

**This set of minutes was approved at the June 21, 2004 Town Council meeting.**

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

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

**MEMBERS ABSENT:** None

**OTHERS PRESENT:** Todd Selig, Town Administrator

**I. Call to Order**

Chair Sandberg noted the meeting had started later than usual because the Council had been on a site walk with the Packers Falls Bridge Committee at the bridge. He said this had been an information gathering session.

**II. Approval of Agenda**

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

*Councilor Needell **MOVED** to amend the Agenda by moving Item VIII C, concerning Wagon Hill Farm, from the Unanimous Consent Agenda, to XI D, under New Business. The motion was **SECONDED** by Councilor Kraus.*

Councilor Needell explained that he wanted to make sure there was sufficient time to discuss this item, and said that putting it at the end of the Agenda would mean it would not interfere with other Agenda items.

*The motion **PASSED** unanimously.*

*Councilor Kraus **MOVED** to remove VIII B, shall the Town approve property tax abatements for 2003, from the Unanimous Consent Agenda, and place this item under New Business as XI A, thereby moving the other items down. The motion was **SECONDED** by Councilor Morong.*

Councilor Niman asked if instead of having a separate motion for this, the Council could simply remove the tax abatement item from the Unanimous Consent agenda and discuss it at that time.

Councilor Kraus said he could accept that approach.

Councilor Morong said given the number of people at the meeting for the Packers Falls Bridge issue, if the Council moved the tax abatement item toward the end of the meeting, the Council could deal with the Packers Falls bridge issue sooner.

Councilor Smith asked Councilor Kraus to clarify what his intention was, and whether he wanted the tax abatement item addressed sooner or later at the meeting.

Councilor Kraus said his intention was that although sooner was better than later, his main concern was that there be an open discussion on this issue.

Councilor Smith said such an open discussion could take place by removing this item from the Unanimous Consent agenda and discussing it at that time.

There was additional discussion about the best way to proceed.

***The motion PASSED 6-2-1, with Councilors Needell and Niman voting against the motion, and Chair Sandberg abstaining.***

Councilor Niman said he had voted against the motion because his concern was that the tax abatements needed to be voted on before July 1<sup>st</sup>, and said he therefore wanted to be sure the Council talked about the issue that evening. He proposed that New Business start no later than 9:30 pm so the Council could talk about the abatement issue.

***Councilor Niman MOVED to amend the Agenda to place the property tax abatement item no later than 9:30 pm. The motion was SECONDED by Councilor Kraus, and PASSED 8-1, with Councilor Needell voting against the motion.***

It was clarified that Agenda Item VIII C (concerning Wagon Hill Farm) was now XI E.

Chair Sandberg asked for a moment of silence for the passing of President Ronald Reagan, and also for those citizens of America and the Town Durham who entered into D-Day 60 years ago. He thanked all those who had served.

### III. Special Announcements

### IV. Approval of Minutes

May 10<sup>th</sup>, 2004 Minutes

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

Page 6, 6<sup>th</sup> paragraph, should read "... send it on to the appropriate person as designated by the Town Administrator, who would then..."

Page 10, 3<sup>rd</sup> paragraph, should read "...whether they were public or nonpublic..."

***Councilor Van Asselt MOVED to approve the amendments to the minutes. The motion was SECONDED by Councilor Kraus, and PASSED unanimously***

***The motion to approve the minutes as amended PASSED unanimously.***

May 17<sup>th</sup> 2004 Minutes

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

Page 6, 6<sup>th</sup> paragraph, should read "...and the correct amount was \$7,700,000."  
Page 8, 2<sup>nd</sup> paragraph, should read "Councilor Smith said he imagined..."

***Councilor Van Asselt MOVED to approve the amendments to the minutes. The motion was SECONDED by Councilor Kraus, and PASSED unanimously.***

***The motion to approve the minutes as amended PASSED unanimously.***

**V. Report of Administrator**

- Administrator Selig thanked everyone who had been involved in preparing for and marching in the Memorial Day parade, especially Dick Dewing, who had played a key role in the process.
- Administrator Selig said that Ann Lemon had stepped down from her role of Supervisor of the Checklist, after serving in that role for many years. He said that Ann Shump had taken over that role, but noted that Ann Lemon would still be a member of the Supervisors of the Checklist.
- Administrator Selig spoke briefly about the upcoming 4<sup>th</sup> of July celebration, and said there would be a presentation on the planned celebration later in the meeting.
- Administrator Selig remarked that the Durham Police Department had an attractive new outside sign.
- Administrator Selig said he wanted to bring it to the Council's attention the need to talk more about the Economic Development Committee, and what was expected of it. He said the committee was given two tasks at the previous meeting regarding the Business Park, and Technology Drive parcels, but said that unfortunately, the committee no longer existed, because its existence had been set for a limited period of time. Administrator Selig said that if Councilors wanted the committee to carry on, they needed to identify who would be on it. He also asked for clarification of what the Council wanted the Committee to do, and what it wanted town staff to do concerning economic development, and said he hoped to have a discussion with the Council on this at its next meeting.

Chair Sandberg said this topic would be put on the Agenda for that date.

**VI. Reports and Comments of Councilors**

Councilor Kraus commented on an article in *Fosters Daily Democrat* on May 22<sup>nd</sup> that highlighted the importance of having detailed, complete minutes. He noted he and some other Councilors had pushed for more detailed and complete minutes, and said this article confirmed his belief in that effort. He explained that the article described a situation in Dover where a town official's assumptions and memories from some meetings could not be

backed up by the minutes, “which are brief summaries of the meeting with no narratives or comments by each Councilor.” Councilor Kraus said he was pleased to read that article, and said that thanks to Victoria, the Council did not have that problem.

Councilor Needell said a joint meeting between the Conservation Commission and the Parks and Recreation Committee had been scheduled for Thursday, June 10<sup>th</sup> at 7:00 pm, to address issues and policies concerning the use of Town land and properties.

## **VII. Public Comments**

**Jim Jelmborg, Park Court**, said he hoped the safety problems with the Packers Falls Bridge would be addressed by the contractor, but said that if they didn’t come through, the Town might have to “bite the bullet”. He said an equally important issue was the loss of the scenic views in that area, which had been important to Durham for many years.

**Pat Samuels, 6 Riverview Road**, spoke about the safety issues surrounding the Packers Falls Bridge reconstruction, and noted that she had narrowly avoided an accident in that area the previous weekend. She said the inside rail was much too high, so she had not seen a car coming. She also stated that the Town had contributed much time and money to protect this scenic, historic and recreation area, and said it would be a great loss if that area were permanently altered.

Ms. Samuels said that bad planning of some kind had led to this problem, and said she realized it would be a financial commitment to remedy the problem. But she said that if the Town was partly responsible, it should fess up to this and stand behind its word to residents, financially, and correct the problem. She also said that Hoyle Tanner had a professional responsibility because of the height of the railings, stressing that professionals were paid to check on these kinds of things. She also said the State had a safety responsibility.

**Holly Harris, Packers Falls Road**, thanked Council members for coming out to the Bridge for a site walk. She said she agreed with Pat Samuels’ comments, and said Packers Falls was one of the most beautiful gems in the Town. She noted that the Town had gone to a great deal of trouble to make the area a Wild and Scenic River forever, and said the Bridge at present did nothing to reinforce the important values that citizens were trying to nurture in the community, to come back to the Town’s roots. She said it would be a shame to tarnish that effort.

**Dr. John Sobel, 12 Deer Meadow Road**, said he had been a resident of Durham for 10 years, and also a student for four years, and had noted over time a very unbalanced relationship between the University and the Town. He said it seemed that for the last 30 years, the Town had avoided problems by voting down infrastructure improvements, etc. But he said that now that the Town was almost up to par in terms of infrastructure, the net result of this was that the financial burden had been passed on unequally to the community.

He said there had been a good faith effort by members of the community to address this problem, but recommended that the citizens should all become a bit more radicalized, because they had reached their Waterloo as to what it cost the Town to maintain this type of relationship with the University system.

Dr. Cerbella also urged the Town not to accept tax abatements as part of the Unanimous Consent Agenda. He said he was one of the citizens who asked for an abatement for specific reasons, noting his property had been re-classified into a much higher category than before, as compared to surrounding properties. He said there were many cases like his with technical flaws, which perhaps merited additional attention.

Chair Sandberg clarified that this issue had been taken off the Unanimous Consent Agenda, and would be discussed as Agenda Item XI A.

**Fire Chief Ron O’Keefe** said he and Chuck Cressy were co-chairs of the July 4<sup>th</sup> Committee. He explained that the Durham-Great Bay Rotary Club had taken on much of the responsibility of developing this celebration, and said the plans included a larger fire works display than in the past, and also noted people would be allowed in to the event earlier.

**Chuck Cressy** said the biggest difference this year, from the Rotary Club’s standpoint, was that it would be able to fund more scholarships than in the past through the support of local businesses.

**Beth Olshansky, Packers Falls Road**, provided details of three near accidents she had in the last few months in the area of the Packers Falls Bridge, and said these represented a diversity of accidents that were now possible in that area.

**John Landerman, Packers Falls Road**, thanked the Council for looking closely at the bridge problem, and said the hard work of the Committee was a great example of democracy at work. He also asked what the Town was waiting for, since it had already been determined that the code was not met, because a 390 foot line of sight was needed, and there was only a 160 foot. He said this was a legal issue, and if the bridge work didn’t meet the code, the firm that designed and built it should bear the financial responsibility. He urged some movement on the legal front while working out the details of how to solve the problem.

**John Boynton** said he was a Republican candidate for State Senate, District 21. Mr. Boynton said he was the economic development director for the Town of Epping, but was also known as a regionalist, and discussed some of the problems facing the towns in the region. He spoke about how Epping had been able to promote economic development while also taking care of the environment, and noted the importance of having a good Master Plan in order to know exactly where the land was that should be built on, and where the land was that should be protected.

Mr. Boynton also spoke briefly about State issues such as school funding, noting that there were presently some inequities in the system, and said that Durham was not unusual in that regard.

## VIII. Unanimous Consent Agenda

- A. Shall the Town Council approve abatements for spring 2004 water billings and authorize the Town Administrator to sign said abatements?

- D. Shall the Town Council schedule a public hearing for June 21, 2004, in accordance with the Town “policy for acquiring legal interest in conservation/open space land” regarding the expenditure of Town conservation funds for a conservation easement on the Mill Pond Center property located at 50 Newmarket Road as recommended by the Conservation Commission and Land Protection Working Group?

***Councilor Smith MOVED to approve Items A and D above. The motion was SECONDED By Councilor Kraus, and PASSED unanimously.***

## **IX. Committee Appointment**

Administrator Selig explained that Linn Bogle had indicated that he wanted to serve as a full member of the ZBA, thereby moving up from his alternate position. Administrator Selig said he contacted the other alternates, Myleta Eng and Sally Craft, and confirmed that it was only Mr. Bogle who wanted to move up to the full position.

***Councilor Harris MOVED to appoint Linn Bogle from his current alternate member position to fill the unexpired term of Robin Rousseau as a regular member to the Zoning Board of Adjustment, said term to expire April 3, 2007. The motion was SECONDED by Councilor Grant, and PASSED unanimously.***

Chair Sandberg thanked Mr. Bogle for his willingness to serve, and also thanked Robin Rousseau for having served so well over the last two years.

## **X. Unfinished Business**

- A. Shall the Town Council endorse the recommendation of the Packers Falls Bridge Committee regarding options for the Packers Falls Bridge?

Administrator Selig said the Committee had spent a great deal of time considering two courses of action: what went wrong (report on this due on June 21, 2004, and how to proceed in order to solve the problem. He explained that the Council had conducted a site walk with the Packers Falls Bridge Committee earlier that evening, and also noted that Richard Lord, a member of the Committee, had put together simulations of 4 different design options, with associated prices.

Administrator Selig said the Committee was fully aware this would be a Council decision, but want to give it information on a number of alternatives, so it would be prepared to make the best decision.

Richard Lord said he had spent time identifying what went wrong, and said he wanted to address traffic visibility safety issues, loss of treasured scenic views, and proposals for replacement options. He presented a series of slides on these various topics.

Mr. Lord demonstrated how he had determined that the bridge pillars were actually 66 inches tall and broke up the view, making it hard to see cars, and provided additional detail of visibility problems in that area because of the bridge construction.

He demonstrated how at present it was so hard to see the river when passing over the bridge, noting that because the two concrete railings didn't line up, one could only see a narrow sliver of the river. He said the two railings compounded the visibility problem. He explained why the pedestrian railing was needed, but showed how at present the pedestrian railing blocked visibility and how a better railing would increase visibility to the river.

Mr. Lord described Options 1-4 for addressing the current problem, with two variations for each Option (mill finish aluminum or black anodized railing), and said the committee was mixed as to which finish it liked better. He said the Committee also examined the possibility of cutting the existing concrete railings, but said that because special formwork would be needed for this, the cost would be about the same as for metal railings, but the final concrete railing wouldn't look as good as the metal railings.

Mr. Lord provided details of four design options and associated preliminary prices. He said that Option 1 was the ideal choice because it created a consistent rail system throughout the bridge system and was aesthetically acceptable to everyone. He noted that Bob Levesque had put together some numbers based on materials costs, which was not a firm number. He said if the Town continued to have conversations with Hoyle Tanner about site distances, it would be better to narrow things down to a single design, and said he was hoping that as part of the deliberations, the Council would decide which of the options was appropriate.

Mr. Lord said there were potential savings (about \$13,000) as part of Option 1 if the Town was willing to close the bridge during construction, and also said there could be some saving if they went with a center railing that was a bit higher with more standard sized pillars, noting that the pillars on the 27" high railing were custom.

Councilor Harris noted that the visual distance would be compromised somewhat with those higher pillars.

Mr. Lord said Option 2 was similar to Option 1 but would retain one section of W 2 rail on the upside of the bridge so would save some money. He said Option 3 was somewhat ugly, involving a change in the downstream railing, but left the upstream railing. He said this would improve visibility, so addressed the safety issue, and would result in considerable savings.

He said that Option 4 would only replace the downstream pedestrian rail, but because of wooden supports for the guardrail and the presence of the W-rail, even though one would be able to see through the pedestrian bridge, this wouldn't solve all the visibility/safety issues. He said he included this option to show how even though it would cost less money, it didn't really address the problems.

Mr. Lord concluded by showing a favorite spot for many people in Durham, the bridge over the Oyster River. He said that all of the rivers in Town, including those further out from the Town center, were beautiful places. He then showed a slide of how that bridge would look with high concrete railings, and how it looked with out them.

Chair Sandberg thanked Mr. Lord and the Committee for their work, and said it was unfortunate that they hadn't had these pictures at the outset of this project.

Ms. Olshansky said, as Chair of the Committee, she wanted to thank committee members for their hard work, and especially Mr. Lord, for his computer work. She said that as she drove around Town, she saw that scenic views like those at Packers Falls were what made Durham such a special place, and said that when she saw a concrete wall, it represented a disconnection, and a tragic loss for the Town. She said the Town had tried very hard to protect these kinds of views, and noted that the Master Plan talked a lot about the protection of scenic vistas.

Ms. Olshansky said the fact that the Town had overwhelmingly approved the conservation bond was a sign that Durham cared about these values, even if it meant raising the taxes residents all complained about. She reminded everyone that the river had been designated as a wild and scenic river in the National Registry for Wild and Scenic Rivers, and also said that Packers Falls Road had been designated as a scenic road as part of the State program. She said Durham was a community that worked hard to protect these areas, and said she hoped the Council would move forward to support the recommendations of the Committee.

Chair Sandberg noted that this wasn't a public hearing, but said there was a recommended motion that could be put on the table and deliberate on. He asked if Councilors had any questions.

Councilor Morong asked Mr. Levesque about the materials for the railing, saying he assumed black anodized was painted over aluminum rail, and asked how the paint held up compared to the plain aluminum. Mr. Levesque said the paint was baked in, and worked well. He noted that the railing on the bridge in Newmarket was a few years old, and still looked good, but said he did not know what the guarantee was.

Councilor Morong noted that where the plow scraped the railing, the paint came off, although it didn't rust.

Councilor Needell asked if the railing on the far side, tapering down into the ground, had been approved by the NHDOT. Mr. Levesque said that to the best of his knowledge it was acceptable to the State.

Councilor Needell also asked whether, if the vehicular center rail was removed or lowered down, if this of itself did not solve the sight problem, and it was clarified that in fact it did not solve the problem.

Councilor Morong noted concerning Option 2, which showed the W-2 rail still in place, that he had heard a comment during the site walk that that rail might be cut back a bit. Mr. Levesque provided some detail about this.

Councilor Van Asselt asked if the Packers Falls Committee had considered doing nothing. He also asked if they started with safety issues and then considered aesthetics, noting that if they broke out just the safety issue, there were other options than those that



had been represented. Mr. Lord said that because there was a 35 mph approach going into a 35 mph hour road, some of those other options would be difficult to enforce.

Councilor Van Asselt said that changes would be required in order to do some other options, but said if these changes were made, there would in fact be other options.

Chair Sandberg asked Councilor Van Asselt to clarify his question/point.

Councilor Van Asselt said he was trying to break out safety from aesthetic considerations. He noted that there were a number of places in Town where there was potential for accidents, so he was asking if the Town put a stop sign on each side of the bridge, or a traffic light on the far side of it, or a blinking orange light on both sides, or reduced the speed limit to 15 mph, if these were things that would solve the traffic problem

Chair Sandberg asked if the Committee had considered these kinds of options.

Mr. Lord said the Committee looked at the possibility of changing the speed limits, but said this was difficult to enforce because the bridge was wider now, so people drove through the center of bridge sometimes at 45-50 miles an hour. He said he doubted if it would be possible to enforce a 15 mph speed limit on the bridge. He said a stop sign would make it difficult to make it up the grade under icy conditions. Mr. Lord said the Committee didn't think these kinds of things addressed the real problem, that drivers should be able to see cars coming, and said that speed limits, etc. wouldn't address this, and would only lessen the impact of collisions.

Councilor Smith asked if the Committee had compiled enough data on what aspects of the construction had gone wrong, and were assigned to whom. He said he saw the need for that information in order to deal with the broader issue that had been raised about how to avoid this kind of problem in the future. He also said it was vital in order to determine how the Council should move forward in remedying the situation, noting that it was no secret that the expenditure of money was the main constraint.

Councilor Smith said he didn't believe anyone would say the design was all right as it was, and said he was interested in knowing what the sequence of events was that caused the engineer at Hoyle Tanner to decide to raise the height x number of inches to compensate for an error in the information it received, and how this related to what the Town did. He said a series of questions needed to be asked in terms of where the responsibility was to be placed, and said this analysis related to how the Town was going to pay for the reconstruction.

Chair Sandberg asked Administrator Selig if there was a sense of the key point where the process broke down. Administrator Selig said there was a lot of blame, but said it was spread out evenly among the engineer, the process, the Council, the Public Works Department, the Town Administrator, delays in funding, etc. He said on a few specific points, they could say the engineer clearly messed up, but said those points alone didn't necessarily equate to a big amount of money. He said it was important to decide which direction to move in, or else the Town couldn't aggressively bargain with the engineering

firm as to how much it would cover. He said the firm needed to know what the Town wanted on site before being willing to agree to anything, while the Town was reluctant to decide how to proceed in terms of options until it knew how much the engineering firm was willing to cover.

Mr. Selig described some other funding possibilities such as the use of contingency funds. He also noted that the Town had about \$80,000 left unexpended for this project from the State bridge aid program, but said the problem was that any change made to the structure at this point would not be covered by the program. He stressed that it was hard to move down the path of finding funds without getting an indication from the Council as to how it wanted to proceed, and said the Committee was hopeful of getting some sense from the Council on this that evening.

Chair Sandberg suggested putting a recommended motion on the table, and getting a sense of what the Council's feelings were with respect to that particular motion.

Councilor Kraus noted that areas like Packers Falls were the Town's cathedrals. But he said the Packers Falls Bridge people were consistently pressuring the Council, and he questioned why residents in this area had not seen the kind of construction that was going on. He said he believed much of the construction was in the spring and fall, and said he didn't think this was a guarded 24-hr construction site. He asked what degree of responsibility members of the Committee, as residents of the area, had for the problems with the bridge. Councilor Kraus also noted there was a petition of 86 people who didn't think these expenditures for the bridge were a good idea.

Mr. Lord said the site was posted as no trespassing, and also said the concrete railings were constructed late in the process. He said his first hint that they would be so massive was when the re-bar first appeared, and also noted that after the contract was established, it was rather late in the process for residents and Council to radically change the plans. He said that residents intervened concerning the wooden railings, explaining that the plan had been to have wooden railing extending all the way back to the intersection of Bennett and Packers Falls Road, and also on the Newmarket side of the bridge.

But he said this was the limit of what residents could do, once the ship was set on course, noting that the report that would come out would show that public input came late in the process. He said a lot of the decisions were made before there was public input, and also said a lot of things needed to have happened long before residents saw the problem as the bridge railings were actually being built.

Councilor Grant said he didn't understand Administrator Selig's comment about the \$80,000 in state bridge aid. He asked if the project had been completed and whether the Town had received this money. Mr. Selig replied that there was still some finish work and landscaping work that needed to be done at the bridge, and that there was approximately \$5,000 to \$6,000 dedicated to finishing the work.

Councilor Grant asked Police Chief Kurz about the traffic safety issue, especially for cars approaching from Bennett Road, and asked what the sight distance should be, what was there, and if the State approved the sight distances that now existed.

Chief Kurz said the State had approved the sight distance based on 35 mph. He said he had looked at this area on a number of occasions and had not deemed it to be critical accident area, and also said there was no data to support this, even though there might be some close calls. He said that on 7-8 occasions, the area had been observed by local police, who had monitored the traffic and found the speeds were generally well within 35-45 mph. He stressed that this did not mean there were not sometimes when the speed limit is exceeded.

He also said the Traffic Safety Committee had looked at this area on various occasions. He said that a stop sign was seen as a possible solution, placed in the appropriate location, and also said it was reasonable to assume that a person stopped there couldn't see everything, and would have to inch forward. He also noted that the Traffic Safety Committee had recommended building an island that would put the stop sign further out into road, protected by the island.

Administrator Selig said the sight distance issue was somewhat complex, and asked Bob Levesque, the Town Engineer, to discuss it.

Mr. Levesque said that based on ASHTO standards for civil road design, since there were more than 400 vehicles on the road per day, it was considered a collector road system, so if a car was coming to the intersection and taking a left hand turn at 35 mph, the sight distance needed to be 390 ft. He said at 15 mph, the sight distance should be 170 ft, and for 25 mph, it should be 280 ft. He said the reality at that location was that the sight distance was only 170 ft. He said he could see that designing the road for 25 mph was reasonable, but said no where near 280 ft was available, and said the 15 mph sight distance was far substandard.

Councilor Grant asked how the State could approve this situation, if the sight distance should be at least 280 ft, and more likely 390 ft., if keeping the 35 mph speed limit.

Administrator Selig said the State relied heavily on the engineer who designed the bridge, looking at basic design elements only, which was essentially what they signed off on. He said the State had looked at the bridge, and indicated that the Town had to look to the engineering firm. He said the Town would push for this, but noted that the engineers had rebuttals for this.

Councilor Smith said this was not a situation where there were multiple combinations of ways to analyze the situation. He said as difficult as it might be, an analysis of comparative blame had to be put on this issue, and said he didn't think it was impossible to do this. He also said he wished the situation was as simple as saying he wanted Option 1, but said his decision would be influenced by where the money was coming from, how it might be distributed, what the individual factors were that could be leveraged, and what the negotiation points were. He said it was important for the Council to know these things.

Councilor Smith also noted that there was discussion at the site walk that the sign posted there of 15 mph was an advisory, and asked what responsibility the engineering firm had

to determine whether the 15 mph sign it was now claiming it based its information on was advisory but not the law.

There was discussion on the report that the Council would be receiving at the June 21<sup>st</sup> meeting. Chair Sandberg said the public was probably anxious to know the Council's sentiments, and said they could either get a motion on the table, or digest what they had heard, get the 2<sup>nd</sup> report, and contemplate it together with the four design options. He said when the Council made its decision, this would then be sent to Town staff for consideration as to whether the matter would be settled at the negotiation table or in court, and said the Town Administrator would then have to come back and say what could be achieved with respect to the various options.

Councilor Kraus said he agreed it was premature to deliberate without having the full report. He said it was important for citizens to understand that if the Council decided on Option 1, the \$ 132,000 cost was equivalent to about half of the road re-surfacing budget for the year, and said these were the kinds of choices the Council was looking at when talking about the costs.

***Kraus MOVED to postpone this discussion to next meeting, Van Asselt SECONDED.***

Councilor Needell asked if there would be any more information on the funding issues at the next meeting. Administrator Selig said he didn't believe so, but said the Council would have more information on who to blame.

Councilor Needell said it was important to note that unless money came from the outside, any money for the bridge would come from taxes.

Councilor Harris asked if there were any current projects that could be delayed if the Council were to act sooner rather than later concerning the bridge. She noted that Councilor Kraus had provided interesting examples of competing projects, but suggested the Council should also think about recreation projects which were good for 30 years but required a lot of maintenance. She said that while the bridge was something that once completed did not require maintenance, it had an equal or greater value to the Town, and was not a seasonal item.

Chair Sandberg asked if it was problematic to postpone this discussion. Administrator Selig said the Committee was working on both of its charges, but wanted to bring this part forward as soon as possible, because the sooner the job could be bid out, the sooner the changes could be made. He noted they were hoping to make the changes by the fall.

Councilor Morong said he was in favor of postponing making a motion and deliberating, as long as they didn't delay this more than two weeks. But he said his decision would not be based on whether the Town would someday get some money from Hoyle Tanner.

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

Administrator Selig noted Town staff had not been neglecting the issue of Hoyle Tanner, and said the firm had conceded on a number of issues, and was willing to participate in

modifications to the structure. He said the question was to what extent, and said that for the firm, this depended on what option was chosen.

***Councilor Needell MOVED to amend the Agenda to not begin the next section relating to the property tax abatements, which was supposed to begin at 9:30 pm, until 9:45 pm, to allow enough time to hear the next item on the agenda. The motion FAILED for lack of a second.***

- X.B. Shall the Town Council approve a request by the Seacoast Bicycle Club to be reimbursed for the contribution to the Wagon Track Bike Path:

Administrator Selig said SABR felt it should be reimbursed \$9,376, which was expended in furthering the project which the Council ultimately decided not to move forward with. He said it had not been budgeted to reimburse the organization, and noted it was never a certainty that this project would be completed, so that those who contributed had done so at their own risk.

Chair Sandberg explained that the appropriate motion would be for the Council to move to approve reimbursement to SABR and if the motion were voted down, this would answer the question. He explained that the status quo was to not pay the money, and an appropriate motion was to change the status quo. He also said another option was to take no action at all.

***Councilor Smith MOVED that the Durham Town Council hereby approves reimbursing the Seacoast Area Bicycle Association for the \$9,376 the organization expended in furtherance of the Wagon Track Bike Path project in 1999. The motion was SECONDED by Councilor Morong.***

Councilor Smith said the matter could have been handled either by the motion he made or by a motion declining to provide any reimbursement, but he said he did not think it was appropriate for the Council to take no action at all, because the request should be answered. He said that from his perspective, the Council had no legal obligation or moral obligation to this organization, and was not prepared to give it any reimbursement whatsoever.

Councilor Needell said he had researched this issue thoroughly, which had been a messy process, and said SABR had stated several times that it would seek legal remedy and would sue the Town for reimbursement. He said he was bringing this up because the entire process came about because of the Council's concern about litigation if the bike path went forward. He said he didn't think the Council should agree to pay the reimbursement, noting that SABR gave this money of its free will, but said he thought the issue deserved a fair airing of the ill will that came about.

Chair Sandberg asked if any other Council members wished to speak in favor of the motion.

***The motion FAILED unanimously 0-9.***

XI.A Shall the Town Council approve property tax abatements for 2003 as recommended by the Town Assessor and Town Administrator?

Chair Sandberg explained that because he was an applicant for the abatement, he would recuse himself from the discussion. He stated that Councilor Grant would serve as Chair in his place.

Chair Sandberg clarified for Councilor Van Asselt that after discussing this issue, the Council would then address Item XI B, regarding the Spruce Wood Development project, unless someone wanted to further amend the agenda

Councilor Van Asselt asked if Administrator Selig was agreeable to postponing Item X C, the discussion on the Budget Guidelines, for either 2 or 4 weeks. Administrator Selig said two weeks would be good, noting that department heads were putting together lists of the basic services they provided, and said it would be useful to have these lists for the Budget discussion.

***Councilor Smith MOVED to sever the discussion on Agenda Item XI A. into two separate matters and to take up first the Items that followed Item #81. The motion was SECONDED by Councilor Kraus and PASSED unanimously.***

Councilor Grant said the Council was therefore considering the following Items following Item #81 on the spreadsheet: veterans credits/ exemptions, the elderly exemption, the elderly deferral, the blind exemption, and current use applications

***Councilor Van Asselt MOVED to approve the recommended veterans credits/exemptions, elderly and blind exemptions, elderly deferral and current use applications as referred to in the attached 2003 Property Tax Abatement Recommendations spreadsheet, and hereby authorizes the Town Administrator to sign the respective applications on their behalf. The motion was SECONDED by Councilor Smith, and PASSED unanimously.***

Councilor Grant said the Council would then take up Items 1-81.

Councilor Smith said he would like to ask Council members to decline to consider Items 1-81. He said the reason he had asked that the Items after #81 be severed from Items 1-81 was that what he was about to say did not apply to the Items which had just been voted on.

He called Councilors' attention to Statute RSA 76:16, which provided for the Selectmen or the Assessor for good cause shown to abate taxes. He read key provisions of the statute, which noted that "...upon receipt of application for abatement, the selectmen or assessors shall review the application, and shall grant or deny the application in writing by July 1, after notice of tax date under RSA 76:16 IA; the failure to respond shall constitute denial."

Councilor Smith said there were 81 requests for alterations in the assessment, and said about \_ had been denied, while \_ had been granted. He said he had a fundamental

concern about the Council taking any action with respect to these matters, and said that while under certain circumstances it had authority to take such action, under the present circumstances, he didn't believe the Council had the authority under the Statute, or under any clear constitutional requirements.

He said the process had been that a number of persons in Town decided they wished to make filings pursuant to state statute, they submitted data which was examined by the Assessor, meetings were held, and in virtually all cases, were held exclusively with the Assessor. He said the decisions that were set forth on the spreadsheets white sheets were characterized as Assessor's recommendations, and said in each case, the person requesting the abatement was sent a form letter which referred to the fact that "we" reviewed, and at the end said recommending to Town Council a certain action.

Councilor Smith said this information now came to the Council with no information on the particulars people were asking for. He said he had never seen any of the applications, yet if the Council took literally the word of the letter sent to landowners, it was being asked to make a decision concerning these matters. He said his concern about this hadn't surfaced in the past because so few abatement requests came before the Council, but said that because of the property revaluation, there were many more this year. He said he was prepared to vote on the previous motion because the issues were clear, but could not do so for Items #1-81, even though he realized this is how the matter was handled in the past.

He said he had looked into the matter further in terms of the statute, and had decided the proper action was not for him to abstain. He said he believed it was improper for the Council to vote on this matter, and quite unnecessary to do so, because the statute clearly stated that action could be taken by the Assessor or Board of Selectman (he said he was comfortable one could substitute Town Council for selectmen).

He said he was not prepared to construe this statutory language as meaning that all of knowledge of review could be handled by the Assessor, and all of the authority without any knowledge could be handled by the Council. He said the Council had become knowledgeable of the fact that the Town had a full-time Assessor who did this work, and was in the position of knowing what the facts were. He said the Council could have told the Town Administrator that it wanted to take on this task, but did not do so, because this was not practical.

Councilor Smith said he had asked Administrator Selig to speak with legal counsel about this issue, and noted that he did not agree with some of the perspectives of legal counsel on this. He said that in particular, legal counsel did not agree with his concerns about what would be a lack of due process if the statute was construed that the Council could exercise its authority without having facts. He said the counsel felt it was not a due process problem because taxpayers could get due process by going to the Board of Tax Appeal or Superior Court. Councilor Smith said the standard of examining the facts simply was not the same before those boards as it was before the Assessor.

***Councilor Kraus MOVED to extend the meeting to 10:15 pm. The motion was SECONDED by Councilor Smith and PASSED unanimously.***

Councilor Kraus said he agreed with Councilor Smith, and had referred to the same RSAs. He also noted that if one looked at the web site of the Board of Tax and Land Appeal regarding how to file an appeal, it clearly said that if a councilperson neglected or refused to abate, a taxpayer could file an appeal with the Board or the Court. He said that by not acting that evening, the Council was therefore not denying taxpayers the opportunity to carry this to a higher level.

Councilor Needell noted that letters had gone out saying the tax abatement information had gone to the Council, and asked if by not taking action and turning this over to the Assessor, if this was saying this was no longer the Council's problem.

Councilor Smith said citizens would have to be notified by letter, and clarified that taking the Council out of the process did not invalidate the decision concerning those who were getting rebates. He noted that some people getting rebates might still be dissatisfied, and might appeal anyway. He also said he agreed it would be appropriate for the Council to pass a resolution in the future that made clear that this was a matter for the Assessor and not the Council.

Councilor Grant asked if Administrator Selig had any comments concerning this issue.

Administrator Selig said he generally stood strongly for empowering the Council to act. He said that historically, the Assessor was charged with this process, and noted that he and Rob had always acknowledged the process was somewhat problematic, because it was extremely difficult for the Council to recreate the data and act as a tribunal concerning this. He said he remembered Council discussion some years back on this issue. He said some basic data had been provided to the Council for each of the properties, and said he thought this was sufficient to provide a rationale of what the various decisions were based on. But he said he shared Councilor Smith's concern that this was an imperfect process, and was made more difficult by the Town wide revaluation process the previous year.

Councilor Needell said it was still unclear why this information came before the Council, noting that historically it had, but apparently this was not a good enough reason. He asked if legal counsel had suggested this was necessary.

Administrator Selig read from the Town Code. He also noted Councilor Smith had said the Council had delegated this authority to the Assessor by inference, and said counsel had said the Council could delegate this authority, but had not done so yet. He also said the Assessor had recommended that at a minimum, he would like the Council to officially delegate this authority. Administrator Selig suggested if the Council took this route, it should delegate the authority to the Town Administrator, not the Assessor. He said he had reviewed this year's abatement proposals, and was comfortable with having this authority.

Regarding due process, Administrator Selig explained that Councilor Smith's concern with this matter is that if the Council does not have the entire case history in front of it on each of the abatement applications, then there has not been due process because the Council cannot legitimately make a decision on the applications.



***Councilor Kraus moved to extend the meeting for 30 minutes, until 10:45 PM. The motion was SECONDED by Councilor Needell and PASSED unanimously,***

Councilor Grant suggested it might be appropriate to put a motion on the table that could be debated.

Councilor Kraus said that having done research on this issue, he didn't think the Council necessarily needed to make a motion, and said not responding was a motion in itself. But he said additional discussion was needed on the entire issue.

Councilor Kraus said that when the Town Administrator is acting on an abatement request coming from a member of the Council, he found that problematic, and that he could not endorse approval on such an action. He wondered whether the Council should be looking at these applications at all, and in this case, not looking at them any further.

Councilor Niman said he would like to speak in favor of Council involvement in reviewing the proposed abatements. He said he understood the due process issue, but said he saw the role of the Council as certifying that the evaluation process had been undertaken fairly. He said agreed that the information provided to Council members was extraordinarily sketchy, but said he viewed the Council as part of the system of checks and balances.

Councilor Morong said when looked through the list he noticed that on every application that was granted, except for the Council Chairman's, there was some reason given for its approval and he wondered why this was the case.

Councilor Smith noted that this was due to a typographical error. He also said he believed what Councilor Niman described was the oversight role of the Council in determining whether it wants the Town Administrator to continue to be the Town Administrator, which in part is influenced by how it views the work of those persons that the Town Administrator hires. He said this was not just a matter of the Council not having enough data, because the statute said that it should review the abatement applications. He asked if any Council members had even seen any of these applications.

He said he would be fine with having the Council pass a resolution making it very clear that it was asking the Assessor to take on this job now, and said the Council should certainly be asking him to do this in the future. He proposed that this matter be tabled, then not taking off the table, so it would dissolve of its own weight.

Administrator Selig said that the Town Attorney was not concerned about the due process issue because even if someone was dissatisfied with the final decision of the Town Council, they still have the option to appeal the decision to the Superior Court or the Board of Land and Tax Appeals. He said it was true that the Council could do nothing, but this would mean that people who for good reason got abatements would have to go through another appeal process. He said it was essential not to force these people to have to go through this process.

Councilor Needell said that if the Council delegate its authority, citizens wouldn't have the option to come before it to appeal, and asked if this would that be correct.

Councilor Kraus said a possible solution to allay concerns about blanket non-action by the Council would be to break out the properties where the abatement was clearly agreed upon, for example, properties which had been destroyed by fire, or where a calculation error had occurred. He said these kinds of situations could be severed out from others that were less clear-cut.

Administrator Selig said he recommended going back and getting supporting materials on each case to give the Council the data it felt was necessary to make a decision.

Councilor Smith said he strongly recommended against this. He said he strongly disagreed with the Town Administrator, and said it was simply not true that following the course of action he had recommended would mean that those persons who had been granted abatements would not get them. He said he would propose a motion that would make clear the Council's responsibility as compared to the Assessor, which would be that the Town Council instructs the Town Administrator that it has not sought to exercise its authority under RSA 76:16 II with respect to current assessments, but has granted that authority pursuant to RSA 76:16 II to the Assessor, and views the Assessor's letters as final determinations, not recommendations.

Councilor Smith said that this motion would establish the clear Town policy of the Council's intention and he did not think this was simply "Monday morning quarterbacking." He said everyone on the Council knew it was the Assessor who does the work, the Assessor who looks at the applications and makes the evaluations and the Assessor who meets with the applicants, and that the Town Council does nothing.

Administrator Selig said it was always his intention to bring this ultimately to the Council for approval and to not stop at the Town Assessor.

Councilor Smith said he understood that it was a good faith effort of the Town Administrator and that it was only the number of requests that caused him to face up to the legal realities of this matter.

Councilor Van Asselt said he supported Councilor Smith's suggestion, if it was a one-time motion, and asked for clarification from Administrator Selig about the idea of possibly taking no action.

Administrator Selig said he believed there must be an overt act of the Council to delegate the authority to the Assessor.

Councilor Van Asselt said the issue of what the Council's authority really is in this matter needed to be clarified once and for all.

Councilor Smith's earlier suggestion was stated as a formal motion: ***Councilor Smith MOVED that the Town Council instructs the Town Administrator that it has not sought to exercise its authority under RSA 76:16 II with respect to current***

***assessments, but has granted that authority pursuant to RSA 76:16 II to the Assessor, and views the Assessor's letters as final determinations, not recommendations. The motion was SECONDED by Councilor Van Asselt.***

Councilor Smith said the motion specifically stated that under the terms of RSA 76:16, the Assessor made the final decisions in this matter, and that the Council was not exercising its alternative right to make decisions in this matter.

Councilor Kraus asked if as explained by Councilor Smith, everything listed on the assessing sheets before the Council would then be the end result. Councilor Smith replied in the affirmative. Councilor Kraus said he could not then support the motion.

Councilor Needell said the process was clearly flawed, and should be resolved in the future, but he said by taking the action suggested, the Council was essentially requiring the Assessor to do the process over again. He said the Council should therefore not second guess the process at this point, should deal with it, and should approve the list, while still noting that the process itself was flawed.

Councilor Smith said his motion that had been proposed dealt with the extent to which the Council needed to make a statement of its authority.

Councilor Kraus reminded Council members that if they voted in favor of this motion, they were also voting in favor of Chair Sandberg's abatement, which is included on the list, and that he categorically could not vote for that due to the profound perceptions of conflict of interest, at least for him personally. He also felt other Councilors should be concerned about voting on an abatement for a fellow Councilor.

Councilor Smith said his motion was very different than saying the Council was approving any one of these applications. He said the motion was saying the Council was not participating in the evaluation process at all.

Administrator Selig referred to the Town Attorney's comments on this issue, which indicated he did not feel this was a due process issue, and that he was concerned that a formal delegation of authority was needed. Lastly, the Town Attorney felt this would not resolve the issue of someone whose abatement application the Town denies, then appeals it to the Superior Court or the Board of Land and Tax Appeals because as part of that process, many times there is a negotiation that happens between the Town and the application to find a middle ground to resolve the issue.

Councilor Morong said he would not support this motion, and said he trusted Administrator Selig and the Assessor to make the right decisions.

***The motion FAILED 1-7, with Councilor Smith voting for the motion.***

***Councilor Kraus MOVED to adjourn the meeting. The motion FAILED for lack of a SECOND.***

***Councilor Needell MOVED to extend the meeting. The motion FAILED for lack of a SECOND.***

Councilor Van Asselt said he would prefer to deal with this issue, with a fresh look, on June 21<sup>st</sup>, and asked if this would cause a problem.

Administrative Selig said it would be helpful to know what kind of information Council members would like him to provide concerning the tax abatement issue/process for that meeting.

Councilor Van Asselt said he would like to see the various approaches that had been discussed for dealing with this issue, in a memo, and said Councilors could then take a fresh look at the options.

***Councilor Van Asselt MOVED to postpone discussion on this matter until June 21, 2004. The motion was SECONDED by Councilor Kraus and PASSED 5-3, with Councilors Morong, Needell, and Harris voting against it.***

Chair Sandberg rejoined the meeting at this time.

Chair Sandberg noted the several Agenda Items that had not been discussed that evening.

***Councilor Grant MOVED to continue the June 7<sup>th</sup> Town Council meeting until June 14<sup>th</sup>. The motion was SECONDED by Councilor Harris and PASSED unanimously.***

Chair Sandberg noted that the tax abatement issue would not be on the agenda for the June 14<sup>th</sup> continued meeting, but would be heard again at the June 21<sup>st</sup> meeting.

The meeting concluded at 11:05 PM.

Victoria Parmele, Minute Taker