DRAFT

MONDAY, MARCH 28, 2005
DURHAM TOWN HALL -- COUNCIL CHAMBERS
TOWN COUNCIL WORK SESSION MINUTES
7:00 PM

MEMBERS PRESENT: Chair Malcolm Sandberg; Neil Niman; John Kraus; Karl Van Asselt; Peter Smith; Gerald Needell; Mark Morong; Diana Carroll; Julian Smith

MEMBERS ABSENT: None

OTHERS PRESENT: Todd Selig, Town Administrator

Minutes on Workshop to Establish Goals and Objectives for 2005

Chair Sandberg outlined in detail the following key subjects:

I.   Purposes of Goal Setting Sessions
    A.   To understand the "framework rationale"
    B.   To establish goals for the upcoming year

II.   The Agenda Framework of the Meeting Process
    A.   Housekeeping
        1.   Special announcements
        2.   Minutes

    B.   Information sharing and gathering to broaden our base of knowledge
        1.   Reports and comments from councilors
        2.   Reports and comments from the administrator
        3.   Reports and comments from the general public
        4.   Presentations from committees, and interest groups and experts.

            a.   Ad hoc committees (example: PTO on parking at Middle School)
            b.   Department heads (example: Status reports on projects e.g. Revaluation, impact fees, zoning changes, etc.

        5. Public Hearings

    C.   Action items (Resolutions, Ordinances, Policies)
        1. Unanimous consent issues
        2. Old business
        3. New business

III.   Conducting the business of the Town
    A.   Rules of Order

B.   Protocol

1. Noise
        2.   Cross talk
        3.   Third person approach to avoid personal confrontation.
        4.   Staying on subject – avoiding going off on tangential subjects. Staying with
             the motion on the table; Councilors can keep track of this as well as the Chair,
             to help keep things on course

POSSIBLE REASONS FOR NOT VOTING
C.   **Recusal** – when there is an issue that will affect a Councilor personally
D.   **Abstention** Charter requires that if a Councilor abstains, he/she must state the reason for
     doing so. Chair Sandberg said if a Councilor feels there is information missing on a
     particular issue, it is important to say this. He said this might be key information for
     other Councilors, who might otherwise be thinking they were ready to vote.
E.   **Absence**, **lack of quorum**   - 6 people required for a quorum, according to the Town
     Charter

Councilor Needell asked if recusal counted toward a quorum. Chair Sandberg said if there
were six people present and one person recused himself/herself, this would affect the
quorum. But he said an abstention wouldn't affect the quorum.

Councilor Morong asked if there were any hard fast rules as to whether someone who had
recused himself should stay in the room, etc., after doing so.

Chair Sandberg said the person could sit in the audience, and might wish to do so, as a
citizen, in order to protect his interests. There was discussion about this.

Administrator Selig noted that the Council sometimes played a legislative role, and
sometimes played a quasi-judicial role (ex. – when it used to evaluate conditional use
permits). He said when it was playing a legislative role, - for example was voting on an
ordinance, if a Councilor should recuse himself and did not do so, this only had repercussions
for that Councilor in terms of being able to continue to serve on the Council. But he said that
when the Council was acting in a quasi-judicial role, if a Councilor should recuse himself and
did not do so, this could jeopardize the Councilor, but also the Council itself. He said in such
a situation, the Council could be sued, and its decision might be set aside.

Councilor Morong said he understood this, but asked again what the Council was saying
would be the policy, when someone recused himself.

Chair Sandberg said a question behind that question was to what extent the Council had the
right to make such a policy.
Councilor Peter Smith spoke about the Young Drive property discussion the Council had
undertaken, and noted that at the time, someone had said that two Council members should
recuse themselves because they had particular opinions on this matter, - but these Councilors
had refused to do so. He said this was the clearest example he had seen of the difference
between the Council's obligations as a legislative body and as a quasi-judicial body. He said

that having an opinion on an issue was not a basis for recusal, when the Council was sitting as a legislative body, although he noted that having an open mind on a particular issue was important.

Councilor Smith said he knew of no court rule, administrative rule, etc. that answered the question as to where a Councilor should sit if he recused himself. But he said a reason he would leave the table and sit in the audience was to avoid confusion for those people watching the meeting.

Councilor Needell said he agreed with this, but said he suspected the Council didn't have the authority to require one thing or another.

Chair Sandberg said the risk was if a Councilor stayed at the table, a decision that was made could be set aside. He also said if the Council was acting in a quasi-judicial capacity, and a Councilor stated he knew how he was going to vote, that person was no longer sitting as a judge. He said if the person couldn't sit at the table with an open mind on an issue, he should think about whether he should be sitting at the table for that particular issue.

Councilor Julian Smith noted when he filed for the Council, the Library Board of Trustees were concerned he would have to recuse himself for matters brought before the Council by the Trustees. He said he had explained to them that there might be times where as a member of the Board, he would vote what for was best for the Library, but when he put on his Council hat, he might vote differently. He asked if was there any condition when the Council would say he should sit in the audience, since he had already formed an opinion on this issue.

Administrator Selig said that when the Council acted in its quasi-judicial role, it would be possible for the Council to suggest to a member that he should recuse himself, but he said this would still be up to the Councilor.

Councilor Kraus said whether a person stated he was for or against an issue should not be relevant, because the Council was a political body. He said he would expect that Councilor Julian Smith would tend to favor the Library in his voting, and said townspeople had elected him with this understanding. He also noted that many Councilors at the table were pro-conservation, but questioned the idea that these people should therefore recuse themselves on votes on conservation related issues.

Chair Sandberg said it was important to make the distinction between the Council's quasi-judicial and legislative capacity.

Administrator Selig said there would in actuality only be one instance where the Council would be sitting in a quasi-judicial capacity. He explained that if he decided to fire a department head, that person would be entitled to appeal this ruling to the Council.

Councilor Kraus said if there were a nonpublic session about the purchase of property, and a Councilor had a vested interest concerning this, that person shouldn't be party to this discussion at all, so there wouldn't be any thought that the person would have inside information.

Chair Sandberg agreed with this.

Councilor Needell said it was not clear whether Councilors should recuse themselves if someone they knew had a matter before the Council.

Chair Sandberg said that with almost every issue, especially tax related matters; a Councilor would know somebody who might be impacted. He provided details on this, and said he wouldn't want to see a Councilor railroaded away from the table on global policy issues.

F.   Discussion on Outside of meeting communications re: packets and policies
      1. Email
      2. Telephone
      3. Sub-quorum meetings

Chair Sandberg said there had been an open policy on this over the years, which allowed Councilors to ask questions of department heads, and to learn about how these departments worked. He said the line that could not be crossed was to go to an employee and ask him/her to take a particular action. He said Councilors had no authority whatsoever to do this, noting this was under the purview of the Town Administrator.

Councilor Kraus said the nuances on the language that was appropriate could be tricky.

Administrator Selig said he encouraged Councilors to ask questions to the departments. He suggested this communication should be cordial and collegial, and he said if Councilors were unhappy with the results of this discussion, they should talk to him and then the Council if necessary.

Councilor Needell said it was important to always keep in mind that only the Council as a body had any policy making authority. But he noted that it was appropriate for Councilors individually to relay information to the Town Administrator, serving as a point of contact for citizens.

There was discussion about this. Chair Sandberg noted a recent situation where he had made a call to the Town as a taxpayer, not a Councilor, about a possible safety problem at the Craig Supply site.

Councilor Niman said he would like to broaden the workshop discussion with regard to Part I - Review of the Town Council meeting process.

Councilor Van Asselt said a frustration he had was when Councilors asked Administrator Selig to take certain actions, and he wound up having too many priorities. He said it was important at times like that to pull back and determine what the will of the Council as a whole was.

Chair Sandberg said when there was a motion before the Council, and it was realized the Council was not yet ready to vote on it, Administrator Selig could state what he had gotten

out of the Council's conversation, and what steps he would take based on this. He said with give and take on this, there could be clear guidance for Mr. Selig.

Councilor Van Asselt noted that he had asked three times for a meeting about the impact fee ordinance.

Chair Sandberg said the Council had agreed on the importance of this ordinance, but he said it was a work in process, and would come back to the Council when it was ready.

Administrator Selig explained that there were some limitations as to what the Council could order him to do. He said there were sometimes existing policies he was carrying out, which therefore had to be dealt with in a certain way. He also noted there were times when the Council asked him to do something that in reality would be unlawful.

Councilor Kraus expressed concern that the Council wouldn't be able to get to workshop issues that evening.

Chair Sandberg said it was important to get some additional comfort level about communications among Councilors. There was then detailed discussion about the appropriate use of email.

Councilor Peter Smith said that if a proposed statute passed, if a citizen sent a Councilor a letter, it would be considered a governmental record, and would be discoverable, as long as it involved the business of government. He noted that Administrator Selig had sent Councilors a good memo on this.

There was additional discussion about the right to know law, and how it related to the workings of the Council.

IV. **Roles of the various "players" in the "Functional Meeting "**
   A. The **Proponent** of a Resolution, Ordinance, Policy, etc. (the Committee) "owns" the responsibility to provide adequate information for the Town Council to base final decisions in advance of the meeting. {Information packets required}

   1. Administration, by way of the Administrator, makes recommendations that he feels are in the best interest of the Town.
   2. Individual Town Councilors may **sponsor** initiatives which they believe will be in the best interest of the Town
   3. **Committees** established to study, report and recommend action (ad hoc or appointed by the TC or Administrator) are charged with the responsibility of making and defending a proposition (either to initiate, continue or discontinue a course of action) ex Packers Falls Bridge Committee; it owned the responsibility to defend its advocacy; provided recommendations for the Council to consider
   4. Independent special interest groups – ex PTA that recently gave presentation on permit parking on Dennison Ave.

Chair Sandberg said it was important that the Council as a group insist and expect that packets be complete so Councilors would all be prepared to participate in discussions in a knowledgeable way. He also said that the Council rarely sat as a Committee, and said it was usually someone or some other group that was the proponent on an issue.

B. The Town Council's role is to consider all available information and any additional information it may require in order to make informed, responsible decisions. (The hunter/gatherer mode)

1. If and when the Town council has received all the information it requires in order to make an informed decision it has four courses of action from which to choose
   a. Approve the proposition with confidence
   b. Deny the proposition with confidence
   c. Postpone consideration pending receipt of further information or contemplation
   d. Remand to the "Committee" for further review, amendment or refinement of language.
2. The Town Council is most often NOT the "Committee" and should guard against taking "ownership" of the proposal by assuming the role of "committee". (Whose "problem" is it, anyway?)
3. The Town Council should NOT allow itself to be pressured into making hasty decisions even if the information seems complete (Time can be an ally)
4. If any Councilor feels that the information is inadequate or he/she needs more time it is that person's responsibility to voice the concern and encourage the taking of time. The Town Council is not obliged to delay. The proponent of delay now owns the responsibility of convincing the council that delay is in the public interest.
5. If the option to remand is exercised, guidance should be provided as to direction or information required

Councilor Peter Smith said if the Council was not simply receiving information, but was trying to formulate policies based on factual information in the room, it was very valuable to have a policy discussion, and to see how Councilors could be influenced by each other, and others in the room.

Chair Sandberg said a good example of this was when the Council had recently worked on Administrator Selig's contract. He said there was a good dialogue on the pros and cons of the contract, but said where the Council started to get into trouble was when Councilors suggested language changes. He said when the Council started acting like a committee, it should take a step back. He said at that point, the Chair should say he would take Councilors' comments, and revise the document based on them.

Councilor Kraus said he would like to see the sun shine into this Council. He said he thought having full back and forth discussion at the Council level was very important. He said he was uncomfortable about "committees" functioning behind the scenes, and said it was a judgment call as to which process was more efficient. He said he personally felt it was just as efficient for the Council to have a full discussion from the beginning.

He said that if the whole discussion about the Town Administrator's contract had occurred more widely, earlier on in the process, the suggestions wouldn't have been as awkward. He said the Council was a political, legislative body, and said everything should happen there. He also said he was not sure the Packers Falls Committee result was any better than would have been the case if the Council instead had had a wider discussion on this issue.

Councilor Needell said he agreed with Councilor Peter Smith that policy discussions should occur at the table. But he said the actual details of how things like bridge abutments should be designed were difficult to handle at the Council level.

Chair Sandberg said the packets that Councilors received for meetings were examples of the work of committees, and said there was nothing about the process that involved railroading. He said Councilors had to decide individually whether based on this information, and on discussion at the table, they were ready to vote up or down on an issue.

Councilor Niman said he felt there was sometimes some degree of railroading going on. He noted he would have welcomed a wider discussion on Administrator Selig's contract, in general terms, and said there were other policy decisions that the Council never really had the opportunity to talk about. He also said that he would have appreciated having the opportunity to ask the Packers Falls Bridge Committee to try out some different possible solutions that Councilors had to the problems. But he said the way the process was set up, this wasn't possible.
Councilor Niman also made note of the PTA presentation, and said there had to be a way, when people came forward, for the Council to indicate that it understood there was a problem, and was anxious to help find a solution. He said otherwise, bad feelings sometimes developed on the part of the public. He also gave the example of the situation with the Library Board of Trustees, and said the Council needed to find a way to better communicate what it was looking for concerning a particular issue, and what its concerns were. He said that otherwise, these committees had to be mind readers.

Chair Sandberg discussed how the process would work, that would allow the Council to participate effectively in various situations.

Councilor Peter Smith said there were few occasions when he personally had voted to call the question, and said this was another way of saying that he was prepared to listen to the discussion of any member of the Council. He said Councilors who wished to say more on a particular issue should state this at the time it was being discussed, and said if there was one thing that made him impatient, it was when a Councilor indicated this, several weeks after the fact. He said the Council needed to make a compact on this, and said perhaps this would mean that more meetings would be needed. But he said he believed the majority of Councilors would be prepared to have these lengthier discussions.

Councilor Van Asselt said he was much more interested in what Administrator Selig wanted to do concerning a particular issue, than what citizen groups wanted to do. He said there was a fine line to be drawn on this, but said it was important to draw it.

Chair Sandberg explained the process that was appropriate for addressing citizen input.

Councilor Van Asselt said that only Administrator Selig was a good source of information when it came time to say something would work or would not work concerning a particular issue.

Administrator Selig provided details on how he approached various issues. Concerning the Durham Business Association, he said he had been closely monitoring the situation, but had not personally thought the issue was ready to bring forward to the Council. He noted that Councilor Van Asselt had decided to bring this issue before the Council. Concerning the PTA issue, he said this was not on the Town's list of priorities, but said the parents had come forward to the Council and had requested the ordinance change, so it was now an issue he needed to work with.

Councilor Van Asselt said that was where the Council broke down at times, - determining what issues were important to pursue at a particular time, and stating this clearly to Administrator Selig.

Chair Sandberg said the detailed goal setting session would help to get at this, and said Councilors' missions would be to convince other Councilors of what the top priorities were.

Administrator Selig said if the Council said the PTA issue was important, it would be important to have a policy discussion on possible ways to proceed, so he would have some parameters within which to work.

Councilor Smith he disagreed with Councilor Van Asselt as to the value of citizen input. But he said there needed to be some kind of limit on this in terms of agenda items. He said he didn't think the amount of time allowed for citizen input was out of control. He also said his request to the PTA for more information was appropriate, and he also said it was up to Administrator Selig to say concerning a particular matter that he would get involved, or would not get involved.

Councilor Needell said that engaging in discussion of other possible options for addressing the PTA issue was appropriate, even when having a first reading.

Chair Sandberg said it was important for Councilors to realize they had the power to say time out, even if an issue was on the Agenda. He noted that discussion early on concerning an issue, and a Council decision not to move forward with it, might lead to other alternatives for solving the problem.

Councilor Kraus said situations should be dealt with differently, depending on the different dynamics of an issue and the people involved. He said the Council had to be flexible in adapting to different situations.

Chair Sandberg said the model he had outlined was theoretical, but said to the extent possible, particular issues should be framed this way.

Councilor Morong said he had no problem with working loosely with models, but he described his own model, as a businessman, for getting things done. He said it was important to be sure projects were scheduled for a particular week, but also to allow for unexpected things that might come up.

Councilor Carroll said she agreed with this, and noted that when a significant number of people showed up at a meeting and said there was a safety issue, it was important to include this issue in what the Council was working on.

Town Administrator's Critique of Past Town Council Performance.

It was noted that there was a tension on the Council between Councilors wanting an orderly schedule for meetings, and Councilors who were more flexible. But he said that typically, meetings were not as productive when they went beyond 10:00 pm. There was discussion about this.
Chair Sandberg said when the Council felt it could not resolve a discussion on a particular issue, it could decide to continue that meeting.

Councilor Peter Smith said his sense was that lengthy meetings were not a major problem, as compared to in the past.

Councilor Needell said it was important to keep track that of each agenda item to see if they were taking longer than expected, so that it wasn't just the last agenda item that had to be cut off. He also suggested there could be a policy to not start any new issues after 10:00 pm.

Councilor Morong said he didn't really think running past 10:00 pm at a meeting was a problem, although the Council had been doing it more often lately. He noted he was a proponent for starting meetings earlier.

Chair Sandberg said it was important that Councilors try not to repeat themselves when making points, which could save time at meetings. There was discussion about this.

Councilor Kraus said if each Councilor remembered to think about how long he spoke, this would be fair to everyone, and would help move meetings forward.

Councilor Morong recommended structuring the meeting so that the housekeeping part of the meeting could be completed by 7:00 pm.

Administrator Selig said it was important for Councilors to put their ideas forward earlier on concerning an issue. He gave as an example the situation with the public hearing on the Library.   He also said that when the Council set particular goals, and then deviated from them, it should discuss why it was making this deviation. He gave as an example the goal of increasing the tax base through commercial development, in keeping with the Master Plan. He noted that the highest and best use for the Town Hall site was as a commercial site. But he said the Council had not really talked about why the Town was choosing to stay at this location, and was not moving Town office operations to another, less valuable location.

Administrator Selig also noted the Powerspan situation, and said the public took away from this that although the Town talked about the need for economic development, the Council killed the project because of the slope of the roof. He said the Council had not explained well why the Town had not gone forward with the project, and he said this had created issues for Town staff.

He also said the application process for the hotel project, which was very challenging for the applicant. He noted that the Town valued the importance of having a good process for evaluating an application, but said there had been a huge amount of discontent concerning this project.
Chair Sandberg said finding a happy compromise concerning economic development was challenging. He provided details on this, and said it was a task the Council, or an appointed committee, needed to work on in order to provide a certain level of comfort to developers.

Councilor Van Asselt said the goal of the Council concerning the Business Park should be to either market the property, or put it away. He said his frustration was that the Council hadn't done either one of these things. He said it was important for the Council to make a decision on this. There was discussion about this.

Councilor Morong said part of the reason people had the wrong perspective on what the Council was doing at times had to do with human nature. He said if people really listened to the meetings, they would see that Councilors generally did hammer out their feelings on issues.

Administrator Selig said the Council should be on the lookout for successes in Town, and to give positive feedback on this to Town employees, etc. He said it should also remember that when giving feedback, it should take care in providing criticism and making suggestions. He provided an example of where not doing this had set back communications with the Fire Department.

Administrator Selig said that concerning issues raised by interest groups, the question was to what extent the Council wanted to make their issues its issues, and how to prioritize these issues.

Councilor Kraus noted this kind of thing had recently been raised at the federal level with the right to life issue, when this issue had impacted the government when there were all kinds of other important issues going on.

Councilor Niman asked what it was that Administrator Selig could do to help the Council keep on track, and to understand the opportunity cost if it decided to addressed a particular issue.

Administrator Selig said it was important to say no concerning a particular issue, when necessary.

Councilor Kraus noted that special interest groups could put an issue at a higher level than would otherwise be the case.

Councilor Van Asselt said Administrator Selig needed to let the Council know if he needed more help. He said he hated to see him have to respond to issues that came up, and therefore have to push aside other issues the Council had already agreed were important.

Chair Sandberg said in some cases, a committee could work to find solutions without overburdening the staff and Councilors.

Councilor Morong said he would like the Council to develop a realistic plan for five years concerning what it could accomplish, - something like a CIP.

Administrator Selig said it was important that Councilors with institutional memory concerning particular issues provide valuable perspective on these issues to the Council as a whole.

Chair Sandberg said the Council should share ideas on how to come to a common resolution on issues. He provided details on this, and there was discussion on this, and on the role of committees in moving issues forward.

Administrator Selig noted the importance of Councilors in providing Council perspective at specific committee meetings. He also said it was important for Councilors to relate clearly to the Council what was happening with their particular committees.

Administrator Selig noted the importance of communicating with the University in a unified manner, noting that when the University had the opportunity to speak to everybody, this tended to work in its favor. He said a good example of this was the northern connector issues, and said he would ask the Council to address this issue so the University would clearly understand where the Town stood on this.

Administrator Selig said the Council should discuss if there was a better way to handle public comments.

Councilor Peter Smith said he believed citizens should have one chance to speak during the public comment period.

Councilor Kraus said he agreed with this, and said at a second meeting where members of a particular group spoke on a particular issue, their total comments should be limited to 15 minutes.

There was additional discussion on how to handle public comments in a more efficient manner. Councilors agreed it was hard to have a hard and fast rule on this, but said to the extent the Council could enlist the assistance of the public on this, it would be worthwhile.

Councilor Van Asselt said he took real offense at having members of the public insult Town staff during meetings, although he said he understood the freedom of speech issue. There was discussion about this.

Administrator Selig spoke in detail about the mutual relationship between himself and the Council in addressing the many complex issues in Town.
Chair Smith said the Council would schedule another work session to get at specific Council goals, and said he hoped the present meeting had been helpful in laying out the process issues.

Councilor Morong spoke about the proposed tollbooth on Main Street, and said he was not in favor of having tollbooths downtown.

Administrator Selig provided details on this issue, and explained that the application didn't require Council action. He said there had been tollbooths in the past, the police were not concerned about it, and he said he was inclined to approve the application because he believed the safety issues had largely been addressed. But he said there was the issue of the precedent that was being set. He asked if the Council wanted this to be the last year this activity would take place, and there was discussion about this.

Chair Sandberg noted this was an administrative decision, and suggested that the Council think about this issue, and perhaps make a resolution concerning it in the future if this was so desired.

Adjournment at 10:30 pm

Victoria Parmele, minutes taker