

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

**DURHAM TOWN COUNCIL MEETING  
MONDAY, JANUARY 10, 2005  
DURHAM TOWN HALL – COUNCIL CHAMBERS  
7:00 PM**

Members Present: Arthur Grant; Neil Niman, John Kraus; Karl Van Asselt; Gerald Needell; Peter Smith; Annmarie Harris; and Mark Morong

Members Absent: Chair Malcolm Sandberg

Also Present: Todd Selig, Town Administrator; Fire Chief Ron O’Keefe; Police Chief David Kurz

**I. Call to Order**

Councilor Grant said he would be serving as Chair for the meeting because of the absence of Chair Malcolm Sandberg, due to illness. He called the meeting to order at 7:00 PM.

**II. Approval of Agenda**

***Councilor Kraus MOVED to approve the Agenda as submitted. The motion was SECONDED by Councilor Morong, and PASSED unanimously 7-1.***

**III. Special Announcements**

There were no special announcements.

**IV. Approval of Minutes**

December 13, 2004

***Councilor Niman MOVED to approve the December 13, 2004 minutes as submitted. The motion was SECONDED by Councilor Kraus.***

Page 2, 5<sup>th</sup> full paragraph, replace “elevation” with “drawdown”

Page 9, 2<sup>nd</sup> full paragraph, should read “...would need to be talked through.”

Page 10, 3<sup>rd</sup> paragraph from bottom, should read “Administrator Selig said administratively, Town staff...”

Page 16, 3<sup>rd</sup> paragraph, should read “...had recently indicated that they...”

***The motion PASSED unanimously.***

December 20, 2004

Page 1, under Approval of Agenda, should read ***“The motion to amend the Agenda FAILED unanimously 0-9.”***

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

Same page, under Nonpublic Session, motion should read ***Councilor Kraus MOVED to enter Nonpublic Session to discuss property matters.***

2<sup>nd</sup> paragraph, should read “...came out of Nonpublic Session at 7:05 pm.

3<sup>rd</sup> paragraph, should read “...had been in nonpublic session to discuss property matters.

7<sup>th</sup> paragraph, should read ***“...and it PASSED unanimously 8-0-1, with Councilor Needell abstaining because of his absence from the meeting.***

Page 4, 1<sup>st</sup> paragraph, should read “...a gathering the previous week..”

Page 7, 5<sup>th</sup> paragraph, should read “...because he worked as a subcontractor to the contractor , and also...”

Page 9, 1<sup>st</sup> paragraph, delete last sentence.

Page 11, 5<sup>th</sup> paragraph, should read “...if there was anything to preclude the Council...”

Page 13, bottom paragraph, should read “...and Durham conveying to Lee the Garrity...”

Page 15, 8<sup>th</sup> paragraph, should read ***Councilor Morong MOVED to amend the motion...”***

Councilor Kraus noted that there was no motion to approve adoption of the CIP. There was discussion about this, and it was agreed the minutes should be corrected and considered again at the next meeting.

***Councilor Smith MOVED to postpone consideration of the minutes until the next meeting. The motion was SECONDED by Councilor Kraus, and PASSED unanimously 8-0.***

## **V. Report of Administrator**

- Administrator Selig noted the Planning Board was holding ongoing public hearings on the Zoning Rewrite. He said the first hearing had been held the previous week, on the nonresidential provisions of the Ordinance, and said additional hearings would be held on January 12<sup>th</sup> and 19<sup>th</sup>.
- Administrator Selig said the Oyster River Cooperative School District would also be holding public hearings on its own budget. He said there would be a hearing on Tuesday January 11<sup>th</sup> meeting scheduled. He also said that on Tuesday, February 8<sup>th</sup>, there would be a public hearing on the SB2 deliberative session on the Board's budget. He noted January 11<sup>th</sup> was the last day to submit petition warrant articles to the School district for the school meeting vote scheduled for March 8<sup>th</sup>.
- Administrator Selig provided details on existing vacancies to Town boards and committees.
- Administrator Selig said the filing period for elected town offices from January 19<sup>th</sup> to 28<sup>th</sup>. He said there were three openings on the Town Council, as well as open positions for Library Trustees, Town Clerk/ Tax Collector and Trustee of the Trust Funds.
- Administrator Selig said the Public Works Department would collect Christmas trees from residences that placed their trees curbside on Jan 10<sup>th</sup>.
- Administrator Selig stated that the Public Works Department was moving forward with demolishing the small open barn on the Town Hall site, and would be demolish the old

Public Works Department garage within the next few weeks. He said the ORYA office would remain standing.

Councilor Morong asked where sand and salt for residents would be located, and Administrator Selig said it would still be available at the Town Hall site, since the sand and salt shed would not be demolished.

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

Councilor Kraus reported that 12 tons of leaves had been collected curbside in the Fall of 2004, compared to 14 tons the previous fall, and said the reduction in tonnage reflected the fact that residents were doing more composting. He encouraged other residents to do composting, noting that this was cost effective for the Public Works Department. He also said the paper leaf bag policy had been very successful, and thanked residents for their cooperation.

Councilor Van Asselt noted that he had sent an email to Chair Sandberg regarding the Town Administrator evaluation. He said the work done by the Council on September 27<sup>th</sup> regarding the evaluation process had been synthesized, and the Council Chair would be emailing this to Councilors within the next few days. He said the plan then was to ask Councilors if there was interest in having a nonpublic session in February to go over this.

Councilor Grant asked Councilors to agree on a Monday in February to do the evaluation, in nonpublic session, and they agreed to do this on February 14<sup>th</sup>.

## **VII. Public Comments**

There were no public comments.

## **VIII. Unanimous Consent Agenda**

***Shall the Town Council accept a non-industrial sewer connection application submitted by Fall Line Properties for the New Hampshire Hotel located on Main Street and refer the application to the Water, Wastewater and Solid Waste Committee for review and recommendations?***

Chair pro tem Grant clarified that in voting on this, the Council would simply be referring it to the Committee. He said the application would come back before the Council.

***Councilor Kraus MOVED that the Town Council accepts the Fall Line Properties application for a non-industrial sewer connection application submitted by Fall Line Properties for the New Hampshire Hotel located on Main Street and refer the application to the Water, Wastewater and Solid Waste Committee for review and recommendations. The motion was SECONDED by Councilor Morong, and PASSED unanimously.***

**IX. Presentation Item** – Presentation by ORCSD Superintendent Thomas Carroll regarding warrant article language relative to the school funding formula

Dr. Carroll discussed the draft of the warrant article he would be presenting the following evening at the School Budget hearing, noting it was somewhat revised from the draft Councilors had in their packets.

Chair Grant asked that Councilor be allowed a few minutes to look over the revised draft of the warrant article.

Dr. Carroll said the draft had not yet been approved by the School Board, and would be presented at the Budget hearing. He said the Board had agreed that this was the intent of what they would go forward with, based on a recommendation from their attorney, after talking with people at the Department of Education.

He provided some history on the development of the article. He said the last time he was before the Council, the Board had an interpretation of House Bill 1281 that said that only the adequacy aid could be included in the amount that could be taken off the top. He said since that time, it was the opinion of the Department of Education that this was not correct, and that both the adequacy grant and the statewide property tax, or the total amount of adequacy aid could be used. Dr. Carroll noted that the report of the apportionment study committee had said this same thing, - that all state aid would be taken off the top, and he said the most recent draft of the warrant article reflected this.

Dr. Carroll went over the wording of the article, noting that the Board had had a hard time coming up with language that explained to the voters what the pre-existing districts were, as referred to in the article. He noted that many people didn't understand how the money was apportioned currently, so developing language about an alternative approach was difficult. He said hopefully people would be well informed, so they would have a clear idea what they were voting on. He noted that as the article itself said, it must be approved by the majority of voters in each of the three Towns.

Dr. Carroll said the clear intent of the article was that, if approved, both the statewide property tax and the adequacy grant, in total, would be taken off the top before the balance was apportioned.

Councilor Needell asked if the School Board would have to approve this at the hearing the following evening, and Dr. Carroll said no, providing details on this.

Councilor Kraus said he was trying to bring the typical voter's perspective to this, and said he thought that most people wouldn't understand what the article was saying. He suggested that perhaps a numerical example could be provided, between the first and second paragraphs, so people could see the difference it would make. He said that if people were confused about this, they wouldn't vote.

Dr. Carroll acknowledged this, but noted that the amount of detail that could be put into the explanation in the Article was limited, in terms of the space available.

Councilor Kraus agreed, noting that the more one tried to explain this with words, the more confusing it could get, but said that simply providing a numerical example would be useful.

Councilor Smith said there had been a significant change in the draft, in that the School Board was now taking the position that had been taken by the Department of Education as to the meaning of certain critical words in the Statute approved the previous year. He agreed that the Article would have to be explained much better than was presently the case, noting that in a highly educated school district like this, not even 1% of the people of Durham, Lee or Madbury would have the vaguest idea what it meant, let alone how it was changing from something else.

Councilor Smith provided some examples of confusing language in the Article, such as “pre-existing districts”, noting his comments had nothing to do with the merits of the article itself. He said he believed there was time to try to work this out, so at least 20% of the people would know what this was about. He said the communities had to do better than this, or else it was a joke to think there would be appropriate consideration of this issue.

Councilor Smith next referred to the document that Dr. Carroll had provided, and asked if the sheet entitled *HB 1281 – Apportionment Changes* was based on actual tax bill figures, and not on equalized taxation. When told it was based on actual tax figures, Councilor Smith then urged that a second document be created on the basis of equalized valuation. He said the existing sheet reflected what individual tax payers paid, but not what was the critical consideration underlying making this change, - the comparative figures between the three towns. He said that until a table was done based on equalized valuation, one couldn't get the most accurate assessment of what that comparative basis was. He said the more recent data for all three towns was essentially at the same equalized base, so using the newer data, one could show the relative amounts the towns were throwing in, and how this would change, using the new formula. He said the statistical formula would be more valid.

Dr. Carroll said it would be problematic to do as Councilor Smith suggested, in part because they wouldn't be able to get the 2004 data, although they might be able to get data for 2003. He said another concern was that doing this would take one complicated issue, the apportionment formula, and try to explain it to people using tax rates they didn't see on their tax bill. But he said he would take the idea under consideration.

Councilor Smith suggested that Dr. Carroll could ask the State if they could make the 2004 data available.

Councilor Harris said she assumed Councilor Smith meant he would like to be able to compare a house of equal value in each of the three towns.

Councilor Smith said he was referring to the reassessment process that had been undertaken, one of the principles of which was that the value of properties should reflect market prices.

He said that had now been done for all of the three towns, so each was now at the 100% level. He noted that this was very significant, given that property tax values were the basis for almost all of the money spent for education.

Councilor Niman said all of this discussion was needlessly complicating the issue, and said there was a way to simplify the explanation in the warrant article. He said the State of New Hampshire was responsible for the cost of an adequate education, and the School District was responsible for the cost of everything else. He said the article essentially stated that the 50/50 formula would be applied for the stuff the District was responsible for, and said he didn't understand why the second paragraph couldn't be simply worded to reflect this.

Administrator Selig asked what the School Board was doing to educate voters of the three towns about this complicated change.

Dr. Carroll provided details on this, and also on the fact that the warrant article was a perfect example of what was wrong with SB2. He said he was willing to bet that not 1% of the population was able to say what was currently done concerning apportionment, even though people paid a significant amount of money related to this. He said the School Board would do the best it could to educate the public, and agreed examples in a publication would be useful, if people studied it.

Administrator Selig asked if the School Board would be endorsing the article, and would be encouraging voters to support it.

Dr. Carroll said there had been no final answer on this.

Administrator Selig said this change in 2003 would have reduced the Durham part of the local school tax rate from 15.75 to 14.64, would have increased the Lee rate in 2003 from 16.60 to 18.32, and would have increased the Madbury rate from 16.74 to 18.29. He said for 2004, for the bill just sent, the Durham school tax rate would be reduced from 17.25 to 16.23, and there would be slight increases for the other towns. He asked Dr. Carroll what, moving forward, he thought the impacts would be on the three towns.

Dr. Carroll said this would depend greatly on what happened with State aid. He provided details on this, and also said that what happened with property values would influence this, making it difficult to project, going forward. But he said if the formula changes could be applied to equalized tax rates, which would give people a good perspective on what the actual impacts would be.

Councilor Smith asked if it was correct that if the article was put on the ballot and passed, that it would apply to a State law that did not currently exist. He said he believed the answer to that question was yes, and provided details on this. He asked, if that was correct, to what extent the Board would want to enact a formula change, to something that did not yet exist. He said this was more than a theoretical question, noting current proposals at the State level to completely eliminate the State property tax. Councilor Smith said he would hope this was something the School Board would give advice to the three towns on.

Dr. Carroll said the Board found itself in the same position, and had looked at this problem all along. He noted that the Committee had tried to come up with a formula where there would be no impact, if State aid went to 0.

Councilor Kraus said the difficult thing was boiling this all down for the voter. He suggested the solution could be to say -: For Durham, it's great, we pay less; for Lee and Madbury, it stinks, we pay more. He said it was difficult to convey this issue in a way so that people understood the equity and other issues, because people tended to look at it from a short-term circumstance.

Councilor Grant said the Council had previously spoken about the importance of having an education program to go with the Article. He said this was a great opportunity for DCAT, the Administrator's Notes, and other means to get the information out.

Councilor Needell said whether the School Board endorsed this or not, the Council had the opportunity to decide whether or not to support it. He said he agreed that Councilor Kraus's interpretation would be applied often, but said there were other interpretations that could be made that were not directly related to the tax impact. He said he would like to have the opportunity to talk about this with the Council, and said the argument could be made for or against this, on matters having little to do with taxes.

Councilor Needell also noted the sheet that had been provided, and asked if the numbers were based on something close to equalized valuation.

Dr. Carroll said he believed that as of 2003, all three towns were at 100% equalized valuation.

Councilor Harris said she remembered when the Council had first talked about this. She said the Council was going to try to evaluate what would be a fair recommendation for the distribution of funds. She said it was her impression that a great number of citizens of each of the 3 towns, based on that initial concept, would look at whether or not it was supported by the School Board, and that this would have a significant influence on whether they supported it or not. She said the Article was difficult to understand, but was intended as a fairness recommendation, and said that if the Board supported it, the public would pay attention to this.

Administrator Selig said he was under the impression that when the School Board Study Committee, which Councilor Niman was a part of, evaluated this issue, the Committee generally felt that the 50/50 formula was working fairly well up to the point of the Clairmont decision, when large amounts of adequacy grant funds started coming in from the State. He said that at that point, the burden for supporting the District shifted more dramatically to Durham, and this current process was an attempt on the part of the Committee to restore fairness, or the status quo before the Clairmont decision. He asked if that understanding was accurate, and if it was what the article was attempting to do.

Dr. Carroll said that was the position of the Committee, and provided details on this. He said the Committee had had difficulty defining what was fair, and said that was what the Board was dealing with, and what the people voting on this would also be dealing with.

Administrator Selig asked if this article was consistent with the recommendations of the Study Committee, and Dr. Carroll said it was.

Dr. Carroll said it was important for the Board, as well as the Councilors and Selectmen in the towns, to educate the public on this, and said any help the Board received would be appreciated. He noted that the deliberative session would be held in the multipurpose room of the High School.

## **X. Unfinished Business**

**Action on Ordinance #2004-06:** Amending Part II “General Legislation” of the Durham Town Code by creating a new Chapter, Chapter 34, entitled “Restaurant and Carryout Establishments Hours of Operations” – Update by David Kurz, Police Chief.

Chief Kurz reviewed the history of this issue with Councilors. He noted that the impetus for the ordinance had been the fact that the Police Department had been dealing with a difficult situation, trying to manage hundreds of people gathering downtown to socialize after the local bars closed. He said the problem was recycling a small police department with minimal staff to come back to work in warmer weather on Thursday, Friday, and Saturday evenings. He explained that what had been proposed was to close the downtown restaurants at 2:00, am to strike a balance with the needs of downtown merchants.

Chief Kurz said he was happy to report that while there had been 76 calls for service the first six months of the previous year, there had only been 26 calls for the last six months of the year. He said the Department had been getting an incredible amount of cooperation from business owners, the Student Senate, and other entities.

He said his recommendation to the Council at present was to not take action on Ordinance #2004-06. He said the Council could do so at any time, if necessary, and said he would not be afraid to tell the Council if the ordinance was needed. He said because of the degree of cooperation he had seen from various entities, he was not in favor of creating laws the Town didn't need.

***Councilor Van Asselt MOVED that the Town Council hereby ADOPTS, as presented, Ordinance #2004-06: Amending Part II “General Legislation” of the Durham Town Code by creating a new Chapter, Chapter 34, entitled “Restaurant and Carryout Establishments Hours of Operations”. The motion was SECONDED by Councilor Kraus.***

Councilor Smith noted that one of the reasons Chief Kurz had originally given for needing this Ordinance was the exhaustion of his employees from working extra hours. He acknowledged the decrease in the problems downtown, but asked, if the employees were

present, whether they would say there had been a sea change in the behavior seen downtown on weekends.

Chief Kurz noted that University police had stepped up their efforts, which had been very helpful, and provided details on how the atmosphere downtown had changed.

Councilor Smith said the state of the police force at late hours was the reason for the proposal, and said comparative arrest figures didn't provide a full answer. He asked for more information on the status of the police force.

Chief Kurz agreed that one couldn't equate arrests with tired officers. But he noted that several local businesses, having observed the tired officers, had started closing by 3:00 am on their own. He said this was something the Department had not seen before, so something had changed.

Councilor Kraus said the proposed ordinance had been a good stimulus for conversation. He said perhaps, as storeowners had come before the Council and presented information, they had begun to realize that they might not be getting that much economic benefit from staying open so late.

Chief Kurz said the proposed ordinance had created conversation, including discussion with the student body leadership, and had provided the leverage for the Town and University to work together.

Councilor Smith said the remaining concern was that the Town not back slide on this issue. He asked Chief Kurz if there was anything the Council should be instructing Administrator Selig to do, which would increase the chances that there would not be backsliding on this issue.

Chief Kurz said he was not clairvoyant. He said that bringing this issue before the Council had created a dialogue, and said it was important that he had gotten support for it from the governing body. He said he was grateful that the issue had worked out so that he could come there that evening and urge the Council not to pass the ordinance. He said the Department would work hard to maintain the current situation, but would want more data before making any more decisions on this.

***The motion FAILED unanimously 8-0.***

## **XI. New Business**

- A. **First Reading on Ordinance #2005-01:** Amending Chapter 53 "Vehicles and Traffic" of the Durham Town Code, Section 153-29(D) "Metered Parking Areas" by deleting this section, and Amending Section 153-32 "Time Limit Parking" by Limiting Parking on the Westerly Side of Madbury Road to Two (2) Hours

Chief Kurz explained that the proposal was to go back to not having meters in this area. He said the intention of the metered parking had been to help provide more turnover of parking in the downtown area, as well as to generate more revenue. But he said at least 10 of the 27 meters were missing due to theft or vandalism. He provided cost figures on the cost of replacing the meters, and said the revenue from parking meters in this area was significantly less than the cost of replacing the meters.

He said the plan would be to take out the remaining meters, revert to two hour parking in this area, and to chalk tires and give tickets to vehicles that violated this. He provided details on the fact that there was currently ample parking in the downtown area, so that the parking meters on Madbury were not really warranted anyway, especially given the enforcement problems.

Councilor Kraus asked how the meters were being removed, and Chief Kurz provided details on this. There was additional discussion, including conjecture that power equipment might be involved in the removals.

Councilor Needell noted that when one drove out of Garrison Ave., cars parked legally near the corner created a safety hazard. He asked that while the Madbury Road parking situation was being changed, that the Department should perhaps review where the parking spaces should be placed.

Chair Grant asked Chief Kurz to look into this, and report back to the Council on it at a future date.

Councilor Smith said the Department was getting rid of the parking meters because they were being stolen. He said if this was a crime that was too difficult to solve perhaps there was no alternative. But he said this left a bad taste in his mouth, and asked for more detail from Chief Kurz on why the problem had to be solved this way.

Chief Kurz said he did not enjoy being present that evening to discuss this problem. But he said the reality was that the Police Department could not be everywhere. He said the Department would love to solve this, but said there were many kids out later in Durham than five officers were going to be out. He said the meters were being stolen, but it wasn't clear how, and noted the meters hadn't even been found later on.

Councilor Grant noted that this was the first reading on the proposed ordinance, and said a public hearing would be held on it at a future date.

***Councilor Van Asselt MOVED that the Town Council hereby passes Ordinance #2005-01 on first reading, as presented, amending Chapter 153 "Vehicles and Traffic" of the Durham Town Code, Section 153-29(D) "Metered Parking Areas" by deleting this section, and Amending Section 153-32 "Time Limit Parking" by Limiting Parking on the Westerly Side of Madbury Road to Two (2) Hours. The motion was SECONDED by Councilor Kraus, and PASSED unanimously 8-0.***

B. Discussion with Fire Department regarding staffing

Administrator Selig explained that during deliberations on the Budget, the Council had discussed various aspects of the operation of the Fire Department, and had decided to hold a future session to discuss these issues in more detail.

He said the presentation that would be given by Fire Chief Ron O'Keefe was designed to give the Council an overview of what the goals were when the Town went to the 5 person shift, the fire safety captain and fire inspector; how Town staff had approached meeting these staffing needs, and the various goals of the Department.

Chief O'Keefe's presentation covered the following key areas:

- **Core Services** provided by the Fire Department.
- **Current Staffing** of 4 shifts, with 5 personnel on each shift. Chief O'Keefe said the 5 person shift did not mean there were 5 people on a truck, and explained that one truck held the captain, a driver operator, and a jumpseat firefighter, while the second truck held the driver operator and a jumpseat firefighter. He said even though the Department would like to have a 4-person engine, 3 people on one, and 2 on the other, was consistent with standards.
- **The Shift Staffing** history of the Fire Department.
- **Simultaneous emergencies.** Chief O'Keefe noted that 20-25% of the time, two calls came in at the same time, which split the on-duty crew, and reduced safety.
- **National Fire Protection Association and Occupational Safety and Health Administration 2 in 2 out standards.** Chief O'Keefe explained that at a fire when two firefighters were sent inside, two were needed outside in case the two inside needed to be rescued. He said the 5<sup>th</sup> person came into play because the standard said there needed to be someone overseeing the two vehicles that pumped the water to the fire. He explained that if the water supply was cut off, everyone was in jeopardy. He said that from day one, that had been the basis for his proposal for the 5<sup>th</sup> person.
- **Leave Use** facts. Chief O'Keefe noted there had been a significant reduction in the amount of leave taken by fire department personnel, between 1999 and 2004.
- **Injury statistics.** Chief O'Keefe said there had been a significant decrease in injuries between 1999 and 2004. He also said that implementing the additional person had increased the Department's efficiency by about 50%. He said that previously, the Department had been seeing a lot of injuries, and a lot of burnout.
- **Simultaneous vs Sequential actions.** He provided details on the various actions that had to be taken at a structural fire when Fire Department personnel arrived at the scene, within 8 minutes of getting a call. He said if these actions had to be done sequentially, many couldn't get done, so a lot of actions had to be taken

simultaneously. He said that what NFPA wanted the Department to do, with 16 people, what it had to do with 5 people, and he described some of the key things the fifth person had to be able to do.

- **Fire propagation curve**, showing the progression of a structural fire to flashover. Chief O'Keefe explained that if the fire expanded beyond the room of origin, the likelihood of civilian deaths went up, injuries went up significantly, and the dollar loss went up. He noted it had been brought up at a Council meeting that Durham had 1-2 significant fires each year. He said it could be seen over and over again that the fifth person was helping to contain the smaller \$2,000-5,000 fires to the room of origin, and said he was proud to say that Durham's fire loss was below the national average. He stated that the Town's loss the previous year was \$160,000, while before the fifth person shift, it had been over \$1,000,000.
- **Overtime costs**. Chief O'Keefe said that while there had been a 24% increase in staffing since 1999, there had only been a 2% increase in overtime costs. He noted there had been a significant fire on New Years Eve, and said that sufficient staffing was needed all the time because one simply didn't know when a big emergency would occur.
- **Training**. Chief O'Keefe said there had been a doubling of training hours since 1999.
- **Fire Prevention and Public Education**. He said there had been a significant increase in fire inspections, and also said almost 1000 people in the community had been educated on fire prevention the past year.
- **Cost per Full-time Personnel**. Chief O'Keefe said the 2002 data indicated that the Fire Department was a cost efficient operation, when compared to other towns of Durham's size. He said the 8,000 population figure for the Town had been used to do this comparison, and also noted that the Town got 26 firefighters for the cost of 14, because of the University.

Councilor Kraus said at the meeting referenced, he was vivid that he wanted some clear answers to the statements in the NFPA 17-10 relative to the meanings of the words high hazard, tactical hazard, etc., because this had been used previously to justify going from the 4 to 5 person shift. He said he continued to believe that was not correct, and said he had heard nothing about this in the Chief's presentation. He asked Administrator Selig if there was a problem in communicating this to the Chief. He said he was asking for something reasonable, given the weight of this issue in previous discussions.

Administrator Selig said Chief O'Keefe had a handout to provide to Councilors on these definitions.

Chief O'Keefe noted this had been asked for in writing, and provided this material to Councilors. He went through the definitions, and provided examples of properties that were high hazard, high risk residential, etc.

Councilor Smith asked what high risk residential referred to, and was told this described residents who had reduced capacity for self-preservation, such as nursing homes, and elderly housing with either partial care or independent living.

Councilor Smith asked if this definition considered only the incapacities of residents, or also considered the greater amount of services staffing for these people, as compared to a facility such as someone's home, where there were younger persons, but no staffing. There was discussion about this, and Chief O'Keefe

Chief O'Keefe noted that the high-rise dorms, the Whittemore Center, the ice hockey arena, etc. were high hazard occupancies, especially because they had hazardous materials. He noted there had been incidents at both of these facilities. He said fraternities were classified as high hazard occupancies, along with some apartments, especially on some weekends. He said activities at these facilities sometimes created reduced capacity, which created a high hazard for a department of their size. He noted the definition of tactical considerations, and said the Department had experienced people shooting pyrotechnics at them, when they were trying to extinguish fires or provide medical aid.

Councilor Kraus said the information that had been provided was helpful, but said he would appreciate seeing the actual NFPA document, with an actual definition where one saw the words displayed in the document. He said this would be enlightening so one could compare it to the interpretive materials the Council received.

Chief O'Keefe said copies of this material were being made for Councilors.

Councilor Van Asselt said high hazard was one justification for having a fifth person, and asked whether, if there were no high hazards in Durham, if the additional person was needed.

Chief O'Keefe said not necessarily. He said the high hazard standard spoke about number of personnel per truck. But he said the entire standard said if there were a lot of high hazard occupancies, a department should have five people per truck going out the door, with 8-10 people per shift.

Councilor Kraus said the standard said these companies should be staffed with a minimum of four on duty personnel, and didn't say anything about people on trucks.

Chief O'Keefe said when the standard talked about a company, it meant a truck, but he said for Durham, two trucks were sent out, which were classified as one company.

Councilor Van Asselt said he had identified 35 high hazard occupancy properties that belonged to UNH, and five that belonged to Durham. He said he questioned the situation

when he heard that everything was wonderful, with the 50/50 split in costs between the Town and the University, but the University's high hazard occupancies demanded a lot more of the Fire Department than the Town's did. He also noted the hostile crowds required a higher level of service. He said about 75% of the demand for fire service to deal with high hazard occupancy and tactical hazards came from the University, and about 25% came from the Town.

Chief O'Keefe said he didn't know the exact numbers, but said the Town had its fair share of high hazard occupancies. He said there were 20 fraternities and sororities, 4 elderly housing complexes, as well as other student housing, private dormitories, etc.

Councilor Needell said it was important to note the importance of the fifth person as a part of the 2 in, 2 out, 1 person covering the equipment strategy, for structure fires. He asked Chief O'Keefe whether, if there was a four-person shift, if firefighters could not enter a burning building until more support arrived

Chief O'Keefe provided details on this. But he said he didn't want people to get hung up on the high hazard occupancy standard. He said the Department didn't need the five person shift because of the high hazard occupancy, it needed it because of a clause in OSHA that said that one of the people on the outside, as part of the rescue team couldn't leave the critical task, to go in and assist, during the first minutes of a fire.

Councilor Needell asked if there would be any way to do this if there were four firefighters.

Chief O'Keefe said they would have to alter their tactics, unless a rescue was involved, in which case all bets were off, and the rescue took precedence.

Councilor Morong said he took exception to Councilor Van Asselt's comments concerning the University. He said the Town and the University had a pretty good symbiotic relationship concerning high hazards, because the Town had enough high hazard occupancies to require training of personnel, sufficient staffing, etc. He said it would cost the Town more to fund all of this on its own, as compared to sharing the costs with the University.

Chief O'Keefe agreed, and said that separately the Town and the University couldn't do as much as they could when they shared the costs.

Councilor Smith said a few years back, he had posed the idea of assessing the odds of events actually happening, as well as assessing how much of an insurance policy the Town wanted to carry, given potential risks, and then seeing where this lead in terms of personnel, etc. He said it was perhaps a difficult thing to develop, but said that without it, he didn't see how the Council could make the sorts of judgments Councilor Van Asselt was talking about.

Councilor Smith said he was hearing that the Town, and the University had it great because they had a 26-person fire department, which only cost half of what it should. But he said he was concerned about the need to make a more scientific judgment on what the costs were. He also noted the issue of how the five-person shift had decreased injuries, and asked if the decrease could be attributed solely to this, or perhaps to other factors as well.

Administrator Selig said he had spoken to the fire fighters about this, and said they had said that having the fifth person was what was preventing injuries, in part because this person made lifting heavy equipment easier.

Councilor Morong asked if perhaps the decrease in injuries could also be attributable to the extra hours of training and/or better equipment.

Chief O'Keefe said it was probably because of all of these things, and said the Department was doing everything possible to be successful. He also noted the Department didn't make significant changes without coming before the Council, because it usually involved some kind of cost.

Councilor Needell said there certainly should be a re-visitation of shared costs with the University, but said he didn't see that the issue of high hazard occupancy was driving the issue of having a fifth person on a shift.

Chief O'Keefe said most of the fires were at residential occupancies, although the high hazard occupancies provided their fair share of costs, especially with the five-person shift. He said the standard talked about for high hazard occupancies was that there should be five, not four people on a truck.

But he said that was only a small piece of what the Department dealt with, and said he did not predicate staffing on high hazard occupancy. He said he had done so based on high use of lead time in the late 90s; the burnout factor of firefighters and the high injury rate; and the clause in NFP 1500 that fire departments couldn't use a standby member to go in and rescue, leaving the critical task of operating the pump. He said that person was critical, in the first 8 minutes of a fire.

Councilor Needell said Chief O'Keefe had made this case strongly. He said this was a situation where the relationship between the University and the Town was win-win. He said how costs were apportioned was a different matter, but didn't go to the central matter of what the staffing levels should be at the Department. He said the fact that there were high hazard occupancies at the University and in the Town meant that both benefited from the present arrangement.

Councilor Niman noted the data sheet on Cost per Full-time Personnel, which compared Durham to other towns, and asked why those particular towns were picked, and other towns with similar populations to Durham were not chosen.

Chief O'Keefe said he had picked some towns of similar size, and that were close by. He provided some detail on this.

Councilor Niman noted some towns on the sheet that didn't appear to maintain a five-person shift, and asked why.

Chief O'Keefe said he could not speak for those communities as to what level of services they felt was adequate for them.

Councilor Smith said he didn't read the sheet to determine what kind of shift each of these towns had, but he asked how many of the towns on the list had a five-person shift.

Chief O'Keefe said he didn't know, and would have to research this.

Councilor Smith said it was a question of how much insurance one wanted to carry. He said the Town needed to look at what towns of comparable size did, and to the extent this was different, needed to ask questions about this. He said it might be determined that Durham was wiser than other towns, but said it was also possible that other insights would be gained.

Councilor Niman noted Portsmouth got by with one fire marshal, while Durham had a fire marshal and a fire prevention officer, and asked how this could be.

Chief O'Keefe said that Portsmouth didn't appear to put as much emphasis on fire prevention as Durham did.

Councilor Smith asked what the consequences were of not putting as much emphasis on fire prevention, and what the differences were in the two communities that would make Durham think it had to put more emphasis, or less emphasis on this.

Councilor Niman asked for details on quick attacks, and on how the five-person shift allowed the Department to make these quick attacks, thus keeping the costs of fires down to the \$2,000-3,000 range.

Chief O'Keefe said for the most recent fires, the initial crew attacked the fire and did search and rescue. He said at the same time, the other two were stretching the line, and the fifth person watched the two trucks. He said that sometimes, the other two might go in to provide backup, shut off utilities, etc.

Councilor Niman asked when there was a fire where there was only \$2,000-3,000 of damage, whether this was an IDLH situation.

Chief O'Keefe said as far as he was concerned, any fire where one had to breathe in smoke was immediately dangerous to life and health. He said if one had to bring in a hose line, it was an IDLH fire.

Councilor Kraus noted some of Chief O’Keefe’s comments illustrated to him that there was a big problem with the discussions with the Fire Department. He said the materials provided by the Chief in 2002 included a vast amount of discussion on standards, and said when concern was expressed about a statement made by the Chief in the 2002 documentation, some Council members said it sounded like they were being told if they didn’t get a five person force, the Department would have to stand around and watch houses burn. He said the response was that this was necessary because of standards. He said the Council asked for more information on the standards at that time, and the materials were provided under some duress.

Councilor Kraus said the problem with these kinds of discussions was that the presentations were superficial, and he said many times it was hard to get a grip on what was being said in them. He said this was not a good thing, because it was difficult to believe the Council was getting the whole story.

Administrator Selig said a key point he had been discussing with the Chief was where it said a Town like Durham should have a five-person shift. He said there wasn’t anything out there that specifically said that, and said Durham’s Fire Department based its needs on an interpretation of what that fifth person was needed for.

He said in 1998, the Town had opted to move forward with this staffing pattern, and since that time, had gone around and around as to where in writing it said the Town had to have this. He said in the end, it came down to the Town’s interpretation, and said he had been hopeful that the Council would have a discussion about that.

Councilor Needell said from his point of view, there had been no lack of information available to the Council on this subject. He also said he took exception to the claim that there had been any attempt, since he had been on the Council, to confuse the issues. He said there had been an attempt to have a dialogue to explain things.

Councilor Smith noted Administrator Selig’s comment, and said the material on the standards was in black and white, and was a starting point. He said if he asked the Chief for a 100% guarantee that for any fire that took place in Durham, the Department would be able to insure that they would always be there within 8 minutes, with 16 persons to perform all the necessary functions, he would be surprised if the Chief said yes.

He said he understood from Chief O’Keefe’s presentation that given those standards, the Department took the standards and said the Department would have to be more efficient in achieve the same thing, with fewer people. He said what was going on was that there were these standards, and then judgments had to be made. He said the same things happened in other departments, noting that these might not be easy judgments to make, and a lot of compromises had to be made.

Councilor Smith said he didn’t think any Council members were looking to take risks that were undue, but were trying to make rational judgments on risks. He said he understood the Chief was looking at the highest standards for the Department, and he assumed that

other department administrators were doing the same thing. But he said they all needed to make some judgments, as they went.

Administrator Selig said he agreed 100% with Councilor Smith, and said if they could bring the level of the discussion of the Council up to what he had described, they would be making a quantum leap. But he said that had not been the discussion during the past few years. He said Town staff had been asked again and again to show where it was said in writing that the Fire Department needed five people.

He said the Chief had provided the same information several times, and was trying in good faith to show that the Department was operating with best management practices, was increasing safety, and was decreasing property losses. He said the interpretation concerning the five-person shift was just that, an interpretation by well trained professionals in the Fire Department. He said it was now up to the Council to decide whether not having that fifth individual was worth the risk.

He said he was hopeful the Council could move on to the line of discussion raised by Councilor Smith, as to whether the community could afford the five man shift, whether the risks in Durham warranted it, and also how these things played into the complicated way the Department was funded, because of the University.

Councilor Smith said the University/Town issue was important, but was a separate issue. He said the Chief was right in saying money wasn't spent unless the Council authorized it. But he said what he thought had happened had to do with the fact that the Fire Department, uniquely compared to the other departments, was essentially an insurance agency.

He said the Council was sitting there without enough expertise; was concerned about the budget, and could either say it would go along with whatever the Chief said, or could look further. He said the Council should look further, because it had responsibility beyond what the Chief had. He said the Council had given up this role again and again, and was to blame for this, and said it was important to decide if the Council needed more independent information and outside expertise to look at this issue.

Councilor Niman said he agreed with Councilor Smith, and said initially, his own perspective was that he didn't think the Town could afford the Fire Department, and he was looking to provide the same services at a lower cost. He noted he was not necessarily looking to eliminate the fifth person. He said he had started looking into this issue when he compared Durham with other communities. He provided details on this, and said that in order to determine if the Town was making good judgments about the Fire Department, the Council needed to compare Durham with other towns making different judgments.

Councilor Niman agreed this was an insurance issue, and also said he agreed that the Town needed outside expertise to assist the Council. He said he was not an expert, but wondered why Durham's standards were different. He said if one just looked at the

standards, everybody had a different interpretation, but said the Council needed to move beyond this, and discuss what was appropriate for Durham.

Councilor Kraus said he was now realized he was free of the standards, and said he wouldn't worry about them anymore. He said the Council now needed to consider whether it could afford what it had, and if there were there things it could do about the current situation.

Administrator Selig said it was important to use the standards as guides and thresholds, but said they couldn't be the only thing that drove what Durham did.

Councilor Harris said she had finally been given a list that day of incidents in Durham, by address, noting she had been curious about the seriousness of these incidents, and where they were located. She said that having looked at the list briefly, it turned out that a disproportionate number of public service calls, false alarms, cancelled dispatches, emergency medical services calls, etc. came from dormitories.

She said she would like to get some sense of what proportion of the Town's fire calls were serious, and what proportion of Town counted calls were in fact in multi-unit buildings like fraternities. She said part of what the Town needed, and the risks it was willing to shoulder, related to what was on this list. She said regular reports like this were needed, in order to analyze this.

Councilor Needell said he encouraged this kind of discussion, but said he didn't necessarily view the Fire Department as insurance. He said that was not a universal approach for viewing fire departments, and said he looked at it more from an operational perspective.

There was discussion about whether to continue the meeting beyond 10:00 pm,

***Councilor Van Asselt MOVED to continue the meeting beyond 10:00 pm, until 10:30 pm. Councilor Kraus SECONDED the motion.***

There was discussion as to whether to continue the discussion on the Fire Department or instead to move on to other Agenda items.

Administrator Selig said he would prefer to finish the discussion on the Fire Department in the time remaining, and Chair Grant agreed.

Councilor Van Asselt said he would be terribly disappointed if the discussion on revenue development discussion got pushed to the bottom again.

There was additional discussion on this.

***The motion PASSED 7-1, with Councilor Van Asselt voting against it.***

Councilor Grant asked, if there was money left over in the Fire Department budget, where it went.

Chief O'Keefe said the memorandum of agreement with the University said that it went into the reserve account, which was shared for purchasing training equipment, emergency purchases, etc.

Councilor Grant said he was concerned about whether Durham could afford a tax increase in 2005. He said he had no problem with the five-person shift, but said the Fire Department was increasing its budget in 2005 by \$270,000 as compared to 2004. He discussed a possible reduction of expenditures, but noted that if this money were saved, it would go into the reserve account.

Councilor Smith asked if this was an agreement that had been approved by the Council. Administrator Selig said yes, and said it dictated the way in which fire services were allocated.

Chief O'Keefe explained that if the amount was over 5%, it went back to each entity equally.

Councilor Grant asked if this agreement was being negotiated.

Administrator Selig said it was. He said Durham would be paying for 55%, and the University would be paying 45%. He said Town staff was pushing to get to a 50/50 split, with each percent change representing approximately \$20,000, but he said there were complications with the water agreement which were hindering the ability to get to closure on this.

Chief O'Keefe explained that it had been difficult to provide the list to Councilor Harris because of a software problem. He stressed that everything the Town had initiated was working, noting fire losses and calls were down. He said the Department continued to work to reduce overtime and injuries, and was doing everything it could to reduce the costs. He provided details on services the Department was providing, but said whether this was worth the expenditure was something the Council needed to decide.

Councilor Van Asselt said he doubted this issue would go away, and noted there were a number of unanswered questions. He said some kind of review committee should be appointed to look into these further, and said the committee could include the Fire Chief, some Council members, and outside people if needed. He said it was important that this committee look at the tough questions, and bring something back to the Council, so there would be some answers before the next Budget came along. He encouraged Administrator Selig to organize this committee.

Councilor Morong said he did not mean to micromanage, but said from the lessons of history, the Town should have two shifts on New Year's Eve.

C. Discussion regarding Revenue Enhancement

Councilor Van Asselt noted he had previously provided the Council with a memorandum entitled “Durham Economic Development”, and said it was based on the premise that the Council must continue to look for alternatives to the continued reliance on the property tax from homes and businesses in Durham.

He said the handout he had provided listed 10 areas for consideration, and said the Council should refine that list. He also encouraged the Council to consider moving ahead at present on each of the following:

- Durham owned properties
- Town-UNH Fiscal Relationships
- Economic Development Issues
- Community Attitude Survey

Councilor Van Asselt spoke briefly about these 4 initiatives. He recommended that a community survey should be done of what economic development meant to residents, because he said he wasn’t sure the Council knew what the community was really thinking. He provided some details on how the survey could be developed, at a reduced cost with help from the University.

Councilor Van Asselt noted that he had not heard one person come before the Council and say that taxes were too high. He said maybe taxes weren’t too high, and perhaps the citizens were happy with all the services. But he said it was important to find this out, and said this could become a blueprint for what the Council should work on.

Councilor Smith said the survey was a good idea, if the right questions were posed. He noted a community survey had been done in 1998, in connection with the work on the Master Plan. He said the Town should be thinking, after adopting the remaining Zoning provisions, about updating the Master Plan, and said a survey would be relevant to this. He said a complication was that while most people thought taxes were too high, Durham was a town that had expressed strong values and ideas about not doing what some other communities had done. He said there were inherent conflicts in these positions.

Concerning one of Councilor Van Asselt’s specific recommendations, he said the assessment of Town owned properties was well along. He noted some people on the Recreation Committee and the Land Protection Working Group of the Conservation Commission had already surveyed the bulk of important properties, and noted they would have something to say about what the properties were worth from their perspective.

Councilor Van Asselt said that he often heard about the Durham Business Park, but also heard that only a portion of it had development potential. He said this kind of information needed to be documented for other properties.

Councilor Kraus said this item should reappear near the top of the Agenda soon, and should be focused on, noting that it never really seemed to get resolved.

Councilor Grant said the Agenda format listed “New Business” as the last item on every Agenda, and said he thought that some nights, the meeting should start with New Business. He asked if the Council agreed they would bring back Councilor Van Asselt’s document early at the next meeting, and Councilors agreed the entire Agenda item should come back at that time.

Administrator Selig noted the Town was currently in the process of revising the Zoning Ordinance, and said what the Council chose to do with this would have more impact on growth, taxable income, etc. than anything else it could do.

## **XII. Nonpublic Session**

## **XIII. Adjourn**

***Councilor Kraus MOVED to adjourn the meeting. The motion was SECONDED by Councilor Van Asselt, and PASSED unanimously 8-0.***

Adjournment at 10:23 pm

Victoria Parmele, minutes taker