

This set of minutes was approved at the February 21, 2005, Town Council meeting.

**DURHAM TOWN COUNCIL MEETING
MONDAY, FEBRUARY 7, 2005
DURHAM TOWN HALL – COUNCIL CHAMBERS
6:30 PM**

MEMBERS PRESENT: Chair Malcolm Sandberg; Arthur Grant; John Kraus; Peter Smith; Mark Morong; Neil Niman; Karl Van Asselt (*arrived at 8:00 PM*) Gerald Needell

MEMBERS ABSENT: Annmarie Harris

OTHERS PRESENT: Town Administrator Todd Selig; David Kurz, Police Chief; other interested members of the public

I. Call to Order

Chair Sandberg called the meeting to order at 6:30 PM.

II. Approval of Agenda

Councilor Kraus MOVED to approve the Agenda. The motion was SECONDED by Councilor Morong, and PASSED 7-0.

III. Nonpublic Session

Councilor Grant MOVED to go into nonpublic session for the purpose of discussing the benefits packages for non union employees, and ongoing negotiations with the University regarding financial agreements, in accordance with RSA 91-A:3 II (a) (c) and (d) respectively.

The motion was SECONDED by Councilor Needell.

Administrator Selig briefed Council members on two issues that could be discussed either in nonpublic or public session. He noted the issue of benefits for non-union employees, and said he felt a broad policy discussion could be held in public session on this. But he said there were some issues concerning this that he would feel more comfortable speaking about in nonpublic session.

Councilor Needell asked if it would help frame the public session by first having a nonpublic session on this issue, and Administrator Selig said it would.

Administrator Selig said the second issue for possible discussion in nonpublic session was the ongoing negotiations with the University regarding a myriad of financial relationships. He said that he and Business Manager Paul Beaudoin proposed to update the Council on this topic at the meeting, and to get guidance as to how to proceed. He noted that Councilor Smith had some grave concerns about going into nonpublic session on this issue, and said he wanted the Council to decide whether it wanted to discuss these matters publicly or privately.

Chair Sandberg suggested proposing two motions: one for the issue of benefits for non-union employees and the other for negotiation of agreements with UNH, and asked if there were any objections to this approach. There was discussion among Councilors and Administrator Selig about the best way to proceed.

Councilor Smith suggested tabling this motion, so the Council would be able to consider a separate motion on whether to go into nonpublic session on the University issue, before going into nonpublic session on the benefits package issue.

Councilor Smith MOVED to table this item, pending resolution of whether to go into nonpublic session for discussion of ongoing negotiations with the University regarding financial agreements. The motion was SECONDED by Councilor Grant, and PASSED unanimously 7-0.

Councilor Morong MOVED to go into nonpublic session in accordance with RSA 91-A:3 II (c) and (d) for the purpose of discussing ongoing negotiations with UNH with respect to contractual agreements with the University. The motion was SECONDED by Councilor Kraus.

Administrator Selig provided background information, and said it was hard to know whether it was problematic to discuss this subject publicly or not. He explained the pros and cons of doing so. He said the real issue was whether the Council would make comments they felt were most appropriately done privately, and whether these discussions were relevant to citations in the right to know law.

Councilor Kraus said it seemed that UNH had nonpublic sessions, so it would seem equitable that the Council could do so.

Councilor Smith said he felt strongly that it would be in violation of State statutes to go into nonpublic session, and provided details on this. He also said it would be bad policy to do this. He said subsection c on its face did not apply, and provided his reasons for saying this. He noted that if the Council was having a discussion on land negotiations (for example, the Craig Supply site) a nonpublic session would be appropriate. But he said to discuss matters that were more general in nonpublic session was not appropriate, and said these kinds of matters were the very things the Council should be discussing publicly.

Councilor Grant said he would vote to deny the motion, because he felt these matters should be discussed publicly. He noted that the Town's contracts with the University were not well understood by citizens of Durham, yet they had substantial impacts on the tax rate.

Councilor Needell said he also supported the idea of not going into nonpublic session on this issue.

The motion FAILED 0-7.

Councilor Smith MOVED to remove from the table the matter of entering nonpublic session regarding benefits packages for nonunion employees. Councilor Grant SECONDED the motion, and it PASSED unanimously 7-0.

The MOTION to go into nonpublic session in accordance with RSA 91-A:3 II (a) regarding benefits packages for nonunion employees PASSED unanimously 7-0 on a roll call vote as follows: Smith, AYE; Kraus, AYE; Morong, AYE; Grant, AYE; Sandberg, AYE; Needell, AYE; Niman, AYE.

The Council entered nonpublic session at 6:50 PM.

The Council went back into public session at 7:26 PM.

Councilor Kraus MOVED to seal the minutes. The motion was SECONDED by Councilor Smith, and PASSED unanimously 7-0.

Chair Sandberg noted for members of the public that the Council had decided not to discuss ongoing negotiations with the University, in nonpublic session. There was discussion on where on the Agenda this issue should be discussed. Chair Sandberg said that rather than amend the Agenda, the Council would decide on this later.

IV. Special Announcements

There were no special announcements.

V. Approval of Minutes

December 20th, 2004 minutes

Councilor Kraus MOVED to approve the minutes of December 20, 2004, as submitted. The motion was SECONDED by Councilor Smith.

Administrator Selig noted the motions to approve the Budget and CIP. He provided details on this, and said Jennie Berry and Victoria Parmele had checked the tapes. He said the minutes were now accurate on these motions and votes.

Page 1 – under Item II, should say, “The motion to amend the Agenda FAILED unanimously 0-9.

Also, page 1 “The Agenda as submitted PASSED 9-0.”

Page 19 – Should say “*The original motion, as amended to approve Resolution #2004-21 adopting the 2005 CIP PASSED 6-3, with Councilors Van Asselt, Kraus and Niman voting against it.*”

Councilor Kraus MOVED to amend the minutes. The motion was SECONDED By Councilor Morong, and PASSED unanimously 7-0.

Page 7, 5th line, should read “Councilor Morong said he would reuse himself from this Item, because he worked as a subcontractor for the contractor.....”

The minutes as amended PASSED unanimously.

January 3, 2005

Councilor Needell MOVED to approve the minutes. The motion was SECONDED by Councilor Grant.

Page 1, Motion under Item II should read “..PASSED unanimously 8-0.”

Page 22, motion should read “*The motion to amend FAILED 3-4, with Councilors Niman, Needell, Van Asselt and Morong voting against it.*”

Councilor Grant MOVED to approve the amendments to the minutes. The motion was SECONDED by Councilor Smith, and PASSED 6-0-1, with Councilor Kraus abstaining because of his absence from the January 3rd, 2004 meeting.

The minutes, as amended, PASSED 6-0-1, with Councilor Kraus abstaining because of his absence from the January 3, 2004 meeting.

January 10, 2005 minutes

Councilor Morong MOVED to approve the minutes. The motion was SECONDED by Councilor Kraus.

Page 1, The motion should read “...and PASSED unanimously 8-0.”

The motion PASSED 6-0-1, with Chair Sandberg abstaining because of his absence from the January 10th meeting.

Chair Sandberg said the editorial change on page 1 would be included, once it was checked on.

Nonpublic session December 20, 2005

Councilor Kraus MOVED to approve the minutes of January 20th, 2005. The motion was SECONDED by Councilor Needell, and PASSED unanimously 7-0.

Chair Sandberg noted there had been no motion to seal these minutes.

Councilor Grant MOVED to seal the nonpublic session minutes of January 20, 2005. The motion was SECONDED by Councilor Kraus.

Councilor Grant explained to the audience that the reason for this was that the minutes contained discussion on negotiations on purchases of land property.

Councilor Smith said he didn't see any reason to seal all of the minutes for the nonpublic session.

There was discussion on this matter.

Councilor Smith MOVED to amend the motion to seal, by sealing the portion of the minutes starting at the heading in bold near the top of page 3, down to the next to the last paragraph on page 4 (through the paragraph starting “ Councilor Morong...) Councilor Morong SECONDED the motion.

Councilor Kraus said he thought the entire set of minutes should be sealed.

Councilor Morong said two distinct issues were addressed in the nonpublic session, and said he didn't see why the minutes couldn't be split.

Councilor Grant said he would vote against the motion to amend, noting the first item was already a matter of public record. He said there was no harm in leaving all the minutes sealed.

Councilor Needell asked what the reason would be to seal the second part of the minutes. There was discussion about this.

The motion to amend FAILED 3-4, with Councilor Smith, Morong and Needell voting in favor of the motion.

The motion to seal the minutes of January 20, 2005, PASSED 6-1, with Councilor Needell voting against the motion.

VI. Report of Administrator

- Administrator Selig noted that Benjamin's Restaurant had closed, and said the Library Board of Trustees was actively looking for a future site for the library, and had visited the site recently as part of determining if there was interest in moving forward. He provided some details on this, and noted Chair Sandberg had attended the site visit. He said the Trustees would be deliberating on the idea.
- Administrator Selig noted that the Library Board of Trustees had also discussed the Craig Supply site. He explained that there was a building on the site, constructed in the mid 1980's, which was in fairly good shape, and was not located on any of the contaminated land on the site. He said there had been some productive site walks, but said the Trustees had determined they were not interested in the site. He said they would however, consider a specific proposal if the Council developed one.

- Administrator Selig spoke about the Mick Gravel Pitt, a property in Lee abutting the Lee Well. He noted the Town had been in discussions with Mr. Mick regarding whether the Town could purchase the property. He said there was potential to purchase it for \$290,000, and said the Town of Lee would then potentially authorize the Selectmen to purchase the pit from Durham for the Town's purchase price.

He said as part of this, Durham would transfer ownership of a Durham gravel pit in Lee on Garrity Road to the Town of Lee, which abutted conservation land Lee wanted to preserve. He said Lee would in exchange grant an easement to Durham on the Mick Gravel pit. He said the purpose of all of this was to protect the currently undeveloped land next to the Lee well. He said Mr. Mick said \$290,000 was a number he was willing to work with, and the Town had sent a purchase and sale agreement to him. He noted Mr. Mick wanted to close the agreement by March.

There was discussion about negotiations between Lee and Durham. Administrator Selig said he had sent a letter to the Town of Lee stating exactly where things stood.

- Administrator Selig noted there had been significant police presence downtown in anticipation of the Patriots celebrations, and said he was pleased to note there had been no problems whatsoever in Town that evening. He thanked everyone for this successful outcome.
- Administrator Selig said the Integrated Solid Waste Management Committee would be holding a dinner in appreciation of the volunteer employees of the Swap Shop on February 13th. He said this was a great group of volunteers, and said Councilors were welcome to stop by.
- Administrator Selig said the 2004 Town Report was available online, and said that printed copies would be mailed to residents within the next few weeks.
- Administrator Selig said there were three open positions on the Town Council, and said noted that DCAT had agreed to hold a Candidates Forum on February 28th in the Council chambers.
- Administrator Selig said that the following evening, there would be a deliberative session of the School meeting, and said this was an important meeting for Durham residents to attend, noting that 69% of the tax bill was affected by the School district.
- Administrator noted a scarf had been left in the Council chambers.
- Administrator Selig said there would be a Red Cross blood drive on Tuesday-Thursday on the UNH campus, in the MUB, from 10:00 to 5:00.

Councilor Van Asselt arrived at the meeting at 8:00 PM.

VII. Reports and Comments of Councilors

Councilor Kraus said he would like to make special note of Linda Hollister, who did an enormously excellent job at the Swap Shop. He said she was the kind of citizen who made Durham a good place to live.

Councilor Morong noted that the Town Administrator's weekly notes had indicated that the ISO insurance rating for the Town was changing. He said he thought the general public might not realize that a reduction from a rating of 9 to 4, with the exception of Adams Point, was in fact a good thing. He said this could potentially reduce insurance rates, and he commended the Fire Department for working toward that low number.

Councilor Grant noted the school budget meeting to be held the following evening, and said that some citizens might want to ask why the School Board did not endorse on the ballot the report of its committee for equity in funding between the three communities. He also said he wished to express thanks to Jesse and June Gangwer for initiating a private fundraising effort for the Packers Falls Bridge repairs.

Councilor Needell said the Parks and Recreation Committee meeting would include a visit from the Newmarket Parks and Recreation Department Director, and said the public was welcome to attend the meeting. He also noted the excellent way things had gone the previous evening after the Patriots won the Super Bowl. He said there was a huge sigh of relief all around, and expressed appreciation to everyone for the way things had gone.

VIII. Public Comments

Rory Sheehan, External Affairs Chair, UNH Senate, said for the second time this year, the students had celebrated responsibly. He noted the work the police force had done, but also said the students had turned a corner with this issue, and had become an example to other universities as having seen a problem, and fixing it. Mr. Sheehan also urged passage of the proposed resolution before the Council concerning federal CMAQ funds to improve the rail corridor. He said the proposed funding improvements were important to the University and the entire Seacoast area.

Chair Sandberg said he hoped the efforts of UNH and the Town of Durham the previous evening and in the past year would serve as a shining example, and he expressed appreciation to the UNH Student Senate for its involvement and leadership on this issue.

IX. Unanimous Consent Agenda

Resolution #2005-01: Authorizing the acceptance of private donations received by the Town of Durham between July 1 and December 31, 2004.

For the benefit of the public Chair Sandberg listed the individual donations.

Councilor Grant MOVED to adopt Resolution #2005-01: Authorizing the acceptance of private donations received by the Town of Durham between July 1 and December 31, 2004. Councilor Kraus SECONDED the motion, and it PASSED unanimously 8-0.

Chair Sandberg thanked these citizens for their contributions.

X. Committee Appointments

- A. Shall the Town Council recommend the appointment of Cynthia Belowski on the Lamprey River Local Advisory Committee to the Commissioner of the State of New Hampshire Department of Environmental Services?

Administrator Selig said that Ms. Belowski was presently serving on the Conservation Commission, and had expressed an interest in serving on the local advisory committee.

It was noted that Ms. Belowski was not present at the meeting.

Councilor Needell MOVED that the Town Council hereby recommends to the Commissioner of the State of New Hampshire Department of Environmental Services that Ms. Cynthia Belowski be appointed as Durham's representative to the LRAC to fill the unexpired term of Richard Hallett, whose term expires April 30, 2007. The motion was SECONDED by Councilor Kraus, and PASSED unanimously 8-0.

- B. Shall the Town Council appoint Michael Sievert as an alternate member on the Zoning Board of Adjustment?

Administrator Selig said Mr. Sievert was present if Councilors had any questions for him.

Mr. Sievert said he had lived in Durham since 1999, and ran an engineering company in Newmarket.

Councilor Kraus MOVED to approve the appointment of Michael Sievert, 28 River View Road, as an alternate on the Zoning Board of Adjustment to fill the unexpired term of Linn Bogle, said term to expire on April 30, 2005. Councilor Morong SECONDED the motion.

Chair Sandberg said he would vote against this motion, noting it was his personal impression that there needed to be some separation, when one was assuming a quasi-judicial role, such as was the case on the ZBA. He noted Mr. Sievert's business was advocating for developers, and said it was close to the line to have someone that engaged sitting in this role. Chair Sandberg said he had voted in a similar way on such matters in the past, and said it was in the Town's interest to be sure there was little or no bias when members of the Board were seated.

Chair Smith said he was commenting with some reluctance on this matter, noting the difficulty of getting people to become members of Town boards and committee. But he said he would reluctantly also vote against this motion. He said he had spent nine years on the Planning Board, and was well acquainted with Mr. Sievert, and had a high regard for him.

But he said he thought the appearance of fairness was as important as the existence of fairness. He said it was important that residents could have full confidence in the process, and said this was especially the case with the ZBA, which was unique among appointed bodies in its quasi-judicial capacity. He encouraged Mr. Sievert to volunteer for other boards in Town besides the ZBA and Planning Board.

Councilor Kraus said he enthusiastically supported Mr. Sievert as a candidate, and said it was important that Town boards have a balanced representation. He said the statements from Chair Sandberg and Councilor Smith suggested that anyone interested in development shouldn't be on planning boards. He said it could then also be said that anyone who was a tree hugger shouldn't be on a board, because that person had a bias too. He said when one looked at all the Town boards who had vacancies, this sent a message that one had to be vetted by the Council before serving on these boards.

Councilor Morong said he sat on the Planning Board when Walter Cheney was on it, and found him to be reasonable. Councilor Morong also said he worked for many of the contractors who had come before the Board when he was on it, and he had recused himself when necessary. He said he was confident that Mr. Sievert would recuse himself if there were an issue that could benefit him personally. He noted the majority of issues before the ZBA would probably not involve clients of his, and said he had every confidence he would do a good job.

Councilor Needell said he was sympathetic to the concerns that had been raised, and noted he had read over the RSAs that applied. He said there was nothing that prohibited this, and said there were very clear guidelines concerning recusal. He said he assumed Mr. Sievert would follow these, and said there was recourse for the person who was wronged, if Mr. Sievert should fail to recuse himself when appropriate. Councilor Needell said there were therefore enough checks and balance in the system, and said the Town should welcome someone with Mr. Sievert's expertise.

Councilor Niman received clarification that Mr. Sievert, if chosen, would fill the alternate ZBA position until April of 2005.

The motion PASSED 6-2, with Councilors Smith and Sandberg voting against it.

- C. Shall the Town Council appoint William McGovern as an alternate member of the Planning Board?

Mr. McGowan introduced himself to members of the Council.

Councilor Kraus MOVED that the Town Council hereby appoints William McGovern, 135 Packers Falls Road, to fill the unexpired two-year term of alternate member Karen Bishop on the Planning Board, said term to expire on April 30, 2007. The motion was SECONDED by Councilor Grant, and PASSED unanimously 8-0.

XI. Unfinished Business

- A. **Public Hearing and Action 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 153-52 "Time Limit parking" by limiting parking on the westerly side of Madbury Road to two (2) hours.

Administrator Selig provided background on this issue, and said what was proposed 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 many of the meters had been stolen, and said that a cost benefit analysis had determined that it made sense to eliminate the meters, and to go back to 2 hour parking. He noted the core focus for this area had been to insure there was adequate turnover of parking there.

Councilor Kraus MOVED to open the Public Hearing on Ordinance #2005-01. The motion was SECONDED by Councilor Grant, and PASSED unanimously 8-0.

There was no one who wished to speak for or against the proposed ordinance.

Councilor Grant MOVED to close the Public Hearing on Ordinance #2005-01. Councilor Kraus SECONDED the motion, and it PASSED unanimously 8-0.

Councilor Kraus MOVED to adopt 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 153-52 “Time Limit parking” by limiting parking on the westerly side of Madbury Road to two (2) hours. The motion was SECONDED by Councilor Morong.

Councilor Grant suggested that since there was a newly increased fine for overtime parking, the Town would make more money with this change than would be made with meters.

Chair Sandberg asked what the penalty was for theft of the parking meters. Chief Kurz said it was a Class A misdemeanor.

The motion PASSED unanimously 8-0.

Chair Sandberg called for a six-minute recess at this time.

B. Continued discussion regarding revenue enhancement

Administrator Selig noted Item #1 of Councilor Van Asselt’s handout on this topic, and said this goal was similar to a goal of Public Works Director Mike Lynch. He provided a handout to Councilors developed by the Public Works Department that contained an inventory of Town owned real estate, along with the Department’s recommendations concerning these properties.

Councilor Van Asselt provided background on the issues listed in his handout. Concerning Item #2, he noted that at a Council meeting on December 13th, Administrator Selig had said he was not convinced to move very aggressively in this area, because the Council hadn’t asked him to do this.

Administrator Selig said it was not so much that the Council hadn't provided specific direction, but explained that everyone seemed to be in favor of economic development until it affected them. He gave the example of Benjamin's Restaurant, and noted that if it were used as a library, this would take it off the tax rolls because it would be a Town owned property.

Administrator Selig said if the Trustees moved forward concerning Benjamin's, he would be curious to see how the Council would look at this. He also noted there had been discussion about using the Town offices property for commercial development. He said if the Council was truly committed to economic development, it would seem that it would move quickly to sell this site. But he said there were obviously other issues to consider, and if they were all thrown in, it made this a more challenging situation. He said the same was true of the Business Park in that there was talk about developing these sites, but when it got down to it, a lot of other issues came into play.

Councilor Van Asselt said that finding out what economic development meant in Durham was a key issue, and said he was not sure this had ever been debated to the point where Administrator Selig felt he had direction on it. He said one way to get at this was with a community attitude survey. He also said there was the possibility of greater utilization of the Economic Development Committee, but said he wasn't sure the Committee had yet moved them very far.

Councilor Van Asselt said the UNH fiscal issue was important, and represented real money. He said there was a primary need to address this, and said he was not sure how, structurally speaking, the Council could get at this. He said after sorting through the various agreements, perhaps the Council could see if more could be done.

He said the point of doing a survey would be to get a sense of what the view of citizens was, but said he didn't think the Town was at a point to do this at present. He said that perhaps a better strategy was to take up this crucial item in March, when the Council developed its work plan, and find out whether the majority of members wanted to include this in the work plan. He said if the majority did not, he would stop writing memos on this. He said the Council needed to be thinking about what results it wanted, and not simply process.

Chair Sandberg said the process of running government was slow. He noted that the Council started in 1995 with an economic development program, and had also looked at this issue again as part of the Master Plan update. He said that as a spin off of that process, the Town had been revamping the Zoning Ordinance, and said this was meant to reflect the will of the community with respect to all kinds of development.

He said the community had spoken, and was currently moving toward changing the playing field on which development would take place. He noted the Council would be getting the recommended zoning changes for nonresidential development from the Planning Board. He asked Councilor Van Asselt if this process, including the public hearing process before the Planning Board and the Council, addressed any of his concerns.

Councilor Van Asselt said the revised Zoning Ordinance would better define the playing field, but said he was not sure the Town would get the economic development itself.

Councilor Kraus noted that the school budget represented 69% of the tax bill. He said everything hinged on who sat on the Council, and said if citizens voted for Council candidates who wanted economic development, the Town would have it, and if they didn't, it wouldn't. He said economic development would not happen in Durham until the Council had people who seriously wanted it, and said all the surveys in the world wouldn't change that.

Councilor Niman said there was more to expanding the tax base than carving up properties on a map and designating zones. He said Durham didn't have a good reputation for embracing business, and said the Town could be more inviting without abandoning the Zoning Ordinance, or reducing its quality of life. He said the Economic Development Committee or the Council could bring a higher quality of services to the Town without impacting its quality of life. He noted that the Economic Development Committee hadn't met for a few months, and said that until the Council indicated to the Town Administrator that this was a priority, the Committee wouldn't be able to get things done.

Councilor Niman said if one was looking at UNH as a way to expand revenues as a result of the Town's relationship with UNH, the Town was not going to get there with the current agreements. He provide details on this, and said until the Town looked beyond renegotiating current agreements, with respect to some of the activities the University was doing, the Town was fooling itself that this would make any difference.

He said the Council should be asking why Benjamin's closed its doors, and how many other businesses downtown would do this. He noted that all the easy money was being taken up by the University, which paid no taxes, and said he hoped there could be a serious conversation about this

Chair Sandberg asked Councilor Niman to provide some specifics on what this conversation should involve.

Councilor Niman said the Town needed to come up with a way so that business could make a reasonable living here. He noted Chair Sandberg had at one point suggested the idea that the Town should put a surcharge on tickets at the Whittemore Center. He said he thought this was a good idea, and was disappointed the Town hadn't moved forward on this. He said at some point the Town had to say to the University that if it drove out all the local businesses, there was a serious problem. He said there should be reasonable accommodation so a business could survive in Durham.

Chair Sandberg asked Administrator Selig if those issues had been touched upon in some way.

Administrator Selig provided some financial details of the draft UNH agreements, and said the plan was to resolve these, and then move on to other issues. He noted that the

Whittemore Center surcharge issue had been broached publicly around this table for nine years. He said the University's perspective was that the Whittemore Center struggled to make money as it was, so it was not practical to pay the Town any money.

Councilor Smith noted that Durham was a uniquely difficult Town to run, and although it was a fairly wealthy town, it was also difficult to live in if one was not wealthy. He said Durham was also a unique town in America for a number of reasons, including the fact that NH's State university system received the least state support of any system in America. He also noted that the Town couldn't control the fact that there was a University Board of the Trustees; that it couldn't control the taxation system; and that it could not do things such as placing surcharges on tickets.

He said many of the major measures for changing the situation were therefore out of the Town's hands. He also noted there was a very strong strain in Durham that supported conservation, open space, and rural amenities, even though it was an area that had a lot of people. He noted the choice made back in 1974 not to have an oil refinery in Durham. He said there were other physical and historical aspects of the Town, in addition to the existence of the University, which made it unrealistic that there would be much in the way of economic development that could be sold to the Town's residents.

Chair Sandberg asked what the best way would be for the Council to move the issue of the Economic Development Committee along. He asked whether, if professional staff was busy running the Town, if there room for an aggressive committee on its own to take the leadership on economic development, including discussions with the University on these subjects. He also said that perhaps the Committee could develop the outline of an economic development plan.

Councilor Van Asselt said although Durham was unique in New Hampshire, it was not unique in the country, and was not the only Town that talked about these kinds of issues. He said that perhaps as a starting point, the Town should consider what was out there that it could talk to UNH about, concerning payment in lieu of taxes. He said some homework would need to be done on this, whether by the Economic Development Committee, Town staff or the Council.

Councilor Smith said that most of the decisions were going to be made largely elsewhere than at the Council table. He noted the Town had been talking about merging the two police departments for several years, and said there was potential for substantial savings with a merged police department. He said this represented a concrete project that could be worth several hundred thousand dollars a year, but said this and other discrete projects, if taken on, would involve people well beyond the Council. He said Durham was, in fact, a unique town in the country.

Chair Sandberg asked if Councilors Van Asselt, Niman, and Morong could develop a concrete proposal that contained a set of goals and tasks that could be accomplished in a defined period of time.

Councilor Morong said focusing on even one task and completing it would be a step in the right direction.

Chair Sandberg asked Councilors with a burning interest in this to come back to the Council with a concrete proposal, and to take the bull by the horns.

Councilor Van Asselt said it should come back to the Council in March, to the work session, so the entire Council said what it wanted the priority to be. He said it would involve not only Council time, but also staff time, and perhaps a consultant to help the Town do this.

Administrator Selig said he was frustrated with this discussion. He said a tremendous amount of time had been spent on all facets of relationships with UNH. He said the present agreements should be the focus at present, and the Council could then move on from them. Regarding the idea of having one police department, the Town had spent a lot of time in the past looking at this. He noted the University was interested in looking at the financial benefits of this, and also said the Town had looked into hiring a consulting firm that would look at this, if UNH was truly interested in this.

But he said none of these issues was easy. He said if the Town could show financial benefits of combining police departments, the next question would be what the formula would be for sharing the department. He said the University believed he was the Council's representative to the University, and said he was trying to get the biggest bang for the buck.

He said there were many relationships involving the two entities, and gave examples of this. He also noted larger issues, such as education funding, which impacted all of this. But he said it was important to go after these four agreements, because at least they were on the table.

Chair Sandberg noted Councilor Van Asselt's suggestion to target the workshop in April to look into economic development further.

Councilor Kraus said previous Council decisions on economic development spoke for themselves. He said what he would like to see was having economic development issues come before the Council as they came along, in a way so that they could be voted up or down.

Administrator Selig said having Council members as part of the negotiating team to work with the University was excellent. He also noted he had made an error regarding the Economic Development Committee. He said he had thought the Zoning Rewrite process would have been completed by now, so the Economic Development Committee had moved very slowly. He said he had come to the conclusion that the Town either needed to bring in some additional resources, or get a group of interested citizens to do this on their own. But he noted they hadn't been able to fill two vacancies on this Committee.

C. Continued Discussion regarding the Fire Department budget

Chair Sandberg said this was an issue brought to the Council by Councilors Kraus, Niman and Van Asselt.

Councilor Niman said perhaps the Council should defer this issue, given the importance of having the discussion on the UNH agreements.

Councilor Niman MOVED to defer discussion on the Fire Department Budget until the February 21, 2005 meeting. Councilor Van Asselt SECONDED the motion, and it PASSED unanimously 8-0.

XII. New Business.

A. Resolution #2005-02: Endorsing NH Executive Council's support for CMAQ funds for Amtrak Downeaster Rail Improvements

Councilor Needell provided detail on this. He noted that at present, only one train could ride on the main track at a time, making scheduling complex. He also said a goal of the project was to allow a fifth train, which would greatly help commuters. He noted the freight system would also benefit from these improvements. He said this was a federal grant, involving no state money, and noted that one caveat was that the grant had to be matched. 20%. But he said this was a joint proposal with the state of Maine, which had agreed to pay the matching funds, so there would be no direct impact on Durham or the state. He said both Maine and New Hampshire Departments of Transportation were behind this, and said NH's Executive Council would be voting on it in March.

Councilor Needell MOVED that the Town Council adopt Resolution #2005-02 encouraging the NH Executive Council to support the bi-state DOT proposal to use \$1,200,000 of Federal CMAQ funds to improve the New Hampshire portion of the Amtrak Rail Corridor. Councilor Kraus SECONDED the motion.

Councilor Smith asked what alternative uses there were for the money in New Hampshire.

Councilor Needell said he couldn't speak to this. He noted the Portsmouth Bus terminal had been built using CMAQ funds and other such projects. He said his feeling was that any time someone decided to ride the bus or train, this satisfied the goals of the CMAQ program.

Councilor Grant said the Downeaster had been providing a genuine service to the community, and said townspeople, students, faculty and staff really benefited from it.

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

The motion PASSED unanimously 8-0.

Councilor Needell asked Administrator Selig if he could forward this decision to the Executive Council, and Administrator Selig said he would do this the following day.

B. Other Business

Discussion on UNH Agreements

Chair Sandberg noted the Council had opted to not go into nonpublic session to discuss this issue.

Administrator Selig noted the four agreements - the Water agreement, Sewer agreement, Fire agreement, and Forest Park agreement, to Councilors. He explained that the Forest Park agreement encompassed students attending the ORCS district, who lived in tax exempt University graduate housing at Forest Park. He noted the water and wastewater agreements had been combined into one agreement, and also said the title of the Forest Park agreement had been renamed to the School agreement, in order to encompass all students living in University housing. He noted that was the original intent of the Forest Park agreement.

He said they were still trying to work on language for the water/wastewater agreement, but said he wanted to talk with the Council before doing anything more on it. He also noted that the 4 agreements, which had been labeled as confidential, were no longer so, since the discussion on them was being conducted in public session.

Councilor Smith asked who had developed the new drafts.

Administrator Selig said it was a combined effort, over the course of 9-10 months. He said the drafts were sent back and forth, and changes were made by both entities. He noted that some of the wording was a result of some compromises that were made.

There was discussion on how to proceed in discussing the draft agreements, and Administrator Selig said he would prefer to go through them one at a time. He said he would like guidance from the Council as to whether the agreements were on the right track, and noted he was trying to create documents that the Council as a whole would agree to.

Councilor Van Asselt asked for clarification on what the Council was presently being asked to do concerning these agreements.

Administrator Selig said the agreement in question was the water component of the water/wastewater agreement. He said the Town had reached a 50/50 split with UNH for operating costs, as part of the Fire agreement, and provided details on this. He also provided details on how the numbers were run concerning Forest Park, and said the agreement reached with the University was that the apportionment formula would be run with and without the students living on University property, and the University would pay the difference. He provided additional details on the School agreement.

He also provided details on the Fire agreement. He noted that Durham was paying for calls on major roadways coming into Town, and said he didn't think the Town should be paying for these. He said numbers had been run on this, and said there were negotiations to see if the Town and University could come to some common ground on this. He also said he had argued on the Town's behalf that the Town shouldn't be paying for the complete fire inspection division, because much of the work there was focused on the University. He provided additional details on what was looked at in coming up with a fair split, said taking all of these things together, the numbers came close to the 50/50 number, so it was decided to go with this.

He said the challenge with the water/wastewater agreement was how to insure that water resources were being used according to best management practices. He said Town staff was comfortable with the current arrangement, where sewer improvements would be based on demand to the system. He noted that the University had agreed that as time passed, the formula would reflect its increased demand on the system, and the burden of maintaining the plant would shift to the University, since it would be growing faster than the Town. Administrator Selig also noted that the composition of the water/wastewater committee had been aggressively addressed as part of the negotiations.

He said the Town well could produce _ million gallons a day, while the Town's demand was about 350,000 gallons a day. He said Durham would therefore not have any problems meeting its water needs as long as the well continued to operate correctly. He said the challenge was that the combined demand, including the University, was over 1,000,000 gallons a day. He said as long as there was plentiful rainfall, the University had no problem meeting its demand, but when levels dropped, the University diverted its pumping in order to take from Durham's well. He said this overwhelmed the well, creating a situation where the joint system needed additional resources, and said this created a burden for everyone. He noted that having the University's water resources was a benefit to the Town, in that if the well were contaminated, the Town would want to draw off of this resource.

Administrator Selig said the idea with the water agreement was that there should be no charge for water. He said the University had argued that their cost for treating water was much higher than the Town's cost of treating water in the Lee well. He said that over the years, Durham had countered this with the position that it wouldn't ever need to buy water from the University if it weren't for the University's demand of the Town's water resources. He said the University was beginning to acknowledge this.

Administrator Selig said another challenge in developing the water agreement was in regard to future exploration of the Spruce Hole aquifer. He said there had been talk about splitting the cost for this 50/50, but noted that some Councilors had said the Town by itself didn't actually need that water, so the University should pay for all of the development costs. He said the agreement said the University would pay 90%, and the Town would pay 10%. He noted that in the future, that resource might be important to the Town, so this arrangement was an insurance policy for the Town. He also noted that even if the Town spent no money on exploration, it still owned 50% of the water rights, which gave the Town some say.

Administrator Selig said that the University had been under the impression in discussions that the Town and the University would begin to operate the entire water system as a single system, which would mean all maintenance costs would be split according to a formula driven by the demand for water. He said the problem with that was that the future potential need for repairs to the water treatment plant was greater than the future potential repair needs for the Lee Well. He provided additional details on this, and said the Town had pulled back from that discussion.

He said the Town instead was saying it was the University creating the demand, not the Town, and when it bought water from the University, it was because the University was overwhelming the Town at certain times of the year. He also noted it was in everyone's best interest to practice best practices, including allowing the well to recharge, whenever possible.

He said the Oyster River reservoir had been a primary source of water for UNH prior to the installation of hard pipe at the Lamprey River two years ago. He said by installing the pipeline from the River behind the Wiswall dam to the treatment plant, this minimized loss of water, and the resulting water was also much cleaner. He said an improved water source had thus been created for the University, which was now drawing primarily from the Wiswall Dam, rather than the Oyster River.

He said the Town could say it wanted to charge the University for this, if it was being charged for water from the treatment plant. But he said it would be better to consider the water as a common resource and not charge one another, and to focus on future water exploration. He said he thought he could make that argument, but he said it was important that the Council let him know whether it thought he was on the right track.

Councilor Niman said that perhaps Administrator Selig's logic was flawed. He said he thought the ideal situation would be to have the University pay 90-100% of the costs to develop the Spruce Hole aquifer as soon as possible, and he provided details on the various benefits of this to the Town. He noted among other things that it would hold down water rates for users.

But he said the economic incentives in the draft agreement were just the opposite, were encouraging the University not to do this, and also enabled it to pass through the higher costs to the Town's rate payers. He said the Town was currently subsidizing the University's use of a less desirable water source, and said that by keeping the cost of water free, the University got not only the benefit of the well water, but the Town was partially subsidizing the water it didn't really want, and didn't want to use. He said that by keeping the water free, the Town was encouraging the University to continue this practice.

Councilor Niman said another issue he wanted to address related to the fact that a letter was sent to NHDES asking the agency to let Durham draw down more water from the Lamprey River. He said he would not have supported this request if he had known about the details of this water agreement, involving free water, which was enabling the University to solve its water problems by taking more expensive water out of the

Lamprey River. He said it was financially attractive for it to do this because the Town's rate payers were subsidizing a third of that cost. He said it seemed that what would benefit the Town most would be for the University to pay for the full cost of developing the Spruce Hole aquifer, while the Town would get 50% of the water from it.

***Councilor Needell MOVED to delete the requirement to adjourn at 10:00 pm.
Councilor Niman SECONDED the motion, and it PASSED unanimously 8-0.***

Councilor Smith said he would speak first about non-substantive issues regarding the agreements. He said the way the agreement was presently worded, they were basically unreadable, and said he hoped the wording would be improved. He also noted the introductory language still placed much too little emphasis on the complications presented to the Town by the existence of the University. He said the agreements needed to be massively cleaned up.

Councilor Smith said a substantive issue concerning the fire agreement was that he had not heard anything about allocation based on the degree of intensity of Town fire safety resources used up to protect private properties housing students, properties that paid taxes. He said he was not sure whether, if the Town and the University did not come to grips with that factor, the two entities could reach an equitable solution. He also said he was a bit leery of the lease arrangement for the fire station, which included a 2 year cancellation clause that was not negotiable. He said he was somewhat concerned as to where that might lead the Town.

Regarding the school agreement negotiation, he said he was concerned that the right numbers were not being used to determine tuition. He provided details on this, and said he didn't think they were high enough, and the effect was to skew them too much in favor of the University. He also said he was not sure whether the UNH offset was growing, and said to the extent that it became an offset to the Town's money, it was being offset not simply by residents of Durham, but also residents of the Towns of Lee and Madbury.

Administrator Selig said this had been discussed in detail, and said the tuition costs would be charged directly to the school district, and not the Town.

Councilor Smith said the main problem with the school agreement, then, was whether the tuition figure being used was correct.

Administrator Selig said the whole notion of tuition had been eliminated in the agreement. He said they had run Durham's contribution with and without the students residing on University property, and said the University would pay the difference.

Councilor Grant said his concern with the School agreement was that much of the estimation of costs was based on tuition. He said the tuition charged by the Oyster River school system was set by the State, and disallowed things like transportation costs, special education costs etc. He provided details on how this affected tuition, as compared to what the actual cost per student was.

He said each youngster attending the School district was billed to the Town at the per pupil cost, and said that was what the University should be reimbursing the Town. He said he objected when either the Town or University tried to find ways to manipulate figures to work to its advantage. He said the average taxpayer believed the cost per pupil at the district was \$11,000 plus, and said if there were 45 students at that rate, the cost to Durham taxpayers was \$495,000.

There was detailed discussion about this issue, and whether the Town paid more or less than this \$11,000 figure for each student.

Councilor Needell said he thought the formula was a simple and elegant way to address the issue. He said it took the tuition issue out of it.

Administrator Selig said Town staff had argued Councilor Grant's perspective, but didn't get far with the University. He said the present agreement reflected what they had agreed to.

Councilor Grant said the problem was that the Town could send all of Durham's students to the School district and save a pile of money. He said the students in Forest Park weren't tuition students, - special kids from other districts; they were Durham students, and the Town should be getting paid the same as it would for every other Durham student.

Councilor Niman said he didn't understand clause 3 in the agreement, - how it was calculated, and why it was there. There was detailed discussion about this.

Councilor Niman suggested that perhaps a clause could be added where the University had to provide the Town, on an annual basis, an inventory of property, and who was living in it.

Administrator Selig said a clause could be added to clarify that this would be done.

Chair Sandberg asked Administrator Selig what more the Council could assist him with that evening.

Administrator Selig said there was certainly more to talk about, but said if the agreements generally looked acceptable to the Council, he would bring them back in a few weeks to approve. He said if they were not acceptable, he would like guidance so he could provide the Council with something that was acceptable.

Councilor Morong said he had some concerns about both the School agreement and the Water agreement. Regarding the Water agreement, he said Durham was only using half of the water it had, and it was good water that didn't need much cleaning up. He said he thought the cost per gallon for Durham residents should be figured, and any additional costs should be paid by the University. He said he didn't like it that the University was being essentially subsidized by 900 households in Durham that were seeing large increases in water rates.

Administrator Selig said according to the Public Works Department and Mr. Metcalf, who did the water study, even if the State approved the Town drawing down more heavily on Wiswall Dam, this was a short term fix. He said the University appeared to recognize this, and said that if it were to have the residential facilities on campus it wanted, it would need to move forward with development of Spruce Hole.

Councilor Morong said the benefits the University had was that any time it needed extra water, it got it, and got it regularly. He said it had this insurance policy, but the only benefit the Town got was that if the well was contaminated, which was unlikely, the Town would get some water. He said this didn't weight out for him.

Administrator Selig asked if the Town was willing to sell the University the Wiswall dam. He said if so, it had been a waste of money spent on the Lamprey River pipe, which combined the two entities (the Town and the University) even more.

Councilor Morong said he was simply talking about equitable shares, and said there should be some way not to subsidize the University in this agreement.

Administrator Selig noted if the Town was going to depend only on the Lee Well, the Town was closer to reaching its maximum threshold than the 750,00 gallons per day number.

There was additional detailed discussion about this issue.

Chair Sandberg noted that the Town had been encouraging the University to build more housing on campus, and said if the Town wanted it to put in more beds on campus, the University needed the water to be able to do this. He said if it couldn't get the water, it would say the students would simply have to move into Town, which would have a different impact on the community.

There was discussion about this. Administrator Selig said this issue had weighed in his thinking at the negotiation table.

Councilor Kraus said the 50/50 Fire agreement was problematic to him, noting the impacts of having the University in Town, in terms of fire safety issues, and the equipment the Town therefore needed to have. He said a typical citizen looking at what the Town actually got from this agreement might think Durham was getting shortchanged. He said he realized it was difficult to calculate what it would cost to have a department without the University, but said it seemed to be a good idea.

Administrator Selig said it was a real challenge to come up with this number, taking everything into consideration, and provided some details on this. He said he would want to bring in someone from the outside to come up with the appropriate number, for a variety of reasons. He noted Councilor Niman's previous suggestion that the Town fund an \$800,000 fire department, but said he didn't know if the Town had the stomach to back this up. He also said he didn't know if citizens would go along with this.

Councilor Kraus said he had raised his point as an observation, and said short of the Council proposing \$800,000 for the Fire Department up or down, this problem would continue.

Councilor Needell said he wholly supported the School agreement. He also said Administrator Selig had done an excellent job of negotiating the agreements, and said he personally put a tremendous amount of weight on the fact that this was what Administrator Selig had come up with. He said he was willing to go forward with it.

Councilor Niman noted that he had not been talking about an \$800,000 fire department for Durham, but rather one that was matched by the University dollar for dollar. He said he didn't have problems with a 50/50 agreement, but said he wanted to be clear on 50% of what. He said rather than working down from \$2.5 million, he would rather work up from \$800,000.

He also said that the Town looked at the cost side but not the benefit side of the Fire Department. He said the value of having an expensive fire department was a lot greater for UNH. He also noted he was not within the 2 _ mile, 5 minute radius of the fire department, so the benefits to him from the department were not as great as for those on campus. He said this also demonstrated that a fair and equitable agreement should look at apportioning shares based more on benefits than on sharing costs.

XIII. Adjournment

Councilor Grant MOVED To adjourn the meeting. The motion was SECONDED by Councilor Kraus.

Chair Sandberg noted that the Council's discussion regarding the Town/University agreements would be continued at a future meeting.

The motion PASSED unanimously.

The meeting adjourned at 10:40 PM.

Victoria Parmele, minutes taker