

**This set of minutes was approved at the October 24, 2005 Town Council meeting.**

**DURHAM TOWN COUNCIL  
THURSDAY, SEPTEMBER 15, 2005  
(Continued meeting of September 12, 2005)  
DURHAM TOWN HALL – COUNCIL CHAMBERS**

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

**MEMBERS ABSENT:** None

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

Chair Sandberg called the meeting back to order at 7:00 PM and explained that this was a continuation of the Town Council meeting held on Monday, September 12, 2005.

**IX. Presentation Items**

**B. Quarterly Financial Report -- Paul Beaudoin, Business Manager**

Mr. Beaudoin said that revenues through the third quarter were for the most part in line with budget projections. He noted that interest income was almost twice as was budgeted for. He said building permits issued amounted to \$42,000 of \$45,000 projected, indicating some activity in that area. He said police special details were only 30% of what was projected for the year, but noted fuel costs were up.

In terms of expenses, Mr. Beaudoin noted legal expenses were running significantly lower for the year, with only \$33,000 of the \$70,000 budgeted spent to date. He said contracted services under the new Zoning Department Ordinance had exceeded the \$5,000 budget by \$8,000 because of the work on the new Zoning Ordinance. He said this overage would be offset by reduced spending in other areas of General Government spending.

Mr. Beaudoin said the Police Department budget was on schedule, and that the Fire Department Budget expenditures were below what was projected. He noted the role of the 24-hour shift in lowering overtime costs.

He said spending on the snow removal and sanitation budgets were running higher than at the same time last year, noting a greater number of snow events had occurred. He provided details on this, and said the Public Works Department planned to tighten up in other areas to compensate for the additional costs.

Mr. Beaudoin said the Town continued to monitor all budgets due to the extreme spike in gasoline and heating oil prices, and said it would continue to look for ways to be more effective in conserving energy.

He said both the Water Fund and Sewer Fund were running more or less in line with projections. He noted that the Parking Fund was down because of a pattern of declining parking revenues since 2003, and provided details on this.

Mr. Beaudoin said that other than the expenditure required for the clarifier for the Wastewater Treatment Plant, everything was going fine concerning revenues and expenditures for the Capital Fund.

Councilor Kraus asked for clarification concerning the Police Department Budget.

Mr. Beaudoin said the Police had fewer details so expenditures concerning this were down, but said the price of gas was more than they had budgeted for. He said overall, the department was liable to be all right.

Chair Sandberg noted the decrease in revenue from parking enforcement actions was considered a good thing by the Council because compliance was a benefit to the community.

**X. Unfinished Business (NLT 8:30 PM)**

- B. Continued Public Hearing on Ordinance #2005-06** proposing amendments to Chapter 175 “Zoning” of the Durham Town Code, Section #2005-06 (C) - Relative to the Shoreland Protection Overlay District, Section #2005-06 (D) - Relative to the Wetland Conservation Overlay District, and Section #2005-06 (E) – Relative to the Aquifer Protection Overlay District

Chair Sandberg said the three hearings were opened and immediately continued at the meeting on Monday, September 12, 2005. He said the hearings could each be opened separately, and after receiving public comments, the Council could either continue or close each hearing. He noted that Consultant Mark Eyerman and Town Planner Jim Campbell were not present.

***Councilor Kraus MOVED to reopen the public hearing on Ordinance #2005-06 proposing amendments to Chapter 175 “Zoning” of the Durham Town Code, Section #2005-06 (C) - Relative to the Shoreland Protection Overlay District. Councilor Carroll SECONDED the motion, and it PASSED unanimously 9-0.***

There were no public comments.

***Councilor Kraus MOVED to continue the public hearing on Section C until September 19, 2005. Councilor Carroll SECONDED the motion.***

Councilor Needell said he was surprised there was so little public input, noting there were some significant proposed changes to the Ordinance. He encouraged members of the public to take advantage of this opportunity, which would not last.

***The motion PASSED unanimously 9-0.***

***Councilor Morong MOVED to reopen the public hearing on Ordinance #2005-06***

***proposing amendments to Chapter 175 “Zoning” of the Durham Town Code, Section #2005-06 (D) - Relative to the Wetlands Conservation Overlay District. Councilor Julian Smith SECONDED the motion, and it PASSED unanimously 9-0.***

**Beth Olshansky, Packers Falls Road**, read from Section 175-64 of the Zoning Ordinance concerning soils in the wetland overlay district. She said while she had thought the issue concerning somewhat poorly drained soils was over, here it was again.

She said she had called Don Keirstead, a soil scientist at the Natural Resources Conservation Service (NRCS), and found out more information on why one would choose to keep this provision as it was, and also would keep 175-55 F consistent with it.

She said Mr. Keirstead told her that very poorly drained soils, and poorly drained soils, were defined as having a seasonal high water table of 12 inches or less, while somewhat poorly drained soils were defined as having a seasonal high water table of 12-15 inches. She said the vegetation characteristics of poorly drained soils were similar to those of somewhat poorly drained soils. She provided additional details of the letter from Mr. Keirstead concerning somewhat poorly drained soils.

She said Mr. Keirstead said NCRC currently was not mapping somewhat poorly drained soils at the published soil survey intensity because the 3-inch window was too narrow to control over a 5-acre minimum lot unit. She said if somewhat poorly drained soils were to be lumped with soils above or below it in terms of moisture, they were closer to poorly drained soils

Ms. Olshansky noted that Mr. Keirstead had noted that somewhat poorly drained soils were susceptible to groundwater contamination. She said therefore, as a matter of making public policy, it was important to err on the side of caution. She pointed out that these soils were often found on the edge of wetlands, and said vernal pools often contained somewhat poorly drained soils.

Ms. Olshansky also said that although the Chair of the Planning Board said the Ordinance should be discretionary concerning this issue, the Planning Board was not always fortunate enough to have soils experts as members, and it was difficult for lay people to make these kinds of discretionary decisions.

***Councilor Morong MOVED to continue the public hearing on Section D until September 19, 2005. The motion was SECONDED by Councilor Julian Smith, and PASSED unanimously 9-0.***

Councilor Peter Smith explained for Ms. Olshansky and others that there was a document on the table from Planning Board Chair Richard Kelley and Jim Campbell, which discussed Ms. Olshansky's discussions with Don Keirstead.

Chair Sandberg said the Council would read this document before the next Council meeting on Monday, and said copies of it were available at Administrator Selig's office.

***Councilor Kraus MOVED to reopen the public hearing on Ordinance #2005-06 proposing amendments to Chapter 175 “Zoning” of the Durham Town Code, Section #2005-06 (E) -***

***Relative to the Aquifer Protection Overlay District. Councilor Carroll SECONDED the motion, and it PASSED unanimously 9-0.***

No members of the public spoke at the hearing.

***Councilor Kraus MOVED to continue the public hearing on Section E until Sept 19<sup>th</sup>, 2005. Councilor Carroll SECONDED the motion, and it PASSED unanimously 9-0.***

- C. Shall the Town Council endorse the proposal by the Oyster River Restoration Task Group to re-establish a navigational channel in the Oyster River?

Councilor Niman provided some background on his work in developing a statement concerning this issue. He said anything that made the waterways more usable and increased recreational opportunities was something he was willing to listen to and move forward with.

He noted that the Council communication he had developed said the Council desired that the task force do additional work to obtain grant moneys, get professional help in determining if dredging made sense, to come up with firm cost estimates, and to seek outside third party funding.

He said he would like to encourage Judith Spang to raise money in support of the project, noting she had said she thought there should be Federal money available.

***Councilor Niman MOVED that the Durham Town Council hereby endorses in concept dredging the Oyster River. The Council further recharges the channel restoration task force to identify third party funding to complete the development of a final plan with firm cost estimates, obtain necessary permits, and finance the entire proposed budget. Councilor Kraus SECONDED the motion.***

Councilor Niman said the intention of the motion was not to commit the Town to expend any funds, but to charge the Oyster River Restoration Task Group with getting a firm cost estimate, and to determine if it was true that Federal and state governments would pay for the vast majority of the project.

He said he anticipated that the group would identify the costs and benefits to the Town, and said once there were firm numbers, the Council could decide where to go from there. He said at present, there wasn't enough information to determine this.

Councilor Kraus remarked facetiously that restoring the channel would open the soft underbelly of Durham to “motorized persons” from other towns. He said it was important that the task force address recreational issues among other issues, and to consider the possibility that this might change the character of Durham in a certain sense.

Councilor Needell said he would be very hesitant to think of this issue strictly in terms of the recreational arguments. He said the argument he had found most compelling was the ecological one--that the changes to the ecosystem of the Oyster River had occurred recently and rapidly. He said he would like that issue to be pushed even harder, and said it was justification for moving on with the project.

Councilor Van Asselt asked if there was really any value in having the Council endorse this statement, and also said he was nervous that endorsement meant support for the project.

Councilor Niman said Ms. Spang had told him the endorsement would be helpful in getting grant moneys. He said he shared the concerns expressed by other Councilors that once a project got going it could take on a life of its own. But he said there were recreational and ecological benefits from the project, and if it were possible to get someone else to pay for it, it would be foolish to not at least take the next step. He said he wanted the task force to go and look for money and to not expect the Town to provide money, but he noted he was not saying the Town wouldn't provide money.

Councilor Carroll said the report provided a lot of background on the issue, and said it was clear that it was important to move forward. She said it was Durham's river in a sense, and said as good stewards, it was up to the Town to do this. She said it was great to look for grants, but she didn't agree with the idea that someone else should pay for the things the Town needed. She noted that Federal grant money was in part theirs anyway, and also said the idea that the Town should provide money for the project shouldn't stop it now or in the future.

***Councilor Julian Smith MOVED to amend the last clause of the original motion to say "...and find financing for the entire proposed project. " The motion was SECONDED by Councilor Kraus, and PASSED 8-1, with Councilor Peter Smith voting against it.***

Councilor Peter Smith said he would oppose Councilor Niman's original motion. He noted that a group of citizens had spent a substantial amount of time on this project, and said he supported and respected this. He said what he would now say was in no way meant to take away from this admiration, But he said he thought the Council was jumping massively into something without knowing where it was going.

Councilor Smith said he believed that what the Council had endorsed in 2000 was a project by private citizens to explore the issue and to develop information on dredging the Oyster River. He said it was not an endorsement of the dredging itself, and noted the Master Plan did not recommend dredging the river, although it had recommended considering dredging Jackson's Landing to create more depth for launching of boats.

Councilor Smith said the motion on the table didn't speak about endorsing the study, or further study, it endorsed dredging of the river. He said although it might be argued that the words "in concept" detracted from the force of the statement, this was not nearly enough for him.

He said what the Council would be doing if it passed this motion was to endorse dredging the river without any further detail or parameters as to what that meant. He said it would say to the task force, please identify funding, obtain permits, and please finance the entire project. He noted that the river was not privately owned, and was not owned by the Town, and said it was not clear whether it was the territory of the Federal government.

He said to pass this motion without having the Council do a detailed examination of the reasons for thinking the dredging was a good idea, and without knowing the validity of

factual data that would support this, was irresponsible.

Councilor Smith read through some of the findings of the report. He said the finding that the Oyster River could not be navigated by motorboat 3-4 hours on either side of low tide was a false statement. He also spoke about the finding that the Fire Department, Coast Guard, and Marine Patrol would not attempt rescues on the river because of a lack of a channel. He provided details on the illogic of the statement, and also said it was simply false. He said it seemed that the statement was trying to say this was an urgent initiative.

He said he had been associated with the Oyster River for 65 years. He noted the sarcasm of Councilor Kraus's statement, but said there was some logic at the bottom of his statement on page 4. He said the river was narrow for the most part, with an irregular channel, and provided details on this. He said this was a tidal river, and that there were some very important issues that needed to be explored in looking at what the best use of the river was. He said at the barest minimum there should be public hearings on this issue.

Councilor Smith read from an article in the *New York Times* about the work that the Army Corps of Engineers was doing in New Orleans. He said to go ahead with the Oyster River project now, knowing what was going on in other parts of the country at present, would be as irresponsible a thing to consider as anything he had seen while he had been on the Town Council.

Councilor Morong said he had been convinced of the merits of the project by the task force at one point, but said he had reservations based on his own experience out on the river at low tide. He said Councilor Smith had brought up some points with merit, and said he would vote against the endorsement motion.

Councilor Needell said he was prepared to support Councilor Niman's motion. He said there had been three presentations on the issue, so there was ample time for public comments on the report. Concerning the issues now being raised, he said he had not heard these mentioned previously, and said they did raise questions.

He suggested removal of the word "entire" from the motion, noting he thought it was inappropriate to endorse something and say someone else should pay for it.

***Councilor Needell MOVED to amend the original motion, by removing the word "entire". Councilor Carroll SECONDED the motion.***

Councilor Julian Smith said at the August 15, 2005 Council meeting, he had spoken in favor of dredging the river, and said he was still in favor of this, even if the Town had to supply some of the funds. He said whether leaving out the word "entire" or not, this did not abrogate the Town from paying some of the money for the project.

Councilor Peter Smith said he would vote against the motion because he knew all the other things in the Town that needed to be done. He said while he agreed with Councilor Carroll concerning the underlying philosophical position, this issue was far down the line in terms of priorities, and he said he would never be willing to appropriate any of the peoples' money for it at the present time.

Councilor Morong said he would vote in favor of striking the word "entire". He said he did believe there was siltation, and was concerned about the ecological issues, noting he had oystered on the river in years past. He also said he would like to think the basic report was correct, but said he would like to find out more before endorsing the original motion.

***The motion to amend PASSED 5-4, with Councilors Peter Smith, Julian Smith, Kraus and Sandberg voting against it.***

Councilor Kraus said Councilor Peter Smith's comments were right on target, and said particularly compelling were his comments about the context of what was going on in other parts of the country, and about the way Durham spent its money. Councilor Kraus said he would vote against the motion. He said this was another Packers Falls Bridge project waiting to bloom, where the funding and planning wouldn't come forward, and Town staff would be diverted to it from other projects.

Councilor Niman provided some background on the development of the motion in question, and noted that the first sentence in it replicated what was voted on in 2000. He also said, in response to Councilor Peter Smith, that he was interested in the idea of empowering citizens. He noted the work of the Land Protection Working Group, and said that they obtained funding for projects, and then asked the Council to vote on them. He said this situation was basically the same thing. He also said there was no way to respond to Councilor Peter Smith's comment about New Orleans, and the idea of wasting of money.

Councilor Julian Smith said he admired Councilor Smith's passion on this issue, and said if the claim concerning not being able to rescue people was correct, he was glad this had been caught. But he said the permitting process would provide plenty of opportunity for people against the dredging to have their say. He said that given the history and importance of the Oyster River, this was a battle worth having. He said he would support Councilor Niman's motion.

Councilor Carroll said she agreed the Council needed a lot more information, including answers to questions that had been brought up this evening, and said she would like to know how they got in the report. But she said even if it turned out some of the findings in the report were incorrect, this would not change her opinion, or her vote.

She said she didn't think dredging should be associated with self-indulgence, and said if one was talking about the health of the river, this was good stewardship. Concerning the reference to New Orleans, Councilor Carroll said if there was grant money still available, it should be used for the common good, for the river.

Councilor Van Asselt suggested the present motion should be tabled, and said there should be some public work sessions on this issue in order to understand it better. He said the Council could then decide how it felt about it. He said the Council owed this to the issue, if nothing else.

Administrator Selig said he had been planning to say very little on this, until the word "entire" was removed. He said he would endorse Councilor Van Asselt's suggestion, and said it was the only prudent way to proceed. He said the first question was whether the Council

was ready to endorse the idea of dredging the river. But he said if the Council passed this motion, it was saying it was ready to endorse this at any cost, and noted that at present there was no idea of what these costs would be.

He said an important question was whether the Council had enough information, and said if it didn't, it shouldn't endorse this, and should take additional time to get the information it needed. He said another issue was that it was problematic to ask a private task force to represent the Town, and he provided details on this. He said the Council should not feel driven to move ahead, and said this issue could be discussed in a more informal way with members of the task force.

Chair Sandberg said he shared the passion of others on this issue, explaining that he had been on the Oyster River for 35 years, and had witnessed the siltation that had occurred. He said he knew for a fact that the river could not be navigated as well as it could have been 30 years ago, and said he had no doubt it was changing.

He said this issue needed further study, and that it would be premature to endorse the motion. He said while he had read the report with great respect, and understood that the Town needed to be thinking in terms of stewardship of the river, the language in the motion was not the same as what Councilor Niman had said the Council's goals should be concerning this issue. He provided details on this.

He said he would encourage the task force to continue to investigate this issue, and to come back with firm numbers, sources of funding, and a realistic scheme. He said he didn't think the task force should be told to solicit funding, noting this was done with the bike path, and the Town ended up spending thousands of dollars that were wasted and was distracted from other important issues.

He urged the Council to not vote on this motion, and said it was appropriate to postpone action on this matter indefinitely pending receipt of additional information. He said his impassioned plea was for the Council not to go down this path that evening.

Councilor Needell said his impression was that taking out "entire" was in no way committing the Town to spend any money at any time in the future. He said the present motion did not commit the Council to fund anything until it knew what it was funding, and said his intention with the wording change was to not rule out that the Town would participate in funding if it chose to.

He said he was sympathetic to Chair Sandberg's comments, especially his perspective on previous run-ins with Federal grants, and said he had no objection to postponing action so people could be more comfortable with the level of information. He said there was time for this.

Councilor Niman said he had never endorsed anything without looking at the cost, noting that as an economist, this made no sense. He said he hoped Administrator Selig remembered his comments when the Council discussed the University agreements.

***Councilor Niman MOVED to postpone action on this item indefinitely. Councilor Van***



***Asselt SECONDED the motion.***

Councilor Carroll asked for clarification on what it meant to postpone action on this matter indefinitely.

Chair Sandberg explained that the issue was put aside indefinitely, until someone chose to bring it back in a different form.

Councilor Carroll noted that Councilor Van Asselt had said that January might be a good time to have a work session to look at the issue in detail.

Administrator Selig said any Councilor could request, at any time, that an issue be brought up again, and placed on a future agenda.

There was discussion on what a previous Town Council had recommended concerning this issue. Councilor Peter Smith said he was at that meeting in 2000 and remembered that the Council had charged a study, not dredging of the river.

Councilor Van Asselt said this was a great example of the need for a work session. He said his understanding was the Oyster River was an important part of Durham, and said the issue should be looked at in more detail.

Councilor Carroll said although she had previously announced her intention to vote for the original motion, she had decided to wait, in order to give this issue more time. She asked what the role of the task force would be now if this were postponed.

Chair Sandberg said members of this group and others with interest in this issue should decide where to go from here, and could develop a new charge.

Administrator Selig said the members of the task force had devoted a tremendous amount of time to this issue, and had been frustrated because they submitted their report some time ago, and nothing had happened. He said the Council should make sure it didn't squander the valuable resources these people were to the Town, and that the Council should continue to talk about this issue, in a deliberate and careful way.

***Councilor Van Asselt called the question. Councilor Julian Smith SECONDED the motion, and it FAILED 5-4 (not a two thirds vote), with Councilor Kraus, Van Asselt, Carroll, Niman, and Sandberg voting in favor of it, and Councilors Peter Smith, Julian Smith, Needell and Morong voting against it.***

Councilor Morong said he was upset that there was deliberate deception in the report, and said this was a serious issue. He said the task force would have to work to get his trust that there were not additional deceptions in the report.

Councilor Julian Smith said he would like to speak against postponement. He said the Council was giving a bad message to citizens/groups that put so much effort into this project, and said the Council was close to acting in a shabby way.

Councilor Kraus said he would vote against postponement, and described this issue as a "tar pit" of added taxation for Durham citizens.

***The motion PASSED 7-2, with Councilors Julian Smith and Kraus voting against it.***

At 8:40, Chair Sandberg called for a six-minute recess.

- D. Shall the Town Council authorize the Town Administrator to enter into agreements with the University of New Hampshire for water/wastewater, school, and fire services?

Administrator Selig provided background on the negotiations conducted with the University concerning the fire, water/wastewater and school agreements.

Chair Sandberg asked if it was Administrator Selig's preference that the Council deliberate on all three agreements under one motion.

Administrator Selig said yes, noting that the terms with the University were such that all the agreements must be agreed on together. He said it was an all or nothing situation.

Councilor Van Asselt asked why this was the case.

Administrator Selig said the Town's negotiating team felt it could gain the most leverage by combining the agreements, noting it had been clear they would be more successful in some areas than others.

Chair Sandberg provided clarification that if a Councilor voted against a motion on one of the agreements, he/she would be voting against all three agreements.

Councilor Peter Smith said there wasn't anything in any of the agreements, or other documents, which actually stated that.

Administrator Selig said that was true, but said if the Council approved some but not all the agreements, he knew that the University would not approve any of the agreements.

Councilor Peter Smith said if the Town voted for 2 of 3 agreements, it would be the first time the University would be faced with a situation like this. He said it hadn't really been tested what the University would do in this situation, and how this might affect negotiations.

Administrator Selig provided details on his role as lead negotiator, and on the role of the negotiating team. He said he was recommending approval of the agreements as a package, and noted he had portrayed this to the Council previously.

There was continued detailed discussion about the idea of handling all three agreements together as a package.

Councilor Julian Smith noted the identical use of the "Whereas" statements in all of the agreements. He said given the spirit of these phrases, it struck him as odd that the University would then take an all or nothing position concerning the agreements.

***Councilor Peter Smith MOVED to enter into a new service agreement with UNH for Fire Protection Services. The motion was SECONDED by Councilor Julian Smith.***

Councilor Peter Smith noted that the critical language in the Fire Agreement that allowed it to be reopened within 10-year period was regarding possible changes that materially affected the overall equity and fairness of the agreement. He said the critical word there was “changes”.

He said he believed that with the Fire Agreement, the Town was currently at a disadvantage because it didn't have a good deal of data, which if it had, would put the Town at a different negotiating posture.

He noted his previous discussion as to where in Town the Fire Department delivered services, and his belief that there was a massively greater use of these services by students. He said it was unrealistic to say that the tax base from properties in Town housing students paid for those services, but said that currently, the data on this was incomplete.

Councilor Peter Smith said his concern was that if the Council got accurate information concerning this, which he hoped it would get over a period of time, there would still be a question as to whether this was information it could legitimately claim was a change that affected the overall equity of the Fire Agreement. He said there was a concern that the University might say this was not a change of conditions, and therefore was not the basis for revising the agreement.

Chair Sandberg asked what Councilor Smith would recommend to address this.

Councilor Smith said one thing that should constitute a change would be the ability to get old data. He said if he had confidence that that could be included in the agreement, this would eliminate the biggest problem he had with the Fire Agreement.

There was detailed discussion about this, and about possible wording changes to the motion, and whether this was even needed.

Administrator Selig said he didn't believe that having new information would reopen the agreements, but said he believed there were other factors such as increasing taxes, calls for service, and staffing patterns that could be the impetus to reopen it.

There was discussion about the Town's ability to dissolve the agreement, and whether it was a practical option.

Councilor Niman said he agreed with Councilor Smith that there was a serious problem with the agreements, but said he would go further, and would say there was nothing fair about them in the first place. He said he was surprised at their tone, and said it would be very difficult to reopen these agreements.

He said he disagreed that the agreements made Durham better off, and also questioned in detail why this was being done as a package. He said the reason he thought they were unfair was that he didn't agree with the incremental approach. He said he didn't know if it was in the

Town's best interest to reopen negotiations, noting the time already spent on the agreements by Town staff. He said because staff was diverted in this way, they hadn't had time to address other needs in Town.

Councilor Niman said he thought a strategy should be outlined to show how the Town could be in a better position some other way than by re-negotiating agreements.

Chair Sandberg asked Councilors to specifically address the Fire Agreement.

Councilor Julian Smith noted the Town had two years' notice to vacate the fire building, and said that given the difficulty of making decisions in Durham, it was hard to see how this could be accomplished in two years. He said the University needed the Town's fire department, so probably wouldn't throw it out. But he said there were dozens of other issues in the Fire Agreement, large and small, that needed to be looked at, and said he thought it should be sent back to the University with the message that the Town Council wasn't buying it.

Chair Sandberg noted under the present agreement, the Town had four more years, and said the 2 years came after that.

Councilor Niman provided a handout to Councilors, and then spoke in detail about his disappointment with the cost figures in the Fire Agreement. He then discussed what might be done with it. He said with the current 50/50 split, there was no incentive to reduce the number of calls for service, and said theoretically these calls could increase exponentially.

He noted the significant number of false alarms, but said it wouldn't be that difficult to better manage these calls through educational efforts, in order to cost split between the Town and the University down to below 50/50. He provided details on this, and asked other Councilors why the Town needed the current agreement, when by adopting sound management approaches it could reduce its share of the Fire Department budget.

Councilor Peter Smith said they had no idea how much these numbers could be reduced, although noting that anything the Town could do to make the Fire Department more efficient was something it should do. But he said even if this were undertaken, he didn't see why the Council shouldn't be getting more information from the University. He said he still had a sense that beyond efficiency, the central difficulty was that what was listed under Town calls for service was a good amount of University related calls.

Councilor Smith said he didn't believe the Town could make that argument until there was the data to make it. He noted he agreed with what Councilor Niman said about attempting to manage calls for service to make things more efficient, but said efficiency didn't necessarily provide guidance as to whether the Council should accept the agreement or not.

Councilor Needell said there was an economic incentive to reduce calls, regardless of how things were apportioned. He also said he did not think that either entity was trying to take advantage of the other concerning this. He said he wasn't sure the Council had a good rationale for saying what the cost split should be. He said the ways used in the past, which were flawed, kept coming back to about 50/50, and said he accepted that as the best ratio

they currently had. He provided details on this.

Administrator Selig said the Fire Department had been trying to bring down the number of calls for service, but said despite these efforts, it had not been able to affect a dramatic decrease in false alarms. He said if the Town were truly willing to go to the lengths necessary to break away from the University, this would give it a tremendous amount of leverage. He said the University didn't believe the Town was willing to do that, and said that frankly, he didn't either. He said to get that type of leverage, the Town would truly have to be willing to make some drastic changes.

Chair Sandberg provided details on why he didn't think the Council would be willing to do that.

Administrator Selig said breaking away would mean a dramatic decrease in firefighters and apparatus, and would mean the Town would have to build its own fire department facility, which would be very costly. He said downtown business owners would very quickly be saying their businesses were at risk, and said he was not confident the community would support the decrease in the level of service.

Councilor Niman noted the focus of the Fire Department on response time. He said if safety was equated to this, it might make sense to put the station in a place where the Department could respond faster. He said he would like to explore the idea of putting a station in a location that was safer for Durham citizens. Councilor Niman provided details on how he saw the water agreement, and said he couldn't support it. He related this to his perspective on the Fire Agreement.

Chair Sandberg asked if the Town had the obligation to provide fire protection service to the entire town, regardless of whether the University helped fund the Fire Department or not,

Interim Fire Chief Mike Blake said the Town did have the obligation to provide services to anyone within the town boundaries.

Chair Sandberg said this, and the fact that the University contributed to paying for the Fire Department, was not a bad thing. He said the University had stepped up to the plate in offering to pay 50%. He provided details on all the things that needed to be considered concerning this agreement.

There was discussion about the fact that the 50/50 split wouldn't happen until 2008.

Mr. Beaudoin explained that the University had been successful in lowering its call volume in a number of ways, including using better alarms and making sure Resident Advisors were more cognizant of the problems. He said this had brought their call volume down, so the Town was happy to get the 50/50 split phased in.

Administrator Selig noted that with the increasing amount of elderly housing in Durham, this also impacted calls for service.

Councilor Peter Smith proposed adding language in the motion that said the parties agreed

that the word “changes” would be construed to include the future collection of data respecting how and by whom fire services were used. He provided details on this.

Councilor Needell said while he agreed the current language didn't determine what "changes" meant, he said he was not sure any language change was going to make it any more likely that an agreement could be re-negotiated. He said the Town and the University were at the mercy of each other to act in good faith.

Administrator Selig provided details on the impetus for the current language.

Councilor Peter Smith said he didn't disagree with what Administrator Selig had said. He asked him what he believed the University would say if the Town went to the University with the kind of data that might well exist.

Administrator Selig said he would think the answer had more to do with politics than data, and he elaborated on this point.

Councilor Needell said he would like to understand what was meant under 12 B and E of the agreement concerning the increased role of the UNH Vice President of Finance Administration.

Administrator Selig said the goal there was to have a way to ensure the University and the Town were actively communicating about financial issues concerning the Fire Department agreement (and the other agreements). He provided details on this.

Councilor Needell said this was inviting greater involvement and cognizance by the University of fire department issues, but he said when it came down to submission of the budget, the University's role was advisory. He said this was similar to the ability of the Planning Board to comment on University planning projects.

***Councilor Peter Smith moved to amend the motion by inserting language previously outlined “...the parties agree that the word ‘changes’ shall be construed to include the future collection of data respecting how and by whom fire services are used”. The motion FAILED for lack of a second.***

Chair Sandberg said Town staff and the University had put in a good faith effort to be fair and reasonable, and said for the Council not to move ahead with the Fire Agreement was not in the best interest of the Town. He said the 50/50 arrangement would cost less than the previous arrangement, and urged Councilors to adopt it.

***The original motion FAILED 4-4-1, with Councilors Peter Smith, Needell, Sandberg, and Carroll voting in favor of it, and Councilors Julian Smith, Van Asselt, Niman, and Morong voting against it, and Councilor Kraus abstaining. Chair Sandberg said the motion FAILED.***

Councilor Kraus stated that this was Alice in Wonderland and said he was the only councilor sitting at the table that was on the Council ten years ago when many of these agreements were originally signed. He said ten years was a long time, and these were ten

year agreements the Council was being asked to approve but yet he heard other councilors saying the Council can abrogate these agreements after a year and in effect it really doesn't mean ten years; it means whatever the Council wants it to mean. He said this was silly. Although there had been some discussions about these agreements there hadn't been really fulsome discussions and the Town was now seriously paying the price. He said he would abstain from all future votes and indicated his reason for the abstention was because the process was flawed. He took issue with Chair Sandberg for trying to cut him off in indicating in detail when others around the table had been allowed to continue on ad nauseam in detail and make multiple amendments. He said these amendments needed a much more thorough discussion before being voted on; otherwise this loony tunes situation of going back and forth would continue.

Chair Sandberg said it was not appropriate to speak on a motion after the vote was taken, and said he would remind Councilors to do this concerning the next agreements.

***Councilor Van Asselt MOVED to continue the meeting to September 21, 2005. The motion was SECONDED by Councilor Niman.***

There was a detailed discussion about the appropriateness, procedurally, of doing this, and also about what the meeting might involve. There was also detailed discussion about the process, going forward, of deliberating on the agreements, based on the vote that evening.

Administrator Selig said it did not bother him personally that the Council had voted down the Fire Agreement, noting they town staff had tried to do the best they could. But he said he wanted the Council to understand the reality that if the agreements were not approved, it would likely be a year before they would come back to the Council, because of staffing changes at the University.

There was discussion about the proper procedure for reconsidering the motion that had just failed.

***The motion to continue the meeting to September 21, 2005 PASSED unanimously 9-0.***

The meeting concluded at 10:30 PM.

Victoria Parmele, Minutes taker