

# D-R-A-F-T

**DURHAM TOWN COUNCIL  
MONDAY, FEBRUARY 21, 2005  
TOWN COUNCIL CHAMBERS, DURHAM TOWN HALL  
7:00 P.M.**

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

**MEMBERS ABSENT:** Mark Morong

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

## **I. Call to Order**

Chair Sandberg noted a quorum was present and 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 Grant, and PASSED unanimously 8-0.*

## **III. Special Announcements**

No special announcements

## **IV. Approval of Minutes**

February 7, 2005

*Councilor Needell MOVED to approve the February 7, 2005 minutes as submitted. The motion was SECONDED by Councilor Kraus.*

Page 1 Chair Sandberg explained that the four paragraphs on page 1 that came after the motion to approve the Agenda should actually be located after the seconding of the motion to go into Nonpublic session. He noted that this revision had been made by the minutes taker to pages 1 and 2, and had been provided to Councilors.

Also, page 1, on both the Title of the minutes, and under the Call to Order, the beginning of the meeting should be 6:30 pm; also delete the second sentence under Call to Order, beginning with "He noted the Council..."

Page 4, under January 3<sup>rd</sup>, the motion should read "*Councilor Needell MOVED to approve the minutes.*"

Page 15, 4<sup>th</sup> paragraph from bottom, should read "...He noted the Portsmouth Bus terminal had been built using CMAQ funds, and other such projects would be another appropriate use for this money."

***Councilor Grant MOVED to approve the amendments to the February 7, 2005 minutes. The motion was SECONDED by Councilor Kraus, and PASSED unanimously 7-0-1, with Councilor Harris abstaining due to her absence from that meeting.***

***The Minutes as amended PASSED 7-0-1, with Councilor Harris abstaining due to her absence from the meeting.***

***Councilor Smith MOVED to approve the February 7, 2005 Nonpublic Session minutes. The motion was SECONDED by Councilor Grant.***

Councilor Van Asselt and Councilor Harris noted they had been listed as being present at this meeting, when they were not.

***The motion PASSED 6-0-2, with Councilors Van Asselt and Harris abstaining due to their absence from this meeting.***

#### **V. Report of Administrator**

- Administrator Selig said that a televised Candidates Forum would be held at the Council chambers at 7:00 pm, on Feb 28<sup>th</sup>.
- Administrator Selig noted that the Town and School elections would be held on March 8<sup>th</sup>, at the Oyster River High School, between 8:00 am and 7:00 pm.
- Administrator Selig said he had received information on fire code violations, relating to illegal parking in fire lanes at the Whittemore Center. He said the information had been forwarded to the Fire Department, and provided additional details on how this was dealt with. He said he had asked the Assistant Fire Chief to follow up with the UNH police department to ensure that they were policing these fire lanes, as they were supposed to do.

Councilor Harris asked if the police were ticketing violators, noting that this was important in order to discourage this illegal parking.

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

Councilor Kraus said the fire lane issue has been a frequent concern, noting that citizen Bill Hall had raised this issue several times. He said what Administrator Selig had said tended to gloss over this issue somewhat, and said this simply should not happen again.

Administrator Selig said that unless firefighters were posted to check these fire lanes at all times, it would be impossible to ensure the illegal parking never happened again. He said there had been a long stretch without incident, and said the Fire Department had been active in this area, reporting violations when they saw them. He noted when the

parking was reported this time, they did take appropriate action. He said the Town would like the University Police Department to pay more attention to this issue, and said he had made the appropriate administrative personnel at the University aware of the fact that this illegal parking had happened.

Councilor Kraus thanked Mr. Selig.

Councilor Needell said at the most recent meeting of the Parks and Recreation Committee, there had been an interesting and enlightening discussion with the Director of the Newmarket Parks and Recreation Department. He said there was a wealth of programming happening in that town, and said he appreciated that the Director had come to speak in Durham about this.

Chair Sandberg asked if the Committee was going to develop plans, in anticipation of an upcoming budget.

Councilor Needell said the Committee was looking at doing a needs assessment, and then reporting back to the Council with some recommendations on ways to improve activities.

## VII. **Public Comments**

**William Hall, Smith Park Lane**, noted there was a bus parked in the fire lane within an hour after the Fire Department was called concerning the previous violation, and said this illegal parking was an ongoing problem. He provided additional details on the problem.

Mr. Hall also spoke about water issues, and provided details on why the restrictions by NHDES on the amount of water that could be drawn down were an extremely stingy limit. He said this was an insane position to take, and recommended that the Town file in Superior Court on this, because he didn't think the people in Concord were listening.

Mr. Hall also provided details on a previous situation where the University had charged the Town for water, but when it became evident that this shouldn't have happened, no one from the Town went to get the money back. He provided additional details on this, and said he currently found it distressing when the Town Administrator represented the perspective of Candice Corvey, and not the water users of Durham. He said he didn't feel that the Town government was concerned about the health safety and welfare of water users in Durham, and their financial future.

**Richard Kelley, 47 Stagecoach Road** noted he was running for Town Council. Mr. Kelley said he had worked on the Planning Board, the Zoning Rewrite committee, and the Strafford Regional Planning Commission. He said in all of those capacities, the issue of revenue enhancement would come up in one form or another.

He suggested that the Council advise the Town Administrator to negotiate aggressively with the University. He said he had read the present agreements, and found what was unique about them was that they were unfair. He said he hoped the Town's negotiating position was to create fair agreements, not in a belligerent manner, but in the spirit of the statement of shared civic commitment with the University. He said the Town Administrator was capable, with Council direction, of negotiating with the University as if he himself was a taxpayer in the community, and subsidizing the University on many of these agreements.

**Diana Carroll, 54 Canney Road**, said she had come to speak about two items on the Agenda, and also noted she too was on the ballot for Town Councilor. She thanked the Council for putting the issue of impact fees on the agenda, noting that it was an important issue for Durham, because it was a way to be proactive, instead of always having to catch up. She also noted the absence of solid waste management from the impact fee list, and said she would like to see it included since it was a service people needed, and impacted the community and the budget.

Ms. Carroll also referred to the fact that the new hotel would be using a considerable amount of water, and said an important question was whether the hotel would be using the best water conservation practices that were available, and whether it would have a plan for times when there were water shortages. She said it was important to look at these issues before the hotel was built, noting once it was built, the opportunity was lost. Ms. Carroll said she realized the Council and perhaps the Planning Board could not require that these water conservation practices be used, but could recommend that these measures be used. She noted the Agenda item concerning procurement of land to protect the Lee Well, and said water conservation was a piece of the larger picture of water resources management and protection.

**Bill Coty, Little Hale Road** thanked the Public Works Department for their continued great job of plowing, and said they were second to none in the state. He also spoke about the discussion the Council had been having about the Fire Department budget. He noted that Councilor Niman had made some excellent points in his memorandum, but he implored the Council to take issue with the idea of having the Council intervene concerning the Fire Chief's job.

Mr. Coty said that this kind of micromanaging was bad practice, and set a bad precedent. He said the Council should rely on the Town Administrator and the Fire Chief, and should also go out and see the kind of work the Department actually did on a daily basis. He also noted that the number one reason for fire department fatalities was the danger on the highway, and provided details on this.

Mr. Coty said there was potential for operational consolidation, but provided details on how the analysis should be done concerning this.

**Bill Hall** said that the University hadn't contributed any money at all to the Lee Well when it was developed. He also noted that at one time the University refused to

contribute to rescue equipment, or to the responses on the road. He said he had brought up this issue several times in the past, which had been trivialized by the present Chief. Mr. Hall also provided several examples of why micromanaging was definitely needed for the Fire Department.

**VIII. Unanimous Consent Agenda (*Requires unanimous approval. Individual items may be removed by any councilor for separate discussion and vote*)**

- a. Shall the Town Council authorize the purchase of the Mick gravel pit (Town of Lee Tax Map number 5, Lot 6-0) consisting of 20.7 acres to protect land around the Durham well in Lee, New Hampshire?

***Councilor Grant MOVED to authorize the Town Administrator to sign the Purchase and Sale Agreement between Samuel O. Mick and the Town of Durham for a parcel of land located in the Town of Lee, County of Strafford, State of New Hampshire, containing 20.73 acres, more or less, and being part of the property described in a deed recorded in Book 1104, Page 2 in the Strafford County Registry of Deeds, and also being shown as Map 5, Lot 6-0 on the Tax Maps of the Town of Lee. The Property is also shown as Lot #4 on a plan titled "Subdivision Plan of Land of Samuel O. Mick for Land Located on Snell Road, Lee, NH" prepared by Civil Consultants of South Berwick Maine and recorded at the Strafford County Registry of Deeds as Plan #69-34. The motion was SECONDED by Councilor Niman, and PASSED unanimously 8-0.***

Councilor Grant asked Administrator Selig to provide details on this acquisition for members of the public.

Administrator Selig explained that this action authorized the purchase of the Mick property, as part of an effort to protect the water quality of the Lee well. He noted that a site assessment would be conducted before signing the agreement.

He said the Town of Lee would move forward with a town warrant article to acquire the Mick property from Durham, and as part of the arrangement, Durham would transfer ownership of the Garrity Road gravel pit to Lee. He noted this parcel was located in Lee, and abutted forestland in that town. He said Lee, in exchange, would grant a conservation easement to Durham over the Mick property, to ensure it was not developed. He said the end result was a very positive partnership between the Towns of Lee and Durham to protect important conservation land for each of the communities, although for different reasons.

Councilor Grant asked Administrator Selig to explain the cost and funding arrangements.

Administrator Selig said the purchase price was \$290,000. He said if this was bonded, which was tentatively planned if the arrangement with Lee didn't work out, the impact on Durham would be about a 10% increase in water user fees starting in 2006. He said as long as the land swap arrangement went through, there would be no such impact. But he said if it did not go through, Durham would have to obtain funds in other ways.

He explained that one way was to put the Garrity gravel pit on the open market, and noted that an appraisal had indicated it was worth approximately \$180,000. He also said the Town could possibly get about \$70,000 from NHDES's Source Water Protection Grant program. In addition, he said another option was to subdivide a section of the Mick pit which was not critical to the well protection area. He said approximately \$70,000 could be obtained in this way, although noting that this option was not preferred.

Administrator Selig said it was therefore possible for Durham to make up all the funds, so there would be no impact on water users, even if the Lee warrant article didn't pass. He said if the article didn't pass, he would come back to the Council with an alternative funding plan, and also noted that Council approval would be required before selling the Garrity Pitt.

Chair Sandberg noted that Council members had previously been made aware of the details of the proposed transaction in a nonpublic session, but now the public was fully apprised of it.

Administrator Selig said this represented a wonderful partnership between Lee and Durham.

## **IX. Committee Appointment**

- a. Shall the Town Council appoint Carol Camp, 8 Sandy Brook Drive, as a member on the Durham Cable Access Television (DCAT) Governance Committee?

***Councilor Kraus MOVED to appoint Carol Camp, 35 Sandy Brook Drive, to fill the un-expired term of Clayton Tolson on the Durham Cable Access Television (DCAT) Governance Committee, said term to expire on April 30, 2005. Councilor Grant SECONDED the motion.***

Carol Camp spoke before the Council, and said this would be a good opportunity for her to give back to the community. She noted that she had worked in broadcasting, and marketing, so this position seemed like a good fit.

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

X. Presentation Item - Presentation from and discussion with Consultant Bruce Mayberry on the development of an Impact Fee ordinance

Administrator Selig said there had previously been discussion over several years on the possibility of impact fees. He noted that Town Planner Jim Campbell had hired an intern to help develop an impact fee ordinance for Durham, in 2003-2004. He explained that since that time, it was decided that some professional advice on the draft was needed, and Mr. Mayberry had been asked to conduct an initial review of the material that had been developed so far.

He said Mr. Mayberry would be giving the Council an update on the development of an Impact Fee Ordinance for Durham, and among other things, would be discussing both the pros and cons of having impact fees with the Council. Administrator Selig said Mr. Campbell would provide a brief introduction of Mr. Mayberry.

Mr. Campbell spoke briefly before the Council. He noted that his own research on impact fees had indicated that Mr. Mayberry was one of the primary experts in the area of impact fees.

Mr. Mayberry provided a slide presentation on impact fees.

He first went through the key principles involved with impact fees:

- They were first authorized under State statute - RSA 674:21,V, in 1991
- An impact fee ordinance is required in order to charge the fees, with a few exceptions
- They are assessed on new development
- They cannot be used to fund “upgrades”
- They are applied only to capital facilities
- There is a time limit on usage
- The fee is proportionate to the demand on capacity
- They are of reasonable benefit to development
- They allow recoupment of investment, after the fact

Mr. Mayberry noted that public open space, as a recreational facility, was not eligible for impact fees.

Mr. Mayberry explained that there were two key pieces of the impact fee process: enactment of the impact fee ordinance itself, and development of the cost basis for assessing the fees. He provided details on each of these pieces. Mr. Mayberry said in most cases, the ordinance did not contain the dollar amounts of the fees, and these fees were provided in a separate document. He said the cost basis of the assessment was included in this document needed to be based on some approach that defined how the fee was proportionate to demand. He said the basis of assessment was adopted by either the Planning Board or the Town Council, and the authority for this was provided by the impact fee ordinance.

Mr. Mayberry discussed the pros and cons of impact fees, and elaborated on each. He noted there had to be a comfort level concerns the fees, and said one size did not fit all.

Pros:

- The ordinance provides the authority to assess impact fees, even if it is not implemented
- Impact fees offset some costs as development occurs, produce revenue stream, reduce debt needs, lower tax impacts, and create a situation that is predictable/uniform
- Impact fees have over time become more expected as common practice

Cons:

- More administrative time is required; (fixed schedule helps streamline this)
- Involves added cost to developer up front
- The cost to a developer is passed through to the cost of housing for the consumer
- The fixed fee is generally non-negotiable (although waivers are possible)
- Impact fees fund a relatively small portion of overall total costs; covers capital costs; is not a user fee that covers operating costs
- They create a possible disincentive to development if the fees are disproportionately high; (he noted that most places where there was growth, impact fees did not stop development)

Mr. Mayberry described off-site exactions, as compared to impact fees. He noted among other things that exactions were only for water, sewer, drainage and highway; they could possibly be used for upgrades, so were negotiable; they were usually used for improvements of more specific benefit to infrastructure, etc. for a particular development; they were enabled under the subdivision regulations; and they were used on a case by case basis, under Planning Board authority.

Mr. Mayberry discussed impact fees in comparison to property taxes, as a funding mechanism.

- He said whereas impact fees were proportionate to the demand that a development placed on infrastructure, with property taxes, costs were proportionate to property value
- He said while impact fees applied only to capital costs, with property taxes the cost of development was distributed to all taxable property
- He said that whereas impact fees increased front end costs to developers, funding through property taxes reduced the initial cost to a property developer/owner
- He said that through impact fees, a town obtained revenue as development occurred to offset costs, while with property taxes, taxes were raised as needed to cover debt or outlay
- He said that impact fees were imposed to appropriate funds for a limited time period (6 years), while with property taxes, funding was obtained through the annual budget and capital reserves

Mr. Mayberry ended his slide presentation by discussing in detail the process of development of the cost basis for assessing a school impact fee. He said he would be glad to answer questions from Councilors, or perhaps could come back another tie.



Councilor Kraus asked for clarification as to whether impact fees were only for new construction and new facilities, and were not to be applied retroactively to new development.

Mr. Mayberry said that was correct, but he said funds obtained from new development could be applied to capital facilities built in the past, such as a sewer treatment plant, if it had the capacity to support additional demand.

Councilor Kraus noted that citizens sometimes thought that impact fees could be applied to something like the Whittemore Center.

Mr. Mayberry explained that if the Whittemore Center were expanded, and had a consequent impact on capital facilities, impact fees could come into play. He said whether as a state institution it would be exempt from the fee, he couldn't say, although noting there was no specific exemption in the statute. He said a nonresidential use involving more floor area triggered the fee, also noting that for residential use, creation of additional dwelling units triggered the fee.

Chair Sandberg asked if there was a definition of impact fee that said it was a fee, and not a tax.

Mr. Mayberry said his opinion was that it was a form of tax, or levy, but was defined as a capital assessment. He also noted that it operated under a distinct section of State statute, under land use.

Councilor Needell noted that for impact fees the methodology had to be defined up front, but asked whether for exactions, there was more flexibility.

Mr. Mayberry said for an exaction, there still needed to be a proportional assessment, but said this was done more on a case-by-case basis. He said that a formula for exactions did tend to get established over time, and often came to be used for other developments after that. He noted it was a good idea to establish some standards for exactions.

Councilor Needell asked who the ultimate authority on what was considered fair was.

There was discussion about this. Mr. Mayberry said ultimately this could end up in court if there was a denial by a Town. He said even with an ordinance, the Planning Board reserved the right to deny a development that was considered premature or scattered, and provided details on this.

Councilor Grant asked Mr. Mayberry how many New Hampshire towns had impact fee ordinances.

Mr. Mayberry said somewhere around 40-55 New Hampshire towns had an ordinance, and noted that more of these towns had ordinances than actually charged fees. He said

many towns had passed the ordinances because, based on a specific Supreme Court case, they feared they would lose the authority to do any kind of exaction or fee without such an ordinance.

Councilor Smith asked if Mr. Mayberry's work on the draft impact fee ordinance for Durham reflected examination of some of the Town's peculiarities, and measurement of them in comparison with communities that didn't have them.

Mr. Mayberry said he had looked at the Town's ordinance structure, school enrollment structure and housing structure. He said it would be important to consider how much growth there was per year, the pace of development, developable land, and the nature and extent of capital facilities, in order to determine if impact fees were needed.

Councilor Smith asked what Mr. Mayberry thought the approach ought to be, in order to get more scientific answers, and who should do this analysis.

Mr. Mayberry said Town staff should look at the CIP, and the major facility expenditures planned. He provided details on this, and also said he thought it was advisable to have an impact fee ordinance on the books in order to prepare for the unexpected.

Councilor Van Asselt asked if the key to the impact fee ordinance was the cost basis of assessment, and if so, if this was done by the Council, the Planning Board, or a consultant.

Mr. Mayberry said for the most part, consultants who knew specific areas were hired to development the cost basis of the fees themselves, and said this resulted in a defensible basis for the fees. He noted that most towns would want to hold public hearings to determine whether the fees were appropriate.

Councilor Van Asselt asked if a Town could have both exactions and impact fees, and Mr. Mayberry said it could. Councilor Van Asselt also asked if it was mandatory that 55 and older developments were exempt from impact fees.

Mr. Mayberry said this would be by local option, and said that generally, for 62 and older developments, the fees were waived, while for 55 and older developments, specific waiver language in the ordinance would determine this.

Councilor Van Asselt asked if a community looking at some significant developments of 55 and older came out better with exactions than with impact fees.

Mr. Mayberry said it depended on the facility, noting there wouldn't be a lot of school impacts from this kind of development, but they could create a large amount of public safety impacts because of services such as ambulance runs.

Councilor Van Asselt noted, concerning possible negative aspects of impact fees, that there were very few developers who now didn't expect to hear about these fees. He also said that the residential pass through was generally only a concern for affordable housing, and not for most housing in a town like Durham.

Mr. Mayberry agreed that for more expensive housing, the fee didn't have as much of an impact. He said he was simply trying to make the point that developers didn't see impact fees as coming out of their profit, because they passed on the cost to the consumer.

Councilor Van Asselt also noted that the relatively small portion of total cost went back to the issue of cost basis, so it didn't have to be a small cost.

Mr. Mayberry said his point was that the public perception of impact fees was not quite right, in that people thought impact fees would solve all problems, and growth would pay for itself. He said the impact fee was only for growth related capital facilities, and operating costs were really where the expenses were.

Councilor Van Asselt asked if Mr. Mayberry had ever done a school impact fee to get at the University, and Mr. Mayberry said he wasn't sure the statute had that in mind.

Mr. Needell asked if solid waste was included under the statute as something that an impact fee could be charged for, and Mr. Mayberry said it was.

Administrator Selig asked Mr. Mayberry to speak about the six-year time frame, and Mr. Mayberry provided details on this.

Chair Sandberg said if there was debt service due, with bonds currently being paid off by a school system, and a development came along and a fee was paid, if those funds could go for recoupment. There was discussion about this.

Chair Sandberg asked Councilors they had additional questions for Mr. Mayberry before it considered whether to instruct the Town Administrator Selig to move forward with the development of an impact fee ordinance, and specific methodologies for development of impact fees.

Mr. Campbell said that as of September, 2004, 64 New Hampshire communities had adopted impact fee ordinances, and noted as Mr. Mayberry had, that some of these towns had not yet actually developed specific impact fees. He provided details on this.

Mr. Campbell also noted that there had been a recent change in the statute on impact fees, relating to the Planning Board's defining of what active and substantial completion was for approved subdivisions, and the existing 4 year exemptions from any zoning changes. He said the change in the statute would enable a town to assess impact fees on some projects that hadn't reached the stage of active and substantial completion, as long

as the Planning Board had clearly defined this in its subdivision regulations. He asked Mr. Mayberry to discuss this.

Mr. Mayberry provided some details on this but said it was a tricky area, legally speaking.

Councilor Needell said there appeared to be three options: forget the ordinance and establish exactions, to establish an ordinance in order to have it in place but then not worry about implementing the fees, or to go ahead and define the fees. He asked if defining the fees had to be done, if the ordinance was passed, whether or not the ordinance was actually implemented.

Mr. Mayberry said passage of the ordinance did not obligate to assess fees, or calculate what they are, unless they wanted to apply them to new development. He also said even if the ordinance was passed, the Town still had the ability to do exactions, and said the ordinance simply broadened the base of what fees could be applied to.

Councilor Needell said it seemed that the ordinance was generic enough that there was no reason to wait until a more clearly defined fee structure was developed in order to pass it.

Mr. Mayberry said that was correct, and provided details on this.

Councilor Van Asselt asked if having an impact fee could be considered as being a complement to property taxes, although not an offset to them.

Mr. Mayberry said that was correct, and provided details on the distinction he made between the two.

Chair Sandberg said perhaps the Council would like to give Administrator Selig some direction on how to proceed concerning impact fees.

Councilor Niman said he would like the Town Administrator to continue the process that had been started.

Councilor Needell said he would like more information before making a decision, and noted that if the Town was going to be pushing economic development, it would drive some of this decision. He said he would like some recommendations from the Town Administrator and the Town Planner on this.

Councilor Harris said consideration of an impact fee ordinance would be very worthwhile.

Councilor Smith said that at present, his sense was that enactment of such an ordinance was a harmless act. He said it was fine to put one on the books, but he said if the Town was really serious about this, it was important to measure the inherent features of

Durham, and determine whether going through the process was worth the aggravation. He said the Council needed to know a good deal more.

Councilor Kraus said continuing to pursue this was worthwhile, and said Mr. Mayberry's presentation had been helpful. He said it was clear impact fees would not solve all of Durham's problems, noting he had heard in various settings that it would.

Councilor Van Asselt said it was important that Administrator Selig moved ahead to get an impact fee ordinance on the books, but noted that this was the easy part. He encouraged Town staff, the Planning Board, etc. to move ahead on this, including looking at some recent developments, to get an idea of capital needs. He said it was important to make this a priority at a substantive level, and he encouraged using Mr. Mayberry to take the Town to that level.

Councilor Grant noted this topic has been under discussion for 10 years. He recommended that Administrator Selig work speedily on the ordinance as well as the fee schedules and the methodologies that supported it. He said that 63 communities couldn't all be wrong, noting that eight of these towns surrounded Durham.

Chair Sandberg said he agreed that this was worth pursuing. He noted some of the biggest impacts to the Town came from the University, and said he was therefore especially interested in determining if an impact fee was a tax, and whether RSA 187:25 applied or not.

He asked Administrator Selig if he needed additional guidance from the Council on this.

Administrator Selig said it appeared to be unanimous that the Council wanted him to move forward on this.

## **XI. Unfinished Business**

- a. Shall the Town Council approve a non-industrial sewer connection application submitted by Fall Line Properties for the New Hampshire Hotel located on Main Street as recommended by the Water, Wastewater and Solid Waste Committee?

Administrator Selig said that Town Engineer Bob Levesque was present to discuss the impacts the Fall Line Properties hotel would have on the Town's existing water and sewer infrastructure.

Mr. Levesque noted he had previously discussed wastewater treatment capacity, and said it would be more than sufficient to handle the hotel's wastewater. He then provided details on impacts the hotel would impose on water supply. He said the Public Works Department had prepared a Town Supply and Demand summary for the Lee Well based on data from the Dufresne-Henry Report developed in May of 2004, as if the well were the only

source of water for the Town. He noted this analysis did not include the University's water demand.

He said the current safe yield water capacity of the Lee Well was 378,000 gpd, arrived at after subtracting out 81,000 gpd allotted to the Town of Lee, and 81,000 allocated to Technology Drive. He said that including water flows for the hotel, Durham would use approximately 293,000 gpd, which represented 78% of the capacity of the Lee Well. He said this was a reasonable usage, based on engineering practices. He said this was a conservative estimate, noting that if the allocations for the Town of Lee and Technology Drive were not included, approximately 60% of capacity would be used.

***Councilor Kraus MOVED to approve the Fall Line Properties application for a non-industrial wastewater discharge permit for connection to Route 108 and hereby authorizes the Town Administrator to sign the approved Wastewater Permit. Councilor Niman SECONDED the motion.***

Councilor Needell asked how significant the water used by the hotel would be, as compared to a development like Fitts Farm.

Mr. Levesque said the water usage for the hotel was comparable to usage by Fitts Farm, and in answer to Councilor Needell, agreed it represented a significant development.

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

b. Continued discussion regarding the Fire Department budget

Councilor Niman provided background on this issue. He said that after reviewing the 2005 operating budget, he had provided data that raised questions about what the appropriate level of funding was for the fire department budget. He noted that Fire Chief O'Keefe had recently made a presentation on current staffing and the efficiency of his department.

Councilor Niman said it was now time for the Council to have a conversation about whether it was spending too much or not for the Fire Department's services, and if so, how it should proceed. He said he had reformatted some of his 2004 data, obtained from the NH Municipal Association and the state Department of Revenue Administration, in order to try to get at the issue of level of service, and what the appropriate level was for Durham.

Councilor Niman said that just as the University had approached the school formula, in terms of incremental costs, he would also look at incremental costs. He said if the University thought it was fair to pay only the

incremental costs for student education, he also thought it was fair that the University pay the incremental costs for a fire department.

He then described in details some comparisons he had developed to get at these incremental costs. He said he had first looked at similarly valued towns, and also at similarly sized towns in terms of population (not including students living on campus) to see what such towns paid for fire services. He said the average amount that similarly valued towns, and similarly sized towns without the University paid was about \$500,000, while Durham had paid about \$1.2 million in 2004. He said the difference was the incremental cost, about \$700,000, which represented about \$0.91 on the tax rate. He asked if the citizens of Durham had actually demanded 2-4 times more level of service than these towns did, to explain these numbers.

Councilor Niman also said he had looked at who was demanding, and who was actually receiving the services provided by the Fire Department. He said that common sense would say in the summer, there would be less risk, and perhaps a 4-person shift might be more appropriate then. He said he had looked at fire calls for June, July and August, and also had looked at how many of the fire calls were for building fires. He noted that there were 11 building fires for the year, but none of these occurred in the summer.

He said he then considered whether the 5-person shift was needed for EMS services, or hazardous materials incidents, and provided details on this. He said he had determined that it didn't appear there were a large number of these kinds of incidents in Durham, where a fifth person would make an important difference, although noting that this was only one summer's worth of data. He said if he could get data for additional years, and could find the same pattern, he would feel comfortable stating that if a 5-person shift could not be made in the summertime, a 4-person shift could be used, and the money that would otherwise be spent for overtime could be saved.

Councilor Niman also discussed the fact that the Department got a lot of calls, and said perhaps there were creative ways to increase operational efficiency, by reducing false alarms and some service calls, by better coordinating with the ambulance corps, etc., so that fire fighters could focus on fighting fires.

Councilor Smith asked if there was any reason to believe the results of Councilor Niman's analysis would be much different if it was done for the other nine months out of the year. There was discussion about this.

Councilor Niman said in looking at the data, he had been surprised at the number of calls for fire service that came from rental properties, and provided details on this. He noted he had recently responded to a call for

service, with the Fire Department, at one of these properties, and said the property was extremely poorly maintained. He said it was no wonder that students at places like this called the Fire Department, and noted that a lot of these kids were on their own for the first time, and didn't really know what to do when there was a problem.

He said when looking at the 50/50 formula, one needed to look at the fact that the services were being used intensely by UNH students who lived off campus, and the property taxes from those properties were not enough to cover the increased cost of these services.

Councilor Needell said this was an important issue, but noted he would not necessarily expect there would be a reduction in the need for service in the summer. He also said there needed to be an analysis of whether there was duplication concerning EMS, but said it was important to realize that the Fire Department played an important role in providing emergency medical service.

Councilor Niman said he had been looking at whether there were ways to free up the Department so that it could focus on responding to the more important calls, including EMS.

Chair Sandberg asked Councilor Niman if this data was available in electronic form, so it could be processed further. He said if the data was then looked at through slightly different lenses, it might be used to possibly develop a different kind of formula with the University; a reduction in the cost of funding the Fire Department; a greater public safety education program for students; regulations such as a burglar alarm ordinance in order to limit unnecessary calls; or some other innovative ideas. He said he would appreciate anything that could be done to help the Council more clearly see what was happening with Town dollars.

Councilor Smith said he would like to know if the University was the reason why the Town's Fire Department was more expensive than the departments of other towns of similar size and valuation. He also said he would like to know if a reason for this was that people in Durham had a greater demand for service. He said it was hard to get data on this, but said it could be that it was a more demanding town.

Councilor Smith noted he had wanted to know for several years whether fire fighters went more frequently to properties where persons 18-22 lived, than to other properties in Town. He said the data Councilor Harris had provided gave some hints on this, but did not provide enough detail to get at the 50/50 formula, so better data was needed. He also said he did not think it was irrelevant to look at data for off campus buildings to determine whether they had students or not, even though some people said the data



was irrelevant since these properties paid taxes. He said he believed this would be the most productive area to look into.

Councilor Smith said it might also be determined that, University or no University, the Town was spending too much insurance on the Fire Department. But he said the answer to that question was less obvious.

Councilor Harris said this discussion begged the question of whether there was data in the Fire Department's files as to the age of people in Durham using the services of the Fire Department.

Administrator Selig asked Assistant Fire Chief Mike Blake to comment on this and some other issues that had been raised.

Councilor Harris asked if Mr. Blake could also address whether the 321 calls could be separated out of the data.

Mr. Blake said the answer was yes and no, and provided details on this. He said the Department's database was not designed to show economic trends, and said it was not the best program to get a lot of analytical data out of, other than number of calls, time of day of calls, etc. He provided details on this.

Councilor Kraus said he was not satisfied with the presentation of this information, and suggested that Mr. Blake should sit down.

Administrator Selig said the Department did many things to reduce call volume. He noted there were fines for people who used the service too much, but said it was often elderly, and people on welfare that used the service. He said this effort had some success on campus but in general had not been very successful.

Chair Sandberg suggested that a column for age could be included in the database. He also said address data could be looked at in more detail, and said having information like this could very well affect negotiations in terms of whether the current Fire Department budget or the 50/50 funding formula was appropriate.

Councilor Kraus said this situation was a precise example of why things hadn't changed much on this issue over the past several years. He said Mr. Blake hadn't even given come close to giving a reasonable answer to the question. He said Councilor Harris deserved an award for finally getting this data, and said Councilor Niman also deserved an award because he was hand-computing the data.

He said a consultant wasn't needed, but what was needed was a data entry person. He said he would be glad to volunteer his services with Councilor Niman, and said with a data entry person the Town hired, they could develop a more usable database, including property information, in order to get a good picture of what was going on.

Councilor Kraus said the Fire Department's presentations were useless, and then went through some of Councilor Niman's data. He said it would seem that Durham was paying almost 60% more than what the average town was for its fire department. He said he was concerned about this, and said the devil was in the details. He said the Fire Department could not be relied upon to do this kind of analysis.

Councilor Smith asked Mr. Blake how difficult it would be to obtain data on age and occupation when the Fire Department was responding to requests for service.

Mr. Blake said the department said it would be possible to obtain this data at the time of the call.

Councilor Smith said that age and occupation would once and for all indicate where the Department's resources were going, and said this data could probably also be matched with property data. He asked if the data could be captured without any more people power.

Mr. Blake said it was possible to do this.

Chair Sandberg asked Administrator Selig if additional types of data would be useful here.

Administrator Selig said he didn't have an answer yet to that question.

Councilor Needell said while he understood the frustration of Councilors about the information they had gotten on this over the years, he did not understand Councilor Kraus's perspective. He also said while all of this data was interesting, and a lot could be done with it, the fundamental question was whether it was time well spent.

Councilor Needell said he didn't subscribe to the idea that every time they looked at something about the Town, they had to determine if it involved a different cost because the University was present. He said the Town and UNH were both there, and were not separable in many respects, and said he didn't think that every thing was attributable to a percentage cost. He said he was leery of spending too much time calculating those percentages.

Chair Sandberg noted that the Council had some volunteers who were willing to look at the data currently available, and said he believed in order to turn the ship around, good data was needed. He asked Councilors Niman and Kraus to look at the data, and see what other data not currently available could be collected.

Councilor Van Asselt said it was fine to go through this process. But he said even with good data, Administrator Selig could go to the University until hell froze over, and it would say it didn't have more money. He said his question was where the Council wanted to go with all of this, and said if it was not willing to put some recommendations on the table to be voted up or down, this was a futile exercise. He asked whether the Council would have the will to make some real decisions on this.

Chair Sandberg said the Council needed evidence to back decisions up, and there was discussion about this.

Councilor Smith said the answer to the frustration could not be to say - forget the data, and just do something, and said the Council had to be driven by data. He said he was not convinced that the Town did not need the size of the current Fire Department, and said it might well be that because of the population and the properties of Durham, that the current resources were needed.

He said he understood the difficulty of expecting the Town Administrator to simply go to the University and get what he was asking for. But he said that if the case could be made, the case could be won. He said if it was not fair to say the University imposed an extra burden on the Town, the data would show this.

Councilor Smith noted to Councilor Needell that he, himself went back to 1940 in Durham, and said his own comments did indicate he was not a strong supporter of the University. But he said if the University should be paying 68%, then he wanted to work toward making this happen.

Councilor Kraus said he was especially concerned about the difference in what it cost to support the Town portion, and said the effort to illuminate where the calls were coming from was very important. He said it might turn out there were ways to fund the Fire Department differently.

Chair Sandberg said the Council and the community would be greatly appreciative if this data could be processed.

Councilor Niman said he believed the Fire Department budget was too big, and he was ready to cut it any day. He said the data might strengthen the case for getting more money out of UNH, although noting that it would be

difficult to get the money. He said the data could also provide insights as to how the Department could be reorganized, etc., so the budget could be cut without seriously reducing services to the citizens of Durham.

Mr. Blake said he apologized if he had not answered the question properly, but said it was not easy watching all of this for months on end. He also said he was trying to answer one question at a time.

- c. What guidance shall the Town Council offer the Administrator in his negotiations on behalf of the Council with the University of New Hampshire for draft water, wastewater, school, and fire agreements?

Administrator Selig provided background on previous discussion of the Council on the agreements, and noted there had not been a resolution of some of the issues. He said a number of questions had come up concerning water capacity, said Town Engineer Bob Levesque was present to try to answer some of them. Administrator Selig said one of the questions was whether the Town should be partnering with the University concerning Spruce Hole.

Mr. Levesque said the Town's and the University's water systems should have been separated, but the reality was that they were interconnected. He provided details on the systems. He said the Lee Well could supply enough water for the Town, if it were not for the University, but said the University supply tended to go dry in the summer, so it needed some of the water from the Lee Well when this happened. He said that the Town itself didn't need another water supply, but said it was at the point where it needed to be thinking about future sources, because it took time to develop this

He noted that if a large water industry came to Town, there would not be enough water. He said the Town knew that Spruce Hole was developable, and in answer to a question from Chair Sandberg, said he agreed that the cost of the study on Spruce Hole should be split 90/10.

Councilor Grant said he didn't have a problem with funding the water study, but said he did have a problem that the Council was being asked to do this in 2005. He also said he would like to see what the University was going to do about the recommendations in the water report that related to it. He said he agreed with what Mr. Levesque had said, but noted that the study was really to find out the cost of delivery of the water.

Administrator Selig next explained that the Council had had questions on the structure of the School Agreement, and the issue of how tuition fell into that agreement. He said Business Paul Beaudoin was present to discuss this

Mr. Beaudoin explained that Town staff had run Durham's contribution to the school district, with and without the students residing on University property, and said the University would pay the difference. He provided details on this approach.

Councilor Grant said his argument with the rationale for this was the way in which tuition in the Oyster River School district and elsewhere in New Hampshire was calculated. He provided details on this, and said he didn't think tuition should even be used in the equation. He said he didn't have a problem with applying the formula approach to the issue, but said the University should pay for the 45 students based on the actual cost per pupil. He said if something should be conceded, tuition should still be left completely out of it.

There was additional detailed discussion about this.

Councilor Niman said his fear down the road was that this agreement didn't cover future University housing where there were kids, and he provided details on this. He said the incremental cost would be different than what had been calculated, and would change with increased capacity, in order to handle the large number of additional students. He said he would want to see this addressed in the agreement, along with how the Town would be reimbursed for the increased demand on Town services.

Chair Sandberg said that sounded like an impact fee.

Councilor Smith said if impact fees could be charged to the University, this would be an example of where such a fee would be appropriate. He said he believed the confusion with the school agreement was that it was capturing the operating costs, but wouldn't be capturing the capital costs, and he provided details on this. He said he saw all of these agreements as works in progress, and said one of the works in process for the school agreement was that when the major expansion came, the University would see the agreement would have to be looked at with capital costs in mind.

Councilor Needell said he believed that this agreement was a wonderful improvement over what existed before, and went in the right direction. He noted that it could be revisited, and said he wholeheartedly endorsed it.

Chair Sandberg asked Administrator Selig to explain the appropriate time frame for the agreements, which would allow things to move forward, but would also allow for additional improvements.

Administrator Selig said the negotiations had gone on for many months over the last year. He said the University was asked for many things, and said the philosophy he had brought to the process was that it had taken years to get to the present situation with respect to all of the agreements,

and it would take many more years to move the agreements in a way that was more beneficial for the Town. He said he and Mr. Beaudoin had felt that bundling the agreements together allowed more flexibility to give and take a little here and there.

He provided details on each of the agreements, and said ideally it would be good to have the school agreement in place by July 1<sup>st</sup>, when the school year started. He said the same was true for the fire agreement, noting that revenue projections planned that it goes into effect by July 1<sup>st</sup>. He said the water and wastewater agreements involved long term, challenging issues, and said his thought was that if they went to the 90/10 split, the University might be open to this. But he noted that it had not yet given any indication that it would agree to this, and provided details on this. He also provided details on negotiations with the University concerning the fire agreement, and also why the longer they waited to do the 50/50 formula, the longer that money would not be received.

Chair Sandberg asked Councilors to indicate what Administrator Selig would have to do with the package in order for each of them to vote for it.

Councilor Smith said he would like Administrator to make clear to the University that with respect to the school agreement, the Council wanted to press on the capital issue, in view of development coming to the University. But he said he respected the fact that the Town was not yet ready to do this, and said there was time to get at this.

Councilor Smith said that with respect to the water agreement, Mr. Levesque's presentation was interesting, and he noted the Council was now at the point where it had a much better idea of what the situation was. He said the case was made for the Town putting in some money for Spruce Hole, but said he wanted the University to understand that he believed the Town have much more leverage on this than it did, and was not inclined to go beyond 10%. Concerning the fire agreement, Councilor Smith said he believed the existing data supported the current formula. He said the Town didn't have the data to make the stronger case, but said he wanted the University to understand that if the Town got the data, it would make the case.

***Councilor Needell MOVED to continue the meeting until 10:30. The motion was SECONDED by Councilor Kraus and PASSED 7-1, with Councilor Kraus voting against it.***

Councilor Kraus said the Town had to get its house in order, and when it did, would be in a position to talk to the University.

Councilor Van Asselt said what would get him to vote no was if he heard the Town was better off than it had been. He said he didn't have a problem

with it if the Council was told this was the best the Town could get so far, but there were ways to move forward with some of the things Councilors had been talking about.

Chair Sandberg said the key was that the language would not say that the agreements couldn't be renegotiated when appropriate.

Councilor Grant said he could support everything but the school agreement, because he did not believe the University had entered into this agreement in a spirit of cooperation, but instead, thinking of how little it could get away with paying. He provided details on this.

Administrator Selig said this was the best the Town could get on the school agreement.

Councilor Niman said he wasn't happy with the water agreement, for the reasons stated at last meeting. He said he was disturbed by the idea of free water, and by the fact that water users would be subsidizing UNH for their expensive water when the Town pumped its own cheap water. He noted he was not a water user himself.

Councilor Niman said he was very unhappy with the 50/50 split on the fire agreement. He also said he was not enthusiastic about renewing the lease on the fire station, and would rather build a new one located more in the center of Town, so more properties in Town could be covered within 5 minutes, which would meet the NFPA guidelines. He said if the Town was committed to safety, and was willing to spend \$2.45 million for a fire department, it should be located where it could better meet the needs of citizens of the Town.

Councilor Niman said he had no comment regarding the school agreement, and said he would vote against the whole agreement package.

Councilor Needell said he was willing to accept the view of Administrator Selig that this was the best that could be done. He also said he didn't see the deviousness of the school agreement, and also said he had not meant by his previous words that the school agreement was better, so it was good.

Councilor Harris said she supported this package, but said she looked forward to hearing next year how the Town had further negotiated concerning all of the agreements. She said she would like to see them all reconsidered next year.

Chair Sandberg said he respected the work done by Administrator Selig and Mr. Beaudoin, and said, and said defeating this would be nonproductive. But he said the points that had been made around the table were excellent.

He said his sense was that it would be good to tie the ribbon around this package that evening, noting that the depth of understanding needed with these agreements would be hard to attain with the new Council. But he said the understanding should be that the Council would continue to pursue this, down the road.

Councilor Van Asselt asked that on March 7<sup>th</sup>, the Council be given a sense of the timeline for the impact fee ordinance.

XII. **New Business**  
**Other Business**

XIII. **Nonpublic Session (if required)**  
None

XIV. **Adjourn (NLT 10:00 PM)**

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

The meeting ADJOURNED at 10:20 PM.

Victoria Parmele, Minute Taker