

**DRAFT**  
**MONDAY, JULY 12, 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; Police Chief Kurz

**I. Call to Order**

**II. Approval of Agenda**

*Councilor Needell **MOVED** to approve the Agenda. The motion was **SECONDED** by Councilor Kraus and **PASSED** unanimously.*

**III. Special Announcements**

*There were no special announcements.*

**IV. Approval of Minutes**

June 14th, 2004 Minutes

*Councilor Kraus **MOVED** to approve the June 14, 2004 minutes as submitted. Councilor Morong **SECONDED** the motion.*

Page 2, under V. Unreserved Fund Balance, should read "Councilor Van Asselt stressed there was no magic to these numbers..."

Page 9, 2<sup>nd</sup> paragraph from bottom, should read "Councilor Needell asked if all three options would include a stop sign..."

Page 11, 5<sup>th</sup> paragraph, should read "Councilor Grant recused himself from the discussion, explaining that he could be a potential beneficiary of Mr. Farrell's proposal".

Page 13, 4<sup>th</sup> paragraph from bottom, should read "...Town infrastructure upgrade to get to this particular development..."

Page 14, CHECK WORDING OF MOTION FOR COUNCILOR MORONG, AND WHETHER WAS SECONDED....

***Councilor Smith MOVED to approve the amendments to the minutes. The motion was SECONDED by Councilor Grant, and PASSED 8-0-1, with Councilor Kraus abstaining for reasons of absence.***

***Councilor Smith MOVED to postpone approval of the minutes pending review of Page 14 with regard to Councilor Morong's motion. Councilor Needell SECONDED the motion, and it PASSED unanimously.***

June 21<sup>st</sup>, 2004 Minutes

***Councilor Kraus MOVED to approve the June 21, 2004 minutes as submitted. The motion was SECONDED by Councilor Smith.***

Page 2, bottom paragraph, should read, "as a possible replacement to a barn at Wagon Hill Farm."

Page 3, 2<sup>nd</sup> full paragraph, should read "...the recently completed Dufresne & Henry..."

Page 4, Under IX. C. , insert "Councilor Needell recused himself from this matter." immediately above the motion.

Page 11, 8<sup>th</sup> paragraph, should read "...and had rebated a portion of the audit fees..."

Page 14, 4<sup>th</sup> full paragraph, should read "Councilor Needell said he was sensitive to the concerns that had been expressed,..."

Page 15, 2<sup>nd</sup> full paragraph, should read "...with respect to 80 of the abatement recommendations...". Also, motion at bottom of page, should read "...SECONDED by Councilor Morong..."

Page 16, Councilor Smith's motion under D. PLEASE CHECK WORDING ON VIDEOTAPE

Page 17, 3<sup>rd</sup> full paragraph, should read "Councilor Morong said he had no problem with letting Administrator Selig know what this Councilor would want in an ideal world".

***Councilor Kraus MOVED to approve the amendments as proposed. The motion was SECONDED by Councilor Smith, and PASSED unanimously.***

***Councilor Kraus MOVED to postpone final approval of the minutes pending review of the videotape with respect to page 16, Item D, paragraph 2. The motion was SECONDED by Councilor Smith, and PASSED unanimously.***

## **V. Report of Administrator**

- Administrator Selig noted that the Independence Day Celebration went very well, and thanked Councilors Needell, Van Asselt and Smith for their help at the event. He also thanked the Durham-Great Bay Rotary Club for its, noting the amount of money raised through the event had not been determined yet, and thanked UNH for allowing the stadium to be used at no charge.
- Administrator Selig said the Woodridge Field tennis courts reclamation work was going along well, and provided details on to the Council.
- Administrator Selig said the 2004 Road Program work was proceeding on schedule, and said application of the top coat was scheduled to begin on July 19th.

- Administrator Selig noted the work being done by the Public Works Department outside the Post Office, also explaining that Verizon had needed to replace wires under the sidewalk there. He said the sidewalks would be upgraded to match the new sidewalk design, and said this work would be done in stages to minimize interruption. He also noted that the light post in this area was, in fact, appropriately placed, within the confines of the sidewalk, so that cars would not run into it.
- Administrator Selig said there was a telephone scam in Town, where residents were receiving unsolicited calls asserting that a company was doing water testing on behalf of the Town. He asked residents who received these calls to contact the Public Works Department.
- Administrator Selig noted that the fire station had recently received a new brass fire pole. He also said the Fire Department was checking to see that property numbers were plainly evident on houses, from both directions, and said it was also important that these numbers not be hidden by shrubs or snow so emergency personnel could respond quickly.
- Administrator Selig said the Annual Durham Red Cross Blood Drive would be held at the UNH Memorial Building on July 12<sup>th</sup> and 13<sup>th</sup> from 10:00 to 3:00 pm.
- Administrator Selig said he had circulated to Council members the NH Municipal Association's Annual Legislative Policy Process, and asked Councilors to forward any comments on it to him, which he would compile and present to the full Council. He said he had raised a few issues dealing with some of the policy positions the Association was taking, and noted he had a meeting scheduled with the Keene City Manager and the Town Administrator in Plymouth to discuss these issues, and would report back to Council members on the meeting.
- Administrator Selig said he had gotten a call from NH Fish and Game concerning the fish passage project, and had been asked how the Town wanted to proceed concerning holding public hearings, donating easements, and donating sand and gravel. Administrator Selig asked Councilor to think about these things, and said he would bring this issue forward for Council consideration in the near future.
- Administrator Selig noted that the agenda for the July 19<sup>th</sup> Council meeting was light, and asked Councilors to consider canceling that meeting, especially since the two Council meetings would otherwise take place only one week apart.

## **VI. Reports and Comments of Councilors**

- Councilor Kraus noted that he had previously spoken at the May 3<sup>rd</sup> Council meeting on how the Spring cleanup was progressing. He said he had met with the Integrated Solid Waste Management Advisory Committee that morning, and said the logistics of this cleanup had again become a focus of concern, in terms of the time and expense required for doing this cleanup. He said in the near future, the committee would be working with the Public Works Department to make a recommendation on this issue.

He said he would like to highlight the issue by providing photographs for Council members and the public showing that some homes had abused the cleanup process by putting out a tremendous amount of waste materials, including demolition debris. He said there were at least a dozen instances where 3 or more truckloads of material were removed from a property.

Councilor Kraus asked those people concerned about this issue to contact Council members or the Town Administrator if they wished to change the current Spring cleanup policy.

Chair Sandberg asked Councilor Kraus if he planned to bring forward something on this as an agenda item, and Councilor Kraus said something would be developed in the near future.

- Councilor Smith updated Council members on the Mill Pond dredging project. He said the members of the Army Corps of Engineers had returned from the Middle East, but said the equipment had not, so the project was still on hold.

## **VII. Public Comments**

**Gerald Smith, 1 Back River Road**, asked that the following letter be read into the minutes. “In May, 2004, the following residents of Durham placed 235 American flags on Veterans’ graves in the Durham Cemetery, and graveyards in Durham. Next year, 2005, at least 2 gross of flags should be ordered through the American Legion, Post 67 in Newmarket. Donald Sumner should be especially thanked for mapping the Veterans’ graves at the Durham Cemetery. The workers were Ronald Clark, Richard Dewing, Kenneth Moore, Tyler Smith, and Donald Sumner.”

**Joe Kelly, Joe’s New York Pizza, Main Street**, asked what the procedure was for presentation of the proposed new chapter to the Durham Town Code concerning hours of operation for restaurants and carryout establishments. He also asked if he would have an opportunity to provide input on this matter.

Chair Sandberg explained the process, and said that all interested parties would be given a full opportunity to express their views on the proposed ordinance.

**Scott Mitchell, 94 Linden Road, Hampton Falls**, said he was the developer who had Smitty’s property under agreement. He said when he was last in front of the Council a few years back, he had not signed a contract with Smitty’s, but he has since signed a long-term contract and was interested in developing the property. He said he was present if Council members had any questions about a land swap idea he had proposed several years ago, or any other matters.

**Mack McLane, 5 Croghan Lane**, noted a recent article in *Fosters Daily Democrat* on the possible use of eminent domain by the Town. He also said he had recently seen a show on CBS that pointed out numerous excesses in the use of eminent domain, and said he hoped the Town would not resort to using this concerning the Smith Sunoco property.

### VIII. Unanimous Consent Agenda

- A. **Resolution #2004-14:** Authorizing the acceptance of funds from a variety of sources related to the Police Department and authorizing the expenditure of said funds for the purposes intended.
- B. Shall the Town Council authorize the Town Administrator to sign a Release Deed on the Chester Willey, Jr. parcel located off of Dame Road?
- C. Shall the Town Council reappoint the Director of Planning and Community Development, Jim Campbell, as its representative to the Seacoast MPO Technical Advisory Committee for the period July 1, 2004 to June 30, 2005?

***Councilor Kraus MOVED to approve Unanimous Consent Agenda Items A, B, and C. The motion was SECONDED By Councilor Smith, and PASSED unanimously.***

### IX. Unfinished Business

- A. What guidance shall the Town Council provide to the Town Administrator with respect to the display of certain property assessment information on the Town's web site?

Administrator Selig provided background on this issue. He said the information had been made available online in an effort to make it easier for the public to access it. He noted the concern was raised at the previous Council meeting that providing this information online could cause problems if persons of "nefarious intent" viewed the information on a property.

Administrator Selig said the Council had requested that he check to see what other towns were doing regarding this issue, and that he had put out a question to the listserv of NHLoGIN, an organization that promoted information sharing between NH government officials. He said he had received several replies, which he had provided to Council members.

Administrator Selig said there were some NH communities where this was not an issue, but also some communities where it was a large issue. He noted some communities had removed dimensional plans and photographs of properties, and said this could be done for Durham's web site. He also said there had been an issue as to whether more information, such as statistical coding on the tax cards, could be put online, so that essentially everything on the tax card could be available online. The Town staff was currently researching whether this could be done.

Administrator Selig said his recommendation was that if Councilors were uncomfortable with the current situation, they could remove the photographs and dimensional plans, although noting that the plans were not an exact representation of a home, and were not that easy to understand. He also said that the larger context of this issue was that the intention had been to make government data more open, so that assessing information would be coordinated with more detailed geographical

information available on local properties, including zoning information, infrastructure information. He said this layering of information could be very useful for planning purposes.

Administrator Selig he said if there was concern about photographs of properties being online, there also needed to be a discussion about the use of GIS information concerning properties. He said there potentially could be a 3 dimensional view of a person's home obtained from aerial photography, which would provide a clear sense of the characteristics of a property. He said the Town had not been thinking about the possibility of someone burglarizing a property when plans for the development of this kind of user-friendly mapping information had been developed.

Administrator Selig noted the Police Department had done some research to see if this was an issue nationally, and had found that it hadn't been. He said these issues of privacy had been a concern of some towns in New Hampshire. He suggested leaving the information online, because it was beneficial for various entities, and cuts down on traffic at the Town Office.

Councilor Smith noted that he had served on a commission in Concord on RSA 91-A concerning electronic issues. He said that the commission members he had served with were surprised about how much information was online at the Durham web site. He said he had two interrelated concerns about the existing policy, one of which was the possible assistance the online assessment information could provide to those engaged in nefarious behavior.

Councilor Smith said the other issue was one of personal privacy, and said he believed that for Durham, the personal privacy issue was the larger one. He said that in a world dominated by massive use of public data, a substantial tension had developed between the spread of information and personal privacy, noting that this tension was playing out at the national level with the so-called Patriot Act. He said it was important not lose sight of what had been constitutionally recognized as a fundamental right to privacy.

Councilor Smith said that since he had been a constant advocate of open government, it might seem ironic that he was now pushing in the other direction. He said the issue raised valid opinions on both sides. He also said the emails from other towns showed an interesting contrast between the views of governing bodies and their town administrators, which was not surprising since governing bodies didn't deal with the kinds of practical concerns that administrators did. Councilor Smith noted that only one Town (New London) responding to Administrator Selig's email had a policy similar to Durham's, and this had been amended so that citizens could opt out if they wished.

He said this delicate issue needed to be discussed, and that was looking at the issue now as something where the Town was essentially starting from scratch, even though the information was already online. He said opting out was one way of approaching this, but that his bottom line was deleting the photograph and the dimensional diagram.

Councilor Smith also said he would be very much in favor of putting online all of the data that showed how decisions were reached concerning properties. He said this was

where he made the distinction concerning the kind of information that should be provided to citizens. He said the government should be open to its citizens and didn't, except in rare circumstances, have the right to privacy. He said that right belonged to citizens because they did not have the same degree of power that government had. Councilor Smith said he would prefer not to make a motion on this matter at present, and would listen to discussion.

Councilor Kraus said that by bringing this issue up as the Council had, a lot of attention had been brought to it. He said he was concerned that this issue did not get carried to an extreme that was not appropriate. He noted that realtor photographs of homes had been available forever, and people didn't complain about having these photographs in the paper because the bad guys could find out about these properties. He also said it was possible that ironically, properties that opted out might be looked at by such people as more likely to be worth robbing.

Councilor Needell noted in response to Councilor Smith that many NH towns were online that they had not heard from, and which had differing levels of accessibility. He said he did not have a problem with removing the photo and floor plan. But he asked if the information was required to be available at the Assessor's office, and if removed from the web site, would still be available there. Administrator Selig said the assessing card was a matter of public records, and included the photo and floor plan, so would be available at the Town Office.

Councilor Needell noted some towns did not display the owner's name online with assessing information, and said from what had been presented, he didn't see any reason why someone should need to search by name. He said he wouldn't have any problem with removal of the property owner's name, but said the other information used for assessment should be there.

Councilor Harris said historically there had been booklets that listed all the properties in town by name, and they had provided interesting information on multi-units and multiple properties as to where tax dollars were generated. She said there were no pictures with this information.

Councilor Morong said Councilor Kraus' comment concerning realtor photos of properties being available was not a fair comparison because in this case, people were making a choice to allow a picture of their property to be shown. He also noted the irony that Administrator Selig had recommended that people not give out information over the phone to callers involved in the water testing scam, yet someone could go online and get all of that information anyway.

Councilor Smith said he did not want his view to be exaggerated, and was not suggesting that most or all of the assessing information should not be online. He noted that other NH towns made distinctions as to what assessing information should and should not be online. He also noted that it was essential, as a legal matter, to be able to access this data at the Assessor's office, because of the property tax system. But he stressed again the privacy part of his argument.

***Councilor Smith MOVED that the photographs and dimensional sketches currently available online be removed from online access. The motion was SECONDED by Councilor Van Asselt.***

Councilor Smith said he was in no way suggesting that this information should be kept from someone coming to the Town office, and it would be up to the Town if it wanted to keep track in any way of anyone who did so.

Chair Sandberg asked if it was Councilor Smith's understanding that if someone came to ask about information at the Town Hall, it would be a legitimate request of the clerk to ask the person to identify himself/herself as the requestor of that information.

Councilor Smith said it could be argued either way, but he had no doubt that the person had the legal right to ask for this information. He said if the privacy issue was separated from the so-called nefarious persons issue, there were probably some restraints that could be imposed concerning the privacy issue, to the extent that someone had to come down to the Town Office to see the information. He said it would be a somewhat greater restraint if someone would have to sign a book when coming in to look at that information. He noted that when he went to court to look at court records, he had to sign a sheet.

There was additional discussion as to what assessing information was presently available in the lobby at the Town Office. Town Assessor Robb Dix said the information in the lobby was identical to what was in the Assessor's office, but represented a file that was frozen after the tax bills went out. He said what was online was somewhat more limited.

Councilor Niman said he generally believed that more information was preferred than less, and commended the Town Administrator for putting as much information online as possible. He said he couldn't support the motion because he didn't understand the principle involved in drawing the line at photos and dimensional drawings, and why they violated personal privacy but other information did not. He said unless he heard such a rationale, he would say that more information was preferred.

Councilor Grant noted he had stated his opinion on this issue at a previous Council meeting. He said that Durham had lived for many years with what he would call an inventory of property, which consisted of the name of the property owner, the acreage of the land, the value of the land and building, and the lot number on the tax map. He said he didn't see why he or anyone else in Durham needed to know more detail than this, and that he didn't see why things like ownership history, or construction detail had value in a general context. He said someone needing to do a meticulous comparison of properties could perhaps utilize more detailed property information, but said this was generally needed within a neighborhood, and could be done based on knowledge of neighbors' properties. He said that putting the information on the web seemed extreme and excessive.



Councilor Harris said it didn't hurt to have the information if someone wanted to make a comparison of properties for various purposes, and the question was whether it hurt someone's privacy.

Councilor Morong said he thought it did hurt one's privacy, and said that if someone wanted to make a detailed comparison, he would rather see that person come down to the Town Office to get this information. He also said he would prefer to give the citizens the option as to whether they wanted their property information on the web.

Councilor Smith said in answer to Councilor Niman's comment about the rationale for drawing the line of privacy, that it was the exercise of judgment. He said the information online, even without pictures and property diagrams, could be argued as being too much, and ultimately it came down to a matter of personal preference as to where a line of privacy should be drawn.

***The motion FAILED 4-5, with Councilors Smith, Morong, Van Asselt and Grant voting in favor of the motion, and Councilors Niman, Kraus, Needell, Harris and Sandberg voting against it.***

***Councilor Smith MOVED to have an "opt out" provision for citizens wishing to remove photographs and sketches (of their properties from assessing information) at the Durham website, and could request that removal by contacting the Town Assessor's office, and the removal would be mandatory. The motion was SECONDED By Councilor Morong.***

There was discussion about the correct wording of the motion, and based on this discussion, ***Councilor Morong withdrew his SECOND.***

***Councilor Van Asselt SECONDED the motion.***

Administrator Selig said it was not clear whether this information could be taken off the web site, and Mr. Dix also said he was not certain.

***Councilor Kraus MOVED to postpone acting on the previous motion until the feasibility of the "opt out" proposition could be assessed. Councilor Morong SECONDED the motion.***

Councilor Smith asked how soon that information would be forthcoming, and was told it could be available at the next Council meeting.

Councilor Van Asselt said he would also like to know if other information could be removed from the web site, and there was discussion about this.

***The motion to postpone action PASSED unanimously.***

**B. Discussion regarding the potential use of the municipal parking lot and adjacent parcels.**

1. Route 108 Sunoco property

## 2. Durham Public Library

Administrator Selig provided background on this issue. He said the Library Trustees had made the request at the previous Council meeting to allow the Public Library to be constructed behind the present Town Office facility. He said the Council had discussed the need to have some discussion, and hold a public hearing before making such a decision.

Administrator Selig said that since that time, it had come to light that Scott Mitchell had reached an agreement, the terms of which were unknown, with the owner of the Sunoco property, and said this had prompted the Council Chair, Vice Chair and himself to talk through how the Council might want to address its interest in the property. He said in addition, they thought it was important to talk through how the property might or might not interface with the Library Trustees' request to locate the Library behind the Town Office. He said an important consideration was whether there was enough room for the library there.

Administrator Selig noted Councilor Van Asselt had sent out a memo attempting to frame various ways the Council might want to address this topic. He said the Town had contemplated this issue of acquiring Smitty's for many years, noting the property was about an acre, and was valued at about \$750,000. He said there had been discussion about what the best use was of the parcel on which the Town office sat. He also noted there had been a vision to merge Smitty's and the Town Office site to create a large town center, or merging the two to create an economic center, which would support Three Chimney's Inn, as well as the new hotel planned across the street. He said it was important to talk through all these issues to get some direction.

Administrator Selig said Mr. Mitchell had come before the Council over a year ago, and had suggested a property swap – where the Town would be given the land between the Town Office and Court House, and in exchange would give to Smitty's the land on which the salt shed and pole barn and small office were located. He said this would give more depth to the Smitty's parcel, and in addition, a right of way would be allowed cross back part of the parcel so Smitty's could forego the existing, blocked entrance in exchange for access to School House Lane. He said the Council had previously expressed some interest in the swap idea, and had talked in a general way about exercising eminent domain on that parcel. But he said the Council had never voted formally to move in that direction. Administrator Selig said that prior to taking such an approach, the Town would want to have provided specific written proposals to Mr. Smith and to have received rejections from him. He said eminent domain was a lengthy process.

Administrator Selig said that if the Town was interested in acquiring the parcel for Town use, this was the time to get serious about doing so, before the property got developed further.

Chair Sandberg said that in setting up the agenda, it was thought that if it was the resolution of the Council to envision this area becoming a commercial center that would resolve the question about the library. He said that on the other hand, if the

Council saw this as remaining as a municipal center, that opened up the opportunity for discussion of the potential of having a mixed municipal/commercial site. He also said if Councilors wanted to retain this area as an historical center of the community, they needed to say so, but if they were not of a mind to do so, they needed to say that. He said this was why this issue should come before the library issue.

***Councilor Kraus MOVED that the Council, and therefore the Town of Durham, not consider any use of “taking” or eminent domain relative to the Smitty’s property for the period from this date until the next Council meeting following Town elections in 2005.***

Chair Sandberg said the issue of the process by which land acquisition might be taken seemed to him to be one that should be discussed in a nonpublic setting, as part of strategies for acquisition of real estate. He said the issue raised that evening was more conceptual: “Was it the consensus of the Council that the area should become a commercial center, should it remain as it was, or should the municipal use be expanded?” He said he did not feel this was a timely motion, but if seconded, there could be some discussion on it.

***Councilor Niman SECONDED the motion.***

Councilor Smith raised a point of order that the Council needed to resolve whether the motion was germane before there was discussion on it.

Chair Sandberg said he had raised the question as to whether this was the time and setting to discuss the strategy for acquiring the land, when they had not yet resolved whether they wanted to acquire the land. He said his sense was that the eminent domain issue was premature.

Councilor Kraus said he was concerned that when he made a motion, the Chair made his own statement as to whether his motion was correct. He said it seemed that a Second should follow that motion without that interjection, and said the motion had been contaminated by comments made before there was the opportunity to Second the motion. He said he believed that Roberts Rules would substantiate this.

Chairman Sandberg said the role of Chairman is to determine whether or not a motion is in order. He said that he raised the issue, not for his final determination, but for the rest of the Councilors to determine whether it is the consensus of the Council body to pursue or not pursue the option of eminent domain.

Councilor Smith said he raised the point of order because it was not clear whether this was the appropriate place to discuss this issue, as compared to under Other Business. He said the discussion under IX B was supposed to be an open discussion to explore the issues more broadly.

Councilor Kraus said his reason for bringing the motion forward was to set the context for the discussion for the immediate future, so that the Council would be on record as not planning to use eminent domain as a strategy. He said he believed using eminent

domain was not appropriate in this context, and said it was important for Council members to vote on how they felt about it.

Chair Sandberg said the question becomes moot if the Council decides not to acquire the property.

Councilor Niman said the eminent domain issue was in fact pertinent to the discussion. He said the Council could have all kinds of discussions on what could be done with this site, but the reality was that Mr. Mitchell had a valid purchase and sales agreement with Mr. Mitchell, and therefore, from his perspective, the property is not available. He said the property would be going to Mr. Mitchell unless the Town decides to use eminent domain--something he was not in favor of and something he did not believe the Town had a realistic chance of succeeding at through the court system.

Councilor Smith said the Council was avoiding deciding whether this issue was germane, and asked the Chair to rule on this.

Chair Sandberg asked for a recess so he could review relevant sections of Roberts Rules to determine the correct way to proceed regarding Councilor Kraus's motion.

The Council recessed for 10 minutes.

Chair Sandberg said he had checked Roberts Rules, and had determined that at the time Councilor Kraus made his motion, that was the Chair's opportunity to determine whether or not the motion was appropriate at that place and time. Chair Sandberg said he had made his comment at that time, but had not done so assertively enough, and the Second to the motion was made. He said that based on this, he believed the deliberation on the issue, as raised by Councilor Kraus, should continue.

Councilor Smith asked the minutes taker if he had made his point of order before or after the motion was Seconded by Councilor Niman. The minutes taker said the point of order was made after the Second was made.

Councilor Kraus said he made this motion because he wanted to make it clear that this was for a specified time period, for the present Council only, and wanted to set the stage for this discussion, so that the eminent domain issue wasn't something that lurked behind the scene.

Councilor Needell said in reviewing past minutes on this he didn't know if there had been a serious discussion on eminent domain concerning this property. He said he didn't see the need to discuss eminent domain at this point, and it appeared to be preemptive to limit the discussion. He noted he had no intention to pursue eminent domain on anything, but did not support this discussion because he didn't see it had bearing on the larger discussion.

Councilor Morong said he didn't remember any discussion on this either, but said if anyone was worried about something nefarious going on concerning eminent domain, this motion would take care of it.

Councilor Smith said not only could this Council not bind a future Council, but could not bind itself, so the motion could be overturned at the next meeting. He said he agreed with Councilor Needell that there had been no meaningful discussion on eminent domain, so it seemed strange that this motion was on the table. But he said that over and above this, for the Council to take a vote at that time that it would not wish to exercise eminent domain, in the context of the present discussion, made no sense.

Councilor Smith said eminent domain was a vital power of government, not some strange item, and whether or not it would be exercised was issue specific. He said it could only be exercised when the taking was for a "public purpose", and said the Council hadn't even begun discussion as to whether it wanted a public library building, whether it wanted it there, or whether if it did, how this might implicate other policy issues. He said the Council had no idea whether, if the Town desired Smitty's property, this would be something that would require eminent domain. He said there was no information that Mr. Mitchell had a purchase and sales agreement, and said for the Council to take this vote now was totally upside down.

Councilor Kraus said there must be some aspects of this issue lurking around, or the Town Administrator wouldn't have mentioned it in the context of this discussion.

Chair Sandberg said eminent domain had been acknowledged as a valid power at previous meetings, but the Council had not deliberated on whether it should or would need to exercise this power. He said that for many years the issue had been on the table as to whether the Town would want to own Smitty's. He said there needed to be consensus as to whether that property fit into the municipal holdings of the community. He said the Council had said in the past that it would like to enter into negotiations, but this had failed in the past. He said the question now was not eminent domain, but whether the Town wanted to pursue the property at all. He said he would therefore vote against the motion.

Councilor Van Asselt said he had no idea whether he had any interest in buying that piece of land, until he had information on whether the corner should be for commercial or municipal use. He said he saw no reason to rule out the use of eminent domain as a possible option, a tool to use if necessary, pending what the Council decided to do with this property.

Councilor Grant said two years ago the Council had authorized the Town Administer to negotiate with Mr. Smith on the property, a price was offered, but nothing came of it. He noted the Administrator had considerable difficulty having conversations with the property owner. Councilor Grant said it was obvious the owner didn't want to sell his property to the Town, whether because of price, or wanting to keep a business there in perpetuity. He said the Council was brought to this discussion tonight because in order to talk about the library, it had to talk about Smitty's property. He also said he would

personally not vote for eminent domain for this property, for the purpose of putting the library there or any other purpose, unless there was some public safety problem. He said it was important for the Council to say the property was not available, or to consider eminent domain, and to get the issue of this property resolved so it could move forward with talking about the library, or what to do with the Town property.

Councilor Smith said there were substantial potential interrelationships between the issue of building the library and the need for additional land the Town currently did not own, and said there had not been enough factual development on this. He said he also sympathized with why Councilor Grant had reached his conclusion about Smitty's view, but said he personally did not see that he would be unwilling to sell to the Town.

***The motion FAILED 4-5, with Councilors Grant, Niman, Kraus, and Morong voting for the motion, and Councilors Harris, Needell, Smith, Van Asselt, and Sandberg voting against it.***

Councilor Van Asselt noted this Item could be made into the sole topic of the July 19<sup>th</sup> Council meeting. There was discussion about this.

***Councilor Van Asselt MOVED to postpone further discussion on Agenda Items IX B 1 and 2 until July 19, 2004. Councilor Kraus SECONDED the motion.***

Councilor Kraus said he endorsed this motion because he had been thinking a single item agenda was appropriate because the short period of time between the two Council meetings.

Councilor Harris asked if they could consider July 26<sup>th</sup> instead, given that there were five Mondays in July this year. Chair Sandberg noted that Councilors had already made their plans for the month, and it happened there was a lot on the agenda for the 19<sup>th</sup>.

After some discussion, and without objection from the Councilors who moved and seconded the motion to postpone discussion until the July 19, 2004 meeting, ***Councilor Van Asselt MOVED to table the motion to postpone further discussion on Agenda Items IX B 1 and 2. The motion was SECONDED by Councilor Kraus, and PASSED unanimously.***

There was discussion as to whether both Items B 1 and B2 were being tabled, and it was agreed that further discussion would include both Items.

## **X. New Business**

- A. First Reading on Ordinance #2004-04:** Amending Part II "General Legislation" of the Durham Town Code by creating a new chapter, Chapter 42, entitled "Camping on Public Land" and initiating a permit system for camping on public land.

Administrator Selig introduced this issue, and said Police Chief Kurz would outline the details of it for Council members.

Chief Kurz said the impetus for this had come from concerned neighbors about camping at Doe Farm. He said there were laws in Durham about camping on public land, but they stopped at the ability to remove tents, and said the campers of concern appeared to be using the area as a weekend getaway.

***Councilor Smith MOVED that the Town Council pass Ordinance #2004-04 on first reading, an ordinance amending Part II “General Legislation” of the Durham Town Code by creating a new chapter, Chapter 42, entitled “Camping on Public Land” and initiating a permit system for camping on public land. Further, the Durham Town Council hereby schedules a public hearing on Ordinance #2004-054 for August 2<sup>nd</sup>, 2004. The motion was SECONDED by Councilor Kraus.***

Councilor Smith said this matter had been brought to the attention of the Conservation Commission, initially in the context of considering the appropriate use of Town owned properties. He said this discussion had narrowed down to focus first on this more urgent issue. He said the Conservation Commission endorsed this ordinance, in concept, and also said he endorsed the motion.

***The motion PASSED unanimously.***

Councilor Kraus asked that there be some way it could be noted for the people who were camping on Town owned property that that there would be a hearing on this issue.

- B. First Reading on Ordinance #2004-05:** Amending Part II “General Legislation”, Chapter 53 “Vehicles and Traffic”, Section 153-46 of the Durham Town Code by prohibiting overnight parking in all municipal parking lots between the hours of 1:00 and 6:00 AM.

Chief Kurz said this came about as a result of discussion of the demolition of the Town garage, which would open up more parking on this property. He said in doing some research, he had detected a deficiency in the ordinance which allowed parking overnight in public lots in Durham, noting that the only related regulation in place at present was a ban on winter parking overnight on these lots.

- C. Councilor Van Asselt MOVED that the Town Council pass Ordinance #2004-05 on first reading, an ordinance amending Part II “General Legislation”, Chapter 53 “Vehicles and Traffic”, Section 153-46 of the Durham Town Code by prohibiting overnight parking in all municipal parking lots between the hours of 1:00 and 6:00 AM. Further, the Durham Town Council hereby schedules a public hearing on Ordinance #2004-05 for August 2<sup>nd</sup>, 2004. The motion was SECONDED by Councilor Kraus.**

Councilor Needell asked what the penalty would be for parking illegally, and Chief Kurz said this had already been addressed elsewhere in the ordinance.

Councilor Grant said he had been trying to convince the Town Administrator to lease out parking spaces out back, and said when the old building was torn down, there would be

even more potential parking spaces available. He asked why the Town would want to ban parking there, when allowing parking overnight could make money for the Town.

Chair Sandberg said banning free parking here would not preclude the eventual development of a parking system in the future.

Administrator Selig said at present it was important to clearly delineate where the parking spaces were on the back portion of the lot, prior to renting out spaces. He noted the lot got filled up when there was a meeting, so before renting out those spaces, it was important that the old building be demolished. He said this ordinance was simply a stopgap measure to take the Council to the next discussion as to whether it was appropriate to rent out municipal parking spaces.

***The motion PASSED unanimously.***

**D. First Reading on Ordinance #2004-06:** Amending Part II “General Legislation” of the Durham Town Code by creating a new chapter, Chapter 34, entitled “Restaurant and Carryout Establishments Hours of Operation

Administrator Selig said he wanted to lend support to this proposal, describing it as appropriate given the size of the Police Department and the constraints it was under. He also said it would address cost issues the Council had asked him to look at.

Chief Kurz said he had provided the impetus for this ordinance. He said the Police Department was challenged by the fact that after the local bars closed, hundreds of people from those bars and from elsewhere - dorms, outside of town, etc., arrived downtown to socialize. He said these people circulated around the three restaurants downtown that were open until they decided to close.

He said it was difficult to manage this situation, noting it was the quality of the behavior of the people there, - predominantly intoxicated people, not the quantity of people there that was the problem. He said this kind of ordinance was not unusual, noting Hampton Beach had something similar. He said the Police Department could handle the situation until 2:00 am, but shouldn't have to do so later. He said officers often had to be there from 3:00 to 5:00 AM, and these were the same officers that had to come back and do it again the next day. He said this was not a money issue, - he simply didn't have the officers to give for this. He said it was a logistics issue, trying to balance the needs of the community and the needs of the department.

He said he had had discussions with the business owners involved, and said that based on this the ordinance would allow delivery after 2:00 AM off the premises to a residential or institutional address, which would avoid “delivery” to people right outside. He noted that Dominos closed at 2:00 AM, so the delivery issue might be somewhat moot. Chief Kurz said the issue was that the establishments needed to close to patrons so the officers could go home, and be ready to come back in the next day.

***Councilor Van Asselt MOVED that the Town Council pass Ordinance #2004-06 on first reading, an ordinance Amending Part II “General Legislation” of the Durham***



***Town Code by creating a new chapter, Chapter 34, entitled “Restaurant and Carryout Establishments Hours of Operation . Further, the Durham Town Council hereby schedules a public hearing on Ordinance #2004-06 for August 2, 2004. The motion was SECONDED by Councilor Grant.***

Councilor Niman asked Chief Kurz whether, if the main problem was not having enough officers, even if funds were available, if the department could get them from some place else, either UNH or the surrounding towns.

Chief Kurz said police staff was sometimes augmented by officers from other towns, and UNH. But he stressed that Durham police officers were more sensitive than those from other towns to Durham’s specific needs, regardless of how good these other officers were, and also said that UNH officers were sometimes not available at the late hour.

Councilor Niman asked if by banning people from these establishments on Main Street, they would go someplace else.

Chief Kurz said it was his contention that if there were no reason for these people to be on Main St, they wouldn’t be, and said whether they would go someplace else was something the Town would have to look at. He noted that UNH closed its facilities at 1:00 AM, as did establishments at Hampton Beach.

Councilor Needell said he was taken somewhat aback about this ordinance at first. But he said it was important to hear what the Police Department was saying about this issue, that this was a matter of their well being as well, and it was a compromise as to how the whole community interacted. He said the cost issue should be kept separate, and said it was important that the department was a part of the community. He said he was inclined to think this was a reasonable approach to pursue.

Councilor Smith asked Chief Kurz to be prepared to address at the hearing, as factually as possible, if the current hours for officers adversely affected their performance.

Councilor Grant noted an interesting article in the Boston Globe about how the city of Boston, the State and the Federal Government were not permitting hours of operation to be extended beyond the normal hours, during the Democratic Convention, because of the lack of resources available to cope with early morning activities. He said he was in favor of holding the public hearing.

Councilor Kraus said it would be important for merchants to provide information at the hearing on the revenue they would be losing in this circumstance. He also noted Councilor Niman’s comment that the crowd could simply go elsewhere, and said he was concerned about this, and hoped this would be addressed at the hearing. He said he was in favor of scheduling the hearing.

***The motion PASSED unanimously\.***

Chief Kurz said he had asked his officers to hand deliver the schedule on this ordinance process to business owners, and to encourage them to attend the public hearing.

**E. Develop questions for Library Trustees to prepare for a public hearing on the concept of locating a new public library at the Town Hall site, and set a public hearing date.**

Administrator Selig said the Library Trustees had suggested either Monday September 13<sup>th</sup> or 20<sup>th</sup> for the public hearing.

Chair Sandberg said the issue of developing questions begged the question that had been tabled. He said it might be appropriate for the Council to deal with the tabled issue first, with respect to the size of the property.

Councilor Smith said for him, the first matter needing to be addressed was whether the Council would support the building of a Town library, and if so, would it support building it at the Town Hall site. He said he was somewhat troubled about having a further discussion before having the public hearing.

Councilor Grant said there had been a preliminary discussion with the Library Trustees at the last meeting, and it was the consensus of the Council that it would be helpful to let the Trustees know what some of the Council's questions were so they could prepare for the hearing. He suggested that Councilors who had questions for the Trustees should state them. Councilor Grant said one question he had was how confident the Trustees were that there was public support for this site, and how they were measuring this level of support.

Councilor Needell said he had 7-8 questions for the Trustees to give to Administrator Selig. He noted the questions Councilor Smith had raised, and asked whether the Council was prepared to support the public library. He said if they were not prepared to do so, they could probably adjourn the meeting.

Chair Sandberg said the question was not whether the Town should support a library but whether there should be a Town owned building for the library, or a rental property and that the Library Trustees have clearly indicated that it is time they have a building. Chair Sandberg noted that the question of where the building should be had been tossed around for some time. He also said that although he was not present at the previous meeting, he had watched it on DCAT, and it struck him that the Library Trustees could have their own public hearing on this. He said if the Council were to have a hearing, it seemed that it should be having one on a specific proposal, and said the present proposal before the Council was very general

Councilor Van Asselt said the question remained unanswered as to whether the Town was prepared to support financially the building of a new public library, and all the other questions were secondary.

Councilor Needell said he had suggested that the Council move forward with a determination as to whether the Library Trustees request was a viable option.

Councilor Harris asked Councilor Needell if it was his intention that the Council would determine whether or not it would support a library on the existing parcel of land versus in addition to other pieces of land.

Councilor Needell replied that in his view, the discussion for the next meeting has nothing to do with the library but rather the discussion should be around what the Town wants to do with the existing municipal lot with respect to the Sunoco Station and the development of the property as a governmental center.

Councilor Smith said the issue the Trustees wanted to have a hearing on was whether the library should be built on this site. But he said what he needed to know in considering the Trustees' request was: how would the building sprout on that land – where would the money come from, and what would be the commitment from Town government on this; and if the building was built, what would the intentions of the governing body of the Town be for the operation of the library. He said the Council needed to know where it was going on these matters.

***Councilor Needell MOVED to delete the requirement to adjourn at 10:00 PM. The motion was SECONDED by Councilor Niman, and PASSED 8-1, with Councilor Kraus voting against the motion.***

Councilor Needell said he agreed about the interrelationship between the issues, and had no problem discussing the library at the next meeting, but simply wanted the Council to move forward. He said he believed there was a way to separate the issues, and said having a discussion about Smitty's could help with discussion about the library. He noted there was an immediacy to that issue because of the potential sale of the property, but said if the Town entered into a land swap, this would have nothing to do with whether the library was built on that site. He said the library could be built regardless of the decision on that property.

There was additional discussion as to how to proceed with the discussion on these interrelated issues. Chair Sandberg provided details as to why the order in which the pieces of the discussion were dealt with was significant.

Councilor Grant said if he were a Trustee, he would be very frustrated. He said he thought they had presented the Council with a clear-cut question, and although he agreed with the Chair that a lot of other ideas could be built around this, he thought the Council should provide a simple answer. He said that if the Council agreed that the library could be built at the Town Hall site, the Trustees would then have the responsibility of looking carefully at the neighborhood and helping the Town develop a vision and a plan for this site. He said he was concerned that at the public hearing in September, if it was not clear whether the Council was open to having the library located at this site, there could be problems.

The Council discussed the scheduling of a public hearing on this issue.

***Councilor Grant MOVED to schedule a public hearing on September. 20, 2004 to hear public comments with regard to the siting of the library on the Town of Durham***

***municipal property. The motion was SECONDED by Councilor Morong, and PASSED unanimously.***

***Councilor Grant MOVED to remove from the table the motion to postpone discussion on IX B 1 and 2 until July 19, 2004. Councilor Needell SECONDED the motion, and it PASSED unanimously.***

Councilor Smith asked Administrator Selig if there was any reason not to have this meeting, and Administrator Selig said he did not.

***The motion to postpone further deliberation on IX B1 and B2 until July 19, 2004 PASSED 6-3, with Councilors Sandberg, Harris and Van Asselt voting against it.***

#### XI. Adjournment

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

The meeting ADJOURNED at 10:23 PM.

Victoria Parmele, Minutes Taker