

**This set of minutes was approved at the February 7, 2005 Town Council meeting.**

**MONDAY, DECEMBER 20, 2004  
DURHAM TOWN HALL -- COUNCIL CHAMBERS  
TOWN COUNCIL MINUTES  
7:00 PM**

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

**MEMBERS ABSENT:** None

**OTHERS PRESENT:** Todd Selig, Town Administrator; Business Manager Paul Beaudoin

**I. Call to Order**

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

Administrator Selig noted his memo concerning the Packers Falls Bridge, and recommended that this issue be taken up instead on January 3<sup>rd</sup>.

**II. Approval of Agenda**

*Councilor Smith MOVED to amend the Agenda, by removing the Packers Falls Bridge issue, to be taken up on January 3<sup>rd</sup>. The motion was SECONDED by Councilor Grant.*

Councilor Niman said he had several questions regarding the memo, and did not want this Item to be removed from the Agenda so that he could ask them.

Councilor Kraus said it was premature to remove this Item from the Agenda, and said he would prefer to leave it in.

*The motion to amend the Agenda FAILED unanimously, 0-9.*

*The Agenda as submitted PASSED unanimously, 9-0.*

**III. Nonpublic Session**

*Councilor Kraus MOVED to enter Nonpublic Session to discuss property matters in accordance with RSA 91-A:3 II (d). Councilor Grant SECONDED the motion, and it PASSED unanimously on a roll call vote as follows: Smith, Aye; Kraus, Aye; Morong, Aye; Van Asselt, Aye; Grant, Aye; Sandberg, Aye; Harris, Aye; Needell, Aye; Niman, Aye.*

The Council entered into Nonpublic Session at 6:35 PM.

The Council came out of Nonpublic Session at 7:05 PM.

The following item pertaining to the Mick Gravel Pit was one item discussed during the Nonpublic Session on December 20, 2004. This item was made public and incorporated into the public session minutes of the December 20<sup>th</sup> minutes.

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### **MICK GRAVEL PIT**

Administrator Selig provided detailed background information on the issue in question, whether the Council would include an appropriation in the water fund budget to purchase the Mick Gravel Pit property. He said one of the key questions was whether the Town of Lee was really serious about purchasing the property from Durham, and discussed financial aspects of this question. He said the Town of Lee was very interested in moving forward, but there was no guarantee that it would get the needed authorization to buy this land at Town Meeting. He provided details on issues in Lee that could impact their decision.

Chair Sandberg asked if it was the sense of the Council that it would like to lay the groundwork for this and amend the water fund budget. He said Town staff had prepared documentation concerning this.

Councilor Needell asked if the Council would be able to discuss publicly the use of the money. Administrator Selig said it would, but noted the documentation itself would not be made public at that time.

Councilor Kraus asked if this was an emergency action, and asked if there was the possibility that the Town could be left holding the bag on this. Administrator Selig described the various options for insuring that this would not happen.

Chair Sandberg noted that a vote that evening was only to explore this as a possibility.

Councilor Needell asked if the Garrity property had any conservation value, and there was discussion about this.

Councilor Smith asked whether, if Lee didn't approve the purchase of the property, the amount of money remaining at risk would be very small. Administrator Selig said yes, assuming the Council was willing to subdivide, and also assuming that the State freed up some source water protection money for this.

Duane Hyde, of the Land Protection Working Group, said the State's Source Water Protection program would not allow subdivision of the land, so this would have to be carefully worded. There was discussion about this. Mr. Hyde said the Town would still have an excellent chance of getting the grant money, because of the proximity of the land to the Town's well.

Councilor Van Asselt said if someone made a motion on this, he hoped that the amount of money that would have to come from the 900 people in Durham who supported the water system would be zero. He said unless funding assistance came through, the Town shouldn't move forward.

Administrator Selig said this would be a purchase purely to preserve Durham's primary source of water, and was an important defensive move. He noted that the water supply was totally owned by the Town, and did not involve the University.

Councilor Needell said the Council needed to prepare itself to move ahead with or without the Town of Lee, and should be prepared to sell the Garrity property if needed to help pay for this. He said this meant taking a small risk that the ratepayers would have to pay for some of this, but said this was worth the risk.

Councilor Niman asked if the Town could use some fund balance for this. He said the Council should move forward with this initiative, and said they should be grateful that the owner wanted to sell the property.

Councilor Harris noted that historically, the voters of Lee hadn't supported this kind of thing, and said she didn't have confidence that they would support it now.

Chair Sandberg said it was the foresight of Durham selectmen to purchase the property for the Lee well some years back, and said the Council had to be stewards of that water resource now.

Councilor Kraus asked if the water quality of the well was good. Administrator Selig said it was, requiring minimal treatment.

Councilor Kraus asked if since the University used some of this water, they should perhaps contribute to this. Administrator Selig said that because the Town did not contribute to the water treatment plant, the University was not willing to contribute to the well.

It was clarified that the Motion, when the Council went into public session, would read that \$294,000 would be put into the Capital Reserve fund under the water fund, for the purchase of the Mick property.

Administrator Selig said the reason bonding was suggested was so that there would not be an impact for a full year.

Administrator Selig noted, regarding the Mick land parcel, that another opportunity for funding was to utilize some of the land use change tax money the Conservation Commission had. He said he and Mr. Hyde thought the Commission would be open to this. He noted that the wording for the land conservation bond mentioned water supply protection as one of the purposes of the bond.

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Chair Sandberg explained to members of the public that the Council had been in nonpublic session to discuss property matters. He noted that prior to doing so, a motion to amend the Agenda by removing the discussion on the Packers Falls Bridge had failed.

#### IV. Approval of Minutes

November 22, 2004

*Councilor Grant MOVED to approve the November 22, 2004 minutes, as submitted. The motion was SECONDED by Councilor Kraus, and PASSED unanimously 9-0.*

November 29<sup>th</sup>

*Councilor Grant MOVED to approve the November 29, 2004 minutes as submitted. The motion was SECONDED by Councilor Kraus.*

Page 3, 5<sup>th</sup> paragraph should say “..improvements to the water treatment plant.”

*Councilor Grant MOVED to amend the minutes. Councilor Kraus SECONDED the motion and it PASSED unanimously 9-0.*

*The minutes as amended PASSED 8-0-1, with Councilor Needell abstaining because of his absence from the meeting.*

December 6<sup>th</sup>

*Councilor Grant MOVED to approve the December 6, 2004 minutes as submitted. The motion was SECONDED by Councilor Kraus.*

Page 9, bottom paragraph, should read “He said misinformation had...”

*Councilor Morong MOVED to amend the minutes. The motion was SECONDED by Councilor Kraus, and PASSED unanimously 9-0.*

*The minutes, as amended PASSED unanimously 9-0.*

December 6<sup>th</sup>, 2004 nonpublic session

*Councilor Grant MOVED to approve the December 6, 2004 nonpublic minutes as submitted. The motion was SECONDED by Councilor Morong, and PASSED unanimously 9-0.*

#### V. Report of Administrator

- Administrator Selig said that because of the upcoming holiday, the Town Offices would be closed on Friday, December 24<sup>th</sup>, and Monday December 27<sup>th</sup>. He also noted that they would be closed on Dec 31<sup>st</sup>.
- Administrator Selig listed current opportunities to serve, by appointment, on various Town boards and commissions.
  - **Conservation Commission** one regular member vacancy
  - **Historic District Commission**, - one regular member vacancy
  - **Planning Board**, -5 alternate member vacancies
  - **Rental Housing Commission**, - one citizen vacancy
  - **Strafford Regional Planning Commission**, - two vacancies
  - **Zoning Board of Adjustment**, - one alternate vacancy
  - **DCAT**, - one vacancy

- **Integrated Waste Management Advisory Committee**, -2 vacancies
- **Lamprey River Local Advisory Committee**, - one vacancy

Councilor Kraus asked if people could sign up immediately for any of these boards or commissions if they desired, and was told they could.

- Administrator Selig said there had been some changes to state statutes concerning tax exemptions. He explained that for 2004 tax bills payable in December, the deadline for applications for veteran's credits, elderly exemptions and blind exemptions was March 1, 2005. But he said that due to the new legislation the deadline for 2005 taxes was April 15<sup>th</sup>.
- Administrator Selig also noted that the filing period for elected vacancies was approaching. He said there were 3 openings for the Town Council, 3 openings for the Board of Library Trustees, an opening for Town Clerk/Tax Collector, an opening for the Town Treasurer, and one opening for the Trustees of the Trust Fund. He said the filing period ran from January 19-28, 2005.

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

Councilor Morong said he would like to report the positive direction the Rental Housing Commission was going in. He noted that citizens from Garden Lane had come in to discuss problems with student housing in their neighborhood, and as result, the University had set up an informal meeting in January of all residents of the area, which would include a mediator. He said this initiative had the backing of the student senate, and also said the mediation services were available to assist everyone, including community members, with conflict resolution. He said information on this was available online, and by phone at 862-3377.

Councilor Harris asked if owners of the rental properties had been invited to the meeting in January, along with students living in their rental properties.

Councilor Morong said it was his sense that this was for the students, as neighbors.

Councilor Harris noted that these students would only be living in the neighborhood for a relatively short period of time, and said it was the rental property owners who needed to be included in this effort.

Councilor Needell said members of the Council had attended a gathering the previous week put on by the UNH Student Senate. He said there was good conversation and food at the gathering, and said he appreciated this opportunity.

## **VII. Public Comments**

**Julian Smith, Packers Falls Road** said he had several small issues to speak about. He said the previous time he had come before the Council, he had spoken about the parking situation at the Town Offices. He said that night, he had parked on Mill Pond Road, and had tried to get in the front door but it was locked. He said he took this as a metaphor of how the Town expected citizens to come to the building, by car, through the parking lot, and not through the front door.

Mr. Smith noted he had not made any suggestions about the parking for the Courthouse at the previous meeting, and said Scott Hovey's comments had made him regret this. He said he had two suggestions concerning this issue. He asked if the Town had any assurances that the Court would not abandon the Courthouse in a few years.

Mr. Smith also noted that Town staff had gone to a lot of trouble to show there was not enough parking for all three uses of the site. He said he would appreciate it if they could be instructed to find out how much parking the Courthouse actually needed, and whether the people coming there could be asked to find alternative parking if the Town went forward with the library. Mr. Smith said that from his observation, most of the people arriving at the Courthouse were there because they had done something wrong concerning alcohol or driving, or both.

Chair Sandberg said there was no guarantee that the Courthouse would stay at that location forever.

Administrator Selig said with regard to how much parking was needed at the Courthouse, this had already been determined. He said that in terms of the types of cases heard at the Courthouse, he did not have that information, but said that many of the people coming there came with parents and attorneys. He said that sometimes there was not enough room for all of them, and said that with the hotel, there would be even more displacement. He also said it was true the Town Offices did not keep the front door open because they anticipated that people would come around to the other side of the building.

**William Hall** said he had checked with Administrator Selig's office concerning the 20 questions the Library Board of Trustees had been given, and had determined that these questions had not been answered yet. He said the questions should be answered before discussions on how to use the parking lot continued.

Mr. Hall said he was concerned about an email from Rep. Judith Spang regarding the Town and the water from the Lamprey River. He provided details on this, and said the federal government couldn't interfere with the use of this water, because the water belonged to the people. He said a decree from the NH Legislature said this, and said he hoped the Town would research this. Mr. Hall said the Town had enough water, but had a problem of mismanagement of the water. He said there was no reason for restricting the use of it.

**Dudley Dudley** said she had come to present a petition signed by many constituents who lived all over Town, and said it was a myth that the problems with the Bridge were a neighborhood issue. She said they supported Option 1, that all of the rails be replaced with a simple, black, anodized railing. She said Durham was a community, and said they all had responsibility to be stewards for the entire community.

Ms Dudley read aloud the names of current and past members of Town boards and committees, as well as State representatives, who endorsed the preferred option for fixing the bridge. She then went through these names.

**Beth Olshansky** showed Councilors a model proposed ballustrade for the Bridge. She also said she had some letters to present to Councilors, including one from Eileen Fitzpatrick. Ms. Olshansky read from this letter. Ms. Fitzpatrick said the work on the Bridge had destroyed its scenic value and safety, but said the most dangerous result was that the public's faith in the public hearing process had been undermined. She said this was not the relationship the Town had spent so much time developing, and said that by allocating less than 4% of the original cost of the work on the Bridge, the Council could restore trust. She said this trust was more valuable than the small sum of money involved, and said although it might seem that they were talking about a silly little bridge problem, the implications were far reaching.

Ms. Olshansky also said she was present to ask the Council to postpone discussion on the Bridge for a number of reasons. She said the specs on options 1 and 2 had just come in, and the Town engineer was not present to discuss them. She also said the Committee thought they could cut the costs down somewhat, noting the figures before the Council were not the best, and would be meeting to go over details on this the following week.

Ms. Olshansky also said that Richard Lord had agreed to create some new visuals to show what options 1 and 2 would look like, something that hadn't existed the last time the Council voted on the Bridge. She said he had not had time to do this yet, and said the Committee wanted the Council to have full knowledge when it voted on this issue.

Chair Sandberg noted that the Town Administrator had asked the Council earlier in the meeting to postpone discussion on the Packers Falls Bridge, but said some Councilors had asked that they at least have the opportunity to ask some questions. He said there was no indication thus far that the vote would happen that evening.

**Richard Lord, 85 Bennett Road**, read a letter he had written to the Council. In the letter, he reviewed the process by which the Packers Falls Bridge Committee developed options 1 through 4. He said the Committee had received substantial support from the Town's citizens. He said the Committee was very aware of the pressing concerns of the Council to minimize costs, and was working diligently to find ways to pay for the repairs. He said the Conservation Commission had recognized the importance of making a financial contribution to this effort, and had anticipated using 2004 contingency funds for this. Mr. Lord said the Committee was not a special interest group, but was simply following through on efforts to find a viable solution to the problem.

Mr. Lord showed Councilors some photos of what the Committee was trying to get the Bridge to look like, and noted some issues concerning how long the guardrails should be extended. He said he wanted the Council to have this information so it would understand why the Committee preferred Option 1.

**Wesley Smith, 26 Woodridge Road** said he was there to speak against any additional money being spent on the Bridge, noting that the Town had already spent over \$200,000 on it. He said budgets were tight, taxes were high, and said he didn't feel the funds should be coming from the Town for the Bridge, which was safe and functional. Mr. Smith said if

people wanted to privately raise the funds for the repairs, the changes could be made in this way.

**Morgan Dudley** said she had been present in May of 2000 when the Council had first addressed the Bridge issue, noting that as an abutter to the Bridge, she had been concerned about maintaining its historic appearance. She said part of the conversation at the time was about widening the Bridge so it would be eligible for State funding, and said the abutters had agreed to this. She said this had saved the Town \$800,000, and should be a consideration now.

Chair Sandberg read aloud a letter from **Margaret and Linn Bogle**, which noted that the Town had worked hard to receive Federal designation for the Lamprey River, and state designation of the scenic road. The Boggles said the work at the location where these two things came together was ugly, and had resulted from an unfortunate mistake. They urged the Council to authorize the replacement of the railings with Option 1.

Chair Sandberg also read a letter from Suzy Loder, a long-time resident, which said the current rails on the Bridge as looking like a fortification. She said they blocked the views, and created safety and scenic problems. Ms. Loder said that as a taxpayer, she appreciated the Council holding the line, but also said she appreciated the Town's natural treasures. She said that with judicious changes, represented by Option 1, the Town could continue to enjoy them.

## **VIII. Unanimous Consent**

- A. Shall the Town Council approve a road acceptance for Phase II of the Worthen Road project as a public right-of-way?
- B. Shall the Town Council approve and accept an easement deed for the Emerson Road/Fitts Farm sidewalk?

Councilor Needell asked that Item B be removed from the Unanimous Consent Agenda.

***Councilor Kraus MOVED to approve Item A on the Unanimous Consent Agenda. The motion was SECONDED by Councilor Niman, and PASSED unanimously 9-0.***

Concerning Item B, Councilor Needell said he walked this area a lot, and noted that when one entered the sidewalk from Little Hale Road, there was a stone retaining wall. He asked who would be responsible for maintaining this if the Town accepted responsibility for the sidewalk.

Public Works Director Mike Lynch said the stone wall would be part of the sidewalk, and would be maintained by the Town.

Councilor Needell noted the potential for maintenance headache there, and asked if there were any concerns about this.



Mr. Lynch said the Department realized an occasional stone would need to be replaced, and would take care of this when necessary.

Councilor Morong said he would recuse himself from this Item, because he worked as a subcontractor to the contractor, and also lived across the street.

***Councilor Kraus MOVED to approve Item B on the Unanimous Consent Agenda. The motion was SECONDED by Councilor Niman, and PASSED 8-0.***

## **IX. Unfinished Business**

### Public Hearing on Adoption of Parking Fines

Administrator Selig said the increase in the fine would generate a moderate increase in revenues.

Chair Sandberg noted that the Council had passed this on first reading at a previous meeting.

***Councilor Kraus MOVED to open the public hearing. The motion was SECONDED by Councilor Needell, and PASSED unanimously 8-0.*** (Councilor Niman had left the room briefly)

**Julian Smith** asked if it was cost effective to make the fine so low.

Administrator Selig explained that the enforcement for parking fell under the parking fund budget, which included fees from meters, business permit fees for spaces along Madbury Road, Pettee Brook parking lot, etc., in addition to parking fines. He said the parking fund actually turned a profit, and said this increase in the fine was designed to increase that profit margin.

Chair Sandberg said the fine was also meant as an encouragement to obey the law.

No other members of the public wished to speak.

***Councilor Kraus MOVED to close the public hearing. The motion was SECONDED by Councilor Smith, and PASSED unanimously 9-0.***

***Councilor Harris MOVED to adopt Ordinance #2004-111 amending Chapter 153 “Vehicles and Traffic, Section 153-32 “Penalties for Offenses” of the Durham Town Code by increasing the parking fine structure. The motion was SECONDED by Councilor Kraus.***

Chair Sandberg asked Administrator Selig to address how these penalties could conceivably be included in the annual menu of expenses and fees the Council considered each year, so it didn't have to have the public hearing annually if it needed to change this.

Administrator Selig provided details on this. He said Town staff had generally not included fines in the fee schedule, but could do so.

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

B. Continued discussion regarding the Packers Falls Bridge

Councilor Niman said he would like the Council to discuss this issue in terms of questions he had regarding the Town Administrator's memo, and what had been called a revised funding scheme. He noted that now that a settlement had been reached with Hoyle Tanner, Councilors could talk more openly about this issue. He asked why an item hadn't been included in the 2005 budget to cover the modifications to the bridge, and also asked why bonding authority from the Woodridge Tennis courts project could be applied to a different project for 2005.

Administrator Selig said he had looked at the Packers Falls Bridge project as one where the concerns were expressed in 2004, so the attempt was made to fund it in 2004. He said it would certainly be possible to modify the Budget to fund repairs to the bridge, which would really be the cleanest way to approach this. But he said he was trying to find ways to live within the 2004 Budget. He said he thought the contingency fund money would be appropriate to use for this, and provided details, as he had at previous meetings, on where the rest of the funding for the repairs was proposed to come from, as well as why it made sense that it come from these sources.

Councilor Niman said the problem he had with this was that there seemed to be a misunderstanding that this represented free money, and said he would prefer a clean approach, so if it cost \$149,000 to fix the bridge, people would understand this. He said the way the scheme was presented, it appeared as though it wouldn't cost the taxpayers anything, and said that was not being honest with the public. He spoke in detail on the proposed sources of funding.

Councilor Kraus said he would like to go back to Councilor Grant's statement where he said he was trying to reduce the tax rate increase down to 0. He said it seemed that Administrator Selig had smoked out some "loose change" money that could be applied to this.

Administrator Selig said only the \$50,000 contingency money could be considered something like loose change. He said the \$81,000 remaining from the bridge project, and the \$48,000 left over from the Woodridge tennis court project was, as Councilor Niman had pointed out, simply bonding authority. He agreed that there was never free money. He because it could not be applied to the Budget for 2005.

Councilor Kraus asked if the contingency funds could be used to reduce the tax rate if the Council chose to do this.

Administrator Selig provided details on this. He said the Conservation Commission had been excited for the past few years that the contingency money would go to them if it

wasn't expended for something else. But he said the Commission felt that because the Packers Falls Bridge was a problem this year, it would prefer that the Council expend the contingency money on this problem rather than have the Commission receive the money for land conservation.

Councilor Needell said he appreciated what Councilor Niman had said, and agreed it was important to be absolutely clear on where the money for the Bridge would come from. He said he would have no problem with doing this as a line item in the Budget, but said he was not sure how the Council would go about this. He discussed in detail why he didn't understand why it was an advantage to encumber the contingency funds.

Administrator Selig and Councilors discussed in detail the contingency funds, and other proposed sources of funding, and why and how they could be used.

Chair Sandberg said Councilor Niman's point was on target that there was no free money. He said the real question was whether the Council wanted to say the Town should spend this amount of money for this, and said it was important that there be clarity on this. He discussed possible procedures for amending the budget if the Council decided it wanted to appropriate money for this in the 2005 Budget.

Councilor Van Asselt said he didn't want to get involved with bookkeeping. He said there was no remaining money available to fix the bridge, and said if the Town wanted to fix it, someone should say the money would be bonded and the cost for the repairs would be put on the tax rolls. He said it was wrong to take contingency money and other moneys and say this should be used for the Bridge. He noted that he had suggested the previous week that contingency money could be used for economic development, and was told that wasn't possible because there was no plan. He asked why the Council could not move this contingency fund to property tax relief for 2005.

Administrator Selig provided details on the fact that it was planned that the \$50,000 would go to the Conservation Commission if it was not expended by the end of the year. He said this and the Lamprey River Advisory Board funds were essentially promised to the Council. He noted that if the Tennis court project and the Bridge project were closed out, the money wouldn't be raised by bonding, and therefore there would be no further tax impact in that amount.

Administrator Selig said he had been hopeful that there would be an agreement with Hoyle Tanner, and noted the Council hadn't really been able to talk about this issue until recently because of negotiations with the firm. He noted that although he had put this particular funding scheme together, it didn't matter to him how the Council funded this project.

Councilor Van Asselt asked why the Council couldn't take contingency fund money and apply it to property tax relief.

Administrator Selig said the fund money related to the 2004 Budget, and he read through the resolution that had addressed this as part of the approval of the 2004 Budget. He said

in order to do what Councilor Van Asselt was suggesting, the Council would have to approve a resolution that undid the previous resolution, and then could delete the reference to the Conservation Commission getting the contingency fund money. He said the funds would then lapse to the fund balance, and the Council could then authorize taking more of the fund balance to lower the property tax balance.

Councilor Smith said he wanted to be clear on what action the Conservation Commission had taken in approving use of the contingency fund money for the Packers Falls Bridge. He said he did not think the Commission thought it owned the money, and would instruct the Council how to spend it. He said the Commission just wanted to say it believed that saving the viewscape in the Packers Falls Bridge area was important, and had an interest in expressing a view on this. He noted that the Commission administered a conservation easement in that area.

He said the Council would have to decide if it wanted to spend real money to fix the bridge, and said it should be clear to the public that real money would be involved with fixing the bridge. He said where the money came from didn't concern him as much as whether or not the Council wished to spend the money. He said where the money would come from was something that he expected Town staff to work out. He said they could take the \$50,000 and other funds and apply it to reducing the property tax rate increase, and not repair the bridge at all. He said this was certainly an option.

Councilor Smith said another point was what Administrator Selig had said about the different circumstance between what the Conservation Commission's role and authority would be now, as compared to later on. He provided details on this, and said he was not prepared to say that the Commission would or would not have authority to spend the money to bring back the viewscape. He said there was some question on this, and said the question would be avoided if the Commission was not put in this position. He said he would prefer that the Commission not be put in that position.

Chair Sandberg said the question was whether the Council should amend the Budget concerning this or not. He said if not, Administrator Selig intended to encumber the money for the contingency fund, as previously stated.

Administrator Selig noted that the bridge renovations were not in the Administrator's budget, and also noted that he was following directives of past Councils that they didn't need the Cadillac, concerning many things the Town purchased. He said the Town had a bridge that functioned, and said he had tried to show the Council a way to fund the project if it wanted to. But he said he was not trying to push an agenda, and simply wanted to give the Council options.

***Councilor Kraus MOVED to direct the Town Administrator to not encumber the \$50,000 in the 2004 Budget for the purpose of bridge repairs for the Packers Falls Bridge. Councilor Van Asselt SECONDED the motion.***

Councilor Kraus said he felt encumbering the money was inappropriate, and said the Council should bring these things forward and vote them up or down.

Councilor Grant said he thought the Council had voted to encumber the funds the previous week, and was told it had not.

Councilor Needell said he agreed in spirit with the idea of not encumbering these funds, but said his view had nothing to do with how the funds would be used. He said he believed it was premature to encumber \$50,000, and didn't see the need for it.

Chair Sandberg asked Administrator Selig if the Council chose to vote down the motion, in effect saying go ahead and encumber the money, if there was anything to preclude the Council from saying to release the money to the Conservation Commission as originally planned.

Administrator Selig said there was not.

Councilor Grant said he remembered a lengthy discussion on this at the previous meeting, and that the Council agreed the funds would be encumbered.

There was detailed discussion on this. Administrator Selig said they talked at great length about the contingency fund, and said he had said he would encumber the funds, on the Council's behalf so it would have it available to it if it wanted.

Councilor Smith said he felt that in voting on this now, the Council was putting the cart before the horse. He said the Council ought to be taking a vote on the merits of spending money on the bridge. He said he also would vote against it, because he felt it should be the Council that made the decision as to whether or not this money would be spent for that purpose, and not get into a possible morass as to whether the Conservation Commission could spend the money.

Councilor Morong said it was important to encumber the funds until the Council had the discussion, and said he didn't see the point of limiting the Council's options. He said if the Council decided to go forward with fixing the bridge, 2004 money should be used for this.

Councilor Needell encouraged the Council to be clear about what the motion would do, to release the funds with no guarantee that it would come back. He said he was leaning toward not supporting the motion.

Administrator Selig said the Council could approve whatever motion it wanted concerning the bridge, and then could amend the budget in 2005, once hard numbers on the bridge were available.

Councilor Grant said he supported the motion. He noted that the remaining Woodridge tennis court savings was not spent because of a variety of cost savings measures. He said it was a lot cleaner to complete the year, and then do what they wanted to do the following year.

Councilor Kraus said he was in favor of the motion, noting that it was not his intention to micromanage this issue. He said that when Councilor Van Asselt had brought forward the proposal about money for economic development, he got comments from the bridge people that this would be taking money away from them. Councilor Kraus said that if the Council agreed the bridge should be fixed, it should be upfront so everyone would understand what it was doing.

Councilor Harris said the Council had spent too much time talking about something that had been made much more complicated than it needed to be. She said this concept was simply an offer, by the Town Administrator to keep the Council's options open. She said the insinuations about what the public believed about the \$50,000 was inappropriate, and said the Council should vote whether to keep its options open, and then decide in January whether it would or would not use the funds in one way or another.

Councilor Morong said it seemed that this was a project that was not finished, and this contingency fund money could have been applied to the project during the year. He said as a building person, he wouldn't give up the contingency funding until he finished the project.

Administrator Selig noted again that this could be amended the following year, but would require a supermajority of the Council in order to pass.

Chair Sandberg declared a 5-minute recess at this time.

The meeting convened at 9:05 pm

Councilor Van Asselt asked for clarification as to whether Administrator Selig was recommending that \$50,00 be set aside for the bridge.

Administrator Selig said if the Council took no action that evening, he had planned to encumber the funds into 2005, so the Council would have the money to use for the bridge. He said the only reason he would be doing this was to give the Council the chance to use the money for the bridge. He said he wasn't trying to push the Council to spend the money on the bridge, but simply to preserve this option if it chose to do so.

***The motion FAILED 3-6, with Councilors Niman, Van Asselt and Kraus voting in favor of the motion.***

Administrator Selig said there were three main issues that came into play concerning the Bridge: the aesthetic qualities wanted for the Bridge, the cost of getting there, and the liability issue. He said that in order to address the aesthetic issues, the Town would have to let go of some of the safety issues associated with the reinforced concrete out there at present.

He also said it was important for the Council to know that the reason he had asked for the delay on Council discussion concerning the Bridge was that the Council had only just received the latest documentation on the project. He also said he wanted the Packers Falls Bridge Committee to fully understand the agreement with Hoyle Tanner, and that some

of the guard rail approach distances being recommended were longer than the Committee had initially suggested.

## **X. New Business**

### **A. Resolution #2004-21: Adopting the 2005-2014 Capital Improvement Plan**

Chair Sandberg noted the final Resolution that had been developed by Town staff included the amendments made by the Council. He noted that in nonpublic session that evening, there had been discussion about further amending the 2005 budget, so said there was a revised draft of the Resolutions.

Administrator Selig said that at the last meeting, Councilor Grant had brought up concerns about the approximately 20% increase in projected water rates. He said he and Mr. Beaudoin had revisited this issue, and noted that in the Resolution before the Council at present, the rate increase would be 6%.

He said a second change had to do with funds concerning the health insurance savings. He said these funds had been applied, as the Council wished, into the Budget resolution.

He said the third item was funding to acquire the Mick Gravel pit in the Town of Lee, which abutted the Lee well. He said the price was \$290,000, with an estimated \$4,000 worth of closing costs, and said his recommendation to the Council was to increase the Capital budget as it applied to the water fund by \$294,000 in order to allow the Council to move forward with this in early 2005, if it chose to do so. He said the proposed plan would be to bond this \$294,000, if a number of things didn't come to pass.

He said the town of Lee was interested in partnering with Durham to preserve the property. He explained that the owner of the property was interested in developing a subdivision on this land, which could be problematic to the Lee well if it was constructed. He said Lee was interested in having Durham purchase the property outright; going to Town meeting to ask citizens to reimburse Durham for the full purchase price; and Durham conveying to Lee the Garrity Gravel pit, valued at \$180,000. He said that in exchange for this, Lee would grant to Durham an easement across the Mick Land to preserve it from future development, and to insure that access to walk on this land was guaranteed for Durham residents.

***Council Smith MOVED to amend the Proposed 2005 Budget as it applied to the Water Fund, by \$294,000. The motion was SECONDED by Councilor Needell.***

Councilor Smith said this was a good deal for the Town.

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

Councilor Grant said he appreciated what Mr. Beaudoin and Administrator Selig had done concerning lowering the water rate increase, but said he was still mystified about what was going on in the water fund budget. He said it appeared to him that \$40,000 was

being added to the capital reserve fund balance, and asked why this was being done at a time when they were trying to minimize, or hold down water rate increases. He asked why they would want to increase the water rate so the reserve could be increased.

Mr. Beaudoin explained that the \$ 40,000 was in anticipation of an agreement with the University, and provided details on this. He also said it was important to have a strong capital reserve in case something catastrophic happened, so the funds would be available to fix the system.

Chair Sandberg said the basic plan was to add \$40,000 per year so the fund balance would grow to a safe, shock absorber level.

***Councilor Grant MOVED to delete \$40,000 from the capital reserve fund balance line for the FY 2005. Councilor Morong SECONDED the motion.***

Councilor Grant said he believed he had stated his case for this. Councilor Grant noted there was also a \$600,000 unrestricted fund balance as part of the water fund.

There was discussion on whether the funds could be deleted from the capital reserve fund. Mr. Beaudoin explained that the current agreement said that if the money was available at the end of the year, it went into this fund.

Administrator Selig said the capital reserve funds were those that would be used for future costs for the water system, and said the idea was to put money aside each year for this.

Councilor Grant asked why the amount was being increased by \$40,000 in a year where there were already significantly increasing costs

Mr. Beaudoin said Town staff wanted to have a minimum of \$40,000 based on negotiations with the University. There was discussion about this.

Councilor Smith asked if the Council was free to make this adjustment as it wished, up or down, without violating agreements with UNH, and Mr. Beaudoin said yes.

Councilor Smith asked Town staff to be more specific as to what was an appropriate number to carry as a reserve.

Administrator Selig provided details on this, and noted that although the Council could maintain the water rates by using fund balance money, this would draw this reserve down.

Councilor Smith said he understood the need for this, but said the Council needed guidance as to whether the motion made sense. He asked whether, if the Council voted in favor of the motion, if this would send the reserve balance on a steep dive.



Mr. Beaudoin said if the funds were taken out for one year, it would be ok, but said the Town would hit a stone wall at some point.

Councilor Morong asked if the sewer rate would be adjusted, and Administrator Selig said it would be left as it was.

Councilor Grant said he was not trying to be an obstructionist, but was simply trying to understand the process. He noted that based on his protest the previous week, Town staff had agreed to look at the Budget again, and by using \$30,000 from the reserve and some other funds, were able to bring down the rate increase. He asked why they were putting \$40,000 into the Capital reserve if they were going to take \$30,000.

Mr. Beaudoin explained that these were two different reserve accounts.

***Councilor Morong MOVED to amend the motion to say \$20,000 instead of \$40,000. The motion was SECONDED by Councilor Harris.***

Councilor Morong said this represented a compromise position.

Councilor Needell asked for more information on why the number had been set by Town staff at \$40,000.

Mr. Beaudoin said that in negotiations with the University, they had talked about a way to make the fund strong in case money was needed for repairs and improvements in the future, and so they wouldn't have to bond this work. He said the University had agreed with this. There was additional discussion about this.

Councilor Harris said she would support the \$ 20,000 amount, since there was approximately \$1,000,000 in reserve in the water fund, and the Town's water users were not likely to increase their need for water. She said it seemed at some point, the Town could say the amount in the fund balance was enough. She also said she saw the need for repairs and Spruce Hole as something that was largely because of the growth of the University.

Chair Sandberg asked what the difference was between the Unrestricted Fund Balance and the Water Capital Reserve Fund Balance, and the extent to which they could be used interchangeably.

Administrator Selig provided details on the Unrestricted Fund Balance, and noted that this was what the Town staff had taken money out of in order to regulate water rates. He said the Water Capital Reserve Fund Balance was money contributed by the Town and the University, and said it could only be used on specific improvements for the water system.

He said the discussion that evening was not helpful in terms of where the Town wanted to go. He noted Councilor Grant's concern about the water rate increase, and said Town staff could figure out a way to get there. But he said that decreasing the amount to be put

in the Water Capital Reserve Fund Balance made it difficult to work cooperatively with the University.

Councilor Smith asked whether, if the amount was reduced from \$40,000 to \$20,000 if this would still complicate ongoing negotiations with UNH.

There was discussion about this. Mr. Beaudoin said he didn't think it would be a killer, and provided detail on this.

Councilor Smith said he was getting the feeling that more study would be useful as to how much money would be needed in this account, based on future needs. He also said he didn't want to decrease the amount from \$40,000 to \$20,000 if this would complicate the negotiations.

Councilor Morong said he looked at this issue as one who received a bill for water and sewer together, and said if there was anything that could be done to bring down the whole bill, he would like the Town to do it. He said it seemed like the fund balance numbers seemed like a lot of money to carry, especially when the specific analysis had not been done as to how much water was actually needed.

Administrator Selig said water system improvements would be costly, and said Town staff were simply trying to put money aside so it would be there when it was needed.

Chair Sandberg said the goal seemed to be to try to stabilize rates.

Councilor Morong noted that the Council was not convinced about the need for Spruce Hole for the Town, and said he didn't see the Town's 900 users needing more water.

Councilor Smith asked again if passage of the motion on the table would complicate negotiations.

Mr. Beaudoin said it was hard to say, but said it wouldn't make them easier, noting that putting constrictions on a negotiating team made it difficult to come up with a total package.

Councilor Morong said he would vote against the motion, because he didn't want to make negotiations more difficult.

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

Councilor Needell said he would vote against the original motion, explaining that he was willing to accept the guidance of Town staff that they think this funding was appropriate.

***The original motion as stated by Councilor Grant which was to delete \$40,000 from the water budget FAILED 1-8, with Councilor Grant voting in favor of it.***

***Councilor Morong MOVED to take \$20,000 from the Unrestricted Fund Balance and apply it to reduce water rates for 2005. Councilor Harris SECONDED the motion.***

Councilor Morong said he wanted to achieve the goal in a different way.

Councilor Grant received assurances that this would not mean replacing the \$30,000 amount already taken out of the budget with \$20,000 being taken out instead.

Councilor Harris said she supported this reduction, because the increases were too great.

Councilor Needell asked what the decrease in the water bill would be as a result of this.

Mr. Beaudoin said this would be reflected in approximately \$0.05 coming off the water rate.

Administrator Selig noted there had been decreases, as well, in the water rates over the past few years. He explained again that the recent impacts on the rates had come from the fact that there was less water usage, so there was essentially less volume over which to spread the costs of the system, so that every gallon of water cost more. He said another issue was how they addressed billing to the University.

Councilor Needell said to bring this up to \$50,000 would mean 8-9% of the fund balance being used in one shot. He said he was therefore not in favor of the motion.

***The motion FAILED 4-5, with Councilors Morong, Van Asselt, Grant and Harris voting for the motion.***

Councilor Van Asselt asked if the Council wished to move to undo what a previous Council had done regarding contingency funds, if this would be the time to do so.

Chair Sandberg said the Council would have to table the Budget in order to do this, because it was a separate issue.

Administrator Selig said the Council could address this issue under Other Business, and there was discussion on this.

Mr. Beaudoin handed out the revised Resolution #2004-22, which included the proposed funding for the Mick property.

***Councilor Needell MOVED to amend the agenda by striking the 10:00 pm adjournment time. Councilor Smith SECONDED the motion, and it PASSED unanimously 9-0.***

Chair Sandberg noted that Councilors had had the opportunity to amend the Proposed 2005 Budget, and said if the Council voted in favor of the amended budget, this would cause Town staff to move forward as directed. He said if the vote failed, on January 1<sup>st</sup>, Administrator Selig's proposed budget would become the budget for 2005.

Councilor Niman asked for clarification on this. He asked whether, if 4 people voted against the budget that evening, and 11 days were left in the year, if the Council could meet before the end of the year and create a new budget.

Chair Sandberg said that would not be the case. He explained that a Councilor who had voted to approve the Budget would have to ask for this based on new evidence. He noted that if a Councilor wished to amend the budget because he/she was not happy with it, the time to do so was now. He also said that if one wanted to move to postpone the vote to a later date, that was appropriate, but said once the vote was taken, it was not likely that the discussion would be reopened.

Councilor Kraus said he would vote against the Budget, explaining that he felt the process should have been started sooner, and found the result unsatisfactory.

Chair Sandberg read Resolutions #2004-21 and #2004-22 pertaining to the FY 2005 Operating Budgets and the 2005-2014 Capital Improvement Program.

There was discussion as to whether Councilors would be voting on these two Resolutions separately or together.

Chair Sandberg explained that the original motion had been made to vote on both concurrently.

Councilor Smith said he was troubled with this procedurally, noting a Councilor might wish to vote for one Resolution but against the other.

Chair Sandberg said the reason it was done that way was so the Council could discuss both the Budget and CIP at the same time. But he said the motion could be amended so the two Items would be read separately.

Administrator Selig said if one wanted to amend the Capital Budget, the CIP would also have to be amended. But he said it was not a problem to separate them.

***Councilor Smith MOVED to amend the original motion made at the November 8, 2004 meeting, which was to approve the 2005-2014 CIP and FY 2005 General Operating budgets concurrently, by voting on Resolution #2004-21 (the CIP) first, followed by a vote on Resolution #2004-22 (the Budget). Councilor Van Asselt SECONDED the motion, and it PASSED 8-1, with Councilor Morong voting against it.***

***The original motion, as amended, to approve Resolution #2004-21 adopting the 2005-2014 CIP PASSED 5-4, with Councilors Grant, Van Asselt, Kraus and Niman voting against it.***

***The original motion, as amended, to approve Resolution #2004-22 adopting the FY 2005 General Operating Budget PASSED 5-4, with Councilors Niman, Grant, Van Asselt and Kraus voting against.***

Chair Sandberg thanked Town staff for their outstanding work, noting that there were few changes except for those involving policy issues. He said the Council very much appreciated the work that had been put into the entire process.

## **XI. Other Business**

Councilor Van Asselt said he had wanted to ask that the Council undo the resolution from the previous year concerning contingency funding, and then apply this money toward property tax relief by first putting it in the unreserved fund balance. But he said he would not make a motion on this now. He said he believed a zero increase in the tax rate was possible, and said he hoped the Council could start to think in those terms, and would work on this earlier in the year.

Chair Sandberg suggested that the Council should look at this issue, along with other issues such as the Fire Budget and revenue enhancement in January. He noted that after the election, there would be a Saturday morning goal session that could look at the issue. He said if the Council decided it was in the best interest of the Town to adopt a policy of a zero increase in the tax rate, it could direct Town staff on this, and had full confidence that Town staff would carry this policy out.

***Councilor Kraus MOVED to adjourn the meeting. Councilor Grant SECONDED the motion, and it PASSED unanimously 9-0.***

## **XII. Adjournment**

The meeting ADJOURNED at 10:20 pm.

Victoria Parmele, minutes taker