

DRAFT

DURHAM TOWN COUNCIL MINUTES MONDAY, APRIL 19, 2004 DURHAM TOWN HALL -- COUNCIL CHAMBERS 6:30 PM

MEMBERS PRESENT: Chair Malcolm Sandberg; Arthur Grant; John Kraus; Gerald Needell; Peter Smith; Mark Morong; Karl Van Asselt (arrived at 6:40 PM); Neil Niman; Annmarie Harris (arrived at 6:50 PM)

MEMBERS ABSENT: None

OTHERS PRESENT: Business Manager Paul Beaudoin; Fire Chief Ron O'Keefe; Public Works Director Mike Lynch

I. Call to Order

Chairman Sandberg called the meeting to order at 6:30 PM.

II. Approval of Agenda

Councilor Kraus MOVED to approve the agenda as presented. Councilor Niman SECONDED the motion. The motion PASSED unanimously.

III. Nonpublic Session: Land matters IAW RSA 91-A:3 II (d) relative to the acquisition of property

Councilor Kraus MOVED to enter into Nonpublic Session to discuss land matters in accordance with RSA 91-A:3 II (d) relative to the acquisition of property. The motion was SECONDED by Councilor Smith and PASSED 7-0 on a roll call vote as follows: Smith, AYE; Kraus, AYE; Morong, AYE; Van Asselt, ABSENT; Grant, AYE; Sandberg, AYE; Harris, ABSENT; Needell, AYE; Niman, AYE

The Town Council entered into Nonpublic Session at 6:32 PM.

The Town Council returned to public session at 7:00 PM.

Chair Sandberg informed the public that the Council had been in consultation with the land protection working group, and were very pleased to hear its report.

Councilor Smith MOVED that the minutes of the non-public session be sealed. The motion was SECONDED by Councilor Kraus, and PASSED unanimously.

Councilor Grant said that although he knew the agenda had already been approved, in the interest of the Fish Ladder/Wiswall Dam Working Group who was scheduled for later in the meeting, he would like to make an amendment to the agenda.

Councilor Grant MOVED to amend the agenda to move Item XI D. to XI A. The motion was SECONDED by Councilor Kraus, and PASSED unanimously.

IV. Special Announcements

Chair Sandberg noted that Administrator Selig was traveling in Europe with the International Association of City Managers, and would miss this meeting as well as the Council meeting the following Monday. He said Business Manager Paul Beaudoin would serve in his place at the meetings.

V. Approval of Minutes: April 5, 2004

Councilor Grant MOVED to approve the minutes for April 5th as submitted. The motion was SECONDED by Councilor Morong.

Page 1, 2nd motion, should read “Councilor Niman MOVED to amend the Agenda to have the opportunity to discuss the memo by Representative Smith...”

Also page 1, first paragraph under Special Announcements, should read “He said none of these items was scheduled for public hearing...”

Page 2, 2nd motion should read, ***“The motion to approve the minutes as amended PASSED 7-0-1.***

Page 5, 6th paragraph, should read “Mr. Bolduc explained...”

Page 6, 3rd paragraph, should read “Laura Jean Butterfield read a prepared statement regarding the Fairchild Stub issue. She also read a letter from Susan Craig Hastings dated April 3, 2004, as well as a letter from Steven Craig.

Also page 6, 5th full paragraph should read “..in the Council’s decision to remove the stub decision...” Also, page 6, 6th full paragraph, should read “..the issue was being removed entirely...”

Page 7, 3rd paragraph under Resolution #2004-09, should read “...employees were evaluated as being at least satisfactory...”

Page 11, 3rd paragraph, should read “..with strongly held, disparate items.”

Page 13, 4th paragraph, should read “Chair Sandberg..”

Also, page 13, 2nd paragraph from bottom, should read “...while property owners...”

Page 14, 3rd paragraph, should read “...such a precedent should not be set here.”

Also page 14, 5th paragraph should read “..changes to the metes and bounds...”

Page 16, motion toward bottom of page, should read – ***The motion PASSED unanimously.***

Page 18, 6th full paragraph, should read “...had all sorts of views..”

Page 21, 2nd full paragraph, should read, “Code Administrator Johnson clarified the..”

Page 22, 3rd paragraph from bottom of page, should read “..at such a late hour..”

Councilor Morong MOVED to approve the amendments to the April 5th minutes. The motion was SECONDED by Councilor Needell, and PASSED 8-0-1, with Councilor Kraus abstaining because of his absence from that meeting.

The motion to approve the April 5th minutes, as amended, PASSED 8-0-1, with Councilor Kraus abstaining because of his absence from that meeting.

VI. Report of Administrator

Mr. Beaudoin said the Town had taken ownership of the Craig Supply site, noting the deed had been filed by the tax collector and had been cleared by the attorneys. He said the property had been insured for liability only.

Mr. Beaudoin noted that construction on the road project on Route 108 from Canney Road to Bagdad Road had started again, and would continue through the summer.

Mr. Beaudoin said that morning, two fraternities –Phi Kappa Sigma and Alpha Tau Omega had pleaded guilty in Strafford County Superior Court to various counts stemming from overcrowding and fire code violations. He said Phi Kappa pleaded guilty on one charge and was fined \$20,000, with \$17,000 suspended, and ATO pleaded guilty to two charges, and were fined \$20,000 with \$15,000 suspended. He said both fraternities were required to pay a \$2,000 penalty toward the Fire Department's Greek Fire Academy, and were required to keep a written log when having assemblies larger than 49 people, as well as to allow fire department to inspect their properties at all times. Mr. Beaudoin said that if the Town had any issues with either of these fraternities in the next two years, the remainder of suspended penalties could be applied back.

Councilor Morong asked what the Greek Fire Academy fund was. Mr. Beaudoin explained that the program was set up to educate fraternities on fire safety issues. He said the money would offset some of the costs involved with this educational effort.

VII. Reports and Comments of Councilors

Parks and Recreation Committee - Councilor Needell noted that there was an Item on the Unanimous Consent Agenda for the Council to approve the award to pave the tennis courts, and said planning for the new playground was moving ahead. He said there would be something before the Council on this in May or June. Councilor Needell also said there were some excellent maps showing the Town's recreation sites, and noted that these maps could be accessed at the Durham web site, under the recreation link. He explained that the maps could be expanded to show trails in Town.

Councilor Grant said he recently observed the Public Works Department applying asphalt to patch holes on Main Street from Old Concord Road to Nesmith Hall, and said they had succeeded in covering about 10% of the holes. He said he was very pleased to hear that they would be shimming that road in the spring-summer, and said the Town needed to pay more attention to that road, as the gateway to the University. He said it was looking like a pretty rough gateway at present, and needed to be kept in good condition.

Councilor Grant said he would like to discuss the letter received from the Seacoast Bicycle Association requesting reimbursement for their contribution toward the Wagon Tract trail program. He also said the Council should be made aware of any other

contributions made by civic groups for this program, and what the total amount for this was, so it could consider whether any of these organizations should be reimbursed.

Chair Sandberg asked if May 17th would allow adequate time to prepare this information, and Mr. Beaudoin said it would.

Councilor Smith said if the Council was going to be discussing its legal obligation to provide reimbursement, as compared to deciding to make a donation, he would like to see a report from the Town Attorney on whether there was such a legal obligation.

Rental Housing Committee - Councilor Morong said the committee had recently met and was looking at three proposals brought forward by Administrator Selig. He said the committee had decided to support one known as the disorderly house proposal, where a tenant would first be notified if there was a violation, and beyond that the landlord would be notified, and could be liable. He said he would work with Administrator Selig to bring the ordinance forward, if it was the wish of the Council, in May.

VIII. Public Comments

Dick Lord, 85 Bennett Road, said he was a candidate for the Lamprey River Advisory Committee, noting he had served on the committee since its inception, and would like to continue in that capacity. He said he had not been able to attend the previous Council meeting where candidates introduced themselves.

Chair Sandberg clarified that the Council did not actually make the appointments to the Advisory Committee, but rather made recommendations concerning these positions.

Representative Judith Spang said she also was up for re-nomination to the Lamprey River Advisory Committee, and noted she was presently the chair of the committee. She said she had submitted the names of all Durham representatives to the committee in March, including Richard Hallett, a recent addition whose experience as a professional forester was valuable to the committee.

IX. Unanimous Consent Agenda *(Requires unanimous approval. Individual items may be removed by any councilor for separate discussion and vote)*

Chair Sandberg said there was a request to remove IX A1 and IX B from the Unanimous Consent agenda. He also noted that under IX A, in the Council Communication concerning terms for appointees, the date for expiration of Planning Board terms should read 4/30/07.

Councilor Van Asselt moved to approve IX A 2-6, appointments to the Parks and Recreation Committee; the Planning Board; the Zoning Board of Adjustment; the DCAT Governance Committee; the Rental Housing Commission; and the Strafford Regional Planning Commission. The motion was SECONDED by Councilor Harris, and PASSED unanimously.

Chair Sandberg thanked the appointees for their willingness to serve the Town.

- A. Shall the Town Council approve citizen member appointments to the following Town boards, commissions, and committees as indicated on the “Slate of Appointees”?

1. Historic District Commission

Councilor Harris said she had spoken to Andrea Bodo, who had served previously on the Commission, and to Sally Bassett. She said both were interested in putting their names in for the Commission. She noted that one of the other candidates had indicated on his application that he would be gone for considerable periods of time, and she said it therefore made sense to look at all the candidates, and decide whom to appoint at the next Council meeting.

Councilor Harris MOVED to postpone consideration of appointments to the Historic District Commission. The motion was SECONDED by Councilor Morong.

Councilor Kraus summarized for Council members and members of the public that there had previously been two candidates for the Commission, but were now two additional people interested in serving, while there were three vacancies.

Chair Sandberg said these two additional people would be asked to submit applications. He also said the Council would try to make the appointments at its May 3rd meeting so the positions would be filled in time for the Commission’s May 6th meeting.

The motion PASSED unanimously.

- B. Shall the Town Council award a bid for the tennis court renovations at Woodridge Field as recommended by the Public Works Department?

Councilor Van Asselt said he had some concerns regarding this issue. He noted that that the funds had been allocated to resurface the tennis court, but said much more than this was actually planned, noting that the decision had been made to remove 1-2 of the tennis courts, and to instead expand the area for toddlers. He said he had some concerns about this.

Councilor Van Asset said he had recently talked to people who used the courts, and also referred to a memo which indicated there was heavy use of the tennis courts in good weather. He asked for clarification on this issue, noting he has spent some time talking with Denny Burns of the Parks and Recreation Committee about this, who said there had been discussion of this on three occasions, where people had had chance to weigh in.

Mr. Beaudoin said Public Works had taken this issue through the Parks and Recreation Committee, and the committee had come up with the idea of eliminating one court and having the capacity of using one court as a practice court. He said the committee felt, with the present volume of use, that this would be a better configuration for the park, and would allow more room for playground equipment, which they felt was just as important at that location.

Council Needell MOVED to approve, upon recommendation of the Town Administrator, the bid for reconstruction of the Town's Tennis Courts to Advantage Tennis, Inc., of Passumpsic, Vermont for the sum of \$56,804 with the expenditure to be paid from Capital Fund account #07-4400-2000-888-04. The motion was SECONDED by Councilor Grant

Councilor Needell said there had been a lot of discussion on this project by the Parks and Recreation Committee, noting it was a multifaceted project, with separate funding for the playground. He said the committee looked at all the options for the entire area, and felt this was the best choice.

Councilor Harris said she was the former Council representative to the Parks and Recreation Committee, and had been struggling with this proposal, and thought might perhaps it was premature. She said discussion held when a vote was taken on reducing the number of tennis courts also included the possibility, not yet explored, for expansion of the site because of adjacent University property behind it.

Councilor Harris noted that the tennis courts were strictly for seasonal use, and said the Town hadn't done a survey to see how many people used these tennis courts as compared to the University's tennis courts. She said that in her mind, the funds needed for this, plus the funds for rebuilding of the playground, were being weighed against a year round consideration, - the library. She said the library served all members of the community, not just little children who did in fact have other playgrounds, and said newly built tennis courts at UNH were available to the Durham community.

Councilor Harris also spoke about the possibility that the Town might want to build tennis courts in another location, possibly at the Route 4 end of the Durham Business Park, which would free the Woodridge field space for more playing fields.

Chair Sandberg asked what the vote of the Parks and Recreation Committee was on this, and Councilor Harris said it had been a split vote.

Councilor Smith asked if this was the playground item that had been moved up one year in the Capital budget, and was told it was. He said he didn't recall in the discussion at that time that the playground was expected to take up a greater amount of land, with a consequent reduction

in size of the tennis courts, and asked if the reduction was specifically because of this.

Councilor Harris said there had been discussion that the courts were not heavily used, and the playground at Jackson's Landing was popular and took up a lot of space, so it made sense to put in a small children's area there.

Councilor Van Asselt said by removing the one tennis court, space was made available for an additional playground area.

Councilor Smith asked if the committee had specifically considered this, and had voted, knowing this would be the result. Councilor Harris said it had.

Councilor Smith asked Councilor Harris to explain the scope of access to UNH tennis courts, and she said they were available to the general public.

Councilor Van Asselt said the courts were available to the general public when one could find one, in the evening. He said there were times when they were not heavily used, and also were times when the people who used Woodridge did not play tennis. He said saying the University courts were an alternative didn't quite make sense. He also noted the courts at the high school were not available to the general public during the week.

Chair Sandberg said the motion was for approval of funding to the tennis court company from Vermont, but implicit in the Council communication was endorsement of concept of installing fencing, landscaping and drainage and other site accessories. He said these items would not be coming back to the Council at another time because they were under the \$25,000 threshold. He said the Council might want to explore this further.

Councilor Morong said it seemed that the Town wouldn't truly be losing a full tennis court, because it would still have an area with a backup.

Mr. Lynch said at present there were five tennis courts, four of which were regulation tennis courts, and a fifth court which had a wall in middle which separated it into two half courts. He said the proposal would retain four full courts, but the fourth court would have a wooden backboard at one end for practice. He said the Parks and Recreation Committee felt it was important not to lose that feature if it was needed in the future.

Councilor Kraus said that even though the Parks and Recreation Committee had considered this issue in detail, it might make sense to postpone acting on this Item for two weeks, in order to make certain that everyone in the community understood what was going forward.

Chair Sandberg asked if there would be a problem if the project were delayed. Mr. Lynch said the contract would be valid for 60 days, so the work could be postponed.

Councilor Needell said the Woodridge field project was a multifaceted project, so delaying it could impact the ability of the Committee to make a decision about the playground. He questioned what would be gained by delaying acting on this.

Councilor Kraus said would like to have a better sense that the community was comfortable with this, and also noted there might be people who were unaware that this was happening. He said he was sensitive to the fact that the Council seemed to be putting on hold the findings of one of its committee, but said this contract was interwoven with other aspects of the project.

Councilor Smith said it was a good idea to postpone voting on this, and to have representatives of the Parks and Recreation Committee come before the Council to enlighten it as to how they reached their decision. He said it would be useful to obtain any information they had which reflected on whether it was preferable to have a larger playground or an additional tennis court. He noted there were minimal recreational facilities in Durham, so under these circumstances, it was especially important to ensure the Council was making the right decision.

Councilor Kraus MOVED to postpone action on this issue until May 3rd. The motion was SECONDED by Councilor Smith.

Chair Sandberg asked Councilor Kraus if he thought a public hearing would be appropriate. Councilor Kraus said he didn't think the hearing was necessary, but a full two weeks would allow this information to be known to the community before the Council acted.

Councilor Needell asked if a public hearing was held on this issue, and was told there was not a hearing, although the Parks and Recreation did meet in public session to deliberate on this.

Councilor Smith asked that the appropriate persons attend the meeting, and provide the information that had been requested.

The motion PASSED 8-1, with Councilor Niman voting against the motion.

X. Unfinished Business

- C. Appoint citizen members to the Conservation Commission and Lamprey River Management Advisory Committee.

Mr. Beaudoin noted there were more candidates than openings available on the Conservation Commission, and said Administrator Selig wanted to bring the nominations before the Council so it could decide who should be appointed.

Councilor Grant suggested that the Town Administrator contact the persons not chosen to serve on the Conservation Commission, to determine if they might be interested in serving on other boards or committees. He said he was not sure Administrator Selig had had the opportunity to do this.

Chair Sandberg said each of these people were contacted by email, and those that responded indicated they were interested in serving only on the Conservation Commission.

Councilor Smith MOVED that the Durham Town Council appoint Duane Hyde and William Skinner to new three year terms, and to appoint Dwight Baldwin to move from being an alternate to a regular member, to fill out the remaining term of another member. The motion was SECONDED by Councilor Kraus.

Councilor Smith said as the Council representative to the Commission that he had been enormously impressed by the Commission's work, and also by the caliber of these three persons.

The motion PASSED unanimously.

Councilor Grant nominated George Thomas to fill a three year alternate term, and Beryl Harper and Jim Hellen to fill two year alternate terms to the Conservation Commission. The motion was SECONDED by Councilor Smith.

Councilor Van Asselt said he believed all five people who had applied for the positions were fully qualified, and said it seemed more appropriate to determine the new members by drawing out of a hat.

Councilor Smith said he agreed with Councilor Grant's nominations, noting two of the three were specifically discussed by the Conservation Commission and were considered particularly well qualified, which he said carried some weight for him.

Chair Sandberg asked if would be customary for the Commission to allow these extra people to engage in discussions at Conservation Commission meetings.

Councilor Smith noted that the Commission had decided to have a public comment period at each meeting, and also said they were a very welcoming, open group.

Councilor Morong noted that Dwight Baldwin had participated in Commission meetings while not an actual member, and had moved on to the Commission over time, beginning as an alternate.

Councilor Van Asselt said he would support the motion, but asked that the Chair encourage Mr. Butler and Mr. Ferris to serve the Town in another capacity.

Councilor Needell pointed out that the terms designated for some of the nominees were not correct.

Councilor Grant amended the motion to read that George Thomas would have a 2 year term, Jim Hellen would have a 3 year term, and Beryl Harper would have a 2 year alternate term. The motion was SECONDED by Councilor Smith and PASSED unanimously.

The motion as amended PASSED unanimously.

Rep. Judith Spang told the Council that said there was no set number of people required from Durham for the Lamprey River Advisory Committee, so all nominees were welcome to join.

Councilor Grant nominated, Richard Hallett, Richard Lord, Judith Spang and Marilyn Dewey for 3 year terms on the Lamprey River Advisory Committee. Councilor Kraus SECONDED the motion and it PASSED unanimously.

D. Discussion with regard to the school funding issue

Council Niman noted the Council had received a communication from Rep. Marjorie Smith recently, detailing what was going on in Concord regarding changes in school funding. He said he appreciated that Re. Smith had kept the Council informed on this issue, and said he felt it was important to speak on this issue now, rather than later.

Councilor Niman said his complaint was not regarding the unfairness of how education was funded in the State, but said he was interested specifically in how the present situation, including SB 302, related to the Town of Durham. He said SB 302 was designed to use equalized valuation per pupil as the basis for determining aid to local towns.

Councilor Niman said his first point was that the State had forgotten that it was the taxpayers of Durham who spent a fair portion of property tax dollars to host the University of New Hampshire. He said he was concerned that by using equalized property values per pupil, this ignored the fact that a good portion of taxes in Durham was used to cover the costs of hosting UNH. He said that by failing to consider this, one might think Durham was a property rich town, and could use all of its equalized valuation to fund sending students to school.

He said he thought it would be fair to give Durham a credit for the percent of valuation the Town needed to use for hosting UNH, because it didn't seem fair

to place the burden of supporting higher education on Durham, while not acknowledging the fact that it was difficult to fund K-12 at the local level.

Councilor Niman suggested that perhaps the Town would be more likely to have some success if it could make this a broader issue, which related to the cooperative school district issues. He said the State now seemed to have forgotten that cooperative school districts were important entities. He said it was unjust for the State to not recognize the special needs of cooperative school districts, and noted that different districts had different apportionment formulas. He said it was ironic that years ago Towns were encouraged to join cooperative school districts, but now seemed to have forgotten that cooperative school districts were a good thing, and the present policy was penalizing them.

Councilor Niman said he was hoping this would provide a broader based issue than simply the “hosting UNH” issue, because the cooperative school district issue was one that was faced by more communities in the State. He said the direction the Legislature was moving in, in Concord was contrary to the spirit of 50 years of trying to support cooperative school districts. He asked if it might be appropriate to bring this issue to the Superintendent, and to contact other cooperative school districts to see if a coalition could be formed to protest, and perhaps influence these current policies.

Chair Sandberg said the Council needed a more current snapshot of the situation, noting the letter from Rep. Smith was dated March 19th, 2004.

Rep Marjorie Smith spoke before the Council, and provided some historical context on the school funding issue, as well as an update on recent school funding related legislation. Council members received a handout that summarized this information. She said the Legislature was looking at two bills, one of which was SB 302, the bill referred to by Councilor Niman, with significant alterations. She said SB 302 had passed the Senate, and had cross over to the House. She provided detail on the bill and what it entailed.

She said the current school funding problems involved incredible complexity, and an unwillingness to define an adequate education, and said that without this definition, there was no way to know what it would cost to deliver an adequate education, so that how to fairly allocate funding was not possible. She said the situation was a monumental disaster, but said the Legislature hadn’t had the will to address it. She said she and others were trying to make changes in how decisions were made, and who was making the decisions.

Chair Sandberg asked Rep. Smith for her perspective on Councilor Niman’s ideas about a possible coalition of cooperative school districts, or perhaps a dispatch from the Town to Concord to protest SB 302.

Rep. Smith said the timing for this would be difficult, and said that not much could be done at this point because there had to be action before April 29th. She also said she believed that the work that had been done

would likely be completely changed in the next session. She suggested that the Municipal Association should be looking at this issue, and also stressed that the Town had a delegation that felt its pain, that realized that what was happening was not fair or appropriate, and was doing the best it could to ease the gross injustices.

Councilor Niman said he would like to wager that if the Town began to take income into account along with equalized property values, that at that time, someone would say, Durham had all those students who didn't make any money, so the median income level should be raised.

Rep. Smith said if she was completely cynical she couldn't do her work in Concord. She said she didn't believe someone was out to get Durham, just as she didn't think someone was out to get Concord, when it had many State facilities there and got no extra help for this. She noted each town had its own story and its own difficulties.

Rep. Smith said that when the day came that the State recognized that peoples' property values did not necessarily relate to their ability to pay their taxes, and that income should be the basis for taxation, this would begin to ease the very real pressure. She said this day would come, although probably not while most of them were still living.

Councilor Grant thanked Rep. Smith for an enlightening discussion. He explained to members of the public that the reason they were talking about this was that in the March 19th memo, Rep. Smith had indicated that in the SB 302, Durham's physical year 2004 state contribution was reduced from 1.608 1.2 million dollars. He also provided figures on Lee and Madbury, and said there were some shocking disparities in these numbers.

Councilor Grant said there were at least three cooperative school districts in New Hampshire where the communities were currently struggling with revising their funding formulas. He said this was because the Town with the highest equalized valuation assessment was pressing to withdraw from their respective districts, and other participating towns wanted to keep the Town in, so were willing to make some adjustments in their formulas.

He said he believed this was a story the Oyster River Cooperative School district Board should be telling, and not the Town of Durham. He noted the Council had been invited to a school board meeting in May, and said the important points should be made again to the Board at this meeting.

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

Councilor Smith MOVED to postpone this Item to the first Council meeting when Administrator Selig was present. The motion was SECONDED by Kraus.

Councilor Smith said this was a core operating document the Council was charging him to work with, so any discussion of possible changes should include his input.

Chair Smith said this Item would be put on the Agenda for May 3rd.

The motion PASSED unanimously 9-0..

It was also confirmed that the date for the Oyster River School Board meeting was May 6th, 7:00 pm. at the High School.

- F. Shall the Town Council Adopt a Land Conservation Policy as recommended by the Town Administrator?
Mr. Beaudoin provided background on the Land Conservation Policy, describing it as a protocol as to how the Town could acquire conservation lands.

Councilor Kraus MOVED to adopt the revised “policy for Acquiring Legal Interest in Conservation/Open Space Land, dated April 6th, 2004 (as presented), that was developed by the Land Protection Working Group and recommended by the Town Administrator, The motion was SECONDED by Councilor Grant.

Councilor Grant said this policy had been discussed at several meetings, and the Council had held a public hearing on it, so the Council should be prepared to vote on it.

Councilor Van Asselt said that Item 7 A. v. in the policy document didn't seem to fit along with the other Criteria to Evaluate Real Estate Interests for Conservation/Open Space. He said v. – “Maximize land conservation per Town dollar spent”, seemed to be broader, and recommended that it be moved to a separate area. He also recommended a suggested language change for 7 B.

Councilor Smith explained that two sets of changes had been made – first, the Town Attorney's suggested changes, and his own changes after looking at the Attorney's suggestions. He said that these changes didn't related to Councilor Van Asselt's issues, but noted that the issue he raised was brought up to Mr. Hyde at a previous Council meeting where there was discussion of the proposed land conservation policy.

Councilor Smith said Councilor Van Asselt was on to a good point, and said that the intent was that all the other criteria should be looked at within the context of the fifth criterion, but not that it should be a separate factor.

Councilor Van Asselt recommended creating a new section 8 A. - Further Directions and Considerations, and put there what was now 7 B. He also said that 7 a v, should then become 8 B.

He also noted he wished to add in bold type that some consideration should be given to projects that would attract non-town funds. He said if a project came forward and outside funds could be found for it, added weight should be given to it. He said this was worth considering, given the number of properties that were likely to come forward, and the limited money available.

He also said that if someone other than the Town government brought forward a property, he didn't want it thrown back on the neighborhood that they should hire all the experts to look into this. He asked that the costs of any proposal be born by the Town, regardless of where it was generated, and noted the Council was assured that this would in fact happen.

Councilor Van Asselt MOVED to amend the motion to adopt the policy, (as stated above). The motion was SECONDED by Councilor Niman.

Councilor Smith said he agreed that the present 7 a v. should be treated separately, but said he was not sure he agreed with the wording recommended. He said there was a tension among all these criteria, including maximization per town dollar spent, and provided a specific example of this. He said he feared the way this would read, - in all proposed projects, it didn't recognize that while an incredibly important factor was maximizing land conservation per Town dollar spent, it wouldn't be the one that would be decisive in every application. He said the language should be somewhat softened.

Councilor Niman suggested that the wording should say, " in all proposed projects, the Conservation Commission and Town Council would try to maximize land conservation per dollar spent.

Councilor Smith said the wording still needed to be reviewed.

Councilor Smith MOVED to postpone final deliberation on this issue pending input from the Land Protection Working Group. Councilor Morong SECONDED the motion.

Councilor Needell said he didn't think there was a consensus for the Council that the Council was endorsing this language change. He said the objection raised by Councilor Smith was an important one, and said extra care should be taken in looking at this language.

Councilor Van Asselt said his intent was to pull 7 A v. into a separate category, and was less concerned about seeing additional wording changes.

Councilor Needell said that by putting the current 7 A v. in a separate category, this elevated it to a level that was not intended.

There was additional discussion about how the wording could be arranged. Councilor Smith said the issue was simply to frame language on maximization of land conservation so that while recognized it as an over arching factor, it didn't become a single factor.

The motion to postpone PASSED unanimously 9-0.

XI. New Business

Chair Sandberg noted for those watching the meeting that Agenda Item D had been moved up to be first, under New Business.

G. Fish Ladder/Wiswall Dam Working Group – Recommendation regarding the Wiswall Dam

Mr. Beaudoin provided introductory remarks and Chair Sandberg introduced Douglas Grout of the New Hampshire Fish and Game, along with other members of the Working Group, as well as Adam Burnett of the Army Corps of Engineers, Joe McKeon of the US Fish and Wildlife Service, Stephanie Lindloff of the New Hampshire Department of Environmental Services, and Town Engineer Bob Levesque.

Mr. Grout provided a slide presentation on the proposed fish ladder.

Chair Sandberg asked Mr. Beaudoin if Administrator Selig had developed any proposal concerning the recommendations of the Working group.

Mr. Beaudoin said it had been determined that the fish ladder seemed to be a good fit for Durham, allowing the Town to maintain the reservoir for water. He said it also appeared to be environmentally sound, and therefore seemed to meet the needs of everyone involved.

Councilor Kraus asked what the philosophy was on what the benefits of fishway would be.

Mr. Grout said the fish ladder would provide access to spawning and nursing habitat, and would therefore provide more fishing and recreational opportunities. He said that river herring (alewife) were important food for sport fish, and said the fish ladder would allow greater populations of them, and hopefully greater populations of shad, noting that at present, because of dams, the population levels were lower than they historically had been.

Mr. Grout said the fish ladder would provide the fish with access to 43 miles of the Lamprey River. He said complete dam removal would have allowed complete passage of fish, and said the exact percentage of fish that the fishway would allow upstream was not known.

Councilor Smith said it was important for the Council to know what the science was behind the design and construction of the fishways.

It was noted by a member of the Working Group from NHDES that there were at least 40 similar fishways worldwide, mostly located in Australia and New Zealand. She explained that the effectiveness of fishways was greater when they were properly constructed for specific species. She said these other fishways were designed for other fish species, but said the Working Group was using lessons learned elsewhere, and were using the parameters that were most appropriate for this species in this place.

Stephanie Lindloff of the NHDES said they were confident the fishway would work for the river herring, but were a bit more concerned about the shad, so might have to fine tune the fishway more for them.

Councilor Smith asked that there be assurance that this proposed design would actually work.

Chair Sandberg asked how the fishway would function if there were a flood, questioning whether because of the bypass around the dam, there could do serious and substantial damage to surrounding areas in such a situation. He asked what protection there would be against a massive erosion problem, and also asked if beavers got into the area, what protection there would be against the area becoming ponded.

Mr. Burnett said possible flood conditions had been addressed in the design of the fishway, and provided details about this.

Mr. Grout said beaver dams would be broken apart, as Fish and Game did at other locations in New Hampshire when necessary. He said that regular maintenance of the fishway area would deal with this and other potential blockages.

Mr. Grout also explained that contingency funds had been built into the project to allow fine-tuning, because it was realized that they might need to make adjustments to the design/structure.

Councilor Harris asked when the fish spawned and how this related to low water periods.

Mr. Grout said the river herring ran in the spring – late April, when the flows were high, and said they came up stream through the middle of June, and

stayed in that habitat until summer/fall, when rain events brought them back down stream.

Councilor Van Asselt noted that the Town was being asked to contribute to the project, and asked for more detail on this.

Mr. Grout said most of the money would come from federal funds, but explained that the Working Group would then have to raise state and local funds for the remainder of the work. He said the Town would essentially be asked to contribute in kind services in support of the project, for example provision of gravel from a source in Durham. He said the group was still exploring the funding aspects of the project, but at present were waiting for approval to go forward. He said once this approval was received, the Working Group would provide more information to the Town on the funding situation.

Chair Sandberg asked whether, if the Council gave its general approval for the project without making a major commitment, if that would be sufficient, and would serve the needs of the working group.

Mr. Grout said that would be sufficient.

Councilor Kraus asked what real, tangible benefits the project would provide for the citizens of Durham, and asked if Newmarket, which also had a fishway, had seen such tangible benefits.

Mr. Grout said Newmarket now had some of the best small mouth bass fishing in the State.

Joe McKeon of the US Fish and Wildlife Service stressed that a key aspect of the project was also the revitalization of the Lamprey River ecosystem.

Councilor Grant MOVED to endorse the recommendation presented by the Wiswall Fish Passage Working Group, and encouraged them to continue with their planning of a nature like fishway at the Wiswall Dam. The motion was SECONDED by Councilor Van Asselt.

Councilor Harris noted there were people in the audience who would like to speak on this matter.

Chair Sandberg said there would be a public hearing on this project, but said that because of the time, the Council needed to decide whether to amend the agenda.

Councilor Kraus MOVED to amend the Agenda to adjourn not later than 10:30 pm. The motion was SECONDED by Councilor Needell.

Councilor Harris said she would be happy to have a public hearing on this issue at a later time, and said the meeting should be extended to allow discussion of other topics.

The motion PASSED 8-1, with Councilor Grant voting against it.

Councilor Smith said he wanted to know what it would mean to endorse this recommendation, especially concerning the fiscal aspects of the project. He noted Mr. Grout had spoken about an in-kind contribution from Durham, and asked if the Council voted to approve the motion on the table, in what respect the Working Group would be relying on that vote as meaning the Town should take certain actions.

Mr. Grout said it would not mean a committal from Durham to finance the project,

Chair said the Town had serious concern that the Town impoundment on the Lamprey River not be put at risk, and also that the management of flow would be adequate. He noted Councilor Smith's point, that this would simply be a conceptual approval.

Councilor Needell asked if the working group would hold a public hearing on the project.

Mr. Grout said they could hold hearings, but also noted that the Town could hold the hearing instead if it wished.

The motion PASSED unanimously.

- H. **Ordinance #2004-03 (First Reading):** Amending Chapter 68 "Fire Prevention" of the Durham Town Code by adding Article V entitled "Mutual Aid" which authorizes the Fire Department to go to the aid of another city, town, village or fire district, from either within or without the State, for the purpose of extinguishing a fire, render other emergency assistance, or perform any detail as requested in accordance with NH RSA 154:24-30

Mr. Beaudoin said this ordinance was coming forward because the Council had never actually created such an agreement to allow the Fire Department to render mutual aid to other towns.

Chair Sandberg said this was the first reading of the ordinance, and the only thing the Council was being asked was whether to proceed with a public hearing on this.

Councilor Grant MOVED to pass proposed ordinance #2004-03 on first reading (as presented) amending Chapter 68 "Fire Prevention" of the Durham Town Code by adding Article V entitled "Mutual Aid" which authorizes the Fire Department to go to the aid of another city, Town,

Village or Fire District, from within or without the State, for the purpose of extinguishing a fire, rendering other emergency assistance, or performing any detail as requested, in accordance with NH RSA 154:24-30, and to authorize the Fire Chief to enter into such agreements. Further the Durham Town Council hereby schedules a public hearing on proposed Ordinance #2004-03 for May 3, 2004. The motion as SECONDED by Councilor Harris.

Councilor Smith said the ordinance did two things: authorize the Town to provide aid to another town, and also allowed the Fire Chief to enter into agreements concerning such aid. He asked why an ordinance was needed to provide authorization for the Town to aid other towns.

Chief O'Keefe explained that this was because of the way RSA 154 was written.

Councilor Smith said the way the Statute was written, the Town was free to provide such aid, and an ordinance wasn't needed to accomplish this. He said he did, however, see the need to authorize the Chief to enter into such agreements.

There was discussion about this among Council members and Mr. Beaudoin.

Chief O'Keefe said when he had spoken with Administrator Selig about this, it seemed to be best way to go.

Councilor Smith said this didn't appear to be necessary, because State statute provided authority for Administrator Selig to do this without an ordinance.

Chief O'Keefe said there were other parts of the Statute that indicated a vote of the elected body was required, and said he and Administrator Selig had wanted the ordinance because they felt it was official, and binding.

Councilor Smith said he would not be in a position to vote on this without more information.

Councilor Needell asked if there would be any problem if voting on this was postponed.

Chief O'Keefe said the Fire Department was still rendering aid, so this was more of a housekeeping issue.

Councilor Grant said the Council should be on record that the legislative body authorize the fire chief to enter into mutual aid agreements.

Chair Sandberg said there was no point to schedule the public hearing if the Council didn't need to.

Councilor Smith said he didn't see the need for an ordinance to provide this authorization. He said there should be at least a minimally positive reason for adding another ordinance.

There was additional discussion about this issue. Chair Sandberg said that Councilor Smith could most likely get the answers to his questions at the public hearing, and the Council could change the ordinance to a resolution if appropriate.

Councilor Smith said he would vote in favor of the motion, but agreed that the decision as to how to proceed could be considered at that the time of the hearing.

The motion PASSED 8-1, with Councilor Van Asselt voting against it.

I. **Resolution #2004-10:** Establishing a process for evaluating the Town Administrator

Councilor Kraus said the purpose of the resolution was to formalize and codify the process for the evaluation by Councilors with all Councilors setting the standard for evaluations in the Town of Durham.

Councilor Kraus MOVED to adopt Resolution #2004-10, a resolution establishing the annual evaluation process for the Town Administrator. Councilor Niman SECONDED the motion.

Councilor Needell said he had no problem with the idea of an evaluation process, but was concerned about the portion of the resolution that said a Councilor who did not complete the evaluation form would not be able to participate in the evaluation process.

Councilor Kraus said his opinion was just the opposite, and said he felt every Councilor should do this.

Councilor Needell said he understood this, but said he wondered where something equivalent existed where a Councilor was penalized in this way. He said he was concerned about the precedent this would be setting.

Councilor Smith said he couldn't agree with this resolution, for policy reasons or for legal reasons. He said the resolution was proposed as a binding action, but said he had substantial doubts that it was consistent with the Town Charter or with State law. He said he believed that in all likelihood it was not, and said he was interested to see what the Town Attorney would say about it.

Councilor Smith also said he believed that passing the resolution would set bad policy, and would be setting a bad precedent. He said he did not doubt Councilor's Kraus's motives in bringing the resolution forward, but felt his judgment concerning it was incorrect.

There was additional discussion by Council members about the current evaluation process. Councilor Van Asselt suggested that Councilors Grant, Smith and Kraus could develop a better evaluation process, as part of the Council's goals process, instead of moving forward with this policy.

Councilor Niman said this made sense to him.

Chair Sandberg explained that there had been multiple evaluation formats over time, and what the Town now had was an amalgamation of them. He said the most important objective was that all Councilors participate in some way in the process, but said it could be shortsighted to adopt the present evaluation process, in the form he had introduced, noting that it conceivably could use some improvement.

Councilor Smith said it was presumptuous to vote in favor of the resolution, and said he would not do, because he did not feel it was the right solution to the problem. He said he agreed with Councilor Van Asselt that as a body the Council could hammer out a better evaluation process.

Councilor Niman agreed, and also said the Council needed a good system for Councilors to evaluating their own performance. He said he would like the Council to address this as well.

Councilor Kraus said the purpose of his resolution was to move something forward so that Councilors are more responsible to each other and to share information in a proper way to prevent having voids in the evaluation process. He said all Councilors are responsible to the citizens of Durham and all Councilors need to set an example for the administration of the Town from the top. He said that he would agree to postponing action on this item, particularly with his interest in Councilor Smith's comments earlier relative to the legality of this matter.

Councilor Grant MOVED to postpone action on Resolution 2004-10, Establishing the Annual Evaluation Process for the Town Administrator, until speaking about core goals and purposes. The motion was SECONDED by Councilor Kraus The motion FAILED 2-7, with Councilor Grant and Niman voting in favor of the motion.

Councilor Smith said he didn't want to simply postpone voting on this resolution, because he was against it. He said he would rather vote it down, and follow Councilor Van Asselt's suggestion that the Council as a whole hammer out a better evaluation process.

Councilor Kraus's original motion FAILED 1-8, with Councilor Kraus voting for the motion.

Postponed

- K. Shall the Town Council authorize the Town Administrator to finalize an easement agreement with the Town of Newmarket for the purpose of granting access across Map 18, Lot 11-8 for the purpose of locating a cell tower on land owned by the Town of Newmarket, in Newmarket, and further to authorize in principle a 40/60 split on proceeds earned by the Town of Newmarket for lease of Town facilities as they pertain to this transaction; 40% Town of Durham and 60% Town of Newmarket?

Postponed

- L. Other Business

XII. Nonpublic Session

None

XIII. Adjourn

Councilor Grant MOVED to adjourn the meeting. The motion was SECONDED by Councilor Morong, and PASSED 6-3, with Councilors Needell, Harris and Van Asselt voting against the motion.

The meeting ADJOURNED at 10:30 pm

Victoria Parmele, minutes taker