

DRAFT

DURHAM TOWN COUNCIL MINUTES MONDAY, MARCH 15, 2004 DURHAM TOWN HALL - COUNCIL CHAMBERS 7:00 PM

MEMBERS PRESENT: Chair Malcolm Sandberg; Arthur Grant; John Kraus; Mark Morong; Neil Niman; Annmarie Harris; Peter Smith; Karl Van Asselt

MEMBERS ABSENT: Gerald Needell

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

I. Call to Order

Chairman Sandberg called the meeting to order at 7:00 PM.

II. Approval of Agenda

Councilor Kraus MOVED to approve the agenda. The motion was SECONDED by Councilor Smith, and PASSED unanimously 7-0.

III. Swearing in of Council Members

Chair Sandberg noted that Deputy Town Clerk Lorrie Pitt here would swear in Councilors Peter Smith and Karl Van Asselt. He also noted that the other new Town Council member, Gerald Needell was not present because he had an important commitment that was scheduled before he considered running for Town Council.

Ms. Pitt performed the swearing in ceremony, in which all Councilors participated. Chair Sandberg then welcomed the Councilors to the table, on behalf of the Council.

Councilor Smith said he hoped 30 years from now, when she was still Town Clerk, Ms. Pitt would remember whom she had first sworn in, in her new role.

IV. Selection of Council Chair and Chair Pro Tem

Councilor Grant MOVED to appoint Malcolm Sandberg as Chair of the Town Council for the year 2004. The motion was SECONDED by Councilor Harris.

Councilor Grant said, on behalf of his fellow Councilors, he greatly appreciated the fairness with which Chair Sandberg conducted meetings, and the decorum he maintained. He said he appreciated his temperance and good judgment, and said he had been a superb

Chairman. He said he was delighted to be able to nominate and vote for him for reelection.

Chair Sandberg thanked Councilor Grant, and asked if there were other comments. Hearing none, he called for the vote.

The motion PASSED unanimously.

Chair Sandberg said he appreciated the opportunity and the honor to serve as Chair for another year. He noted that he had asked Councilor Grant to take over for him as Chair, but said circumstances were such that Councilor Grant felt he was unable to do so. Chair Sandberg said he would do his best to do his duty for the Town.

Councilor Smith MOVED to appoint Arthur Grant as Chair Pro-tem. The motion was SECONDED by Councilor Kraus, and PASSED unanimously.

V. Special Announcements

Administrator Selig introduced Fire Chief Ron O'Keefe to make formal introductions of the three new firefighters the Town had recently hired: Kenneth Lundberg, David Blatchford, and Brendan O'Sullivan.

Chief O'Keefe said Firefighter Lundberg had been with the Fire Department for two months, and Firefighters Blatchford and O'Sullivan had started work that day. He provided biographical information on each of the firefighters, and said the Town was pleased to have such high caliber people coming to work in Durham.

Chair Sandberg congratulated the new firefighters, and welcomed them to the Town.

VI. Approval of Minutes

March 1, 2004

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

Councilor Kraus asked that the following language be added on page 5, following the statement made by Meghan McPherson, in brackets: [Ms. McPherson then walked from the Council chambers, accompanied by a group who had risen and stood during her comments.] Councilor Kraus said it was important to include this because it had been a most unusual circumstance, and the language conveyed a sense of this.

Councilor Kraus MOVED to approve the amendments to the minutes. The motion was SECONDED by Councilor Morong, and PASSED 6-0 with Councilors Smith and Van Asselt abstaining.

The minutes as amended PASSED 6-0 with Councilors Smith and Van Asselt abstaining.

VII. Report of Administrator

- Property tax abatement - Administrator Selig said the Town had received a total of 80 abatement requests stemming from the recent revaluation conducted by the Town. He said the difference in assessment between the current town records and the requests that had been received equaled \$13,907,195, and equated to a total liability for the Town of just under \$328,000. He said the Town Assessor would be holding hearings with individuals on the abatement requests, and would be in touch with these individuals concerning the schedule for this. Administrator Selig said he would also update the Council on this time frame.
- 24-hour Shift - Administrator Selig said the concept of the 24-hr shift for the Fire Department, as part of a one year probationary trial period, would soon be implemented starting on March 27. He said it was felt this would be a positive development for both the firefighters and the Town.
- Red Cross Blood Drive - Administrator Selig said the annual Red Cross blood drive month would soon get underway, noting that Durham had one of the few volunteer Red Cross organizations in the State, and the country. He said people interested in volunteering for the Red Cross should call Mrs. Noble K. Peterson at 868-9692.
- Packers Falls Bridge – Administrator Selig said that the first meeting of the Packers Falls Bridge committee had been held the previous week. He explained that the committee was comprised of Town residents, and had been put together to help evaluate two major matters: the process leading up to problems with the bridge at the present time; and how to modify the bridge to make it more acceptable to the community at large.

He noted Councilor Harris was a member of the committee, along with Beth Olshansky, Richard Lord, Walter Rous, and Julian Smith, and said that Town Engineer Bob Levesque was an advisor to the group. Administrator Selig said he also attended the meetings, and said the next meeting would be held at the Public Works Department on Wednesday, March 16 at 4:00 pm, and said members of the public were welcome to attend and provide input.

- Administrator Selig noted that the unanimous consent agenda included meeting dates for the next twelve months. He said that although they typically didn't include in this slate the meetings held during the budget process in November and December, Councilors were requested to block off the second and fourth Mondays of those two months for the budget work sessions.

Councilor Smith asked Administrator Selig to describe in more detail the process for reviewing tax abatement requests.

Administrator Selig explained that the Town Assessor would schedule a meeting with each taxpayer filing an abatement request, where they would have an opportunity to

present any information they had that would lead Assessor to conclusion that the assessment was inaccurate, for whatever.

He said some residents had written to him indicating they had met with the Assessor informally during the revaluation process to contest the proposed assessment, and that meeting did not result in a lowered assessment. He said these people were questioning how useful it would be to simply meet with the Assessor again, so in order to accommodate them, Administrator Selig and/or the Business Manager had agreed to sit in on those hearings as well, if requested.

Administrator Selig noted that as part of the usual process, abatement requests did come to his office before he forwarded them on to the Council, and he did question the Assessor on the rationale behind the decisions on the requests.

VIII. Reports and Comments of Councilors

Councilor Kraus said that the Integrated Waste Management Advisory Committee had met that morning, and wished to thank Councilors for their support for the process of using paper bags for leaf pickup. He said that 90% of residents had participated in this effort the previous fall, and the new system had cut the pickup time in half, down from two weeks to one week, which meant less money spent by the Town. Councilor Kraus said that a ton fewer leaves had been picked up, noting this was probably because of composting by residents. He said the program would continue in the fall, when there would be mandatory use of leaf bags.

Councilor Kraus also said he would like to make a clarification concerning a playful comment made at the Informational Town meeting that Councilors served on a volunteer basis. He said in accordance with the Town Charter, Councilors were paid, receiving \$1,500 per year, and the Chairman received an additional \$500. He said citizens should be assured that if Councilors began to think about giving themselves a raise, the founding fathers had also provided protections concerning this in the Charter.

Councilor Kraus said it seemed appropriate to note this, since they were at the start of a new year, and also considering Resolution #2004-08, which recognized outgoing citizens serving on the various Town boards and committees, who were, in fact, volunteers, and did a wonderful service for the Town.

Councilor Niman said he had seen some items that were on the proposed Town Council meeting schedule that had been there for quite some time and had never been discussed. He asked if the Council would be addressing these items (i.e. the impact fee ordinance idea, a philosophy about student housing, a permit system to make Wagon Hill Farm self-sustaining, or the feasibility of developing the north forty acres of Wagon Hill Farm).

Administrator Selig said that some of these items were essentially placeholders, and had been carried forward so they would not be forgotten. He said the Council had not gotten through all the goals and objectives established the previous year. He said the goal he was

hearing the Council was most concerned about was the impact fee ordinance, and also said the philosophy about student housing was an issue he would very much like to discuss with the Council. He said these issues tended to get pushed off when other more pressing items came up, and also noted time limitations at each Council meeting.

Councilor Niman requested that before receiving an update by DPW on GIS and other such agenda items, the Council should talk about some of these other goals. Councilor Morong said that the Rental Housing Commission had recently met, noting that John Harwood and Administrator Selig had made presentations on proposed ordinances which were only ideas at this point, and were not even in draft form. He said there was a lively discussion on this by the committee, with many comments received from the public, and said that most parties thought that getting absentee landlords more involved was important in addressing disorderly houses. Councilor Morong noted that this idea was the focus of most of the ordinances.

He said the next committee meeting would be held on April 13th at 4:00 pm in the Council chambers, and noted that the committee had increased the number of meetings because of the significant amount of interest in this topic. He said that everyone was welcome to come and provide ideas.

Councilor Smith thanked the public for allowing him to be there again as a Councilor, and said he would do his best on their behalf in the next three years. He also noted that the previous week, he had attended the Conservation Commission, which had approved and sent to the Council the proposed Land Conservation Policy that the Council would be considering that evening.

IX. Public Comments

William Hall, Smith Park Lane, said the \$3 million plus initiative dealing with the University was 10 times what the Town paid for Wagon Hill, and this initiative should be debated. He said there was a significant amount of non-information and misinformation presented at the Council's table, noting this had occurred during the public hearing on the hotel project. Mr. Hall said it was no surprise that the water issue was a non-issue, and said that anyone should have known this.

Mr. Hall also spoke about the Mellon House issue, which took many meetings to resolve, and said Administrator Selig's time was being misdirected from the agenda the Council had set for him in order to spend time, often too much time, on some issues. He said he couldn't think of anything that was more important to the Town than a \$3 million agenda item dealing with the University, noting many of the issues concerning it were quite obvious.

Chair Sandberg noted for the record that the Council had nothing to do with the Mellon House debate, which was before the Zoning Board of Adjustment. He also said those who viewed the meeting that included discussion on the water issue would have seen that the Council unanimously decided not to include any reference to water in the hotel debate.

Mr. Hall said that was his point, that the water issue was a non-issue, and too much time was spent on it. He said he was using this as an example of other issues that the Council spent too much thought and time on.

X. Unanimous Consent Agenda

- A. Shall the Town Council appoint Council representatives to the various Town boards, commissions and committees as indicated on the proposed “Slate of Appointees”?
- B. **Resolution #2004-06:** Establishing regular Town Council meeting dates for April 2003 through March 2005
- C. **Resolution #2004-07:** Establishing April 1, 2004 as the effective date for the Town Charter amendments that passed at the March 9, 2004 Town Election
- D. **Resolution #2005-08:** Recognizing outgoing elected officials and board members for their dedication and service to the Town of Durham and extending the terms of all appointed board members through April 30, 2004.

Councilor Kraus MOVED TO approve Unanimous Consent Agenda items A, B, C, and D. The motion was SECONDED by Councilor Harris, and PASSED unanimously 8-0.

XI. Unfinished Business

Update by Town Administrator on request from property owners on Fairchild Drive, Madbury Lane and Davis Avenue to release the “stub” of land located at the end of Fairchild Drive from public servitude

Administrator Selig read the motion passed by the Council concerning the stub of land at the February 16th meeting. He said he had since been in touch with representatives from the neighborhood association, as well as the Council, to consider the best way to proceed. Administrator Selig said it was his clear sense when the issue was discussed on February 16th, that Council members did not want the stub to be developed as a roadway.

He said one question raised by the attorney for the developer, Stonemark Management, was that by taking the action to discharge the stub, the Town would be creating a landlocked piece of land. Administrator Selig said he had receive clarification on this from the Town Attorney, and read this legal response, which essentially said discharging the stub would not land lock the Stonemark property, and did not create a taking, because the property did have other access.

He said if the Council wanted to continue to move toward discharging the property from public servitude, it should first make a motion to that effect. He said that would still leave the Council with the fee ownership of the property, and explained the Town then had a number of options. It could do nothing, in which case the stub would remain Town property. It could grant an easement, which would be awkward, because it wasn't clear

to whom such an easement would be granted. He noted there was not likely to be much interest in such a small parcel of land that didn't connect to other conservation land, and also said the Town wasn't planning to make the land into a conservation area.

Administrator Selig said another possible approach was to work with the two abutting property owners on either side of the stub, and essentially deed the property to them, drawing a line down the middle. He said as part of the conveyance, there could be a requirement that the land not be developed. Finally, Administrator Selig said the other option was to deed the land to the common land of the neighborhood, an option that the abutters said they preferred.

He said there was already common land as part of the neighborhood, but no formal association had been formed to manage it, so such an association would have to be formed as a legal entity, before the stub could be conveyed to them. He said that if at some point in the future the neighborhood association wanted to make the land available as a roadway, this would be a decision the neighborhood would have to make. Administrator Selig said the Town could also put restrictions on how the property could be used, as part of the conveyance, which would preclude its use as a roadway.

Administrator Selig said that Stonemark Management had requested that the Superior Court decide who owned the property, and read the petition presently before the Court. He said this had been faxed to the attorney for the neighborhood association, and would provide copies to Councilors. He said now that the Town had a court case against it on this issue, it had every right to go into nonpublic session to discuss this. He also said that because this was a land matter, the Council had the right to go into nonpublic session.

Administrator Selig said it was his feeling that because the discussion so far on this issue had been open, and Council members had already decided the direction they wanted to head in, it made sense to discuss this publicly. He said his recommendation was for the neighborhood to form a legal association and for the Town to work with the association to develop terms and conditions for a conveyance of the property. He noted this recommendation was consistent with guidance the Council had already given him on this issue.

He said the motion to discharge the stub could be done that evening, but said his preference would be to draft language, let the public know the question was before the Council, and present it at a future meeting. He said that if action were taken at present, it would be done before the Court had a chance to respond to the petition that had been filed. But he also said that if the Court ruled in favor of the petition, it could reverse any decision the Council had made.

Councilor Van Asselt noted that he lived on Fairchild Drive, and would therefore recuse himself on this issue.

Councilor Harris recommended that the Council reaffirm that the Town should move forward to discharge the stub, or if possible in a timely manner, to draft a conveyance to the neighborhood.

Councilor Smith said that in light of the legal action against the Town, it was important for the Council to restate its position formally. He also asked Administrator Selig if it was the Town Attorney's view that the issue was somewhat of a close question, or if the petition had no merit whatsoever.

Administrator Selig said the Attorney did not feel Stonemark's lawyer had a valid argument.

Councilor Smith said that if the Town Attorney concluded that the argument was wholly without merit, Administrator Selig should ask him to request a return of attorney's fees. He also noted there was some confusion about the fact that two law firms were involved on behalf of the plaintiff in the case. There was discussion on this.

Councilor Smith MOVED that the Council reaffirm its earlier position concerning discharging the stub of land from public servitude.

Chair Sandberg said that moving to reaffirm something that had already been affirmed was superfluous.

Councilor Smith said it was important that there be no doubt, publicly or privately, as to what the Council's position was, given the fact the Council was now the subject of a lawsuit on this issue.

Councilor Harris SECONDED Councilor Smith's motion.

Councilor Niman suggested that each Councilor give their opinion on this motion. He said he had no problem with releasing the stub now, or at any time agreed upon.

Councilor Grant said he was anxious to reaffirm the previous motion. He noted traffic issues in the existing neighborhood, the lack of sidewalks, minimal lighting, children playing, and said this was not an area where the Town would not want additional traffic. He said this was the position of the Planning Board when the subdivision application was originally denied, and said it was important that the Council take firm action on this issue, so there would be no question as to its intent.

Councilor Morong said he had no problem with releasing the stub now, but noted that he had not been convinced, at least so far, about the merit of turning the land over to any other group.

Chair Sandberg said he had looked at the subdivision plan, as compared to the tax map (which had an error in it). He said a question he had was who would pay the taxes on the common land, but said if the Council adopted the motion, this would give Administrator Selig adequate guidance to put together an item for a vote at the next Council meeting.

Councilor Kraus said he would vote enthusiastically to reaffirm the motion.

Chair Sandberg said the motion was a reaffirmation of the original motion:

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 remain in its present, natural state, and could be used for recreational purposes, effectively precluding its future use as a roadway.

The motion PASSED unanimously 7-0, with Councilor Van Asselt abstaining because he had recused himself.

XII. New Business

A. Adopt Land Conservation Policy

Administrator Selig explained that Duane Hyde was there to discuss the Conservation Land Acquisition Policy that had been developed by the Conservation Commission and Land Conservation Group, as a result of the passage of the conservation bond the prior year. He said it was realized that it was extremely important to have a policy that would guide the Town in conserving land, and he briefly described the process by which the policy statement was developed.

Mr. Hyde explained that the draft before the Council was initiated at the working group level, and had then gone before the Conservation Commission, where changes were made reflecting comments that were received over a period of two meetings. He also noted that Councilor Smith had provided additional tightening of the language in the policy statement.

He described the various kinds of projects that could come before the Council, noting that the Council had sole authority to vote on whether to approve these projects. He then described the process by which a project would be reviewed. He said Administrator Selig would review the proposal for completeness, and if appropriate would send it to legal counsel, or directly to the Conservation Commission which would make comment and recommendations to the Town Council. He said the Council would then hold a public hearing on the project, and after the hearing, the Council would vote whether to approve the project, and could make amendments to the proposal. He noted that if the Council made a change that related to use and management of the property, this kind of amendment would go back to the Conservation Commission for further review.

Mr. Hyde next went through the various sections of the policy document, and noted in particular Section 7, which listed the various criteria that would be use in evaluating a land conservation project.

Chair Sandberg asked if Councilors had any questions about the policy document.

Councilor Morong said knowing that Councilor Smith had thoroughly reviewed the document made him feel comfortable with it, from a legal perspective.

He asked if there might be a time when there might be a sensitive land purchase where there would be a binding purchase and sale agreement before a public hearing on the project was held. He noted that the Council sometimes had nonpublic sessions to discuss sensitive land issues.

Mr. Hyde said this document did not lay that process out, and said he was uncomfortable with the idea. He said that if there were a sensitive project the working group needed to talk to the Council about, they could get this input in a nonpublic session, which would be appropriate, although there was nothing in the policy about this. But he said that actually putting ink on paper had to be done after a public session of the Council. He stressed that discussions with landowners were done completely privately, and only went public when they were comfortable.

Chair Sandberg said his understanding concerning RSA 91-A was that when the Council was in the negotiating phase, this could be discussed in nonpublic session, but the policy issue of entering into negotiations was more appropriate to deal with in the public domain.

Councilor Smith said the Council should view the document, which was in a tentative stage concerning language, not so much as a legal document but as a policy document. He said it didn't change in any way the authority of the Council, but essentially laid out the process by which a project was considered. He said the most important part of the policy statement for the Council to focus on was the criteria section, and said if the Council did not think these criteria made sense, now was the time to say this.

Councilor Van Asselt asked who paid for the project package and other aspects of the process, if the project the Town didn't initiate the project.

Mr. Hyde said a landowner could petition the Town Administrator or Conservation Commission to assist in funding an appraisal. He also noted that the Working Group hoped to have model legal documents that could be used for various projects.

Councilor Van Asselt made reference to the criteria for evaluating land parcels, and said he had heard that the Working Group had tried to stay away from a scoring process, for a variety of reasons. He asked what kind of weight was given to the criterion "maximize land conservation per Town dollar spent".

Mr. Hyde said he would be reluctant to add additional weight to this, noting that when the conservation bond passed, there was a strong LCHIP program and water supply protection program, but these and other programs were now under-funded.

Chair Sandberg asked if the Town voted to adopt the policy document in principle, and then remanded it to legal counsel for refinement and revision, and then brought it back to the Council to be adopted as a policy, if that would be useful and appropriate.

Mr. Hyde said it would be.

Councilor Smith MOVED to adopt in principal the “Policy for Acquiring Legal Interest in Conservation/Open Space Land” dated March 2004 that was developed by the Land Protection Working Group and recommended by the Town Administrator and Conservation Commission, and refer the document, through the Administrator, to legal counsel for refinement and review. The motion was SECONDED by Councilor Grant, and PASSED unanimously 8-0.

Chair Sandberg thanked Mr. Hyde and others in the Working Group for their hard work on this important document.

Councilor Harris called to Councilors’ attention the fact that the Towns of Lee and Northwood had not passed their land conservation bond issues, each for \$5 million, and Greenland had passed one, but for a lesser amount, \$2 million.

- B. **Ordinance #2004-01 (First Reading):** Amending Chapter 153 “Vehicles and Traffic” of the Town of Durham Code by prohibiting on-street parking on Young Drive.

Chair Sandberg explained that procedurally, this would be the first reading of the ordinance, and the question before the Council was whether to schedule a public hearing on it.

Administrator Selig said he would be asking Council members to defer action on the ordinance proposal. He provided background on the issue, explained that the Town had been struggling with the impact of rental properties on residential neighborhoods. He said there had been no more problematic area of Town than the Young Drive area, noting that all of the properties there were owned by the Fischer Agency. He said that unfortunately, until very recently, the Town had not received the cooperation needed from the owner to turn around these problem properties. Administrator Selig said there were often fights in the area, garbage strewn around, and bond fires that damaged the street. He said that because it had become such a party area for students, a situation had been created where it was difficult to get emergency vehicles down the road when necessary because of cars parked haphazardly on the road and large numbers of pedestrian traffic. He said this was especially problematic when the Town was trying to respond to a fire in that area. He also noted the unsightly nature of the parking situation, as vehicles were often parked in front yards of the properties.

Administrator Selig said that in response to the public outcry over the impact of rental properties in Durham, the Town had taken a hard look at some of these properties, including Young Drive, to see how the Town could turn the areas around. He stressed that the goal was compliance, and said that if possible, the Town would like to work cooperatively and collaboratively with the owners.

Administrator Selig explained that Young Drive had been a strong impetus behind the disorderly house ordinance idea, because the owner had not been very responsive to past requests for assistance. He noted a series of excuses had been given by the owner in the

past, but said it appeared this resulted from a lack of attention, and from not setting a standard and then holding tenants accountable.

He said the Town had been aggressively pursuing zoning violations, including haphazard parking on lawns, as well as head-in parking as one turned from Route 108 into Young Drive, on the left side, where typically about 30 cars were parked. He said these cars were parked partially on the Town right of way, and partially on the Fisher property. Administrator Selig said it was possible to park in a parallel manner there as long as it was within the Town's right of way. He noted that presently, no parking was allowed along the north side of Young Drive, but said that although this was frequently posted by the Public Works Department, the signs were soon torn down, so when the police responded, no signage was there, which made issuing tickets difficult.

Administrator Selig said after talking with the various entities in Town, he had suggested that all of Young Drive be made a no parking area. He noted that since moving forward with the no parking ordinance, as well as with zoning issues in that area, there had been a positive response from the owner of the property. He said the owner and his attorney were both now interested in working collaboratively with the Town to address the parking and behavioral issues, and said he was inclined to defer action on the ordinance, and give that voluntary effort a try.

He said if that didn't work, the proposed ordinance could be brought back to the Council, and also said that he would like the Council to consider the possibility of designated just the area from Route 108 to the fire hydrant on the left hand side, which essentially demarked where head in parking had been, as a no parking area. He explained that the owner would like to have parking on the street for service and delivery vehicles, and for guests of tenants living along the roadway. He suggested giving this a try, and said if it did not work, he would come back to the Council for further action.

Councilor Harris said it was good that the owner was now willing to work cooperatively, but said the problem was that there was a new group of students every year, and in order to not draw in more troublesome students for next year, it made a sense to go ahead and ban parking on the entire length of the road, on both sides. She said it was important to come down hard on this issue, and in this way they would perhaps get different kinds of students there.

Councilor Grant said that with due respect to the situation in which they might be putting Administrator Selig, this was an area where the Town should have taken action years ago. He said the Town was partly to blame for permitting this gradual accumulation of irresponsibility in this neighborhood, and said he would favor proceeding with adopting a motion to schedule a public hearing. He said at that time, Administrator Selig would be in a position to report further developments and negotiations, including possible modifications of the ordinance. He said the owner of the properties could speak at the hearing, and said he was sure the neighborhood would appreciate the opportunity to speak on the issue.

Councilor Grant suggested that the hearing be held on April 19th or in May, to give Administrator Selig some leeway.

Councilor Grant MOVED that the Town Council hereby passes Ordinance #2004-01, an ordinance amending Chapter 153 “Vehicles and Traffic, Section 153-46 of the Town of Durham Code by Prohibiting Street Parking on the north and south sides of Young Drive, on first reading, and schedule a Public Hearing for April 19, 2004. The motion was SECONDED by Councilor Kraus.

Councilor Kraus said the landlord, Fischer, had owned the property for ten years, and there hadn't been a lot of progress. He said while the present cooperation was laudable, he was very skeptical, and said moving forward with the motion was appropriate.

Councilor Morong said he wondered if Chief Kurz was having trouble keeping no parking signs in place now, how he proposed to prevent this so the ordinance could be enforced. He also said the Rental Housing Commission had looked at ways to put pressure on Mr. Fischer, through code enforcement and other safety related laws, which applied to every property in Town. He said he had supported this, but questioned the legality of targeting this particular area with an ordinance when there were no other properties in Town where parking on both sides of the road was prohibited.

Councilor Smith said the background materials provided to Councilors on this issue had included numerous code violation notices. He said the properties needed a short leash, and said that although he would normally defer to Administrator Selig's desire for leeway in negotiations, this situation required action. He said if the accusation were made that the ordinance was not appropriate because it only applied to one street in Town, it would be easy to demonstrate that there had been no other street like this in Durham, over a period of years. Councilor Smith said he might be willing to change his mind after hearing testimony at the public hearing, but for now, supported the motion.

Councilor Niman said he looked forward to speaking with Mr. Fischer at the hearing. He also said he would like Administrator Selig and Chief Kurz to think about whether, if parking on Young Drive was banned, people would simply park on Bayview Road. He said this concerned him, and said that perhaps a plan was needed to avoid this, noting he would hate to simply pass the problems on to the next road.

Chair Sandberg asked if the Traffic Safety Committee had looked at this issue. Administrator Selig said it had not, but said from experience with other roads, that was likely to be the result, and the Town would have to address this.

Chair Sandberg pointed out that resident permit parking had been used in some other neighborhoods in Town. He said this and other issues could be deliberated following the public hearing, and the Council might ask the Administration to look at such a concept for Bayview Road.

Administrator Selig said the recent letter from the attorney for Fischer properties indicated that the emergency response issue had been brought to their attention in the past, and they advocated taking small steps to address this. He also said that Mr. Fischer would be out of Town until May, and had asked that the hearing be deferred until he

returned. Administrator Selig also noted that he himself would be out of town on April 19th, although Police Chief Kurz could attend that evening.

Councilor Grant MOVED to amend his previous motion, and to have the public hearing on May 3rd. Councilor Kraus SECONDED the motion.

Councilor Harris asked what would happen in the meantime, noting that currently there was no parking allowed on either side of the street.

Administrator Selig said he had recently asked the Public Works department to put up signage that would be very hard to take down.

Chair Sandberg said that if the hearing was held on May 3rd, there would be time to see how effective the negotiations and signage changes were.

Administrator Selig said if the Council was inclined to move forward on this, having the hearing on April 5th made more sense, and would still allow the Council to look at whether they wanted to amend the ordinance.

Councilor Grant said he would withdraw his amendment, and would make a new motion to hold the public hearing on April 5th, as originally scheduled.

Chair Sandberg said the motion before them was to amend the original motion, so as to have the public hearing on May 3rd. He recommended voting this motion down first, and then proposing another amendment.

The motion FAILED, unanimously.

Councilor Grant MOVED that the Town Council hereby passes Ordinance #2004-01, an ordinance amending Chapter 153 "Vehicles and Traffic, Section 153-46 of the Town of Durham Code by Prohibiting Street Parking on the north and south sides of Young Drive, on first reading, and schedule a Public Hearing for April 5th, 2004. The motion was SECONDED by Councilor Kraus.

Councilor Morong said he would prefer to have the public hearing when the owner returned, because the ordinance would affect a number of his properties.

Chair Sandberg summarized that the options available to the Council, if they had the public hearing, were: to vote to not pass the ordinance; to vote to pass the ordinance; to vote to amend the ordinance; or to postpone action and deliberation to a future date.

Councilor Morong said even if they postponed action, this would not give Mr. Fischer a chance to be at the hearing.

Chair Sandberg said another option was to continue the public hearing.

Councilor Kraus said the owner could have his attorney represent him at the hearing. He said the owner typified an absentee landlord, and this was his problem.

Administrator Selig said Fischer properties had professional staff that could represent him.

Councilor Smith said it was not reasonable for the Town to have to schedule around the owner, even if he did not have professional staff.

The motion PASSED unanimously 8-0.

C. Scheduling of goal setting session for Council

Administrator Selig said he had asked consultant Winthrop Puffer to be available to assist the Council with this process, if that was what the Council wanted. He also noted that the Council already had a list of goals, and if anything, it made sense to whittle these goals down.

Chair Sandberg said Saturday, March 27th appeared to be a good day for Councilors to meet.

Councilor Kraus MOVED to schedule a goal setting meeting from 8:00 am to 12:00 pm on March 27th, 2004. The motion was SECONDED by Councilor Niman, and PASSED unanimously 8-0.

Councilor Kraus said he endorsed Administrator Selig's comment about the need to focus on important topics. He also said he didn't think a consultant was needed for this meeting.

Chair Sandberg asked what the consensus of the Council was on this. Other Council members agreed that a consultant was not needed, but Councilor Harris noted that the consultant had brought good things out in the past.

Councilor Grant said he hoped the Council would talk extensively about procedure and practices. He said that any problems he had had with the administrator were actually problems of the Council, noting the large number of goals that had already been set in two prior years, many of which had not yet been accomplished. He said the important thing to focus on at the retreat was to reducing the list of goals to the 2-3 most important ones that should be pursued.

Chair Sandberg said they would try to reflect this in the agenda.

Administrator Selig said it had been helpful to have the list of goals, because it gave some definition to what the Council was interested in, and the general way it would like to see certain issues dealt with. He said as items related to these goals came up, he was therefore able to deal with them more efficiently. He said it might be helpful for the Council to look at this list of goals and determine which should continue to be included,

and which they might simply want to develop position statement for that would provide some guidance.

- D. Set special meeting for March 29th regarding proposed Zoning revisions.

Chair Sandberg said he had talked with Administrator Selig and Planning Board Chair David Watt about dedicating some Council meetings solely to the Draft Zoning Ordinance, so careful consideration could be given to the proposed changes. He said a presentation would be given to the Council by the Planning Board and planning staff on March 29th.

Councilor Niman MOVED to schedule a Town Council meeting for March 29, 2004, for the sole purpose of discussing the proposed Zoning Ordinance. The motion was SECONDED by Councilor Kraus.

Councilor Smith urged that as many members of the Planning Board as possible attend this meeting, because he saw that the purpose of the initial meetings was not only to learn more about the text of the Zoning Ordinance, but also to learn about the variety of views that led to the changes to the ordinance.

Chair Sandberg said the Planning Board could decide how to proceed with this.

Councilor Grant noted that all Planning Board members had been invited to attend the meeting, and said most would, in fact, be attending. He also said the Board had discussed in some detail the way in which it would present the ordinance to the Council.

The motion PASSED unanimously 8-0.

- E. Other Business

Councilor Grant said a communication had been sent to boards and commissions indicating that reappointments would be made in May rather than in March, as had been the past custom. He said there was an opportunity for those who did not wish to serve beyond March to indicate this. He also noted that one of the resulting openings would be on the Planning Board.

Chair Sandberg said people would be encouraged to get applications in so the Council could review them at the April 5th meeting, noting this review could also be done at the April 14th meeting. He also asked Councilors to contemplate penciling in public hearings on the Zoning Ordinance for alternate weeks in April.

Councilor Kraus said from previous experience that something as comprehensive as the Zoning Ordinance warranted great attention, and other items than got pushed off.

Councilor Smith asked if Administrator Selig could get an initial report from legal counsel before the March 29th meeting concerning the role and authority of the Council in this process, because this was crucial information.

Administrator Selig said this information should be available by that date.

Councilor Grant said he was interested in Councilor Niman's comment about the north forty of Wagon Hill, and said he would like to discuss this. He asked whether it was appropriate for the economic development committee, or perhaps the Town Administrator to evaluate this. He also said a site walk by Councilors might be appropriate.

Councilor Niman said he would be more than happy to consider this at the Economic Development Committee, but first needed resolution on whether it was a viable piece of land for development.

Councilor Smith said he knew the land, and recommended researching the extent of wetlands extent, and also, keeping in mind the nature of that stretch of road. He noted that the NHDOT person had said that the more cuts that were put in, the more dangerous the road would be. Councilor Smith said that was a major concern for him. He noted this land was thrown into the Wagon Hill package.

Councilor Harris asked if the Conservation Commission would be sufficiently expert to look at the land on their behalf. She said she had walked the land, and some of the area, across from the Wagon Hill entrance, was worn down, but some parts of it were pretty nice.

Administrator Selig said it was first important to get a sense if there was any will to develop this piece of land. He said if there was not, it didn't make sense to focus more attention on it.

Councilor Kraus noted, for people watching the meeting, that the property under discussion was located on the other side Route 4, opposite Wagon Hill, and abutted Emery Farm.

Chair Sandberg said if there was a vision for this, the visioner should make a proposal. He said if the Conservation Commission said some portion of the property was developable, and the Economic Development committee then showed some interest in it, the question could then be asked whether there was the will to develop the parcel into a tax generating property. He said perhaps the Council could develop guidance on this issue at the goal setting meeting.

Councilor Smith noted that there was presently no one with wetlands expertise on the Conservation Commission. He also said it didn't make sense to decide if there was the will to develop the property if the inherent nature of the land made it unsuitable for development. He pointed out that if the Council decided to explore whether it did have the will, the Master Plan spoke a great deal about the vistas of the entryways to the Town on Route 4 and Route 108. He said he would need a lot of persuading to have the will to do any development there unless it was substantially set back from the road.

Chair Sandberg said Council members should do a site walk of the area.

Councilor Kraus said it would be useful for Councilors to have some maps which showed the boundaries of the property area.

Councilor Grant asked if Administrator Selig could have the US Natural Resource Conservation Service walk the property.

Councilor Niman said that given the Town's tax situation, if the setbacks were such that the property could be developed without destroying an entry into the Town, the Council would be remiss to not pursue explore this property as a possible economic asset.

XIII. Nonpublic Session (if required)

None

XIV. Adjourn

*Councilor Kraus **MOVED** to adjourn the meeting. The motion was **SECONDED** by Councilor Morong, and **PASSED** unanimously 8-0.*

The Meeting **ADJOURNED** at 9:05 PM.

Victoria Parmele, minutes taker