

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

**DURHAM TOWN COUNCIL
MONDAY, MARCH 7, 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; Mark Morong

MEMBERS ABSENT: None

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

I. Call to Order

II. Approval of Agenda

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

Councilor Van Asselt asked why discussion of the UNH agreements was not on the Agenda.

Administrator Selig said the reason the UNH agreements were not before the Council was that there had not been resolution on them.

The motion to approve the Agenda as submitted PASSED unanimously.

Councilor Niman asked for clarification regarding an Unfinished Agenda item, noting there had been an email to Councilors about this.

III. Special Announcements

Chair Sandberg said that Election Day was the following day, March 8th. He urged Councilors to participate in the process, noting that the Supervisors of the Checklist would appreciate this. He said that he would be participating.

Chair Sandberg also noted this would be the last meeting of the Council prior to the election, and said that three Council members would be leaving the table, and a third might or might not be returning.

He said that Annmarie Harris had been a member of the Council for six years, and had also served as a Councilor representative to the Planning Board during that time. He said that she had served on the Planning Board for six years prior to that, and had also served on the Conservation Commission, the Integrated Solid Waste Management Committee, the Parks

and Recreation Committee, and the Master Plan Committee. Chair Sandberg expressed collective thanks to Councilor Harris for her many years of service to the Town, and said he wouldn't be surprised if he saw her back again.

Chair Sandberg said that Councilor Grant had been on the Council for a total of 10 years, and said in that time he had accumulated a great deal of wisdom that was valued by the Council. He noted that Councilor Grant had also been a Council representative to the Planning Board, and most recently had also worked on the Zoning Rewrite Committee, so essentially had been doing triple duty. Chair Sandberg thanked Councilor Grant for his many years of service, and said he looked forward to his continued involvement with the Town.

Chair Sandberg said that Mark Morong had served on the Council for three years, and before this, had been on the Planning Board. He said Councilor Morong had served as Council rep to the Conservation Commission, the Rental Housing Commission and the Economic Development Committee, and said his service to the Town was appreciated.

IV. Minutes

February 14th, 2005 minutes

Councilor Needell MOVED to approve the February 14, 2005 minutes as submitted. The motion was SECONDED by Councilor Grant, and PASSED unanimously.

Feb 14th, 2005 nonpublic session minutes

Chair Sandberg noted that these minutes would be sealed.

Councilor Kraus MOVED to approve the February 14, 2005 nonpublic minutes, as submitted. The motion was SECONDED by Councilor Smith, and PASSED unanimously.

V. Report of Administrator

- Administrator Selig said the elections would be held the following day at the Oyster River High School.
- He noted that the Parent Teacher Association of the Oyster River Middle School would like the Council to consider ordinance to require permit only parking on Dennison Road, and said this would take place at the next Council meeting.
- Administrator Selig said the snow removal budget was at 60% as of February 22nd, and said he believed the Town would make it through, despite a lot of snow.
- He thanked DCAT, especially David Langley, for the work done on the Candidates Forum.
- Administrator Selig said that vacancies for town boards were listed at the Town web site, and asked those citizens interested in serving to contact the Town by March 21st.
- He said that since the Durham Fire Department had initiated the trial 24 hr shift, there had been a 22% reduction in overtime use, which had saved \$50,000 and had also had a positive impact on employee moral. He said the 24 hour shift would soon become a standard part of Department operations.
- Administrator Selig noted that the Library Board of Trustees had been considering Benjamin's as a possible site for the new library, but had decided not to move forward

with this location. He also said the Trustees were in the process of developing a committee to look into other possible sites, and was looking for a Council representative to this committee.

- He said the Durham Police were making an extra effort to have a presence in the downtown area during daytime hours, and provided details on this.
- He said that the State Department of Revenue Administration had determined that the Town's assessment of property was 96% of market value, which was excellent, and reflected that the Town's Assessment Office was doing very good work.
- Administrator Selig noted the demolition of the old Public Works buildings currently underway at the back of the Town Hall site, and said that this area would hopefully be made into parking, some of which could be rented out in order to obtain additional revenue for the Town.

Councilor Kraus asked if the Councilors leaving the Council would be receiving certificates from the Town, and Administrator Selig explained that they would be receiving letters.

VI. Reports and Comments of Councilors

Councilor Niman said he had recently had a conversation that caused him to put together some numbers, which showed the Town's police and highway budgets, as compared to the ten closest towns, in terms of valuation, and population without UNH students. He said if one added together the incremental costs of fire, police, and highway, this came to about \$2 million dollars, and said that as the Town continued negotiations with University, it should therefore remind the University that it strained the Town's other resources too. He said a sizable portion of the tax rate was going to support the University.

Chair Sandberg asked if there would be a presentation from Councilors Niman, Kraus and Van Asselt on this topic at an upcoming Council meeting.

Councilor Niman said this would take place some time in April.

Councilor Morong said there had recently been a meeting of the Economic Development Committee, and said most of the discussion centered around the proposed build-out of the Beech Hill area. He noted that some letters of concern had been received regarding this proposal, and possible changes that wouldn't impact the area quite as much. He said that interested citizens should come to these meetings.

Councilor Needell said the next Parks and Recreation Committee meeting would be held the third Thursday in March. He said the Committee would be reviewing the Master Plan as it pertained to parks and recreation issues, and noted that at the last meeting, the Committee had discussed what the expected life of the current Master Plan was.

Chair Sandberg said it was a 10-year document, but could look out even further than this.

Councilor Grant said the Planning Board had been discussing updating the Master Plan. He said state law said this should be done at least every 10 years, but said Chair Roberts would like the Board to start work in 2005.

Councilor Smith asked Administrator Selig for an update on the problem with COMCAST Corporation, involving its recent failure to provide service to some residents of Durham.

Administrator Selig provided details on this, and said Comcast had been slow to respond, although it had had every opportunity to do so. He said he was hopeful the issue could be resolved, but said he had given them a deadline to restore the service, and if this was not met, he would send a certified letter that the company was in a material breach.

Councilor Smith provided details on his previous involvement with cable issues. He said he was happy with what Administrator Selig had said, and said if the certified letter went out, the Town should give careful consideration to demanding rebates for the people who were supposed to receive these services. He said they paid one of the highest prices in the area, and asked Administrator Selig to vigorously press this issue.

Councilor Van Asselt noted an article in the Portsmouth Herald on senior tax exemptions, and said he felt strongly that the Council needed to deal with this issue. He said it needed careful consideration, although noting he understood that there were serious consequences. He said he would like the Council to make it a priority in the work plan.

VI. Public Comments

Mike Blake, Assistant Fire Chief, noted he was both a Town employee and a resident of Durham. He first spoke about the UNH fire lanes issue. He said he had sent emails to all department employees to watch out for people parking in these fire lanes, and said although some illegal parking might be missed, they were making considerable progress on this issue.

Mr. Blake next showed Councilors a map that he said was the end product of 3 years worth of work. He said they all wanted the same thing, and said it was important that taxpayers see something for their efforts besides shiny trucks and Fire Prevention week. He said the map represented what the Insurance Services Office classified the Town as, and said Durham was a 4/9, with 10 being the worst. He noted very few towns were rated 4 and below in NH, and provided details on this.

He said that in the past 3 years, a number of things had been done to increase the Department's capacity to supply water to areas of the Town, at the rate of 250 gallons a minutes for at least 2 hours. He said the only area that was now not a 4 was a small area, - a spit of land around Jackson's Lab. He noted it was a University building, over 5 miles from the fire station, and said the only way to change the rating for this area would be to move the fire station closer to the center of Town.

Mr. Blake read the ISO split classification information– concerning Durham's 4/9 rating, and provided details on this. He noted that some citizens had insurance with companies that might not recognize the formula, while others had insurance that did recognize it. He said the Town would soon be notified that Durham had been certified as a class 4 town, other than the small area previously noted, and said this could be a significant savings to the townspeople.

Bill Hall, noted that on Wednesday, the Planning Board would be discussing the planned build-out of the Gables II, and said Town staff should have informed the Council that now was the time to discuss the Northern Connector. He said the map that had been given out showed an intersection similar to Route 108, but didn't show a 200 ft. right of way going out to Madbury Road, which was the only way to get thousands of cars a day off Edgewood Rd.

He provided additional details on this, and said again that the business with the Gables was the time to discuss Northern Connector, and hold the University's feet to the fire to get the connector in. Mr. Hall also spoke about the Southern Connector, noting the University was also talking about developing the south end of campus. He said it was crucial that the underpass be put in, otherwise, all the University traffic from the Loop Road would be dumped onto Mill Road, and residents would be asking where the Council had been on this. He said he hoped Town staff would be at the meeting the following evening with that message.

Diana Carroll said she would like to reflect on a few things. She first noted the celebration that had been held at the Mill Pond Center the previous Sunday, to celebrate the 10 acres of land along the Oyster River that was now under permanent conservation easement. Ms. Carroll noted that the townspeople had asked for more open space in this area, and said it was important that when citizens asked for quality of life items, that they be responded to by government entities.

She noted as another example of this that the UNH pool would be open the following summer. She also said one of the important things that citizens had asked for was train service in Durham, and said Amtrak was in fact a wonderful benefit, and represented an important quality of life issue. She noted that former Governor Jeanne Shaheen had said, on the day the Downeaster was inaugurated, that that the people had spoken on this issue, before the politicians did, and were right.

Chair Sandberg noted that the Town had contributed \$70,000 to the conservation easement for the parcel at the Mill Pond Center, and was very pleased that this had happened.

Julian Smith- said he was present to commend the Council for the resolution before it, -that the Town desired Mr. Selig to continue in his position as Town Administrator. He said he hoped the Town would continue to provide a lot of inducement for him to remain, and said he was doing a very good job. He also noted it took a long time to break in a Town Administrator, and said he therefore hoped, if Administrator Selig ever left his job, that he would have the good will to train the Council on how to administer the business of the Town.

Mr. Smith noted that a Councilor in past weeks had said that Administrator Selig spent an enormous amount of time catering to special interest groups and encouraging him not to spend so much time at this. He said not all special interest groups should be lumped together, noting that some were interested in promoting the welfare of the Town, the quality of life in the Town, and in preventing future Councils from making mistakes that shouldn't have been made in the first place.

Diana Carroll explained that one of her purposes, in speaking about quality of life issues, was to commend the Council for being responsive to these issues, and she said she hoped the Council could continue to be responsive concerning these kinds of issues.

VIII. Unanimous Consent Agenda

- A. **Resolution #2005-03** recognizing outgoing elected officials and board members for their dedication and service to the Town of Durham.
- B. **Resolution #2005-04** accepting NH Department of Cultural Resources Certified Local Government grant funds in the amount of \$2,960.00, authorizing the expenditure of said funds for the purpose of developing a “Historic District Brochure”, and authorizing the Town Administrator to sign the Grant Agreement on behalf of the Town of Durham.
- C. Shall the Town Council award the bid for the 2005 road program?

Councilor Van Asselt MOVED to approve Unanimous Consent Agenda Items A, B and C. The motion was SECONDED by Councilor Smith, and PASSED unanimously 9-0.

Chair Sandberg thanked all those committee and board members who had worked so hard, and said that hopefully, many of these people would be coming back to serve the Town, and that other citizens would come forward to fill any vacancies.

IX. Presentation Item

Build-out Analysis – Jim Campbell, Planner, and Dale Abbott from the Strafford Regional Planning Commission.

Administrator Selig said Planning Board Chair Steven Roberts would introduce this presentation.

Mr. Roberts said it was his pleasure to welcome Dale Abbott, a GIS analyst from the Strafford Regional Planning Commission (SRPC). He explained that the Zoning Rewrite process had caused the Planning Board to ask, a year ago, what effect the zoning changes would have on the build-out capacity. He noted that in 2000, a previous, snapshot build-out had been obtained, resulting in a figure of 1,768 as the maximum build-out that could take place under the existing zoning at the time.

Mr. Roberts said the Board believed it had gotten a wonderful return on investment from the work of the SRPC, which was supported by the efforts of Mr. Campbell. He said the outcome of the analysis showed a natural progression in terms of where the Town had been, and where it was going.

Mr. Abbott gave a slide presentation that described the build out analysis that had been done. He explained that the objective of the analysis was to determine, under the current Zoning Ordinance, how many building lots could be developed, and to compare this to the results of the previous build out analysis done in 2000. He described the data that was used for the analysis: Digital tax map data, zoning minimum lot sizes, and various constraints based on the overlay districts.

He next described the method by which the build out was done, using this data, and noted that the process of calculation of usable area was taken right out of the current Zoning Ordinance. He explained that the factors that couldn't be modeled were things like ledge outcroppings, and shallow depth to bedrock soils because the County Soil Survey data on this seemed to be inconsistent, on a town-wide basis. He said just about everything else could be modeled, except for usable area that was fragmented or isolated by unsuitable areas.

Councilor Needell asked what was done with this acreage that couldn't be included, and Mr. Abbott said it was eliminated. He listed the constrained data layers: conservation lands; hydric soils; steep slopes (slopes greater than 25%); 100 year flood zone; hydrography data layer depicting wetlands; 100 ft. and 75 ft. buffers of wetlands; private roads; and the stratified drift aquifer data layer. He said there was only one area in the aquifer district that could be developed, because it had existing sewer and water, and noted this was Spruce Woods, a development currently proposed.

Mr. Abbott described the process by which the number of build out parcels was estimated. He said the parcel area was divided by the minimum lot size for a particular zone, with a recalculation for minimum frontage requirement on parcels with less than 4 possible new lots, based on the conservation subdivision provisions. He also said that 10% of the usable area on conservation subdivisions was removed, to allow for a subdivision road.

He explained that the tax assessment data was linked up with this data, and he provided details on this. He then described a map of conservation land, which included UNH land as well as open space land in subdivisions. He noted that this layer had recently been updated by Tony Federer for the Conservation Commission, and explained that it was considered a constraint layer, so was removed from the buildable area.

Mr. Abbott described modeling that was done concerning some land locked parcels, explaining that 10% of the usable area was taken out to allow for a road. He also said there were lots that didn't have enough frontage under current zoning, so 10% was taken out of the buildable area to allow for roads. Mr. Abbott also explained that GIS had no way of modeling where a house could go on a lot, based on setback requirements, so this was not done.

Councilor Smith asked how this affected the results.

Mr. Abbott said it was hard to say, but said he didn't feel it had a huge effect. He noted that small lots were not modeled to begin with because of the effect of the setbacks.

Mr. Abbott provided details on the data that was used. He noted that County Soil Survey data was used and was at a scale of 1 to 20,000, and provided data on wetlands soils, buffers, and steep slopes. He noted that the quality of the Town parcel maps was much more accurate than the GIS data layers, so when these layers were overlaid together, they didn't match up perfectly. He said for the most part, the County Soil Survey data was as accurate as they were going to get, other than doing a HISS map for the whole town.

Mr. Abbott said after the constraints were subtracted out for the parcels, the usable area was divided by the current zoning for the particular parcel, and said the end result showed where the potential development could go. He said that based on the analysis, 953 lots could go in, and said an additional 190 lots, which currently didn't have enough frontage but had enough usable land, could go in with a waiver. He said the total was 1143.

Councilor Needell asked how much uncertainty there was in these numbers, given that there were things that could not be modeled.

Mr. Abbott said there was about 5% uncertainty.

Councilor Smith noted that the 190 lots would be obtainable under the current waiver provisions, and asked if there was any way to model this based on experience in other communities using variances and special exceptions. He noted there was a constant stream of such requests, and asked, if one wanted to come up with a figure of what was potentially buildable, assuming no actual change in the Ordinance, if there was any way to calculate how big a fiddle factor these other avenues provided.

Mr. Abbott said this could not be done with GIS.

Mr. Campbell said it would take a lot of money to do this kind of analysis.

Mr. Abbott said the assumption that was used was that if the 10% was taken out, the waiver would be granted. He said he also could have said if there wasn't enough frontage, the lot simply couldn't be developed.

Councilor Morong noted that one of the goals was to make a comparison with the 2000 build out analysis, and asked if the same constraints were used for each so that it was a fair comparison.

Mr. Abbott said he thought it was a fair comparison, noting he was able to look at what went into the assumptions for the 2000 analysis. He said the major difference was that the 2000 buildout was completed for all zoning districts. But he said the same constraints were used.

Councilor Morong asked if the 2000 analysis broke out the other zones into commercial, residential and Mr. Abbott said not that he was aware of.

Councilor Kraus received clarification that the number located within the parcels on the build out map indicated how many lots could be developed.

Chair Sandberg asked for an explanation of how one could have more house lots on a particular small parcel, as compared to a larger parcel that allowed fewer lots.

Mr. Abbott explained that one of the parcels had more constraints on it, so allowed fewer lots.

Mr. Campbell also explained that the minimum lot sizes for the two parcels were different because they were located in different districts.

Mr. Abbott next spoke about lots that needed to be subtracted out from the total number of buildable lots: lots withdrawn by conservation gift/purchase; lots withdrawn by development (Fitts Farm); and lots withdrawn as a result of the 2004 zoning changes, - all totaling 588 lots.

He said the 1143 lots allowed under the 2005 analysis was then subtracted from the 1768 lots allowed based on the 2000 build out analysis, leaving 625 lots. He said the 588 lots withdrawn as a result of land use changes from 2000 to 2005 were then subtracted from the 625 lots, leaving a difference of 37 lots. He also noted that the lots withdrawn by the 2004 Zoning changes (for example, change from residential to nonresidential district) could be added to this, for a total of 271.

Councilor Needell asked if it could be concluded from this that the difference of 37 lots represented relatively little change, and there was discussion about this.

Mr. Abbott said with this type of analysis, the Town could keep a running tally on what buildable land was left. He said the numbers generated compare pretty well to an actual development. He noted that the Spruce Woods development estimated 92 lots would be developable, and his own analysis had predicted 98 lots. He said the absence of HISS information in his own analysis hadn't had a huge effect.

Mr. Abbott explained the usefulness of this build out analysis: It provided a useful estimation of the build out of new lots that was possible under current Zoning requirements; the map showed potential growth areas priorities for land protection; the data was useful for calculating water consumption rates based on dwelling unit size; it allowed one to see the effects of changing minimum lot sizes in the Zoning Ordinance; etc.

Councilor Van Asselt said this was all interesting, but noted that 50% of the land and valuation in Durham was owned by UNH. He said the Town had nothing to say about the planning of this land, which impacted water issues, transportation issues, etc.

Councilor Needell asked if the analysis indicated that HISS mapping was perhaps unnecessary.

Mr. Abbott said he was not trying to say this, and said he had simply been trying to back up his numbers. He noted that the accuracy of the County Soil Survey data could vary from town to town.

Chair Sandberg thanked Mr. Abbott for his presentation and said it had been very enlightening. He said GIS was a marvelous technology, and said he was sure the Planning Department would put the data to good use.

Councilor Niman noted that when the new Zoning Ordinance was adopted, members of the public said the changes would make their land unbuildable, and this would represent a taking. He said it seemed from the presentation that it could be concluded that this was not the case, and asked Mr. Campbell about this.

Mr. Campbell said this could be inferred from the analysis. He said there would be some lots that differed from this analysis, and he also noted that when a septic system was put in where there was no sewer and water, 5 feet of soil would be needed, which might take a few lots out of the equation. But he said there had not been a large scale taking at all.

Councilor Van Asselt said that looking at the build out map, it seemed illogical the way things were laid out. He asked Mr. Campbell and Administrator Selig if they had talked seriously with UNH about doing some logical land trades.

Mr. Campbell said he had not, but would be happy to.

Administrator Selig said there had been preliminary discussions concerning Woodridge Field.

Councilor Van Asselt said it would be interesting to find out more about this. He noted that people wanted to protect open space in Durham, while a goal of UNH was to be a centered campus rather than spreading here and there. He said the map brought this kind of questioning to mind.

Councilor Grant said a substantial portion of the land in green on the map was College Woods, which was UNH land, much of which had been preserved, or at least had not been allowed to develop yet.

Chair Sandberg noted there was a lot of agricultural land there as well.

Administrator Selig asked Mr. Campbell to speak about the draft impact fee ordinance.

Mr. Campbell said he was working on a timeline as to when this would come back to the Council.

Chair thanked Mr. Abbott for the presentation.

X. Unfinished Business

Resolution #2005-05 authorizing the Town Council to enter into an employment agreement with the Administrator, to establish the Administrator's FY 2005 salary, and to accept the Administrator's FY 2005 evaluation.

Chair Sandberg outlined the options for proceeding with these items. There was discussion about this among Council members.

Councilor Needell MOVED to adopt the Annual Performance Review, dated Feb 21st, 2005. Councilor Morong SECONDED the motion.

Councilor Van Asselt said he wanted to make sure that the comments of individual Councilors were included as an attachment to the document, stating that these were as important as the overall document.

Chair Sandberg said all of these individual comments had been forwarded to the Town Administrator, and noted that the purpose of this process was to put together the comments of the Council as a whole.

Administrator Selig pointed out that the February 21st consolidated document indicated that the individual comments were to be attached to it.

The motion PASSED 8-0-1, with Councilor Kraus abstaining because he said he had chosen not to participate in the consensus process, since the Council was more of a political body than one that could provide a consensus.

Chair Sandberg said that he, Councilor Grant and the Town Attorney had worked to refine the language of the Employment Agreement into something that was worthy of Council consideration. He provided details on this, and asked Council members if they would like to go into nonpublic session with the Town Attorney or not.

Councilor Niman said he would like to go into nonpublic session. He also noted that the Agenda item said “2005 salary”, but the Agreement said something else, and asked if the Town could be in legal trouble for doing this.

Councilor Smith said that was a valid point, but said he didn’t believe it created a legal issue, although noting the Town Attorney might have something to say about that.

Chair Sandberg said if there were no objection, he would declare a recess, and then would reconvene the meeting.

Councilor Kraus asked for clarification on the process to be followed, and there was discussion on this.

Councilor Smith provided clarification that if an elected body wanted to meet with its attorney, this was not something viewed under the public meetings law as a nonpublic meeting. He said that law spoke about two types of meetings that were neither public nor nonpublic meetings; meetings with a town attorney, or a collective bargaining meeting.

Councilor Kraus said he was not comfortable with the speed with which this process had come forward, and said he was not prepared to act on the Agreement that evening. He also said he found the process very cloudy.

Councilor Needell asked if the purpose of the meeting with the Town Attorney would be to discuss the legal implications of the document and to get feedback, but not to discuss the policy issues.

Councilor Smith said, in response to Councilors Kraus, that he understood that this was a confusing area. But he said that what he had previously stated was crystal clear in State statutes, so the public should not think that what the Council was doing was cloudy and used the mere presence of its attorney at the meeting as a device to hold it in private, when it had

no intention of engaging its lawyer in a decision of legal issues. He said what was proper was that the Council had some questions about provisions of a draft legal contract, which were the kinds of things that should be discussed with the Town Attorney. He said he agreed that public policy issues relating to the contract should be discussed in public.

Chair Sandberg said that after having the conversation with the Town Attorney, the Council could, if it wanted to, discuss the substance of the contract in nonpublic session, under RSA 91-A.

Councilor Needell said that hopefully the discussion with the Town Attorney would move the process forward.

Chair Sandberg said the purpose of this process was for Councilors to reach a level where they were comfortable voting.

Councilor Niman said that based on this clarification, he was interested in going into nonpublic session, because it seemed that some policies had not been included in the document.

Chair Sandberg noted the nonpublic session and the discussion with the Attorney could take place at the same time, if that was what the Council wished to do.

Councilor Grant MOVED to go into nonpublic session in accordance with RSA 91-A:3 II (a) and (c) respectively for the purpose of discussing the Town Administrator's employment contract. Councilor Smith SECONDED the motion.

Chair Sandberg asked Administrator Selig if he wanted the discussion to be conducted in public.

Administrator Selig said he didn't want the public to perceive this process as sneaky, so he would have no opposition to the process being done in public. He said he was not requesting this, but didn't have an issue with it.

Councilor Smith said that technically speaking, Administrator Selig's statement didn't mean that the discussion had to take place in public, and said it was up to the Council to decide this.

Councilor Van Asselt asked Councilor Niman why he didn't want the discussion to be public.

Councilor Niman said his concern was a policy issue, whether the proposed multi-year contract would be just for the Town Administrator, or also for department heads as well. He said what the Council decided might impact how Administrator Selig got along with other department heads. He also said it was important for the Council to decide what the policy should be concerning multiyear contracts, and with respect to raises in future years.

Administrator Selig said the agreement document was a result of a substantial amount of negotiations between himself, Chair Sandberg, Vice Chair Grant and the Town Attorney. He noted that there might be aspects that the Council would want to discuss with the Attorney in order to make sure the Town's interests were preserved.

Chair Sandberg said it needed to be perfectly clear that when he and Councilor Grant first met with Administrator Selig, they were trying to glean from previous conversations what the concerns of the Council were. He said there was no commitment to a multiyear contract, and said if the Council preferred a year to year contract, this was its prerogative. He said some interest had been expressed in having the security of a multiyear contract, but said this did have implications. He said if the Council wanted to discuss these implications with the Attorney in nonpublic session, it should vote yes on the motion, or, it could discuss these matters in public.

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

Chair Sandberg said the Council would therefore proceed in public session.

Councilor Grant said he had participated in much of the discussion on the development of the document, but said that when this process started, he had thought they were developing more of a simple, resolution type of statement that would express confidence in, and satisfaction with the Town Administrator. He said the document now had 6 pages, with formal, contract type language. He also said he did not feel able to guarantee the Town Administrator compensation for the years for which he would not be part of the evaluation process. Councilor Grant also noted it was possible that a future Council would arrive at a different evaluation, and might want to grant a different level of compensation. He said he felt badly that they were getting into a very legal document, when he thought the purpose was to try to express some good faith with some legal standing behind it.

Councilor Kraus said his discomfort reflected the rapidity with which this process had moved. He said he had just received the document that evening, and said there were other implications for other employees, and setting salaries into the future. He said he would vote against acting on it that evening, because more time was needed to look at its implications.

Chair Sandberg said the Council had the time at the meeting to discuss and resolve its concerns, or could postpone voting on this, but he noted it was useful having the Town Attorney at the present meeting.

Councilor Needell said he would love to see Administrator Selig offered a secure position in Durham, but asked if in a simple, legal sense, the present Council could bind future Councils concerning this.

Attorney McKittrick said it could.

Administrator Selig said Councilor Grant was correct about the document they had been trying to come up with, but said that the Town Attorney, upon seeing it, had indicated some

things that were wrong with it from a legal perspective, for both the Town and the Town Administrator. He said a cooperative approach was taken to find something that was acceptable to both parties, and said the Town Attorney had developed this document, representing both interests. He noted that the changes Councilors had received that evening were mostly grammatical.

Councilor Grant said his concern was not about the legality of the document, but said his question was whether the Council should feel uncomfortable committing a future Council to a minimum salary for the Town Administrator.

Councilor Morong said he had no more problem with Councilor Grant's concern than he would have with committing to a bond that would have to be paid back over a number of years.

Chair Sandberg said there should be a higher level of confidence with Administrator Selig than would be the case if he were a new employee, so this policy, concerning him, was quite different than it would be with a new employee.

Councilor Smith said this was a political/policy issue, and noted this kind of thing was done with labor contracts, where the Town was bound for a period of time in order to honor the contract. He said the issue here was whether the Council wanted to take that step with respect to the Town Administrator, and said that as Councilor Niman had suggested, this opened up the question as to whether the Council wanted to do this with other department heads. He said it was a matter the Council needed to resolve before giving more than a one-year contract to the Town Administrator, and he said answers to the technical questions would fall into place once the Council had resolved this.

Chair Sandberg said an important question was to what extent this policy would change Administrator Selig's relationship to other employees.

Administrator Selig said to him, this wouldn't change at all. He noted that the Fire Chief and Police Chief had had multi-year agreements when he became Town Administrator, but said his own position was that he would not sign a multi-year contract with department heads. He said he wanted to insure that they reported directly to him on an annual basis. He noted that these employees were already protected by state statute, and said there were rigorous thresholds that would have to be crossed before firing them.

Administrator Selig said that for his job, he believed it was a different situation. He said the Council was a political body, which changed over time, and created many issues for the person serving as town administrator. He said he had tried to create an environment where he would want to stay for a longer period of time, noting that the average service nationally for a town administrator was 3-5 years, and he had been there for 4 years.

He also said that because he reported to a political body, he had to carefully frame issues. He said it was his sense that the Council wanted the best information he could provide on issues, but he said in the course of providing this, he could be unpopular. He said the Council didn't want the Town Administrator worrying about the information he was providing coming back

to hurt him and his family, which would make him more likely to buffer the best advice he could give them. He said by providing security, this insured that the Council got stronger information, because he knew that unless he did things that were specifically defined as being cause for termination, it would be hard for the Council to get rid of him as Administrator.

He said he had chosen not to have a formal agreement early on in his employment with the Town, for various reasons, and provided details on this. He also noted he had promised to stay in his position for 5 years when he was hired, and had stayed with this even though he had been offered other positions. He said he enjoyed the challenges of working in Durham. He said the question then was what type of agreement was appropriate. He noted there had been some discomfort about doing an infinite type of agreement, so a three-year contract was developed.

Attorney McKittrick said a lot of work had been put into this document, but said the original draft was one that was created by committee. He also said that at best, the current draft document was a 2-year contract, noting there were various escape clauses. He provided details on this, and said unfortunately when there was a legal document, the terms and conditions had to be spelled out. He said the Council should look at the escape clauses on both sides, discussed in paragraph 14, and he went through these clauses.

Councilor Van Asselt asked if the draft was rewritten as an agreement between the Town and Administrator Selig, not as an agreement between the Town and any town administrator.

Attorney McKittrick said the document was specific to what he had been given by Councilor Grant, Chair Sandberg and Town Administrator Selig.

Councilor Van Asselt said he agreed escape clauses were important, but said he had real problems with the idea of punishing Administrator Selig if he decided to leave his position. He also said that he had seen the severance issue raise its head in the Seacoast area when town administrators left their employment, but said he didn't know a way around this. He said this was a real issue that needed to be talked about.

Chair Sandberg noted there had been some discussion about dropping paragraph E.

Councilor Smith said he agreed that in terms of the guts of the agreement, the Town Attorney had put his finger on the most significant things. He encouraged the Council, if possible, to take one issue at a time, but said he didn't think the Council should fool with the subsections of the document if it was not generally in favor of taking this approach.

He said there was no way in the world he would have considered this contract for Administrator Selig at the time he arrived. But he said he thought the circumstances at present were different than they were 4 years ago, and said he was one Councilor who hoped that the Town Administrator would give the Town at least another 3 years. He said he was in favor of having this somewhat more extended contract, and urged the Council to make up its mind on this first, and then get into the details about any specifics that troubled it.

Chair Sandberg said it would be good to get a sense of how the Councilors felt about the agreement at that point.

Councilor Kraus said he believed a multiple year contract was appropriate, but said his own concern was that the process was moving forward too quickly.

Councilor Morong said he concurred with the points made by Councilor Smith.

Councilor Van Asselt said the Town Administrator job was unique, and said more than a one-year contract was important. He said this needed to be formally stated in the contract.

Councilor Grant said he had no problem with the idea of a multi-year agreement, but he did have a problem with the multi-year salary and the clause that if the Town decided to release Administrator Selig without cause, it would pay him a year of salary but if he left, he gave up three months. He said he thought things should be equal.

Chair Sandberg asked Councilor Van Asselt how he felt about the salary commitment.

Councilor Van Asselt said he disagreed with putting salary numbers in for years two and three, and said he believed that the Town could provide job security by requiring that the salary for years two and three be at least as much as for the first year.

Councilor Harris said she felt the Town was fortunate to have Administrator Selig, and encouraged giving him a multiyear contract.

Councilor Needell said he agreed with this.

Councilor Niman said as long as Administrator Selig's words were preserved in the minutes, he agreed with what he had said about the importance of a multiyear contract for just the Town Administrator. He said he would endorse this.

Councilor Kraus received clarification that if the Town Administrator left his position, that he could receive no pay from employment for a three month period, but could receive income from other sources.

Chair Sandberg asked if there was any way to handle the salary issue other than putting in definitive amounts for each year.

Administrator Selig noted for the general public that the salary amounts in the draft document were: 2005-\$89,497; 2006- \$93,972; 2007-\$98,670.

Councilor Van Asselt said one of the concerns was to protect Administrator Selig against a future Council that decided it wanted to pay him less, and said if he were assured of receiving a minimum amount, this protected him against this. He noted it was more likely that the Council would raise his salary, but said he didn't agree with setting the other two numbers at present. He said this was how his own contract was structured, and said he liked it that way.

Administrator Selig said that in negotiations with Chair Sandberg and Councilor Grant, he had said that if there was a penalty for leaving, he wanted to know what his salary would be for the future years. He explained that he was essentially agreeing to take himself off the market, so therefore wanted to be protected by knowing what his wage would be.

Councilor Van Asselt noted he was against that penalty clause.

Chair Sandberg said if they took this clause out, they also might be able to take the specific salary numbers out.

Councilor Smith referred to items 14 D and E, on page 4 of the agreement, and said that not only was paragraph E punitive, but inappropriately so. He provided details on this. But he said paragraph D was the other side of the coin. He said he agreed with Councilor Van Asselt that the Council was not a private corporation, but was a public entity that was not spending its own money, but rather the peoples' money.

He said with paragraph D, the Council needed to accomplish two objectives. He said the first was to give Administrator Selig, who had been there for four years, some reasonable sense of security. He noted that the longer the Town Administrator had shown his colors, the less risk there appeared to be from taking this approach. He said the other side of the coin was that the public purse should have some protection, and said that taking these two competing interests, language could be worked out that was reasonably satisfactory to both of them.

Councilor Smith recommended that if Administrator Selig decided to leave, that the Town should give him a severance package of 6 months that would be available to him whether he wanted to take another job or not. Councilor Smith said that to him, a year was too much. He said that on the Town's behalf, the contract would say that upon termination of employment, the Town Administrator would begin in good faith to seek new employment meeting two conditions: it was within his field of expertise, and was at a level appropriate to his level of expertise.

He said that if in good faith, Administrator Selig sought this and got employment within six months, he would receive the 6 months of severance. He said if he didn't get employment, the Town would continue to pay him for an additional period of 6 months, as long as in good faith, he was seeking employment. He said it might turn out that the severance was for 1 year, but said this would be different than simply agreeing to pay a years salary so someone could go sit on the beach.

Councilor Needell said it was not clear in Councilor Smith's comments if he was only discussing what would happen if the Town terminated the employment.

Councilor Smith said he would just like to focus on D and E at present.

Chair Sandberg asked Councilor Smith whether, if Administrator Selig announced he was leaving in two weeks, the Town would owe him six months of severance under the terms that had been described, or whether this only applied if the Town initiated the termination.

Councilor Smith said he was not making any proposal with respect to paragraph C yet.

Administrator Selig said that even if there was a three year contract, if he was told the Town didn't want him for a third year, he would work actively to find another position. He asked Councilors what their fear was of three years, noting that they in fact were elected for three years. He said this would essentially afford the same thing to the Town Administrator that they already had, and he said if this became so onerous to the Town, the relationship could be severed. But he said he wanted to insure that if the Council did so, without cause, it would be painful for the Town.

Administrator Selig said if it became so difficult for the Council to deal with him, the chances were that he wouldn't stick around for the full three years.

Councilor Needell MOVED to eliminate the adjournment time of 10:00 pm. Councilor Harris SECONDED the motion, and it PASSED 7-2, with Councilors Kraus and Grant voting against it.

Councilor Smith said it was important to keep in mind what the term "without cause" meant, and he provided details on this. He also noted that if each of the Councilors received \$90,000 a year in salary, he would take more to Administrator Selig's point.

Chair Sandberg asked Administrator Selig what his response was to Councilor Smith's proposal of a six-month severance.

Administrator Selig said that generally speaking, it would take about nine months of searching to find another position, so a year of severance would be optimal. But he said he would agree to a nine months severance, and said if the Council wanted to allow him up to a year if it took longer to find a position, that would be comfortable for him.

Councilor Smith said he was willing to go that way, but said he was also asking that Administrator Selig be under the requirement to be seeking a position from the time that he left.

Administrator Selig said this didn't take into account the emotional angst of being sacked, perhaps for purely political reasons. He asked if six months of pay was enough to make a Council think twice, and provided additional details on this.

Councilor Kraus said he felt a year of severance was an appropriate damper on precipitous Council action.

Councilor Morong said he was comfortable with a year's severance. He noted the Town Administrator job was unique in that another town might have the same requirement as Durham that he would have to live in the Town he worked in. He said if his position ended, he would therefore have to pick up and move his family, so there could be financial losses from that as well.

Councilor Needell said he appreciated what Councilor Smith was trying to do, but said it was too complex. He said one year of severance was reasonable, also noting that if he were

sacked, this would affect his ability to find a job. He said this was the core reason for having a multiyear contract, and said the severance went with this.

Administrator Selig said he was aware that Durham was a very turbulent town, and so this would afford him additional protection.

Councilor Niman said the point of all of this was to provide security, and said he agreed with the year of severance. He noted he had been critical of Administrator Selig, wanting him to be more decisive, firm, and forthcoming in his dealings with the Council. He said he thought he would be a better Administrator if he was secure in his employment, and said the Council would benefit from this. He said the value of having to pay him a certain amount would be paid back.

Administrator Selig said if the Council eliminated the hook from the agreement, he would prefer to be paid on a year to year basis, and would in fact prefer this.

Chair Sandberg provided details on the salary numbers. He said he had no objection to taking the hook off of E, and renegotiating on an annual basis, so it would probably even out. He asked Administrator Selig how it would be if for a particular year, there were no salary increase.

Administrator Selig said contemplating that, he would ask that 14 C be amended, and he provided details on this.

Councilor Van Asselt said he would recommend that the 2006 salary number should be the same as for 2005, subject to negotiation, because it might turn out there would be no increases for town employees because the Town couldn't afford it. But he said at the same time, he wouldn't want to reduce the salary below a minimum amount. He also said the 6 months penalty should be reduced to 3 months.

Chair Sandberg noted it was not easy to find a new town administrator.

Councilor Van Asselt said he assumed he would train someone before leaving. He also said he did not agree with paragraph D, and said one year of severance was too much. He said he was willing to make a compromise on this, but said most people didn't have a year of severance when they left a job.

Councilor Smith MOVED to adopt the document. The motion was SECONDED by Councilor Needell.

Councilor Grant MOVED to delete paragraph 14 E. The motion was SECONDED by Councilor Smith.

Councilor Van Asselt asked the Town Attorney if this was a significant move.

Attorney McKittrick said it was, because it released the hook, so there was no penalty for Administrator Selig to leave. But he noted this was a political, not a legal question.

Councilor Grant said he would make further motions to change other parts of the agreement if he prevailed, and said this agreement should reflect trust. He said he didn't want to penalize anybody, either the Town or the Town Administrator.

The motion PASSED 7-1-1, with Council Niman voting against it, and Councilor Kraus abstaining because of the late hour of the meeting.

Councilor Kraus suggested that the Council stop deliberations at this point, and pick them up at the next meeting. He said it had been a fruitful discussion, but also noted that there had been no opportunity for the public to express opinions on this.

Councilor Harris said if the Council could possibly work through the concerns and vote that evening, the present Councilors could decide on this. She noted that the following week, a new Council would be elected, with less historic memory.

Councilor Grant said he agreed with Councilor Kraus that it was better not to vote on this at the late hour.

Councilor Van Asselt asked how the Council could stop this process.

Chair Sandberg said it had been his impression that this group of Councilors wanted to make a decision. He noted that the Election was the following day, but said the current Council would stay in office until the election was certified, at the close of business on Friday. He said it would therefore be possible to postpone action on this, and continue the meeting until Wednesday or Thursday evening.

Councilor Kraus said his position was that this was a noble purpose, which should not be done in such a rapid way. He said the perception of having another Council meeting was not good, and said he had faith that the next Council would continue to move this issue forward. But he said it represented a change from what Durham had done in the past.

Councilor Needell said he agreed with Councilor Kraus. He said the efforts here were noble, and said it would have been nice to finish the deliberations and vote that evening, but he said the timing was not right. He also said he would appreciate getting some public input on this issue.

Councilor Van Asselt MOVED to postpone action on this Motion until March 21st, 2005. The motion was SECONDED by Councilor Kraus.

Administrator Selig asked if the Council did this, if it would want to have the Town Attorney present for the discussion.

Councilor Smith said he would be happy to discuss the non-substantive points of the agreement with the Attorney.

Chair Sandberg said the Town Attorney could perhaps make himself available by phone if the Council had legal questions.

Councilor Needell commended Administrator Selig that this discussion had taken place in public session. He also said the way in which the discussion had been conducted was commendable.

Administrator Selig said he respected the Council's choice to wait, but said he wanted it to know that it was very difficult to have one's livelihood hung up for a number of weeks. He said what he didn't want was to see residents urging the Council in one direction or another at the next meeting.

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

Councilor Kraus MOVED to adjourn the meeting. The motion was SECONDED by Councilor Grant, and PASSED unanimously 9-0

The meeting ADJOURNED at 10:25 PM.

Victoria Parmele, minutes taker