

DRAFT

MONDAY, SEPTEMBER 13, 2004
DURHAM TOWN HALL -- COUNCIL CHAMBERS
TOWN COUNCIL MINUTES
7:00 PM

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

MEMBERS ABSENT: None

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

I. Call to Order

Chair Sandberg called the meeting to order.

I. Approval of Agenda

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

II. Approval of Minutes – August 16, 2004

*Councilor Smith **MOVED** to approve the minutes as submitted. The motion was **SECONDED** by Councilor Morong.*

Page 2, 2nd paragraph from bottom, should read "...\$2.5 million".

Page 6, 6th paragraph, should read "Councilor Morong amended the motion ..."

Page 14, 5th paragraph, should read "Chair Sandberg declared a 10 minute recess at this time."

*Councilor Needell **MOVED** to accept the proposed amendments as presented. The motion was **SECONDED** by Councilor Smith, and **PASSED** 8-0-1, with Councilor Harris abstaining because of her absence.*

*The minutes as amended **PASSED** 8-0-1, with Councilor Harris abstaining because of her absence.*

III. Report of Administrator

- Administrator Selig provided details of the Durham Day celebration.
- Administrator Selig noted that the State Primary would be held the following day at Oyster River High School's new gymnasium. He said this should be a good dry run for using the facility for the November election.

- Administrator Selig said that the Woodridge Field playground had been installed, and thanked employees of Timberland Corporation, Councilors, and others who had contributed their time to make this happen.
- Administrator Selig provided the most recent tax lien figures, noting this was down slightly as compared to the last three years. He said this was in part because one taxpayer had paid off a number of liens.
- Administrator Selig said he would update Councilors, under New Business, on developments concerning the Packers Falls Bridge as well as the proposed land swap.

IV. Reports and Comments of Councilors

Councilor Harris spoke about her recent experience at the Olympic Games in Greece, where her daughter and son-in-law had competed in the rowing events. She said her daughter had realized it was a pride shared with her country and community, as well as one she felt for her own individual effort.

Chair Sandberg said the citizens of Durham were very proud of her, and congratulated her for her efforts.

Councilor Grant thanked Councilors and others for their help on Durham Day. He also expressed his sincere apology to residents of Bagdad Woods and Churchill Apartments whose bus transport to Wagon Hill Farm did not show up because of a mix-up.

Councilor Grant also thanked Town Administrator Selig and the Public Works Department for the paving being done on the west Main Street entrance to the community. He noted that the work was being done for only about \$15,000, in part because town employees in the Sanitation and Waste Water treatment divisions of the Public Works Department were assisting with the work.

Councilor Kraus noted the public hearing on the proposed library that would be held on the following Monday. He said he wanted to comment, in order to provide context and information for citizens, that the draft CIP proposal indicated an amount of \$3 million for the new library/Town Hall.

Councilor Van Asset said if there were time later in the meeting, he would like to discuss the Town's plan review process.

VI. Public Comments

There were no public comments.

VII. Unanimous Consent Agenda

Shall the Town Council approve a permit application submitted by the UNH Campus Activities Board to close a portion of Main Street and Mill Road for the annual UNH Homecoming Parade on Friday, October 15, 2004?

Councilor Van Asselt MOVED to approve the permit application submitted by the UNH Campus Activities Board to close a portion of Main Street and Mill Road for the annual UNH Homecoming Parade on Friday, October 15, 2004. The motion was SECONDED by Councilor Kraus, and PASSED unanimously.

VIII. Committee Appointments

- A. Shall the Town Council move Catherine Leach from her current position as an alternate member on the Durham Public Library Board of Trustees and appoint her to fill the regular member vacancy created by Judith Moyer until the March 8, 2004 Town election, as recommended by the Library Trustees?

Administrator Selig said that a letter from the Library Board of Trustees said they had voted unanimously that Ms. Leach should be a regular member of the Board until the next election.

Councilor Kraus MOVED that Catherine Leach moves from her current position as alternate member on the Durham Public Library Board of Trustees and appoints Ms. Leach to fill the regular member vacancy created by Judith Moyer, until the March 8, 2005 Town election. The motion was seconded by Councilor Grant.

Councilor Smith asked if Ms. Leach was present, and it was determined that she was not. He said that in recent years the Town had made the effort to have potential appointees present, so Councilors could be more informed. He said it was vitally important, especially with regard to the Library trustees, that the Council did not take lightly its responsibility concerning appointments.

Councilor Smith said that although he realized this appointment would be for a short period of time, given the current status of the Library and what lay ahead, it was very important to explore carefully, to the extent the Council had responsibility, how potential appointees saw their role as a trustee. He said he didn't feel comfortable, given the current extreme importance of this issue, to vote on the appointment, and asked if it was essential to vote on it that evening.

Administrator Selig said there was no urgency to this, but said if the Council did not act that evening, it would not be able to do so until the Oct 4th meeting because of the public hearing on September 20th.

Councilor Smith said he would not be present at that meeting, and did not want to delay the appointment unnecessarily. He said he simply wanted to advise the Council about this issue. There was additional discussion by Council members and Administrator Selig.

The motion PASSED 8-0-1, with Councilor Smith abstaining due to a lack of adequate information.

- B. Shall the Town Council appoint Albert Frost, 16 Oyster River Road, as an alternate member to the Durham Public Library Board of Trustees as recommended by the Library Trustees?

Administrator Selig said the Trustees had voted unanimously to appoint Albert Frost to the Board of Trustees.

Councilor Van Asselt MOVED to approve Albert Frost, 16 Oyster River Road, as an alternate member to the Durham Public Library Board of Trustees as recommended by the Library Trustees. Councilor Grant SECONDED the motion.

Mr. Frost said he was pleased to help move the library project along, and realized there were some challenges ahead.

Councilor Smith said at a time of fairly difficult decisions, he would like some sense as to how Mr. Frost saw his role as a Trustee. He noted the central issue, in addition to where the library would be, was how to pay for it, and said he would like some sense of what Mr. Frost thought the Trustees should be doing in terms of obtaining funds for the library.

Mr. Frost said he had yet to read all the actions of the Board over the last few years, and was still getting up to speed as to how they felt the funds needed should be raised. He noted that finding a location for the building was just one of their tasks. He also said it was very important for the cultural tone of the Town that the library not be a rented store front, and said that however it came out, the library needed a home. He said that was the reason he agreed to participate on the Board of Trustees.

Councilor Smith said he understood Mr. Frost was not in a position to commit to a view yet, but asked concerning the issue of finances, whether his mind would be open, as one way of proceeding, that the Trustees should have a major role in seeking to raise substantial portions of the funding for the library.

Mr. Frost said they should have a role, but said he was not sure as to whether it should be a major role. He said he was still studying the situation.

The motion PASSED unanimously.

IX. Presentation Items

A. Report on the Conservation Commission

It was noted that Dwight Baldwin was ill, so was not present to speak before the Council.

B. Report on the Rental Housing Commission – Mark Henderson

Mr. Henderson said the Rental Housing Commission had been much more active than in the past, and was looking at a number of issues. He said the Commission was a good vehicle for the Town, landlords and tenants to come together to address certain issues. He noted that there were currently no vacancies on the Commission, and said it had tried especially hard to fill student vacancies. He said there had been five meetings in 2004, and said the next meeting was scheduled for the following week.

Mr. Henderson said that some of the neighborhood groups had given presentations at Commission meetings concerning problems, and said it was great that they had a chance to voice their concerns. He also said it was good for the Commission to hear the different sides, for ex, concerning Coe Drive, so it could do a better job of solving problems.

He noted landlord concerns with the various proposed ordinances being put forward, and said the Commission meetings were a good way for landlords to find out more about them as well as other issues. Mr. Henderson also said the Commission was working more closely with the Landlord's Association, in part because the Commission was pushing them to get more and more involved with their properties. He noted that the Landlord's Association was working to develop more standards, and said the Commission was trying to provide them with guidance in these kinds of areas.

He said the Commission had looked at the proposed ordinances during the summer, and was generally in favor of the disorderly house ordinance, believing that it would make landlords more responsible. He said the Commission did not support the rental registry or assembly permit ordinances, although noting that they hadn't really touched on the rental registry issue. He said the Commission saw there could be a number of problems with enforcement of the assembly permit ordinance, including dealing with private residences. He said the Commission was working with the draft because it had come before them.

Mr. Henderson said the Commission would hold as many meeting as was necessary, noting it could come together quickly to address issues as they appeared. He asked if Councilors had anything they would like to see from the Commission.

Councilor Needell asked Mr. Henderson if he had observed any significant changes this year.

Mr. Henderson said the recent police presence has been unbelievable, and had curbed a lot of problems. He said there were still large group of people wandering around at times, and didn't appear to know where they were going. But he said the police presence had made a big difference. He also noted that the lighting on Madbury Road had made a big difference, and said that overall, he felt pretty good about the first two weeks of school.

Councilor Smith asked if Mr. Henderson had a sense of what percentage of students housed in Durham live in facilities where landlords who owned them did not live in Durham. He also asked Mr. Henderson how he saw the scope of the problem of absentee landlords.

Mr. Henderson said he didn't have any numbers on this, but said more pressure was being put on some absentee landlords, because they tarnished the overall image. He said the Commission didn't know much about people who went on sabbatical and rented out their homes during this time. He noted that Mr. Johnson had done a good job in curbing some of the problems, and also said the Commission was trying to educate absentee landlords on property management skills.

Councilor Smith said his second question for Mr. Henderson related to the disorderly house ordinance. He asked Mr. Henderson for his perspective on whether the fines involved with this type of ordinance would simply be viewed by some landlords as a business expense.

Mr. Henderson said he did not know. He said that although some people might view the fines as a business expense, the people he talked to didn't see it that way.

Councilor Smith asked Mr. Henderson what level of confidence the Council could have that the fines would be sufficient for those landlords for whom they were really needed, given the amount of money to be made in rental student housing,.

Mr. Henderson questioned Councilor Smith's comment about the money to be made in student housing, and there was discussion about this. He also said that in the end it came down to looking at what the problem was, and educating tenants and landlords, and said this was the way the Commission was focusing on this.

Chair Sandberg asked if the Rental Housing Commission and the Landlord's Association had different perspectives on the proposed ordinances.

Mr. Henderson said the Rental Housing Commission had a broader base, and had discussed the ordinances with various parties, while the Landlords Association had a narrower focus. But he said the Association realized there was public scrutiny of student housing issues because of problem areas, as well as a need for tools to deal with these problems.

Chair Sandberg provided clarification that the Rental Housing Commission was still working on its comments on the drafts of the ordinances.

Mr. Henderson said he would have the Commission's response by Oct 4th.

Chair Sandberg said there would be discussion on this at a Council meeting in October.

Councilor Grant noted that the Commission could function in a way the Council couldn't, and thanked Mr. Henderson for his leadership on the Rental Housing Commission. He said he had a sense that Mr. Henderson's activity in the last year had paid off, and said the Commission had taken the ball and carried it forward. He said he appreciated the role it was playing.

Councilor Harris said she agreed that it was good that neighborhood residents had an opportunity to bring problems to the Rental Housing Commission, and asked if there was a way for the public to know when the Commission met, especially since the meetings sometimes came together on short notice. She suggested that perhaps the Commission could contact people from the neighborhoods about the meetings. There was discussion about this.

Councilor Niman asked Mr. Henderson what the Rental Housing Commission's objections were to the rental registry concept.

Mr. Henderson said members hadn't really addressed this concept in any detail.

Councilor Van Asselt said when the proposed ordinances had been discussed at a previous Council meeting, a comment had been made that better enforcement of existing ordinances would probably accomplish as much as some new ordinances would. He asked if Mr. Johnson had additional assistance with code enforcement, whether that would do as much to solve the problems.

Mr. Henderson said he believed that more enforcement of what presently existed was the best direction to go in, and said the Commission's first goal was to focus on this. He said everyone was now more aware of the potential problems, and also said he felt that landlords were more on top of their properties than they had been in the past.

Councilor Smith asked how the Commission would feel about abolishing the "more than three unrelated persons" provisions of the Zoning Ordinance, and instead focusing more on noise, health and safety, minimum square footage, etc. regulation.

Mr. Henderson said the "more than three unrelated persons" provisions didn't need to be abolished, although noting that three wasn't a magic cutoff number. He said square footage could be a consideration, given that some houses were bigger, and also said location could be a factor.

Councilor Smith said he would like to see the Commission explore the "more than three unrelated persons" provision, and said he felt that perhaps incorrect factors were being considered in using this.

Mr. Henderson said this might be something that the Council could ask the Rental Housing Commission to look at.

Councilor Grant said he wanted to see the "more than three unrelated" provision stay in effect, pointing out that it had worked, and had withstood court challenges. He said the problem was essentially a density issue.

Chair Sandberg thanked Mr. Henderson for the comments he had provided to the Council.

X. Unfinished Business

- A.** Report by Councilor Jerry Needell, representative to the Parks and Recreation Committee, regarding the committee's view concerning the implementation of a non-residential use fee system at Wagon Hill Farm.

Councilor Needell said this idea had come from the Master Plan, but said the Committee had a hard time coming up with good reasons for such a system. He said the Committee realized there were relatively few people using Wagon Hill Farm, and saw that such a

non-resident user system would require some kind of identification, which only made sense if this identification could also be used for something else. He said the Committee was looking for feedback from the Council as to how to proceed.

Councilor Kraus said he concurred with the Committee's views, and said that with all the things on the Council's plate, it should let this issue go.

Chair Sandberg said he'd like to get some idea of how many people going to Wagon Hill Farm were from out of town. He also said he agreed that an identification system would only make sense if this was integral with something else requiring identification.

Councilor Harris suggested that if a large group of people from out of town used the area, a donation of some kind for upkeep would be appropriate.

Councilor Needell said some Committee members had done some observing out at Wagon Hill Farm, and didn't see that many people coming and going.

Councilor Kraus suggested that a car counter device could provide some idea of how much the area was used. There was additional discussion on what the actual usage of the area was.

Councilor Needell noted that the car counter wouldn't identify Durham residents, and there was discussion about this.

Chair Sandberg said his personal perspective was that the Parks and Recreation Commission presently had tasks at hand, and should prioritize those. He said if the user fee was on the list, because there was potential there, then there might be need for additional funds, and ways to generate them.

Councilor Needell said discussion of park usage was on the Committee's agenda. He suggested that the idea of the fee could remain on the table, and if it became a significant issue, could be revisited.

Councilor Smith said he liked Councilor Kraus's idea of counting the number of visitors.

B. Discussion of Council self-evaluation process

Administrator Selig explained that Councilor Van Asselt had some ideas on how this process could be done.

Councilor Van Asselt outlined some possible ways the self-evaluation process could be undertaken, and also said the Council needed to consider the format, etc. for evaluating the Town Administrator. He said a second issue the Council needed to consider was the area of Council communications, and a third issue was Council meetings themselves. He said a fourth issue for Council consideration was efficiency.

Councilor Van Asselt suggested that a work session could be devoted to these four tasks, and said he did not see the need for hiring an outside consultant to facilitate this session.

He offered his services for the work session, and said that between himself and Administrator Selig, they could develop a format that Council members could respond to. He said the goal was not to solve all problems, but to focus on the most important ones. He provided additional details on his thoughts concerning the work session.

Councilor Kraus said he concurred that the Council should take bite size pieces in addressing these issues, and said it should look first at the issue of evaluation of the Town Administrator.

Councilor Needell said he supported the idea of a dedicated session for addressing key administrative issues, and of making as much progress as possible at the session.

Chair Sandberg asked if Councilor Needell agreed with the four issues chosen by Councilor Van Asselt to focus on, and Councilor Needell said he was fine with them.

Councilor Niman said they were the same four issues he had chosen, and said he would like to spend some time discussing them

There was discussion as to when to do hold the workshop, and what to include in it. Councilors agreed there would be a two-hour session that would be held on September 27th at 7:00 pm.

Councilor Van Asselt said he would be glad to work out a format for this work session.

Councilor Smith said he would not be present for the work session. He noted that Town boards didn't always have this kind of evaluation expertise, and said the Council should take advantage of this.

Councilor Van Asselt MOVED for the Council to convene a two hour meeting on September 27th, 2004 at 7:00 pm, for the purpose of having a workshop conducted by Councilor Van Asselt, to discuss the administrator evaluation, Council communications, Council meetings, and efficiency. The motion was SECONDED by Councilor Kraus and PASSED unanimously.

Councilor Morong noted the legislative Commission Councilor Smith was on concerning electronic communications, and asked if he could update the Council on the Commission's findings for the September 27th work session.

Councilor Smith said the Commission had made a lot of progress, which involved substantial restructuring of RSA 91:A, in order to incorporate rules of electronic communication. He said this involved a very intricate process, and said one of the things focused on was at what point an electronic communication amounted to a meeting. He said the standard to be adopted was that whenever an electronic communication reached the point where it involved a number of persons on any entity covered which would constitute a quorum, a meeting had taken place.

Councilor Smith said that if at any point it turned out there had been an electronic communication that constituted a quorum and there had not been notification of this, then it was incumbent on the persons participating to make information available as to what took place, at the next public meeting of the board.

Councilor Smith also said there would be a broad standard as to what would constitute a governmental record. He said the new language would define this as any information, whether electronic, visual, etc. which came into the possession of a covered government entity.

Chair Sandberg asked if there would be a draft of the language developed by the Commission in time for the Council's work session on September 27th.

Councilor Smith said it would not be ready by that date. He noted there might be legislation ready for 2005, but said this was not clear yet.

X. New Business

A. Update on Smittys

Working with several enlarged aerial photos, Administrator Selig showed Councilors the placement of the proposed library footprint at different locations on the Town's property, with and without the proposed land swap. He provided details on the results of this exercise.

He noted that Mr. Mitchell still wanted the right of way onto Newmarket Road, and said that because of this, regardless of the configuration, the land swap did not appear to make that much sense. He said he therefore needed input from the Council as to whether to proceed with negotiations.

Councilor Grant said he had thought from day one that the Town was swapping a larger amount of land for a smaller amount. He said the land the Town would be swapping would be preferred by residents as a greenway, and the land that would be gained would be separated by a through-way. He said he could see no purpose or commensurate value in the land swap.

Councilor Harris said she had looked at the property carefully, and illustrated a possible land swap that was more workable in terms of the library and other desired plans for the site.

Councilor Needell said he agreed with Councilor Grant that as long as the right of way was not negotiable, there was no point to the negotiations. He said the right of way eliminated any benefit of the land swap.

Councilor Smith asked whether the Council should suppose in discussing these issues that the plan for the library was fixed, but noted that he did not see it that way. He said he agreed to a certain extent that the land swap didn't make sense, but said the present configuration might not bear resemblance to what the final one would be.

Councilor Harris suggested making a rectangle with the same number of square feet as a configuration for the Library, and moving it around on the property.

Chair Sandberg said the proper question might be how many square feet of floor space was needed for the library facility, and how many square feet was needed for parking for the facility.

Councilor Morong asked if numbers existed for the square footage of the Town's lot with and without the land swap.

Administrator Selig said the Town would pick up more land than it would lose, but noted that much of this land would be easements. He said what seemed more imperative was the effect of the swap on the siting of the library.

Councilor Morong said he didn't consider easement square footage as land the Town would be getting. He also said the Town should not be limited by one particular drawing of the library, and said he would like more configurations considered, some of which would allow more square footage of building on a smaller footprint.

Chair Sandberg noted that the easement right of way could also be used by people coming to the Court House and Town Hall. He also noted there was some slope to this land.

Councilor Needell said he agreed they had no idea what the library would actually look like, but said this demonstration simply showed what impact the land swap would have on the plan that had been put forward. He said considering everything, the Town gained very little by the proposed land swap.

Councilor Niman said Chair Sandberg made an excellent point that the easement would mean share use of the right of way. But he said the first thing the Council needed to decide on was whether the land swap made sense or not. He said if they did think it was worth pursuing, the configuration of the library could be reconsidered.

He said one question was whether they wanted to see the library up front where they could see it, or in back where they couldn't see it, and noted he thought the Library Trustees had eliminated some other sites because the library wouldn't be able to be seen from the street. He suggested that if it was the case that the library should be able to be seen, then perhaps it could be put close to the street, with three stories, and with parking in back.

Councilor Niman said that if the Council believed the land swap was a bad idea, it should kill it. But he said he believed the land swap opened up some possibilities.

Councilor Kraus said there were citizens out there who might think it sounded as if the Town had already found the money to build the library, and said he had a problem with this. He also said that if one looked at the picture of the bank building across the street, such a square building might offer more possibilities on the site. He said the present configuration for the library was hard to locate on the site.

Chair Sandberg said he had decided to take Councilor Kraus's suggestion, and using the map, tried putting a blockier shaped building at different places where it would be most functional and beneficial to the community, if they collectively agree that they need a library and needed to acquire more space. He said all of this should be looked at, and said people shouldn't be constrained by boundary lines.

Councilor Harris said she had done a GIS map which located where the center of Town was, and could show how a library might fit on the various sites that had been looked at by the Library Trustees.

Councilor Smith said the Council should not continue discussion about the land swap, not because it should be taken off the table, and although noting he was inclined to think it would never work out. He said the Councilor first needed to be clear on what the correct sequence of steps were; otherwise they would be involved in a circular process.

He said he agreed with the implications described by Councilor Kraus. He said the Council had not made up its mind yet as to whether the library should be built, and whether it should be built there. He said the public hearing would provide input on these questions, and then the Council would be able to make its decisions on these two issues.

Councilor Smith said if the answers to both questions were yes, then the Council could talk about how big the building should be, what its configuration should be, whether it should be joined with the public town space, and whether the Town wanted to build a new Town Office. He also said if discussions reached that point, he was not prepared to take off the table the idea of purchasing the property from the owner.

Councilor Needell said he agreed with everything Councilor Smith had said but the last part. He said two things were needed from the hearing: was there sufficient support to go ahead with the library; and would it be at the Town Hall site.

Chair Sandberg asked what the answer was to Administrator Selig's question as to whether he should proceed with negotiations on the land swap.

Councilor Morong said he would like to see the square footage figures. He also said he would still like the Town Administrator to pursue negotiations for the land swap, because there was a court house with no parking for it.

Councilor Grant said regarding the parking spaces around the Court House, that what Mr. Mitchell was willing to swap would not be adequate.

Chair Sandberg said it seemed premature to answer this question at present. He said the Council should get public input first, in order to address the two questions raised by Councilor Smith. He said if the answer to whether there should be a new library was yes, other questions came up, for example, - who was going to pay for it; who was going to raise the money; how much square footage would be needed; how much of this could be used for commercial purposes. He said if this site was to stand the test of time, it needed to be done

well, and in the interest of the citizens. He said if Smitty's property changed into another shape, so be it.

Councilor Kraus said a key issue concerning the footprint was aesthetics vs. square footage, and said more of a box configuration could provide more square footage for the library.

Councilor Grant said that Administrator Selig needed an answer, yet the Council would not have one for several weeks. Councilor Grant said he believed the Council should dissociate the land swap idea from the library idea. He said it appeared that the land the Town would be giving up was more than Mr. Mitchell was prepared to give up, and said this didn't appear to be a good swap, especially because the land would have a right of way through it, and one that was loaded with traffic.

Councilor Niman asked if some Councilors would be in favor of the land swap if the lot lines were redrawn, and the right of way was moved a bit to allow more parking spaces.

Chair Sandberg suggested that perhaps the existing driveway could be a shared driveway, so the other right of way between the buildings would not be needed.

Councilor Morong said that until he saw the numbers he couldn't decide on this.

Administrator Selig said it was not clear what the Council was trying to accomplish. He said that in the interim, Mr. Mitchell was presenting his plans to the Planning Board.

Councilor Kraus suggested that the Council should look at the land swap independently of the library, and analyze it on its merits only. He said if the library was approved and funded, then it would be up to the library to fit into that.

Councilor Smith said it was better to see two yeses concerning the library before proceeding from there.

Councilor Harris said the property between the Court House and the Town Hall looked bad, and said she would rather see it belong to the Town, even if was used as a nice looking commercial property. She said that at present the land looked like a no man's land.

Councilor Needell asked Councilors to consider how they would view the land swap idea if the library proposal didn't exist. He recommended stopping the negotiations, and if that cut out the Town, so be it.

Councilor Needell MOVED to cease negotiations about the land swap. The motion was SECONDED by Councilor Smith.

Councilor Niman spoke against the motion. He said the Court House had no parking, and would like to see it get some parking. He noted this would enhance the economic value of the area. He also said he had not considered Chair Sandberg's idea of sharing the existing right of way, and said he would like to pursue this.

Administrator Selig noted that Mr. Mitchell did not like that idea.

Councilor Morong spoke against the motion. He said he agreed with Councilor Kraus that the land swap idea should look at on its merits. He also noted that the Town might not have the opportunity to get the land near the Court House in the future.

Councilor Grant said he would vote against this motion because he would like negotiations to continue, in order to see what the Town could possibly get.

Councilor Smith said the Town wasn't in a position at present to have an intelligent discussion with Mr. Mitchell.

Councilor Grant asked Administrator Selig to show the specific land on Newmarket Road that Mr. Mitchell was prepared to give the Town.

Chair Sandberg said he probably agreed with Councilor Niman that the Town would need space around the Court House, and frontage on Newmarket Road. He said that at a bare minimum, the Town should have an L shaped property so the Court House was contiguous with Town Hall.

He said he thought Administrator Selig should report to Mr. Mitchell that the Council needed answers to questions 1 and 2, and then depending on the answers, would continue talking with him. He said he was inclined not to agree with the motion, which said to stop negotiations, and said that instead they should simply wait on the negotiations.

Councilor Needell said the motion said to stop negotiations now, but was not meant to be permanent. He said that at some point there might be reason to resume them.

Administrator Selig said he had told Mr. Mitchell to proceed with his plans, and that he would be back in touch with him when he was ready to talk about something. He said that still seemed to be a prudent course of action.

Councilor Needell and Councilor Smith agreed that the motion should say the Council was deferring negotiations on the land swap.

Councilor Morong said negotiations on the land swap were relevant whether or not the answers to the two questions on the library were yes.

There was discussion on exactly what a vote on this motion would mean.

Administrator Selig said that if the motion passed, negotiations would be deferred. and if it failed, he would continue negotiations on the basis of getting more parking for the Court House, and more square footage.

Councilor Kraus called the question, and it PASSED 6-2, with Councilors Needell and Councilor Smith voting against it.

The motion FAILED 2-6, with Councilors Needell and Councilor Smith voting for it.

B. Update on the Packers Falls Bridge

Administrator Selig said there had been a lengthy discussion with Hoyle Tanner. He said Durhams's, and then Hoyle Tanner's perspectives were expressed, and the discussion then shifted to ways the two entities could work together. He said no agreements were made at the meeting, and in fact Hoyle Tanner had not agreed to anything to date. But he said in his view, the company would be open to replacing the 57" pedestrian railing with whatever Durham wanted to replace it with. He said he also believed Hoyle Tanner would be open to paying for 50% of the hard costs of doing this, which would mean they would pay half of approximately \$30,000.

Administrator Selig said he also believed Hoyle Tanner would address the site distance issues regarding the Bennett Road/Packers falls Road intersection, and also would be willing to: assess whether the Bennett Road stop sign could be moved farther forward and to the right; whether an island was possible; and whether additional pavement could be added to the bridge and to the approaches to the bridge in order to increase the height of cars crossing the bridge, so it would be easier to see over the rails to the water, and also would allow one to see on-coming cars. He said he also believed Hoyle Tanner would be willing to assess whether they could remove some of the wooden guard rails in place, and would be willing to provide the engineering costs gratis for these services. He said he believe this was the best deal the Town could get from them.

He said another option, which he didn't care for, was that it might be possible to extend the contract to the next bridge project Durham planned to work on. He said he was not convinced that this would save, money, and also said it was important to select a company on the merits of a specific project. Administrator Selig provided additional details of negotiations, and asked if these ideas would be acceptable.

Chair Sandberg asked what the Packers Falls Bridge committee felt about these options.

Administrator Selig said he had spoken with some of the committee members about this, - Councilor Harris, Julian Smith and Dick Lord, but said the Committee as a whole had not yet considered these options. He noted that it would be the Council that would be deciding on this. He said this issue had involved a very time consuming process, but said if the Council wanted more input from the Committee and from residents, Town staff would undertake to get this.

Councilor Smith noted Administrator Selig had said that Hoyle Tanner would want to know, if the Town accepted the offer they might make, that the Town would express the view that it was satisfied with the outcome of the Bridge.

Administrator Selig said that was correct.

Councilor Smith asked if that meant that Hoyle Tanner would not go along with this compromise if what the Town said it was satisfied with was the outcome of the negotiation to obtain a certain percentage from Hoyle Tanner. He said that was saying something different.

Administrator Selig said that Hoyle Tanner would like to be able to utilize the Packers Falls Bridge project as a success story, in its marketing efforts. He said they would like the Town to say it was satisfied with the firm, and satisfied with the final product.

Councilor Smith asked whether, if the Town only said the former, that would not be acceptable to Hoyle Tanner. He said the distinction was important, and provided details on this.

Councilor Grant commended Administrator Selig for his work on these negotiations, and said the possible proposal was interesting.

Councilor Grant MOVED that the Council ask Administrator Selig to pursue these negotiations with Hoyle Tanner and bring a firm proposal before the Council. The motion was SECONDED by Councilor Niman.

Councilor Needell asked whether it would be appropriate to hold a public hearing before or after the proposal came in.

Administrator Selig asked what a public hearing would be intended to address.

Councilor Needell said he saw no harm in saying this proposal was a reasonable step, and said the Council could then decide if it wanted to accept it. He said the negotiations therefore did not mean the Council was ready to accept the project.

Administrator Selig said that before he was willing to sign on, he wanted to know if he had the support of the Council on this.

Councilor Harris said she had some concerns that the safety issues were not addressed with the proposal. She noted that the middle rail obstructed the view to a great degree, and was a safety issue, and said she didn't see that this proposal solved that problem at all.

Councilor Kraus said he was opposed to more public hearings on this problem, and noted that it was consuming a considerable amount of the Town Administrator's and the Council's time. He said this was a bad situation, involving enormous culpability of the Town. He asked who would pay for these changes, and said if the Council subjected themselves to more public hearings, this would go on forever.

Councilor Morong asked Administrator Selig to determine in the negotiations whether the Town could still take down the middle rail at its expense, and asked if perhaps the engineering for this would be gratis.

Administrator Selig said he could discuss this with Hoyle Tanner, but he stressed that in general, the company was not willing to hang around and wait for the Town to decide how to proceed. He said the firm needed some certainty on what the Town wanted. He spoke about the designs proposed by the Committee, but noted that it got more and more costly as the design improved. He said a key issue in the negotiations was that much time was spent on the

design phase, and yet there were still problems. He said Hoyle Tanner wanted to be sure that everything was clear up front.

Chair Sandberg suggested that within the parameters described, the Committee could ask that the middle rail be addressed, that the recommendation about the downstream rail be followed, etc., so there would be something the Town said it had agreed to. He noted that Hoyle Tanner wouldn't agree to a proposal until there was a proposal, - one that stated clearly what the Town wanted.

Administrator Selig said it came down to how much the Town was willing to spend. He said the Council had said if Hoyle wanted to pay for everything, it would want everything. He asked, assuming Hoyle Tanner was willing to pay \$15,000, how much more than that Durham would be willing to pay for. He said that if the Town was not even willing to pay \$15,000 toward replacement of the downstream rail, he needed to know that now, and could deal with other fixes, such as a stop sign, which would address the perceived safety issues.

Councilor Grant said Administrator Selig had come a long way with Hoyle Tanner in the negotiations, and said he wanted him to get approval to continue them.

Councilor Harris said a fair agreement would be 50/50. She said yes the Town had some culpability, but noted the speed limit was 35 mph, not 15, and said the firm should have brought it to the Town's attention that the concrete middle railing would further obstruct the view, regardless of what the speed limit was. She said they had huge culpability on this.

Councilor Needell said he would vote against the motion because although he agreed in principle with what Councilor Grant proposed, he was not willing to commit the Council to this without public input. He said if there was a safety issue there, it should be brought forward, and the Council would deal with this.

Councilor Niman asked about the possibility of cutting off the raised part of the downstream pedestrian rail and thereby fixing that rail, and eliminating the middle rail, together which would solve the visibility and safety problems.

Administrator Selig said part of the problem was that cutting down the railing cost \$30,000 per rail.

Councilor Harris noted that this wouldn't work because the pedestrian walkway was not crash proof.

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

Councilor Kraus MOVED to adjourn the meeting. The motion was SECONDED by Councilor Morong, and FAILED 5-4, with Councilors Niman, Needell, Harris, Van Asselt and Sandberg voting against the motion.

Councilor Van Asselt thanked Councilor who voted not to adjourn the meeting. He said he would like to suggest taking a look at the idea of increasing Durham's planning capability.

He noted that many of the questions coming into the Town Planner and Department heads were complex, and said it was only fair to residents that they be looked at by those with some expertise. He recommended that Administrator Selig, Town Staff and the Planning Board take a look at weaknesses in the current plan review process, areas where expertise was needed, and what costs would be associated with this.

Councilor Van Asselt noted that he had provided information on how this was handled by other communities, and said there were a number of ways this could be paid for. He said this was in no way a criticism of the Planning Department, and said if Councilors were interested in the idea, he hoped Administrator Selig would look into it in 2005. Councilor Van Asselt noted it was common practice that much of the cost for this expertise could be born by the developer.

Councilor Grant said the Planning Board already utilized such advice in some circumstances, but noted that the Board's biggest need was for legal advice.

Administrator Selig said he would follow up on Councilor Van Asselt's suggestion.

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

Adjournment at 10:10 pm.

Victoria Parmele, minutes taker