Session - 6:45 pm

- A. Personnel matters IAW RSA 91-A:3 II (a) establishing the annual compensation for the Town Administrator

Councilor Kraus MOVED to enter into non-public session IAW RSA 91-A:3 II (a) for the purpose of establishing the annual compensation for the Town Administrator. The motion was SECONDED by Councilor Morong and PASSED 7-0 by a roll call vote as follows:

<i>Peter Smith</i>	<i>Absent</i>	<i>Arthur Grant</i>	<i>Aye</i>
<i>John Kraus</i>	<i>Aye</i>	<i>Malcolm Sandberg</i>	<i>Aye</i>
<i>Mark Morong</i>	<i>Aye</i>	<i>Annmarie Harris</i>	<i>Aye</i>
<i>Katie Paine</i>	<i>Absent</i>	<i>Patricia Samuels</i>	<i>Aye</i>
		<i>Neil Niman</i>	<i>Aye</i>

The Council entered into Nonpublic Session at 6:45 PM.

The Council returned to public session at 7:14 PM.

- B. Resolution #2004-05: Establishing the compensation for the Town Administrator for Fiscal Year 2004 - **7:15 pm**

Councilor Grant MOVED that the Durham Town Council adopt Resolution #2004-05, a resolution establishing compensation for the Town Administrator for Fiscal Year 2004.

The resolution states that the Council will set the Administrator's salary for Fiscal Year 2004 at \$81,314. The motion was SECONDED by Councilor Harris.

Councilor Grant noted that the increase in salary for the Administrator recognized outstanding performance during the past year, in what was a very difficult year for the community and for Town officials. He also said that in adopting the salary, they were setting the Administrator's salary at the midpoint of the compensation plan for non-union employees, for the Town Administrator's portion of that plan. He said the plan was based on a survey of 20 selected municipalities comparable to Durham's size and operations.

Councilor Morong said Administrator Selig deserved a mid point salary increase and more.

The motion PASSED unanimously.

Chair Sandberg congratulated Administrator Selig, and thanked him for continuing as Town Administrator for another year.

IV. Special Announcements

None

V. Approval of Minutes

February 2, 2004

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

Page 21, 4th paragraph from bottom should read " Councilor Kraus explained why he had abstained in voting approval of the Budget."

Councilor Kraus MOVED to approve the amendments to the minutes. The motion was SECONDED by Councilor Morong and PASSED unanimously.

The motion to approve the minutes as amended PASSED unanimously.

February 16, 2004

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

Page 2, University had loaned them interns to write the

Page 14, 4th paragraph, should delete

Page 19 CHAIR SANDBERG ASKED THAT VIDEO BE CHECKED TO SEE WHO
MOVED TO ADJOURN THE MEETING

The motion to approve the minutes with non-substantive changes PASSED unanimously.

VI. Report of Administrator

- Administrator Selig said the Town had been actively negotiating with the surety company that held the bond on the Wastewater Treatment Plant improvements and was able to reach an agreement that allowed a new bid to be done to continue the work. He explained that because the surety company was covering the costs, they awarded the bid.
- Administrator Selig said there had been a slight makeover to the Town web site at www.ci.durham.nh.us which would make it friendlier and easier to use.
- Administrator Selig noted there had been a water pipe break at the Durham Historic Building the previous week, which although repaired, had damaged some carpeting which might need to be replaced.
- Administrator Selig said the final date for abatement applications to be received for 2003 property tax bills was March 1st. He said these applications would be reviewed by the Town Assessor, hearings would be held, and then a formal recommendation would be made to the Administrator on abatement requests, which were then reviewed and ultimately forwarded on to the Town Council. He noted the Council had the final say on whether or not an abatement was granted, and said it was generally his recommendation that the Council follow the recommendations of the Assessor, who used impartial, objective measures to make recommendations.

He said that he and the Business Manager had offered to sit in on those hearings where taxpayers were uncomfortable with having only the Assessor reviewing those applications.

Councilor Kraus asked if a taxpayer was dissatisfied with the decision of the municipality, what recourse was available.

Administrator Selig explained that this year there were more abatement requests than usual because the Town had just undergone a complete revaluation. He also said that for the first time, the process would include formal notification of residents when their applications would be coming before the Council for review, so they could make a request directly to the Council, under Public Comments, if they were dissatisfied with the previous abatement request review. He said that if a taxpayer was still not satisfied with their assessment after review by the Council, they could either appeal the decision to the NH Board of Tax and Land Appeals, or to Superior Court.

- Administrator Selig said that Senate Bill 511, dealing with penalties for throwing objects at public safety officials during a riot situation, passed in the Senate, and had crossed over to the NH House of Representatives. He said he and Police Chief Kurz would be planning to testify on behalf of the bill.
- Administrator Selig said the Spring hauling ban would go into effect on March 15th in order to protect roads from heavy loads at this time of year.
- Administrator Selig said the Oyster River Cooperative School District annual report was out, and copies were available at the Town Hall.
- Administrator Selig said there would be a candidates' forum on Tuesday, March 2nd at the Town Hall that would be sponsored by the Durham MainStreet Program.

- Administrator Selig said the Town elections would be held on March 10th from 8:00 am to 7:00 pm at the Durham Evangelical Church. He explained that this year the elections would be held downstairs in the function room.
- Administrator Selig said an Informational Town Meeting would be held on March 10th, and noted this might be the last one the Town would be holding, since there was a question on the ballot as to whether it should continue to be held.
- Administrator Selig said on March 9th at 4:00 pm in the Council Chambers, the Durham Rental Housing Commission would be meeting and would be evaluating a memorandum forwarded to them outlining three potential ordinances that might or might not be of benefit to Durham. He said input on the merits of these ordinances had also been received from the Durham Landlord Association and Durham department heads. He said the three ordinances to be discussed were: a disorderly house ordinance, an assembly permit ordinance and a rental registry/landlord permit ordinance.

He explained that a specific ordinance had not been crafted to bring forward at that time, but the ordinances reflected what other communities had done in these areas. He said the intent was to have the general discussion first to see if it made sense to pursue any of them, and said he wanted to make it very clear that the Town was not poised to act on any of them. He said that if the Rental Housing Commission thought it was a good idea, and further deliberation determined that something would be brought forward to the Council, they would then go through the process of developing specific language for the ordinance.

- Administrator Selig said the Annual Town Reports for 2003 were recently mailed out, and drew attention to pages 26-28 which contained a copy of the Town warrant which should be reviewed because it contained specific ballot questions before voters to make some modifications to the Durham Town Charter. He noted the Council had reviewed these provisions and public hearings had been held on them.

Councilor Kraus MOVED to allow 20 minutes more before going to Agenda Item IX. The motion was SECONDED by Councilor Morong, and PASSED unanimously.

VII. Reports and Comments of Councilors

Councilor Harris said the Parks and Recreation Committee had met and discussed renovations/reconstruction for the Woodridge tennis courts and playground area, including possibly reducing the number of courts because they were not being used very much. She said the Committee was interested to hear from the public on this.

Councilor Kraus said he wished to note, with concern and regret, the administrative matter of evaluation of Durham's excellent Town Administrator. He said that this year, Councilors Smith, Paine, Harris, and Samuels had chosen not to provide any evaluation using the form provided, and said that the previous year, Councilors Smith, Harris, and Paine also did not carry forward with the process. He said he felt strongly enough about this that he would be developing a resolution in the near future that any Councilor who did not complete an evaluation in a formal way should not participate in salary setting discussions.

Chair Sandberg noted there was no requirement that Council members submit written evaluations and that the Council members Councilor Kraus had identified had participated verbally in the evaluation process, both one on one and in the joint session. He said the Council would look forward to seeing Councilor Kraus' resolution at some point in the future.

VIII. Public Comments

Megan McPherson, UNH, said she had listened to the Council speak about students as if they were one person, but said it was important to be clear that students could not be lumped together. She said the majority of students were savvy enough to know that the majority of residents did appreciate their presence in Durham. She said members of the Council said it was a small minority of students who had caused the problems, but the actions of the Town administration did not demonstrate that attitude. She said that contrary to comments at the Town Council meeting on the night following the Super Bowl, the students were not scared back into their dorms, and there was a conscious effort made by the majority of the student body to not have a repeat of what occurred after the Red Sox game in the fall.

Ms. McPherson said that more ordinances were proposed to supposedly help students, but urged the Council to not approve such ordinances. She said there were already so many ordinances on the books that were not enforced and that the laws that were already there should be enforced. She said the Town's Administration had said this would be another tool to get those students in line, but she said the students who were the problem were under 5% of the student body, just as approximately 5% of the landlords were the problem.

She said that while all students were being lumped together as unruly, in public comments, they were gladly welcomed as mentors in the schools, interns at local businesses, involvement in community service projects, and more. But she said that the minute something happened that was not to the Town's liking, it couldn't disown the students fast enough.

Ms. McPherson said the previous October, she had told the Council that the students would not give up on Durham, and asked the Town to please not give up on them. She said the students had held up their end of the deal, and although student leaders were singled out as those who made the effort, they were indicative of the majority of the student community who had urged their fellow students to respect the Town and appreciate it. She said nothing happened after the Super Bowl, and the students did not give up on them. She said that the Town's work on the ordinances, never once involving a student representative, was a slap in the face. She said the students had held up their end of the bargain, but frankly the Town had effectively given up on them.

John Laniman, 156 Packers Falls Road, said as an aside that he was a professor at UNH. He said that he agreed with the students, and was proud to have them in his communication classes. He said he appreciated that they were working hard to get beyond the problems and realized the students had not been scared into the dorms at all.

He noted that he had spoken previously about the problem created by the raised hand-rails on the bridge. He said he had done his calculations assuming a speed limit of 15 miles per hour,

and had since realized the speed limit was unambiguously 35 mph on that part of the road. He showed pictures of signs in the area to demonstrate this, and said Police Chief Kurz had recently confirmed the 35 mph speed limit to him. He said the sight line needed for any approaching vehicle was 385 ft, which was more than twice what was there now. Mr. Laniman said he would hate to see the Town have to swallow the cost of fixing this problem, noting that an engineering firm hired to fix a bridge was required to meet code, and as it presently stood, the bridge did not meet the code.

Bonnie McDermott, 82 Dover Road, provided signatures of Durham residents who were against putting up any money to change the bridge, and said that the majority of residents felt this way, as compared to a small minority of people who wanted the bridge to be changed. She said if the engineering firm could change railings, etc. that would be fine, but said many residents were against expending any town monies on the bridge, in an already overtaxed community. She also said that in terms of the safety issue, there were many areas in Town that used stop signs as a safety mechanism, and said that if a stop sign were put before the bridge on the Newmarket side, vehicles would have to stop before proceeding.

Holly Harris, 154 Packers Falls Road, questioned the large majority Ms. McDermott spoke about. She said that she had been asked to speak on behalf of her neighbors, who had met several times regarding the bridge problem and had reached a consensus, that all the concrete railings should be removed. She said they felt that to save the Town money and to improve sight distance at a minimum, the third railing, between the pedestrian walkway and the road, should be removed because there was no value, it added extra weight, and hindered sight. She said they would like to see railings like those over the Oyster River, which were promised previously would maintain the beauty of the area. She urged the Council to move forward to prevent future accidents, and said she hoped Hoyle Tanner would participate in fixing the mistake.

Richard Kelley, 47 Stagecoach Road, said he had prepared a graphic showing the departure sight triangle that Mr. Laniman had spoken about. He said that based upon his interpretation of AASHTO and the NHDOT design guide, the sight distance at the intersection was inadequate. He said he was relatively well qualified to make that assessment because he was a civil engineer, and noted he had sat at the intersection and watched vehicles approach from the Newmarket side. He said that the importance of having a clear sight triangle should have been taken into consideration by the design professionals and those reviewing the bridge plans, and advised the Council to get some answers regarding this.

Charles “Mac” McLean, 5 Croghan Lane, asked for clarification concerning the phasing out Town meetings.

Chair Sandberg said the Town Charter currently required that on the day following the general election, the Town hold an annual Informational Town meeting, and this had taken place for the last 12 years since the Town had had the Town Council form of government. He said the public would be asked if those meetings should continue on an annual basis.

Mr. McLean asked if it was the Council’s belief that those meetings were not productive.

Chair Sandberg said the question was being put to the public to answer that question, but noted that attendance had been weak over the years.

Mr. McLean asked if that Town Informational Meeting had any control over governance of the Town. He said if it did, he would certainly speak in favor of retaining it as a traditional item. Chair Sandberg explained the meeting was held for informational purposes only where the results of the elections were announced and awards were usually given, but said no business of the Town was conducted at them.

Councilor Morong noted that if the warrant article passed, the Town would not be required to have an annual Informational Town Meeting, but could still have one if it wished.

Councilor Samuels said that even though it might not be form of governance, she looked at the Informational Town Meeting as one place where citizens could come together once a year and actually discuss issues.

IX. Unanimous Consent agenda

- A. Shall the Town Council accept the resignation of Linda L. Ekdahl upon her retirement, and express its sincere appreciation to Ms. Ekdahl for her 35 years of devoted service to the Town as its Town Clerk-Tax Collector?
- B. Shall the Town Council approve an abatement for Lesley Smith for sewer charges for Fall 2003 and authorize the Town Administrator to sign said abatement?

Councilor Morong asked that Agenda Item A be removed from the Unanimous Consent Agenda.

Councilor Kraus MOVED to approve Agenda Item IX B. The motion was SECONDED by Councilor Morong, and PASSED unanimously.

Councilor Morong said he had asked that Item IX A. be removed from the Unanimous Consent agenda because he was philosophically opposed to fast tracking the Item concerning Ms. Ekdahl's retirement. He also noted there would be a formal retirement ceremony within the next few months, which citizens of Durham would be invited to attend, and said he would keep the Town posted on this as more information on the event became available.

Councilor Samuels said she spoke for all Councilors and townspeople in saying that Linda Ekdahl had been an institution in Durham, someone people could always turn to for help, and said it was with very deep regret that the Council would vote to accept her retirement.

Chair Sandberg said he had contemplated what would happen if the motion did not pass, and noted it need not be moved just because it was there. He said they all appreciated the sentiments expressed by Councilors Morong and Samuels, and were looking forward to the ceremony in the spring to honor Ms. Ekdahl.

Councilor Grant MOVED to accept the resignation of Town Clerk Linda L. Ekdahl for purposes of retirement, with regret. The motion was SECONDED by Councilor Morong, and PASSED unanimously.

X. Unfinished Business - 7:55 pm

- A. Public Hearing (Continued):** 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 hearing had been continued from the previous Town Council meeting on February 16th. He said the hearing was still open and asked if members of the public who had not yet spoken wished to speak.

David Watt, 6 Sullivan Falls Road, and Chair of the Durham Planning Board, said that when the previous Conditional Use Permit application had appeared before the Council, he had seen that there were allegations that the Planning Board had not exercised due diligence in considering the application. He said he would outline the process the Planning Board had gone through for the present application.

Mr. Watt said the Board had gone through the standard steps that went with the acceptance and approval of a site plan, and described these steps briefly. He said the abutters had been extremely well organized, had made their arguments persuasively, and that their input had caused the plans to be changed rather significantly.

He said their primary concern about the project was the future possibility of conversion of the hotel to student housing, and the second concern was traffic associated with the site. He also said there were also a number of questions about the economic viability of the project, which was related to the student housing issue. He also noted that one abutter in particular had commented that the proposed building was out of scale with the surroundings, and said a number of people preferred other uses for the site.

Mr. Watt said the site was pretty problematic, located at the busiest intersection in Durham, which had advantages and disadvantages. He said there was contaminated soil on the site related to previous gas stations located there.

He said the Planning Board went to a lot of trouble to address abutters' concerns, and asked for additional visuals for considering the problem of the scale of the building as well as an economic viability study that looked at whether the hotel was likely to succeed. He said this was a groundbreaking step which was really useful, and said the consultants the Board hired essentially validated the applicant's statements about economic viability. He said the Board also asked for architectural changes to the building to make it more compatible with surrounding structures, which the applicant agreed to.

Mr. Watt said that whether one agreed with the Board's conclusions or not, it had considered those issues very carefully. He said the Board's feeling was that the buildings should be aligned more closely with the road, but said the argument that this would result in noise

problems, and would also require the removal of contaminated soil, made sense. He said the Board accepted the argument that the scale was appropriate, but asked the applicant to raise the angle on some of the gable ends.

Mr. Watt said the Board had concluded that given the size and scale of the building and the amount of traffic that would be generated, that the hotel would probably be one of the better uses for the site, noting that the market for other uses was not that strong.

He said that during the hearings there was wrenching testimony from residents of the pocket neighborhoods in the area, especially residents on Bay View Road relative to excessive parking and noise problems. He applauded the Council for the work it was doing to address the issue of regulating student housing in Durham, noting it was an enormously profitable business for some people, and was here to stay, but the neighborhoods needed to be protected. He said to the extent that the Town could bring the non-compliant residences into line, it would make Durham a better place to live, and a better place to develop economically as well.

Mr. Watt said the members of the Planning Board were extremely well qualified to do the job they did in considering the application.

Robbi Woodburn, 6 Cormorant, said she was a landscape architect for Mr. Berton, a member of the Durham MainStreet Association and a resident of Durham. She read a letter from Bill Schoonmaker, Chair of the Association, which urged the Council to approve the project, noting the hotel would present an attractive transition from gasoline alley to the historic district up Main Street, and would bring much needed tax dollars to the Town. He also said the fact that the project might keep tourists and visiting parents in Town argued persuasively for its long term economic benefits.

Ms. Woodburn also read a letter from Warren Daniel, owner of the Bagelry. Mr. Daniel said that as an active member of the Durham business community, he had seen the problems facing downtown first hand. He said a large part of the shrinking market the downtown was experiencing was due to competition from on campus establishments which had an unfair competitive advantage because they did not charge a room and meals tax to patrons, and did not pay property taxes. He said there had been continued erosion of businesses because of the University's increasingly tax-free offerings. Mr. Daniel said Mr. Berton was coming before the Council with a well thought out plan, and said Durham needed responsible entrepreneurs like him to add to the tax rolls with minimal impact on the services. He encouraged the Council to approve the application.

Ms. Woodburn said that as a resident, when she did take a project in Durham, she did so for the Town, not for the money, and said she really believed the hotel was a worthwhile project.

Kevin Webb, 22 Davis Avenue, explained that he was an alternate on the Planning Board, and noted he was acting as voting member the night the hotel project was approved. He said the decision ultimately boiled down to whether the project was in the Town's best interest, noting that what was there at present at a prime intersection in Durham was not in the Town's best interest. He said one of the objections raised by the public was about traffic, and said he could not think of anything that would create less traffic than a hotel. He said the

student housing concern was the primary one raised by the public, but noted that the applicant had agreed to limit stays at the hotel. He said the questions about economic viability appeared to be driving that concern, and said the independent analysis that was done helped to ease his own concerns about this.

Mr. Webb said the hotel would have guaranteed business as long as the University was in Town, noting there were many businesses that survived on short bursts of intense activity. He said he understood the concerns about the scale of the project, but said it seemed that there was a certain economy of scale at that size, and that pairing down the facility would limit the number of rooms that could be offered, which could affect the viability of the project. He said he would have preferred if at least one of the duplexes currently on the site had been removed, which would have meant fewer parking spaces, but noted Mr. Berton had not agreed to do this. He said that in the end, he decided that the third duplex unit would provide an economic backstop to help Mr. Berton get through the dry times, which would help to avoid the need to sneak student housing in. He also noted that Mr. Berton had proposed a facility that was compatible with the Historic District, and which would provide a nice entrance into the town coming from Route 108, although he was not required to do so.

William Cote, 21 Littlehale Road, said he had been a member of the Planning Board when the first proposal for the site came before the Board, as student housing. He noted that there had been an uproar from abutting neighbors about that previous proposal, but said that now because of the reworking of the plan, and assurances and conditions, that the second proposal was viable. He said there would be direct economic benefits from the project, in the taxes it would pay to the Town, as well as immeasurable economic benefit for food establishments, and other places that need overflow. He said this was a project that would keep money in Durham, and was a win-win situation, offering a viewshed into the community, and asked the Council to support it.

Stephen Roberts, 174 Packers Falls Road, and member of the Planning Board, said he did not think Durham had done very well in terms of commercial planning, as compared to planning for the Rural Zone. He said that as a member of the Economic Development Committee, he had seen there were concerns about economic viability within the commercial area. He said the hotel project would take care of itself, with fencing and containment so that parking did not intrude on passersby, and said he did not see any other solution as elegant as this one for Durham. He said the applicant may even have assisted in helping with the Town's parking problem, and urged the Council's support for the application.

Gwendolyn Howard, 5 Bayview Road, said she had been to most of the Planning Board meetings on the application, and was well versed on the project. She said as a resident of Bayview Road, her main concern was that although referred to as the hotel project, she believed the hotel was only a part of the project. She said it was still a problematic site, noting it started out as 4 separate lots, some of which sat in the Historic District. She said the proposal included the fact that the existing duplexes would be pushed back closer to the pocket neighborhood which would allow the hotel to be the focal point of the site.

She said they had lost sight of the fact that no concessions had been made to reduce the overall density and impact to pocket neighborhoods. She said this could have been done, and noted a Planning Board member had said that some of the duplexes could have been

eliminated from the plan, which would have been very helpful. She noted that Mr. Berton had made some good concessions regarding limited stays at the hotel, and said she had been assured that the conditions of approval concerning this would hold.

Ms. Howard said it was her understanding that at the January 5th Council meeting, a moratorium was put on water hookups in Town for commercial establishments, and at the time, it was discussed that the Berton application was in process, and that the technical review committee would determine if there was sufficient water to support this commercial endeavor as well as others. She said that if the Council was charged with considering only fiscal matters, the water issue was certainly important to consider. She said the process of evaluating the application, in relationship to evaluation of the water supply, didn't make sense, and asked if it made sense to approve the application without knowing the outcome of the water study.

Councilor Morong clarified that the Council had not voted for a moratorium on January 5th.

Administrator Selig clarified this. He explained that on Jan 5th, the only action the Council took was to approve a sewer water hookup application. He said that a discussion then took place where he explained that because of the concern raised about the Town's water capacity whenever an application came before the Council, and because of drought conditions experienced in recent years, he had asked the Public Works Department to engage an engineer to look at the issue of the Town's water capacity. He also noted there was discussion on this issue during the Budget process, and also said the Town was expecting to get the water report within approximately two weeks.

Administrator Selig said there was no moratorium per se, but he had asked the Public Works staff to not review additional water and sewer hookup applications until they got the results of the study. He said they had tried to time the study to coincide with all of the applications the Planning Board had approved, and said that in fairness to Fall Line Properties application, it was filed well before the idea of the technical water study came up.

He also noted that as part of the Planning Board's review of the application, a technical review committee looked at potential impacts of the project, and at that time, Town staff felt the 3,000 gallons per day, representing an 0.0024% increase in water utilization, was not a problematic addition to the infrastructure. He said the Planning Board considered that information and came forward with a conditional approval for the application, noting the permit to the Town for a water/sewer hookup was still needed for the project.

Administrator Selig said it seemed that the fair thing to would be to honor the initial consultation with the technical review committee, which looked at the issue of water capacity in relationship to the application, with the best information available at that time. He noted that if the Public Works Department had expressed reservations about the adequacy of the water capacity to support the project, it was likely that the applicant would not have moved forward and spent significant money on the approval process. Administrator Selig said his recommendation to the Council was to focus on the technical requirements of the hookup to make sure it was done properly.

He also said that in preparation for the evening's discussion, he had asked planner John Harwood to draft a generic Conditions of Approval document, noting he had not heard negative comments about the application with the exception of Ms. Howard's comments. He said some language dealing with the water issue and the student housing issue had been included in the draft.

Pete Chinburg, 32 Woodridge Road, said he was a true abutter of the site for the proposed hotel. He noted he had been Chair of the Water, Wastewater and Solid Waste Committee while on the Council, and said that although the Town had experienced some difficulties with droughts in recent years, he sincerely doubted that water capacity would be a problem with the hotel project. He said he supported the application, noting it had been delayed too long, and that it would be bad to delay it any longer.

He said he remembered the Council two years ago talking about its role in reviewing applications like this as being restricted to fiscal impacts, and said he would like to see the Council vote on that basis. Mr. Chinburg suggested that if the Council voted against the application, those voting against it should divvy up the lost tax money and add it to their tax bill. He said he supported the project and would like to see it proceed that evening.

William Hall, Smith Park Lane, spoke about the water capacity issue, and said that what the Town needed to do was get realistic about how it dealt with water, and in this way it would not have a water shortage. He said the only deficiency in the water system was that there was no second source in the Lamprey River that was worth anything. He said if that if a sewer problem involving the Lamprey River occurred, there would be a water problem in the Town, because there would not be enough water in the impoundment to make up the deficit. He said this had never been addressed by the Town.

Attorney Malcolm McNeill said he had received a draft copy of the Conditional Approval document from Administrator Selig, and said the applicant was in complete agreement about the document except for the water/sewer language. He said the applicant would like to include Mr. Kraus's language in place of that language.

He said the project had been accepted and approved by the Planning Board, and that denying the applicant a water permit would be the same as denying him a building permit. He reviewed the process the applicant had gone through, and said the applicant had not been made aware of water issues earlier in that process. He also noted there was no water ordinance in Durham, and no procedure to impose a moratorium, and said that from what he had heard that evening, there was no moratorium. He said if there was ever a case of equity and fairness that cried out for a result that said this application was exempt, it was this one.

Attorney McNeill read proposed language developed by Councilor Kraus regarding the water and sewer issue, and said that if this language was acceptable to Council members, it was acceptable to Mr. Berton. He also said Administrator Selig's language without the italicized language was acceptable.

He noted the language concerning student housing in the draft document, and said that Attorney Loughlin's clear intent was regarding student housing. Attorney McNeill said if

Council members wished to emphasize that language, they should put in the word “student” after housing in the document.

Mr. McNeill also noted that at least two, and perhaps three members of the Council would not be present at the next meeting because of the upcoming elections, which would mean that if a decision on the application was not made that evening, there would be at least two people at the next meeting who would not have heard all the information about the application. He asked the Council to accept the recommendation of the Planning Board and approve the project that evening.

Ms. Howard asked if the italicized language in the Conditions of Approval document could be read out loud.

Chair Sandberg read the proposed language that was in italics, but clarified that the draft document was simply put forward as a working document, as a starting point for deliberations. He said there was nothing intended in having the document prepared in advance to indicate there was a drive to go one way or the other.

Administrator Selig provided an explanation of the context of the emails that passed back and forth the previous week, and then read the email from Mr. Harwood that included the draft Findings of Fact and Conditions of Approval that Mr. Harwood had developed. Administrator Selig said the draft went out Friday afternoon because it took most of the week to put the draft together, and the goal was to save the Council time in having to craft language at the meeting itself.

Councilor Kraus said there was no mystery about the content of the emails he had sent regarding the draft document, explaining that he had agreed that a water and sewer moratorium should not apply to the project, and had sent an email to all Council members to this effect that included alternate wording.

Jim Jelmborg, 29 Park Court, said he would like to get an opinion from Attorney Loughlin regarding insertion of the word “student” after housing in the Conditions of Approval.

Mr. Watt said he agreed with Attorney McNell that if at all possible, the Council should deliberate on the application that evening because of the chaos that could otherwise ensue when the Council membership changed. He also noted that Councilor Grant had been asked to recuse himself from deliberation on the application. Mr. Watt said he had been in many meetings with Councilor Grant in the past few years, and had faith that he could act without bias or duplicity, and would adjudge the application fairly.

Councilor Grant MOVED to close the public hearing. The motion was SECONDED by Councilor Kraus, and PASSED unanimously.

Chairman Sandberg called for a recess at 9:02 PM.

The meeting reconvened at 9:10 PM.

Councilor Grant MOVED to amend the agenda to delete “NLT ____ PM” language from Agenda Items X C,D, and E. The motion was SECONDED by Councilor Niman, and PASSED unanimously.

- B Deliberation and discussion on the Findings of Fact and Conditions of Approval 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 suggested that a motion be made to approve the language suggested by Administrator Selig and his staff, and once this was moved and seconded, the document could be amended as appropriate. After some discussion, it was agreed that this was the best approach to take.

Councilor Niman MOVED that the Town Council approve the application for a 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 located in the Limited Business District (LBD) zoning district, as recommended by the Planning Board and subject to the Findings of Fact and Conditions of Approval by the Planning Board and the Town Council. The motion was SECONDED by Councilor Morong.

Councilor Niman MOVED to amend the Findings of Fact by deleting the italicized and bracketed language on page 2 so that the paragraph reads as follows “The applicant has indicated that the new hotel would use approximately 3,000 gallons per day representing a .0024% increase of the utilization of the town’s water and sewer resources. Town staff reviewed the project approximately a year ago and it was believed at that time that the project would not place an undue burden on the sewer/water infrastructure. The motion was SECONDED by Councilor Kraus.

Councilor Samuels said the application for the hotel project had been made before the imposition of restrictions on water hookups, and said it would therefore not be a fair representation of how business was done in the Town to impose the restriction for this project. She said it would be to the benefit of everyone to not to impose this restriction, and said the italicized language should be deleted.

Administrator Selig said the intention of the document was to approve the application for the Conditional Use Permit, but also incorporated the restrictive comments that had been made. He said the language was included so the Council would at least have the opportunity to address it.

Councilor Samuels asked if UNH could conceivably be subject to the water usage restriction in the future.

Administrator Selig said the Water, Wastewater and Solid Waste Committee reviewed hookups of all properties in Town, and said the University would go through the same process as everyone else.

Chair Sandberg noted that UNH's Master Plan included concerns about water supply, and then read the language of the proposed paragraph on water and sewer.

The motion to amend the Findings of Fact PASSED unanimously.

Councilors made several minor wording changes to the Findings of Fact and Conditions of Approval document, and there was also discussion about the possible insertion of the word "student" after the word "housing". Councilor Harris recommended against including the word student, and instead suggested that the wording be "that the hotel shall not turn into any form of residential housing for the University of New Hampshire or any other entity". After some discussion, it was agreed to leave the language as it was in the document.

Chair Sandberg read through the entire Findings of Fact and Conditions of Approval document.

Councilor Grant spoke about sweeping statements that had been made about the slowness with which Town government dealt with various matters, and noted that inferences had been made that evening and at previous hearings. He said the Planning Board had approved the project on October 2nd, the application was submitted to the Town Council on December 12th, and on December 29th the applicant's attorney filed a letter requesting recusal of two members of the Council. Councilor Grant said that on January 5th, when the Council was first to have taken up the matter, the recusal issue was before them, and explained that requested legal advice from the Town Attorney was not received until January 23rd. He said the Council then proceeded within two weeks to commence the deliberations and public hearings on the application.

Councilor Grant said he had voted against the project when serving as the Council's representative on the Planning Board, noting his objection was based on land use, specifically the 125 space parking lot, which he felt was extravagant, could have been addressed in an alternate fashion, and would have made for better land use. He said he would, in respect to the Council's responsibility regarding fiscal issues in the granting of a Conditional Use permit, vote in favor of the application.

The motion to approve the Conditional Use Permit PASSED unanimously.

C. Continued discussion on budget goals and objectives

Councilor Niman reviewed previous discussion on this topic, noting the first discussion covered general concern about the budget and the need to do something about it, and the second discussion addressed structural problems facing the Town. He said the third part of this process was what he was hoping would be a general discussion about how to move forward on this issue, and noted he would like to establish a process and timeline for doing so.

Councilor Samuels said she liked the cost benefit approach Councilor Niman had provided to Council members, and asked what value could be placed on this approach.

Councilor Niman said there was little in the literature on this particular approach. He said that fortunately UNH was somewhat unique, which made it easy to do something like this, because Durham was essentially a one company town, with relatively little commercial development other than the University in the downtown area.

Chair Sandberg noted a timeline had been requested, and asked Councilor Niman if he had spoken with Administrator Selig about progress being made concerning contractual relationships with the University.

Councilor Niman suggested Town Administrator Selig should be asked when he envisioned there could be resolution on some of these issues, and said the Town would either have to get additional revenues or start considering cutting expenditures.

Administrator Selig updated Council members on negotiations with the University, and said the goal was to have gotten through the majority of the discussions, with some agreements in hand, by October, the start of the Town's budget process. He noted the staff until recently been fully engaged in some other issues, including employee contract negotiations, and said in the next few months he would be focusing on relationships with the University.

Councilor Kraus said much of what Niman was presenting related to gaining additional revenue from UNH, and said he thought the budget goals and objectives needed to be broader. He said hopefully additional revenues would be obtained from the University, but also suggested that the Town's budgetary process should begin sooner. He said it would be good to know what the Town's needs would be by October, noting there had already been preliminary budget discussions, including possible ramifications of level funding of the budget.

Councilor Morong asked if Administrator Selig had shared Councilor Niman's study with UNH officials. Administrator Selig said he had forwarded it on to them, but had not yet received any response.

In answer to a question from Councilor Harris, Administrator Selig described the various Town and UNH participants who were involved in the discussions.

Councilor Grant asked Administrator Selig if he felt he had sufficient opinion and guidance from the Council as he undertook the negotiations. He said, as an example that he thought it was disgraceful that the University was only paying 75% of the tuition rate for Forest Park children, and said he would also be upset if they were only paying 75% of the actual cost of education. Administrator Selig said it depended on the topic. He said the goal with Forest Park was 100% compensation, which was fair because students were living in tax free housing and attending Durham schools, which greatly impacted Durham's contribution to the school system.

Administrator Selig said there were many different kinds of agreements to look at. With respect to how to reformulate the fire services agreement, he said there were a lot of ways to approach that and said the Council would need to talk about this as a group. With respect to dispatch services, Administrator Selig said the Town paid a tremendous amount to the University at present, and said Town staff were looking at whether a significant amount of

money could be saved by contracting out to Strafford County or possibly to the Town of Newmarket. He said a report on this was expected by the first of May.

He said his plan was to keep the Council up-to-date on discussions as negotiations were occurring, and asked Council members to speak plainly if they saw anything they didn't like. He said there were various ways for the Council to discuss these kinds of issues, but noted that a year ago the Council decided that he would be the lead person to do this, although because of other issues, he had been greatly distracted from this work.

Councilor Samuels said the cost benefit analysis was an excellent basis for any discussion on any contract. She said the Council had to be clear on these costs/benefits so they could articulate this to the University and trustees in discussions.

Chair Sandberg said as Administrator Selig entered into the various negotiations, he would need to be confident that all of the arguments were making sense, and would need the Council's support on this. He also said it was in every one's interest to not have to go to before the State Legislature on this, but said that if this was necessary, it would be ideal to do so hand and hand with the University, so a fair and equitable solution could be found.

Councilor Niman said he agreed with Chair Sandberg, and stressed that in negotiating the many agreements with UNH, he didn't want those that were important to the Town budget to be at the bottom of the list. He asked Administrator Selig to, as much as possible, put things like Forest Park and the Fire Department to the head of the list, and communicate to the University that it would be good if these issues could be resolved earlier.

Councilor Niman also spoke about the fund balance issue, noting he would like to have that conversation soon on what a good level of fund balance was, so the Council could give guidance to Administrator Selig regarding this. He also said that policies and procedures developed by previous administrators, many of which were still in place, should be looked at to determine whether the Town was delivering services efficiently. He said budget sessions as early as possible should look at this, in order to have a positive impact on the budget content and process.

Chair Sandberg said budget issues would be put on Council agendas in a timely fashion.

D. Update on the Work of the Economic Development Committee

Councilor Niman updated Council members on the process the committee was following, and said they were waiting for some of the pieces to fall into place. He said they were waiting for a proposal from Cain and Company for the Business Park, and also noted there had been a meeting with Heidelberg Web services, which had a few building lots it might be interested in doing something with.

He also said there were discussions about connecting Technology Drive to Beech Hill Road, which if converted from a Class VI to a Class V road, would open up that area to development. He noted Beech Hill Road was not connected to Route 4, but said NHDOT was interested in getting rid of the traffic light at Madbury Road, and wanted to rebuild the intersection near where Beech Hill Road almost came to Route 4.

Councilor Niman said that once the Zoning Rewrite process was complete, he would be asking the Planning Board to begin work on some development guidelines for that area, and would ask the Town engineer to determine the cost of putting infrastructure in, so the area could be opened up to office research. He also said he would like to move the economic planning work to the Planning Board, and convert the Economic Development Committee to more of a marketing committee.

He said there had been a large turnout at the last few meetings to talk about the committee's community development plan. He said staff from the Mill Pond Center had attended the meeting, and he appreciated their energy and ideas. He said they all worked on a map called "Proposed recreation connections" which identified areas of activity within Town, as well as ways to connect them together. He said starting at the Court House, they considered what would be a comfortable walking range, came up with a quarter mile radius representing 5-10 minutes of walking, and then looked at what was located within this radius.

Councilor Niman said that one group was looking at expanding recreational opportunities in the waterfront area in order to improve the quality of life for Durham residents and attract people to the Town. He noted that Durham was one of few towns that did not exploit its waterfront very much, and said they were not considering a massive development of the waterfront, but were looking at how to transform it into something that could be utilized, and also how to tie it into the rest of the Town. He said discussions with the Mill Pond Center had been instrumental in this, because it was another potential attractor. He suggested the possible connection where people could take a class or see a show at the Center, stay at the new hotel, enjoy the waterfront, and get something to eat, all at places that were within walking distance of each other.

Councilor Niman said they were looking at some kind of foot bridge over the water so the whole faculty neighborhood would become accessible to the Mill Pond Center. He said they also looked at how to get people safely over Route 108 so they could access sidewalks and get to the hotel or Old Town Landing. He said another question was how to integrate all of this with Main Street and revitalization plans concerning the area, noting that the MainStreet Association was interested in coming down to where the new hotel would be, and down to the waterfront.

Councilor Niman said the last piece, where not much headway had yet been made, was where to put student housing that was not disruptive, and which took pressure off the neighborhoods. He said an important question as part of this was how to change the economics in Town, and explained that the biggest stumbling block to transforming Durham into a town where there were nice restaurants, bakeries and other shops was that the economically best use of property in Town was student housing. He said this was the biggest economic development challenge.

Chair Sandberg thanked Councilor Niman for some terrific ideas.

Councilor Kraus MOVED to extend the meeting by 15 minutes. Councilor Niman SECONDED the motion and it PASSED unanimously.

E. Discussion concerning options for possible modifications to the Packers Falls Bridge

Administrator Selig recommended that the Council establish a small committee with 3-5 residents who would work with the Public Works Department to identify a design that was acceptable. He said the group would also work with staff in reviewing results of the analysis the Town Engineer was doing with respect to where the project went wrong, in order to determine what could be done, moving forward, to prevent this kind of thing from happening again.

Councilor Kraus said at the Feb 2nd meeting, the comments among Councilors indicated the majority wanted to have some kind of panel or commission, so this seemed appropriate to pursue.

Chair Sandberg asked what would be involved in choosing one of the solutions, and how much time this would take.

Councilor Kraus said there were some real problems, because of costs and time factors, even though it was agreed that something should be done about the bridge.

Councilor Samuels said the bridge was one of the key viewsapes in Town, and the area provided many other benefits to the Town. She said the Council and the Public Works Department had made an error, and needed to fix the problem for present and future generations. She said the design needed to be simple and functional. She also asked Administrator Selig to pursue the obligation of the contractor concerning the sight distance issue, noting that by not foreseeing the problems, they were culpable in some way.

Administrator Selig said the subcommittee was an excellent way to proceed. He also noted it was hard to negotiate with the engineering firm when it wasn't yet clear what the redesign would be. He said it was agreed in the Public Works Department that the engineering firm shared some culpability, but he said at present they were very defensive, had rational reasons for everything they had done, and were not very cooperative. He said the scenario needed to be changed so they would become part of the solution, and said ideally, the Town would like to see the firm redesign the bridge in the way that it wanted, at no cost to the Town. But he noted the situation was not as one sided as some would like it to be.

Administrator Selig also said the Town was working with NH DOT concerning how to work through the grant moneys that had funded 80% of the project, noting \$85,000 was left, but it was State money. He said the State's buy-in was important, going forward, and said one way to do this was to point out the traffic concerns around the bridge. He noted the State had approved the design, and said that if they acknowledged that they too had made an error, they would perhaps be more likely to help the Town solve the problem.

Administrator Selig listed members of the subcommittee -Walter Rous, Julian Smith, Annmarie Harris, Richard Lord, and Beth Olshansky, and Chair Sandberg asked if there were any objections to the choices for the subcommittee.

Councilor Grant asked that a skeptic be added to this group, who was not convinced that the bridge was totally wrong and that it was worth a lot of money to change it. He said these questions would come up when the proposal came before the Council, and it would be better to have someone who was an articulate critic, for whatever solution was arrived at.

Councilor Kraus noted this could be an awkward spot for someone to be in, and that such a person would have to be chosen very carefully.

There was additional discussion on this, and also on the timeline that would be needed. Administrator Selig noted that the project needed to go out to bid no later than April 1st.

Councilor Kraus cautioned not to move forward too fast, and stressed the importance of getting the design right.

Administrator Selig said a stop sign would be proposed for the intersection coming from Newmarket and approaching Bennett Road.

Councilor Harris said it was important to consider views of the bridge while driving across it and also noted there were no examples relating to the Route 108 Mill Pond bridge, which had two railings, was 36 inches high, or to the Scammel bridge.

Administrator Selig said the photos were developed by Richard Lord, who had simply put some ideas together.

Councilor Niman said it needed to be clear that ultimately the Council would make the decision about the design, and also said the Council needed to be very sensitive to how much it would cost.

Councilor Kraus thanked Councilor Samuels, on behalf of the Council, for her splendid service for a year, and Councilors Paine and Smith for their three years of excellent service, noting they might see Councilor Smith back on the Council.

Chair Sandberg said he hoped Councilor Samuels would be attending the informational town meeting.

XI. New Business

None

XII. Nonpublic Session (if required)

None

XIII. Adjourn

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

Meeting adjourned at 10:30 pm.

Victoria Parmele, minutes taker