

DRAFT

**DURHAM TOWN COUNCIL
MONDAY, APRIL 5, 2004
DURHAM TOWN HALL -- COUNCIL CHAMBERS
7:00 PM**

MEMBERS PRESENT: Chair Malcolm Sandberg; Arthur Grant; Neil Niman;
Annmarie Harris; Gerald Needell; Van Asselt; Peter Smith
Mark Morong

MEMBERS ABSENT: John Kraus

OTHERS PRESENT: Town Administrator Todd Selig

I. Call to Order

II. Approval of Agenda

Councilor Grant MOVED to approve the Agenda. The motion was SECONDED by Councilor Morong.

Councilor Niman MOVED to amend the Agenda to have the opportunity to read the memo by Councilor Smith regarding changes in school funding proposed in Concord, under Other Business. The motion was SECONDED by Councilor Needell and PASSED unanimously.

The amended motion PASSED unanimously.

III Special Announcements

Chair Sandberg noted that there were several items on the Unanimous Consent Agenda that might be removed and opened for discussion. He said none of these items were public hearings, so if members of the public wished to speak about them, the time to do so was under Public Comments.

IV. Approval of Minutes

March 15, 2004

Page 1, under III, Swearing in of Council members: should read Chair Sandberg noted that Town Clerk Lorrie Pitt would swear in Councilors...". Also next paragraph in that section should read "...Chair Sandberg then welcomed the new Councilors to the table..."
Page 3, 3rd paragraph, should read "...Mrs. Nobel K. Peterson..."
Page 9, 2nd paragraph, should read: the motion PASSED unanimously 6-0.
Page 10, 6th paragraph, should read "Councilor Van Asselt asked who would pay for the costs associated with the project if the Town didn't initiate the project.
Page 11, 2nd paragraph, should read "...MOVED to adopt in principle..."

Also page 11, 7th paragraph, should read "...on the issue, explaining that.."
Page 12, 3rd full paragraph, should read "...the possibility of designating
Also page 12, 4th full paragraph should read "...for next year, it made sense to.."
Page 13, 4th paragraph, should read "He said the owner of the properties needed to be put on a short leash.."
Page 15, 3rd paragraph, should read "...to schedule around the owner, who was on a several month vacation in Arizona"
Page 17, 4th paragraph, should read "...the extent of wetlands and also keeping in mind..."

Councilor Van Asselt MOVED to approve the minutes. The motion was SECONDED by Councilor Grant.

Councilor Van Asselt MOVED to approve the amendments to the minutes. The motion was SECONDED by Councilor Harris, and PASSED 7-0-1, with Councilor Needell abstaining because he was not at the meeting.

The motion to approve the minutes as amended PASSED unanimously.

V. Report of Administrator

Administrator Selig said that the Integrated Solid Waste Management Advisory Committee had just published the April 2004 edition of its excellent *Down to Earth* Newsletter, and said residents should be receiving it shortly.

Administrator Selig noted that the Town Council would be holding a public hearing on April 12th concerning proposed revisions to the Zoning Ordinance. He said it was important that citizens of Durham become familiar with the proposed changes, noting they might have an impact on what citizens could do with their property.

Administrator Selig said the Fire Department would be holding burn training on Thursday, April 8th, at 9:00 am at the Vaas House on Spinney Lane.

Administrator Selig noted that a consultant was in the process of developing a study on the water supply issue, and said a report of findings should be available soon, copies of which would be provided to Council members. He also said the consultant would make a formal presentation on his findings in May.

Administrator Selig said there was a town in Germany that had expressed interest in "twinning" with the Town of Durham. He said the German town appeared to have a much larger metropolitan area than Durham, but said he was not especially interested in the idea at present because there were a lot of ongoing projects underway in Town. He asked Councilors to let him know if they had any interest in this idea.

Chair Sandberg asked Councilors if they disagreed with Administrator Selig's perspective, and no objections were expressed.

Administrator Selig noted that the Police Department had changed the style of hat that officers wore, and explained the reasons for this.

VI. Reports and Comments of Councilors

Parks and Recreation Committee – Councilor Needell said the next meeting would be April 15th, where there would be representatives from three playground manufacturers to present equipment and ideas for layout at the Woodridge Playground. He said the public was invited to attend the meeting to learn more about the proposed options.

Historic District Commission – Councilor Van Asselt said it was interesting to see how the commission was dealing with architectural standards for the district, including color, and also said it was thinking about expansion of the district.

Councilor Morong noted that the sendoff party for Linda Ekdahl would be held on Sunday, May 2nd from 2:00 to 5:00 pm at the Alumni Center. He said all members of the community were welcome to attend.

VII. Public Comments

Mary Miller, 118 Piscataqua Road explained that she had come to get an occupancy permit for a greenhouse on the gable end of the barn. She said she understood this was not the usual process to follow to get a permit, but said she wanted the issue to be very public. She gave a detailed presentation on the frustrating process she had gone through to try to get the permit, including the history of her dealings with Code Administrator Tom Johnson. She asked Councilors to read the material she had provided, and to give her a permit as soon as possible.

Administrator Selig said this was the first he had heard of the situation, and would look into it with Code Administrator Johnson.

Bill Skinner, 6 Bucks Hill Road explained that each year the Durham-Great Bay Rotary Club sponsored a student to study full-time in a country other than their own, to learn about language, culture, government processes, etc. He introduced Julie Silva, a Rotary youth exchange student from Brazil who was attending as a senior at the Oyster River High School.

Josh Jenkins, 7 Morgan Way said he was present regarding the stub of land on Fairchild Drive. He said his interest was personal, from contact with the owner of the property. He said he had looked over historical drawings and other paperwork and said discharging the stub would effectively isolate the land behind the stub, which would decrease its value and make it impossible for the owners to gain profits from any potential development in the future. He asked the Council to look at the original affidavits and recognize that the land was intended to be part of a future roadway and development.

Brian Maurer, 32 Young Drive said he had recently been accused of starting a fire on Young Drive, and as a result, he and his roommates were being evicted. He said he had not started the fire, and wanted to know why this had happened to him.

Chair Sandberg asked who was evicting him, and Mr. Maurer said Fischer Realtors was the landlord. Chair Sandberg said this appeared to be an issue between Mr. Maurer and the landlord, and the Council likely did not have any standing on this.

Mr. Maurer said he received a letter from the landlord suggesting he come to the Council meeting. He also said another concern was the stakes on Young Drive, which were blocking his driveway so he couldn't get to work on time. He said it was the stakes that were used in creating the fire.

David Garvey, Stonemark Management said he represented the Craig's regarding the stub issue. He said the Council appeared to be moving in a manner that was contrary to the public interest; contrary to the intent of the Master Plan, contrary to the Town's Zoning regulations – in 1980 and present, and contrary to the road regulations, both then and now. He read various passages from these regulations in support of his position.

He said that by cutting off access, and taking the stub off of the public role, even if the Craig's donated their land as park land at some point, there would be no access to it. He said there were plans all the way back to 1950 showing continuation of streets such as Fairchild Drive to adjoining land. Mr. Garvey said this was a huge issue, and the bottom line was that if the Council voted to deed the reserve strip away, it was voting against the public good and was also completing an illegal action. He said the action might also be immoral. He asked the Council not to take away the access, which was the only viable access, for any economic use, available to Mr. Craig's land.

Cathy Leach, 14 Fairchild Drive said she was an immediate abutter to the stub of land, and urged the Council to continue with what it had said was its intention regarding the stub, to release it from public servitude and deed the property over to the neighborhood association. She noted that the key issues regarding this situation had been talked about for over 20 years, and said the Planning Board had denied the use of the stub for a project based upon these issues.

She said the neighborhood had been consistent about this situation during this time, and said that in terms of the public good, they were the public interest, the people who lived right there, who didn't want more traffic and other impacts. She said the Planning Board had agreed about these issues, and also noted Stonemark Management had come before the Board and the Council and had talked about other access to their property. She said it was confusing to the neighborhood that now they were hearing the stub was the only viable access. She said she sympathized if there was a difficult family situation, but said it was not the neighborhood or the Town's responsibility to consider this.

Ms. Leach said the neighborhood association had officially filed with the State, and she provided a copy to Council members.

Jim Bolduc, Stonemark Management said they were not turned down by the Planning Board because the stub wasn't accessible. He said the project had been turned down by the Planning Board for other reasons that Stonemark wanted to address if the stub issue could be resolved.

He said there seemed to be confusion about a secondary access, and explained that they had discussed with the Planning Board and other Town officials the idea of having a one-way road from Fairchild Drive to Madbury Road to try to reduce the traffic issues. He said there had been an option to purchase other access to Madbury Road from Peter Ejarque, but Stonemark could only afford to purchase it if the project went through. He said at present they only had access through the stub, and if this was taken away, the property was landlocked, and this would represent a taking because the project would be dead.

Chair Sandberg said the Council had received copies of a deed, which referenced a right-of-way for pedestrians and vehicles which connected two parcels owned by the same owner. He asked Mr. Bolduc to clarify why that right-of-way did not constitute access.

Mr. Bolduc said the right-of-way was approximately 16 ft wide, and the Town had a 30 ft. requirement for the driveway.

Councilor Grant asked if Mr. Bolduc realized that Attorney Ryan had presented a second project proposal for the Craig Meadows development to the Planning Board, as part of a conceptual discussion, where he stated that the Ejarque right-of-way was held by the company and that the stub was no longer needed for access.

Attorney Bolduc explained, concerning Chair Sandberg's comment, that the property was worthless with a 16 ft. easement. Concerning Councilor Grant's comment, he said they had been trying to accommodate the Fairchild Drive people by trying not to use the stub and thereby eliminating the lawsuit. But he said the revised Zoning Ordinance had dropped the allowable density from 18 down to 10 units, which killed the viability of buying the easement.

Administrator Selig noted that the reserve strip had been maintained for 20 years, and asked why it wasn't developed within the 20-year time period.

Councilor Smith recommended removing this Item from the Unanimous Consent agenda so it could be discussed further by the Council. It was agreed this was the best way to proceed.

William Hall, Smith Park Lane said he had asked some years back that Davis Ave. be posted for no parking up by Adams Road because when cars parked on both sides of the road, plows and sanders couldn't get through, and many cars therefore couldn't get up the road. He said he was not able to prevail with the Council at that time, but subsequent to pointing this out, the ammonia got loose at the Whittemore Center, and the police had to evacuate the Davis Ave. area, with cars parked on both sides, so there was only one way in and out for the evacuation. He said he believed it was negligent on the Town's part to

not preserve a second access to that neighborhood, as good sense. He noted that in some other towns where this was an issue, they stabilized the ground with cement blocks so the fire truck could drive over a grassy area if necessary. He said he was disappointed that Chief Kurz or Chief O'Keefe hadn't pointed this out to the Council, because they were aware of the issue.

Mr. Hall also said the greenhouse occupancy permit issue was similar to some he had had in Durham, and provided details of his dealings with Town staff concerning these issues. He also pointed out that vehicles were still parking in the fire lane at the Whittemore Center, and the Field House was also completely blocked. He said the full time fire employees who were paid to go to those events should be doing a much better job of enforcing the no parking restrictions for fire lanes.

Laura Jean Butterfield read a prepared statement regarding this issue. She also read a letter from Susan Craig Hastings dated April 3, 2004.

Councilor Smith MOVED to extend the Public Comment period at the meeting. Councilor Needell SECONDED the motion, and it PASSED unanimously.

Richard Kelly, Stagecoach Road requested that the water supply study be made available to the public when it was completed.

Marjorie Wolfson, 12 Fairchild Drive said she was very disappointed in the Council's decision to move the stub decision from the Unanimous Consent agenda.

Chair Sandberg clarified that Council members had the right to ask that a Unanimous Consent agenda item be removed simply for the purpose of discussion, but this did not mean the issue was not being removed entirely from the evening's agenda.

Administrator Selig noted that five additional letters regarding the stub issue had been received by the Town.

VIII. Unanimous Consent Agenda

Items A, F, G and H were removed from the Unanimous Consent Agenda, so there could be separate discussion on each of them.

- B. Shall the Town Council authorize the award of a bid for the purchase of a heavy duty, four-wheel drive 2.7 cubic yard front-end loader with front snowplow attachment as requested by the Department of Public Works and recommended by the Town Administrator?**
- C. Shall the Town Council authorize the award of a bid for the sale of surplus equipment (1986 Caterpillar road grader) as requested by the Department of Public Works and recommended by the Town Administrator?**

- D. Shall the Town Council approve the water and sewer warrant for spring 2004 and authorize the Town Administrator to sign said warrant?**
- E. Shall the Town Council approve an abatement and refund for 2003 water and sewer billings for 30 Mill Road and authorize the Town Administrator to sign said abatement?**

Councilor Smith MOVED to approve Unanimous Consent Agenda Items VIII B, C, D, and E. The motion was SECONDED by Councilor Harris, and PASSED unanimously.

- A. Resolution #2004-09: Establishing the compensation for non-bargaining unit employees for FY 2004**

Councilor Niman said he had hoped to have a conversation about setting this compensation, noting the Council had met in nonpublic session for all the other employee groups in Town. He said he would have appreciated having the opportunity to provide input on this process, especially given the change toward the merit system, which he endorsed. He asked the Town Administrator to describe generally when he decided on a merit system, and how the evaluation process took place.

Administrator Selig explained that during the annual budget process he had recommended funding that could be utilized as wage increases for these employees. He said historically, Towns didn't do a good job of evaluating their employees, and one way they got around this was by giving all employees the same increase. He said there were positive and negative aspects to this.

Administrator Selig said that after being in Durham for a number of years, he had decided the Town could differentiate between different levels of performance, because the annual evaluation process allowed for this. He said he was pleased to report that all of the non-unionized employees were evaluated as being satisfactory, which went a long way, because Durham brought a high standard to the evaluation process.

He said this year he had decided to move to a more of a performance based system, and the question was then to work within the 2.5 percent pool of money that was available, and how to gauge what type of increase should go along with the different evaluation categories. He said the plan that was developed administratively was that those employees receiving a below satisfactory rating would not receive a pay increase; those receiving satisfactory rating would receive a 3% increase; those receiving an above average rating would receive a 3.75% increase, and those receiving an exceptional/outstanding rating would receive a 4.5% increase. He said there was one employee who received a 5% increase because of what was considered to be exceptional service beyond outstanding. Administrator Selig said the evaluation process, which had existed for the past three years, involved setting specific goals at the beginning of the year, and rating

employees at the end of the year based on this. He described various criteria for evaluating performance, and said deficiencies were used to develop new goals for the following year. He also said it was his practice to not wait until the end of the year to discuss deficiencies, but rather to do this on an on-going basis.

Administrator Selig also noted there was a compensation program that was required by the administrative code and the personnel plan, where classifications were established for employees along with the range of salaries to hire people in those classifications. He explained that the Town had looked at 20 other municipalities comparable to Durham in order to establish this range. He noted that a deficiency in the process was that in order for people to advance, the Town relied on wage increases in Durham outperforming those of other communities, and said frequently that was not the case; they were matching what other Towns were giving. He said it was therefore sometimes challenging for employees to advance within that scale. Administrator Selig provided additional details about this process.

Councilor Niman explained that he had drafted goals related to the fact that he would like to use merit pay to change the culture in town government to work more efficiently, and to be more careful with taxpayer dollars. He asked whether that evening, or perhaps at another time, the Council could have a discussion on this.

Councilor Niman read a prepared statement of draft goals he had developed. He noted that private companies had the discipline of the marketplace, but in the public sector, there was only the willingness of the taxpayers to open their wallets a bit further. He said one of the goals of town employees should be to look for ways to improve the operations of town government so the Town could move toward its goal of cost reduction.

Chair Sandberg said this issue might be more appropriate to bring up during Agenda Item VIII G.

Council Van Asselt MOVED to adopt Resolution #2004-09: Establishing the compensation for non-bargaining unit employees for FY 2004. The motion was SECONDED by Councilor Morong.

Councilor Van Asselt said that as he read the financial numbers in the Budget and saw that the Town didn't use all of the money that was budgeted for salaries for these employees.

Administrator Selig said this observation was accurate, and provided some explanation for this.

The motion PASSED unanimously.

- F. Shall the Town Council approve the release and discharge from public servitude the so-called "stub" of land located off Fairchild Drive, approve a**

deed with no covenants to the Fairchild Neighborhood Association and authorize the Town Administrator to sign said deed?

Councilor Smith explained that this matter should not be passed as part of the Unanimous Consent agenda, because it was a hotly contested issue, and should therefore be handled in a manner that allowed open discussion. He said there were two steps to the process that needed to be considered: 1) whether to discharge the stub; and 2) whether to enter into a contract with the neighborhood association concerning the stub.

Councilor Smith said the first step had nothing to do with the association, and said the second item was a separate matter, involving public policy. He noted that different ideas had been offered as to how to handle this second step, and provided details about this. He said the first question to ask was whether appropriate action had been taken to bring this association into existence.

Administrator Selig said he had determined that the appropriate papers had been filed with the State, so the association was now a legal entity. He also said Cathy Leach, representing the association, had brought these documents to the Council meeting.

Councilor Smith said the fact that the filing had taken place did not indicate in and of itself exactly how many of the neighbors were involved in this association. He explained that the reason he was asking questions about this was because in making a policy decision concerning deeding the stub over to the association, the Council needed to know how much support there was for this.

Administrator Selig said he had discussed this with Ms. Leach, who said the formal association was in fact representative of the larger community. Mr. Selig said he didn't doubt this, having seen the number of people who had demonstrated their involvement in the issue, over time, including that evening.

Councilor Smith said he would speak to the merits of the issue later.

Councilor Grant MOVED that the Durham Town Council, in accordance with RSA 231:51, hereby approves the release and discharge from all public servitude the so-called "stub" of land located off Fairchild Drive, further described in the deed as follows:

"A certain tract or parcel of land situated in Durham, County of Strafford, State of New Hampshire, and shown on a plan entitled "Subdivision Plan, Durham, New Hampshire, for D.J. Chase Associates," Kenneth E. Moore and Bruce G. Staples, land surveyors, March 1, 1980, and recorded in the Strafford County Registry of Deeds, and more particularly described as follows:

Beginning at a point on the radius of the cul-de-sac at the termination of Fairchild Drive, so-called, where the westerly boundary of Lot 21 intersects with said cul-de-sac, then running North 250 41' 00" East along said Lot 21 a distance of 20.61 feet to a point of land now or formerly of Funkhouser; then

turning and running along said land of Funkhouser North 290 Ole 04" West a distance of 6.23 feet and North 220 599 10" West a distance of 59.79 feet to a point; then turning and running South 25~ 41' 00" West along Common Area "B" a distance of 63.71 feet to a point at Lot 22, along an arc of an inverted curve to the right, having a radius of 65 feet, to the point of beginning."

The motion was SECONDED by Councilor Niman.

Councilor Van Asselt recused himself from the discussion.

Councilor Grant said it was difficult to discuss comments made by the audience concerning the stub issue without getting into discussion of issues regarding development of the property to which the stub was connected. He said he did not think the Council meeting was a proper venue for that kind of discussion, but noted that if there were questions pertaining to this, he and Councilor Harris were available to answer them.

Councilor Needell said he had read through the minutes of the previous Council discussion on this issue, and said it appeared that after 20 years of non-use of the stub, the land had become available for release. He asked for clarification on this.

Administrator Selig said the Town Attorney had confirmed this. After a 20-year period when the land had to remain in public servitude, the Town was now free to do with it as it wished. He said what made the issue confusing was that testimony on both sides was very subjective, and he urged the Council to take one course of action or another. He provided details on these various courses of action.

Administrator Selig said what was before the Council was a policy issue and he encouraged Council members, if they were not comfortable, that there was a long record of information, and clarification on numerous points. He said the legal issues involved here had been addressed by the Town Attorney, so the Council did have the information it needed to make a policy decision.

Councilor Needell said there was no question what the original intent of the stub was, but said this intent no longer appeared to be relevant to the discussion. He asked if there was any guiding principle regarding the access issue, noting there was a right-of-way that might or might not be sufficient for certain uses, and there were also stated opportunities for purchase of rights of way on other properties. Councilor Needell said he was looking for reassurance that it was within the Council's purview to restrict this access.

Chair Sandberg said what they did know was that the original deed was signed in 1933, when the right-of-way was agreed to, and met the requirements of the owners at that time. He said they also knew that policy and planning documents at that time spoke of the possibility of using the stub in the future, but he said he didn't believe anything definitive on this was stated.

Administrator Selig said the March 2004 letter from the Town Attorney indicated that he did not feel releasing the stub was a taking.

Councilor Smith MOVED to release the confidentiality of the Attorney letter for general public consumption. Councilor Morong SECONDED the motion, and it PASSED unanimously 7-0.

Councilor Smith said Administrator Selig was correct that this issue was fraught with strongly held, disparate issues. He also noted Councilors could not make decisions based on personal feelings. He said the March 12th letter addressed several issues, one of which was when the 20-year period began to run. He said the Town Attorney said it began to run at the time the stub was shown on the plan approved by the Planning Board, and said he saw no legal reason to question that opinion. He said the premise here was therefore that 20 years had in fact passed.

Councilor Smith said the second significant issue was whether the property was in fact landlocked without the stub, and noted he agreed with the Town Attorney's legal analysis that had determined that the property was not in fact landlocked. He said that the property was not landlocked because it was deeded with an easement that permitted pedestrians and vehicles. He said that at the time the property was purchased, it was known that the purchase included an easement of a particular size and length. Councilor Smith said this didn't mean that having an easement allowed a super highway to be built there, but said there were a number of things that could be done with this land.

Councilor Smith said he fully agreed with the Town Attorney that the Council was in no respect engaging in a taking. He said that releasing the stub would not mean the Town was taking away any legal rights, but simply meant it had a piece of land it wanted to dispose of.

Councilor Morong said he had supported the first motion to release the stub, from the outset but did not support the second motion, to deed the stub to the neighborhood association. He said he did not think it would serve the public interest to give the land to the neighborhood, and would prefer to keep the stub as the Town's options open on the land. He said he didn't see why, as the Town Attorney's statement had indicated, the Town needed to divest itself of the property.

Administrator Selig clarified that this statement was part of a response from the Attorney to his questions, and said these questions were based on the perceived direction the Council had given him.

Councilor Niman said he hadn't planned to comment on this issue until he had heard a reference in one of the letters to "ill intent" on the part of Council members. He said he did not know the people who had made the accusation, and was troubled by it. He also said he wanted to respond to Steven Craig, and said Mr. Craig's notion of fairness appeared to be different than his own.

Councilor Niman said the reason he would vote to discharge the stub was because although the intent originally was to develop it, that right no longer existed. He said that now if the right to develop it were approved, something would be taken from the existing neighborhood. He noted that appraisals had indicated that property values would go down in the surrounding neighborhood if the stub were released. He said to him, if a taking was occurring, something was being taken away from the people who already lived in the neighborhood. Councilor Niman said he had yet to hear why this was considered good public policy, to destroy a neighborhood in order to maximize the economic value of a piece of land. He said in the absence of that, he intended to vote to discharge the stub.

Councilor Grant said it was very significant that the request following a subdivision application that was denied. He said after this denial, the applicant chose to take the Town and Planning Board to Court. He said the issues raised in court related to public safety, covenants in the deeds, and the development of the larger Fairchild Drive area. He said there was more that related to public policy in these issues than in all other issues raised with regard to the stub of land.

Councilor Morong said he agreed with Councilor Niman, and said it was important to understand that the Council was free to do with the stub as it wished. He said if the time hadn't passed, it would be a different story. Councilor Morong noted the testimony from Attorney Ryan and others that the only way to make the Craig property economically viable was to have a through road, and said he personally did not want to see such a through road.

Councilor Smith said it was important to make it clear that a conclusion about the stub issue was not reached by the Court. He said he did not want Council members to vote based at least in part on thinking that the Court had supported the Planning Board on this issue.

The motion that the Durham Town Council, in accordance with RSA 231:51, hereby approves the release and discharge from all public servitude the so-called "stub" of land located off Fairchild Drive, further described in Council communication dated April 5th, 2004, PASSED unanimously.

Councilor Niman MOVED that the Durham Town Council hereby approves the deed, with restrictions, to the Fairchild Neighborhood Association for the so-called "stub" of land located off Fairchild Drive, and authorizes the Town Administrator to sign said deed, further described in the Council communication of April 5th, 2004. The motion was SECONDED by Councilor Grant.

Councilor Niman noted he was the Councilor who had suggested deeding the stub to the neighborhood, because it seemed it could make better use of the land than the Town.

Councilor Needell said an earlier discussion had suggested that the abutters might be the likely parties to get the stub land, and asked why Stonemark Management, as an abutter, was not included in discussions about this.

Administrator Selig explained that the stub had come to be considered as a roadway, where typically if discontinued by the Town, one half would go to the abutter on one side of the road, and the other half would go to the abutter on the other side, with the boundary line drawn down the middle of the road. He noted Attorney Ryan had said there were three abutters, but the Town Attorney said this situation was not the same thing as an easement situation, so the Town was free to do with the land what it wanted. Administrator Selig said that because it was the clear goal of the Council that the road would not be part of future development, the Town had spoken exclusively with abutters on either side of the stub, who said they preferred that the land be deeded to an association.

Councilor Morong said he would vote against this motion because he wanted to keep the Town's options open. He assured Councilor Niman that the Town hadn't spent much money maintaining the stub over the years.

Chair said when the Fairchild Drive subdivision was created, there were two common parcels, A and B, and asked if the stub abutted either of these parcels. He also asked who owned the common parcels.

Administrator Selig said it was his understanding that the common parcels were supposed to have gone to the neighborhood association, but the association never formed. He said a tax bill was not generated for the parcels, but instead the property owners in the development saw an increase in their property values because there was common space next door, which was reflected in higher taxes. He said he believed, now that the association was formed, that it might take charge over those lands.

Chair Sandberg asked if the newly formed association might suddenly be faced with a tax bill for the parcels.

Administrator Selig said the Town Assessor had said this would not happen, and the parcels would continue to be common land for the benefit of all properties in the neighborhood, while properties owners paid slightly higher taxes because of this land. It was clarified that this same arrangement would exist concerning the stub property.

Councilor Smith said that for this second motion, there were two questions to resolve: was this the correct policy to follow, and if yes, what if any specific restrictions should be placed in the deed. He noted he had requested there be a public hearing on these matters, but said in this absence of this, he was prepared to proceed with the motion, although with some reluctance. He said the reason for this was that there had been a lot of public discussion on the issues involved, and the various views had been expressed.

Councilor Smith said Councilor Morong's position was not a frivolous one, but said he disagreed with it because he believed what the Town was doing was a matter of public policy, even though releasing the stub to the neighborhood association would not benefit the whole community to the same degree. He said the continued existence of this very stable neighborhood was an appropriate public purpose for the Council to be contributing to. He also noted that while the land in question was very small, it could be used for passive recreational uses, while allowing the neighborhood to continue to thrive. He said this didn't mean there would be no more development in the Town, but did mean that development should be consistent with the positive values of existing neighborhoods.

Councilor Smith noted that the deed restricted the land to passive recreational uses, and access for motor vehicles was prohibited. He noted the Town Attorney asked if further prohibitions were desired, including prohibiting structures.

Councilor Morong said it seemed like an opportunity for this land to benefit the whole community. He said he didn't think the Town was in the business of giving away land, and said such a precedent should be set here.

There was discussion about the size of the property, and it was agreed that the parcel was quite small.

Administrator Selig noted there were some non-substantive changes to the meets and bounds in the deed, and read through these.

Councilor Grant said the suggestion about prohibiting structures was appropriate. There was discussion about this.

Administrator Selig said the Council was essentially taking the position that the neighborhood was the best judge of the future use of the stub land, and said it was therefore not an issue for the Town to consider.

Councilor Harris asked if a playground area with slides and swings was considered to be passive recreation, and noted that such an area involved structures. There was discussion about this.

Chair Sandberg noted that the motion was to transfer the land described in the deed as it existed, but said the amendments made by Administrator Selig would also be included.

Councilor Needell said that if the Town kept the land, this might allow for the possibility of some intrusion into the neighborhood in the future. He said that deeding the land to the neighborhood was a cleaner way to go.

The motion PASSED 6-1, with Councilor Morong voting against the motion.

Chair Sandberg called for a 5-minute recess at 9:20 PM.

The meeting reconvened at 9:25 PM

Councilor Grant MOVED to amend the agenda to move to Item X A, and then to Item X B. The motion was SECONDED by Councilor Morong, and PASSED unanimously.

F. Shall the Town Council adopt the Core Purpose, Values and Goals Statement for 2004 as established during its visioning session on March 27, 2004?

This Item was postponed.

G. Shall the Town Council Adopt a Land Conservation Policy as recommended by the Town Administrator?

This Item was postponed.

IX Unfinished Business

X. New Business

A. Meet with citizen candidates and begin process for appointing members to the remaining Town boards, commissions and committees

Administrator Selig reviewed the openings that still existed for some of these committees.

Chair Sandberg asked the individuals present who were running for the various boards and committees to introduce themselves to the Council and the public.

The following citizens said they were interested in serving on the Conservation Commission: **Tim Butler; Neil Ferris; Beryl Harper; Jim Hellen.** Each person described his/her background as it related to the purpose of the Conservation Commission.

Councilor Harris noted that if any of these highly qualified people wanted to consider serving on alternative boards, this would be appropriate.

Catherine Leach said she was interested in serving on the Historic District Commission, and also said she had an interest in serving on the library committee. She also noted she had significant work experience in the parks and recreation field.

Kevin Webb said he was currently an alternate on the Planning Board, and wanted to move up to become a full member of the Board. He noted he was the Board's liaison with the Conservation Commission, and said he was very pleased to see so many candidates for the position available on the commission.

Richard Kelley said he wanted very much to serve the community, and as an engineer was qualified to serve on either the Planning Board or the ZBA. He said

he would also consider serving as the Town's representative to the Strafford Regional Planning Commission.

Councilor Grant noted for the viewing audience that two alternate positions on the Planning Board would not be filled based on the current number of applications. He said having alternates was critical in order to have a quorum at Board meetings.

Chair Sandberg provided the names of other citizens who were applying to various Town boards and committees, but were not present at the Council meeting.

Megan Brady said she would like to serve on the Rental Housing Committee. She explained that she wanted to help open up communication between landlords and tenants, and felt that if she were on the Commission, she would be able to be more of a resource for her peers.

Councilor Smith asked her if she was presently a tenant in Durham. She said she had been a tenant, but was not one now. Councilors discussed whether it was appropriate to allow someone who did not actually live in Durham to serve on the committee. Administrator Selig provided details on why this was allowable.

Chair Sandberg said they would make the appointments to the various boards and committees at the next regularly scheduled Council meeting.

B. Ordinance #2004-01 (Public Hearing): Amending Chapter 153 "Vehicles and Traffic" of the Town of Durham Code by prohibiting on-street parking on Young Drive

Administrator Selig provided detailed background information on this issues that lead to the development of the ordinance. He noted that at the previous Council meeting where this was discussed, he had suggested that the Council defer this item to allow some proactive efforts by the owner, but the Council felt they should move on to the public hearing process, and get a sense of the public's views.

Councilor Smith MOVED to open the public hearing on Ordinance #2004-01 Amending Chapter 153 "Vehicles and Traffic" of the Town of Durham Code by prohibiting street parking on the north and south sides of Young Drive. The motion was SECONDED by Councilor Grant.

Chair Sandberg asked if there were members of the public who wished to speak about the proposed ordinance. There were no members of the public who wished to speak.

Attorney Hantz said she represented Fischer properties, and said her client had asked to continue the public hearing on this ordinance so he could be there, and

she made the request again to continue the hearing. She also said that because of statements made by some Council members at a previous meeting, some of which were quoted in *Foster's Daily Democrat* and represented pre-judgments, she would ask those who had made those statements to recuse themselves.

Attorney Hantz said she was aware of the history of landlord tenant issues in Durham, but said this present issue was recent in origin, and in a very interesting way. She said it was important that the Council understand this, and provided detailed information on how events had unfolded.

She noted that as part of this unfolding, the owner instituted a parking permit program, which was now in place, in order to identify cars that did not belong, and said that tenants were informed that they were responsible for guests. She said things were proceeding well, until the owner got a violation notice from Code Administrator Johnson.

Attorney Hantz said the claim was that the cars were illegal, there were too many curb cuts on the property, and the cars needed to be removed. She said the owner then determined that the cars in question were mostly in the Town right-of-way, not on his client's property, but said he was not allowed to tow them. She described events that unfolded after this time, and also noted other issues that came up, including on site parking, which was not pertinent to the proposed ordinance.

She explained that the owner was trying to reconfigure the parking on site, and said that this issue, along with the trash issue and other issues, was separate from the one the public hearing was about. She said from her client's perspective, these other issues had affected the perception of the need for the proposed ordinance.

She said there had been 70 emergency calls to the owner's property in the past few years, and said none of the entries in logs of the incidents indicated that access had been a problem. She said the owner had never been informed of any access problems.

Chair Sandberg asked how the various issues raised by Attorney Hantz were pertinent to the proposed ordinance.

Attorney Hantz stated again that these other issues, in her client's perspective, were where the ordinance had come from. She said emergency access hadn't been an issue. She said her client had been looking to find areas of common concern on student issues with the Town and the University, and would like to see that continue. She said the proposed ordinance seemed premature and overly broad.

She suggested there were other ways to address the access problem, if one existed, and suggested parallel parking, along with other options. She said that banning parking caused problems for the owner, in terms of allowing maintenance

of the properties and deliveries to them. She also said that banning parking inconvenienced students and their parents.

Attorney Hantz asked for a continuance so the owner could come before the Council, and asked that there be a continuation of voluntary means to address the parking problems that had only recently come up. She said more time was needed to see some progress. She said a parking ban was not needed on both sides of Young Drive in order to provide emergency access.

Councilor Needell MOVED to amend the Agenda, and continue the meeting for another 15 minutes, until 10:30 pm. The motion was SECONDED by Councilor Smith and PASSED unanimously.

Councilor Smith asked Attorney Hantz to indicate which Councilors she felt should recuse themselves and the reasons why.

Attorney Hantz read and described comments made by Councilors Smith and Grant at previous Council meetings. She said she had no way of knowing which other individuals described in the newspaper article had made comments.

Councilor Smith questioned what the legal grounds were for asking him and Councilor Grant to recuse themselves. He first pointed out that the request for recusals was not made before the public hearing was opened, so was not valid. He also said he would like to state that this was the single most frivolous objection he had heard in 2004, and perhaps before then as well.

Councilor Smith said that every member of the Council was sitting on this matter as a member of a political body, to make political, public policy judgments, and was not in any way a quasi-judicial board. He said Council members had also sorts of views, and noted he had all sorts of views on Young Drive that had developed over the years because of problems there. Councilor Smith stated that there was no basis whatsoever for asking Council members sitting in this capacity to recuse themselves.

Councilor Grant said he agreed with Councilor Smith that there was no basis for the request for recusal.

Brian Maurer, 32 Young Drive said until recently there had been no problems with the parking on Young Drive, and said it was better to see cars parked there than to have people getting drunk and driving home. He said the street was a dead end, and if people didn't like the conditions there, they didn't have to drive down the road. He said Durham was a college town, and this kind of parking was to be expected.

Carolyn Richer, Fischer Agency said the agency had been working diligently to try to resolve problems. She said the proposed ordinance represented an undue hardship to the students, parents and anyone who wanted to go down Young

Drive. She said there had been some improvements, and wanted to work with the Town on the problems. She said it was premature to close off the road, and would be better to change the situation in small measures. She said there had been no notification regarding safety issues, and said if it were a safety issue, she would be the first to say close the street off. She said if it was just an issue of cleaning up the parking, posted signs should be used. She also suggested there should be parallel parking available, so there would be at least some parking on the street.

Chair Sandberg asked if there had been times when access to the road had been a problem for fire vehicles or ambulances.

Chief O'Keefe said he would paint a much different picture than the one painted by Attorney Hantz. He said crowding of pedestrians on the street on the weekend, when many people were drinking, combined with cars, and fires, did create an access problem. He said there were times they could not get down the street.

There was discussion about the specifics of parking on the road, where it was allowed and where it was not, and how this was determined. Chief Kurz said one thing he didn't want to get involved with was finger pointing, and said he was more interested in solving the larger problems with quality of life for Bayview. He provided details of the problem solving approach that was developed, and noted the parking permit idea was included.

Councilor Harris noted that the access issue was especially bad the further in one went down the road.

Chief O'Keefe explained that the Fire Department would need to use the road at the very time when there would be a mass exodus of people and cars, which made the situation very dangerous, especially because the streetlights were continuing being taken out.

Councilor Morong said he thought he had heard Chair Sandberg ask if Chief O'Keefe had reported any access problems to the landlord, and asked Chief O'Keefe about this. There was discussion about this matter

Councilor Smith asked Chiefs Kurz and O'Keefe what their views were as to what the Council should do concerning the proposed ordinance for Young Drive.

Chief O'Keefe said he recommended prohibiting parking on both sides. He said that based on experience there, allowing parking made it very difficult to get down the road, delayed responses to emergency situations, created a hazard for pedestrians and vehicles exiting the area. He noted that the Fire Department would tend to be there under the worst conditions.

Chief Kurz said he would take an alternate view, which might label him as foolhardy. He first noted that the Police Department didn't have the same kinds of access issues that the Fire Department was faced with. He said the police

department was trying to work with the Fischer agency, and suggested there might be room for some kind of compromise, and said he would like to provide the opportunity for it to succeed. He suggested that the ordinance be amended to read that there would be no parking on the left/south side of Young Drive, 605 ft. from the intersection of Dover Road.

Chief Kurz said that if that didn't work, they could always go back to the more conservative approach reflected in the present ordinance. He noted that it was usually residents of a neighborhood who brought forward a request for a parking ordinance, and said it was more problematic when none of the residents had brought such a request forward.

Chair Sandberg asked what he would recommend to solve the problems Chief O'Keefe described.

Chief O'Keefe said he thought the approach suggested by Chief Kurz would still result in a problem, but might be a good start, and suggested that if the Council was considering it, the ban on parking should extend 30 feet beyond the fire hydrant.

Administrator Selig said it would be a good idea to hear from Public Works Director Mike Lynch on this because of the issues his department faced concerning this street and the proposed ordinance.

Councilor Harris MOVED to extend the meeting for an additional 15 minutes. The motion was SECONDED by Councilor Niman, and PASSED 7-1, with Councilor Grant voting against the motion.

It was clarified that there was currently no parking allowed on the right side of the street, and this revised proposal would not change this, but would deal with parking on the left side of the street, and would allow parallel parking only on the left beyond the fire hydrant.

Councilor Harris pointed out that the worst area was actually further up on the left and ride hand sides of the road.

Public Works Director Mike Lynch said the job of Public Works was to remove debris from the area, often in the middle of the night, and said doing so had become dangerous at times, especially because the street lights were not always working. He noted that on two occasions, his crew was verbally accosted when they tried to open up the right-of-way, and also said there were problems with vandalism, concerning signs, etc.

Richard Kelley said he had heard it said earlier that given the fact that Durham was a college town, this kind of thing was to be expected. He said he had also heard that the problems on Young Drive had sometimes put the public in a dangerous situation, when emergency response vehicles couldn't get down the

road, and said Town staff also appeared to be endangered because of the present situation.

He said no college town should have to accept this, and said that as a resident of community, the situation was unacceptable.

Code Administrator Johnson clarification on the history of the properties, and the parking situation. He noted that the Planning Board had originally required that a sidewalk be installed on at least one side of the road, but this was never done. He also noted that Fischer properties never appealed his administrative decision to the ZBA, and noted recent questions before the ZBA and also the State Fire Marshall's office concerning the classification of the properties. Mr. Johnson said he recommended no parking for both sides, which would be easier to enforce, suggested that the property owner could seek remedies elsewhere.

Councilor Smith asked whose responsibility it was under Planning Board actions, to build the sidewalk, and Mr. Johnson said the property owner was responsible for this.

Councilor Van Asselt said he respected that Chief Kurz wanted to make things better, and Attorney Hantz said things were getting better, yet there were two Councilors that had been around longer than him who said things hadn't changed. He asked Attorney Hantz when things would be getting better.

Attorney Hantz provided details on progress that was being made.

Administrator Selig read a letter from Gwendolyn Howard which said that approving the ordinance would be doing a service to the adjacent residential neighborhood, because it would allow a faster response to the inevitable disturbances coming from these properties.

Councilor Smith asked Chief Kurz and Chief O'Keefe if the parking were banned whether it would be easier or more difficult to get compliance.

Chief Kurz agreed it would be easier if parking was simply banned on both sides of the street, but said this approach was not realistic.

Chief O'Keefe said he said was not opposed to alternatives, as long as there was some place to put students when they were existing the area, such a sidewalk. He said at present everything was funneled onto the road, which made the situation more dangerous.

Councilor Morong said the problem appeared to be with the number of cars trying to get out when there was an emergency, along with people milling around, when fire trucks came down the street.

Chief O'Keefe said it was a compounded problem, and said he agreed that the majority of situations occurred further down the road.

Councilor Morong asked if parking in the yards was reconfigured, if would this help the situation. There was discussion about this with Attorney Hantz.

Administrator Selig noted the various excuses made by the attorney as to why her client couldn't get at solving the parking problems, and said this was the reason why the Council needed to move forward on this issue. He said he was more inclined now than he had been when he brought this issue forward some weeks back to proceed with the ordinance. He said these kinds of deferrals and excuses had caused the Town to have to look much harder at the problems on Young Drive, and recommended that the Council approve the ordinance.

Attorney Hantz said her arguments were not offered as excuses, but were offered as reality. She said they could not reconfigure the parking until the weather improved, and could not enforce the parking situation in the Town right-of-way, but said they could communicate with the students and ask them to comply with the Town's wishes, and their own leases. She said no parking on the right side would solve half the problem, and there could be parallel parking on the left side to solve the rest of the problem. She said banning parking would create more problems than it solved.

Councilor Harris MOVED to close the public hearing. Councilor Smith SECONDED the motion, and it PASSED unanimously.

Councilor Grant MOVED to ADOPT Ordinance #2004-01 (as presented) 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. The motion was SECONDED by Councilor Niman.

Councilor Smith MOVED to amend language on page 5, in the right hand column Location of Prohibited Parking, so it would simply say, "entire length of roadway" instead of "from right-of-way, and would also say "Both" instead of : North and South" in the middle column. Councilor Harris SECONDED the motion, and it PASSED 7-1, with Councilor Morong voting against the motion.

Councilor Morong MOVED to postpone final deliberation on the proposed ordinance, and consider the proposal made by Chief Kurz.

Councilor Morong said he felt that passing the ordinance quickly at such a later hour was not appropriate.

Councilor Needell said the Council should consider the potential impact this ordinance would have on the residents of Bayview Road.

The motion was SECONDED by Councilor Needell, and FAILED 3-5, with Councilor Morong, Councilor Needell, and Councilor Grant voting for the motion.

Councilor Smith said how delivery vehicles would be handled needed to be considered.

Chief Kurz said delivery vehicles would be exempt from the ordinance.

Councilor Morong said he was concerned that other locations in Town where parking on both sides of the street was banned had been requested by neighbors who didn't want this parking. He said the Town might be setting itself up for problems by singling out Young Drive.

Councilor Morong MOVED to amend the original motion, and to ban parking starting at Route 108, and 635 ft. down the road on the left, and all the way down the road on the right. The motion was SECONDED by Councilor Needell.

Councilor Morong said this compromise suggested by Chief Kurz seemed to be reasonable, and said if the Council didn't try to compromise in some way on this, it was opening itself up to more abuse of public officials.

Councilor Harris said that Young Drive was a dead end street, and represented a safety issue. She said there needed to be fewer cars on this street, and said that banning parking on both sides of the street would help with this. She also noted that the situation had gotten worse and worse on Young Drive.

Councilor Niman said a compelling argument had been made by Chief O'Keefe, and suggested that if there were a sidewalk on the street, he would not be in favor of the ordinance. But he said there was no sidewalk there, so the Town had to do what it could to improve the safety of the area.

Chair Sandberg said it was fair to say that if sidewalks were to appear in this area, the ordinance might be reconsidered.

The motion to amend Councilor Morong's motion FAILED 2-6, with Councilor Morong and Councilor Needell voting for the motion.

Councilor Smith said what convinced him of the importance of passing the ordinance as written was the presentation on behalf of the landlord. He said he concurred with Administrator Selig that based on the presentation he had heard that evening, he would wonder why anybody would have the slightest concern about what was going on at Young Drive. But he said this was not the reality of the situation, and noted that if that reality changed, he would be happy to modify the ordinance.

Councilor Needell explained that he was voting against this because of possible negative impacts on the surrounding neighborhood that could result from it.

Councilor Niman said had raised that concern as well at a previous meeting, but had spoken to someone who lived on Bayview Road who was in favor of the proposed ordinance.

Administrator Selig said if that did become a problem, they could, as they had done in other neighborhoods where parking had migrated, address this through an ordinance for permit parking.

The motion to ADOPT Ordinance #2004-01 as presented PASSED 6-2, with Councilor Needell and Councilor Morong voting against it.

Councilor Grant MOVED to postpone deliberation on Items VIII A, G, and H, as well as the discussion on school funding until the next regularly scheduled meeting. The motion was SECONDED by Councilor Smith, and PASSED unanimously.

XI. Adjourn

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

The meeting ADJOURNED at 11:15 PM.

Victoria Parmele, minutes taker