

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

**DURHAM TOWN COUNCIL
WEDNESDAY, SEPTEMBER 21, 2005
(Continued Meeting of September 12, 2005)
DURHAM TOWN HALL – COUNCIL CHAMBERS
7:00 PM**

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

MEMBERS ABSENT: None

OTHERS PRESENT: Todd Selig, Town Administrator; Paul Beaudoin, Business Manager; Michael Lynch, Director of Public Works

I. Call to Order

Chair Sandberg said this was a continuation of the September 12, 2005 meeting, and that the Council had left off with Agenda Item X D concerning the proposed water/wastewater, fire services, and school agreements between the Town and the University. He said these would be addressed at the present meeting.

He noted that a motion made by Councilor Peter Smith at the September 12th meeting to endorse the fire agreement FAILED on a vote of 4-4-1, on a tie vote. He said the question now was how to proceed, and what direction the Council wanted to go in. He said there were two of the three agreements still outstanding.

Councilor Julian Smith suggested that before making any additional motions, Councilors could go around the table and describe their questions and thoughts on the agreements, and how the Council might proceed.

He said the idea was to have a strategy for getting things out in the open before repeating what had happened the previous week when the Council had separated out one-third of the agreement, and then didn't approve the motion on it. He said perhaps if the Council discussed all of the motions, it might get further with the entire process.

Chair Sandberg said the Council could reconsider the fire agreement if one out of the four people who voted against the motion moved to reconsider it. He said if one made such a motion and it was seconded, the mover would then state the case as to why the motion should be reconsidered.

He said if the Council did move to reconsider, it placed things back with the original motion made by Councilor Peter Smith to approve the fire agreement. He said at that point, the Council could either re-enter the debate or a Councilor could move to postpone taking action until after dealing with issues concerning the other two-thirds of the agreement. He said the Council could then vote on each of the components of the agreement or could vote on them all as a package.

He said the Council could also decide to move ahead and deal with the remaining two agreements. He said it was worth hearing from the Council on the options that were available.

Councilor Julian Smith asked if there was some danger that the Council would fall back into problems it had before if it reconsidered its negative vote on the fire agreement, and the motion failed.

Councilor Niman said before reconsidering the fire agreement, he would like to have the opportunity to explain why he didn't like the other two agreements and to discuss this with Councilors. He said he would also like to discuss strategies for moving forward.

Councilor Peter Smith said he had made the motion at the September 12th meeting to sever the fire agreement from the other agreements because he thought this was a more intelligent way to proceed in order to be able to focus on each of the agreements. He provided additional details on his perspective concerning this.

Councilor Julian Smith said he hoped that before the meeting was over, the Council could send Administrator Selig back to negotiate with the University with a strong sense of the Council's reactions to the proposed agreements. He suggested that if the Council couldn't agree on how to proceed by the end of the evening, it might consider holding a public hearing on the agreements. He said as part of this, he would like to see discussion on various aspects of the cost to the Town of having the University.

Chair Sandberg repeated the choices before the Council at present concerning the agreements.

Administrator Selig said he had taken some time to review the agreements as well as previous discussion on the negotiations by the Council, including what some Councilors thought was wrong with the agreements. He provided a detailed account of many of the comments made previously by Councilors, as well as the response of Town staff to these comments.

He said that based on feedback offered by the Council the previous year, he had tried to make some improvements to the agreements. He noted his April 2005 memo to the Council to update it on the status of the agreements, and then read through this for the Council.

Councilor Niman said what Administrator Selig described as a major breakthrough concerning the water agreement was something he considered a major blunder. He also noted the water agreement was raised late at the April meeting and said now he was being told that because the Council didn't complain about the agreement then, it didn't have the right to complain now. He said the issue hadn't been given the weight or the time it deserved.

Administrator Selig said he was simply trying to point out that there had been some dialogue with the Council on these agreements in the past. He also noted concerning the proposed water agreement that it was in keeping with the water quality study done which the Town and the University had adopted.

There was discussion on what the present water agreement said concerning the Town's ability to buy back development rights for water if it needed to in the future. Administrator Selig said the agreement didn't get specific about this. Councilor Morong said if the Town did this in the future, it could wind up spending more than if went in initially on owning some development rights.

Administrator Selig said that issue was off the table at the present time.

Councilor Peter Smith received clarification that the school and water agreements were on the table that evening, and that the Council might also possibly reconsider the fire agreement.

Councilor Peter Smith MOVED that the Town Council adopt the agreement known as the "School Agreement" between the Town of Durham and the University of New Hampshire. The motion was SECONDED by Councilor Needell.

Councilor Niman said he would like some clarification. He said the way the numbers in the school agreement were calculated, why should he think this agreement was fair and equitable. He discussed the numbers in detail.

Mr. Beaudoin described how these numbers were arrived at. He said the Town proposed that the University should pay \$11,000 per student and the average of what it cost the Town per student. He said their reply was to say it should be considered that if the 45 students were not there, how much less it would cost to operate the School District. He said its contention was that it would reimburse the Town for the marginal cost of the impact of those students on the Town.

He said a formula was developed, noting a problem with it was that the tuition numbers didn't adequately cover the cost of sending students to the School District. He said if the District charged a number closer to the actual cost, this would be good. He said a goal was to get the numbers higher, although the University didn't want to pay more than the marginal cost. He said the more the tuition numbers could be raised, the better things would work out for the Town.

Administrator Selig said it would be a good thing if the funding formula was changed, but noted the School District hadn't been willing to do this.

Councilor Needell said he was not saying the agreement was good because it was better, and said he thought it was inherently fair. He said by State law, one couldn't simply say the students should be sent somewhere else. He said this situation had to be looked at as a whole, and stated that it was the responsibility of the Town to educate those students. He also said it was the responsibility of the University to acknowledge this was a burden on the Town, and should compensate it for this.

He said a reasonable approach was to ask what the cost would be if this number of children came into the School District from somewhere else. He said although the tuition numbers weren't what the Council liked, this could change. He said the part of the agreement that was better, and was fair, was that it did result in a substantial increase in the payment to the Town. He said he would object to putting in a per capita charge, and said this was not the

way to fund education.

Administrator Selig noted that currently, when a student at the High School took a class at UNH, the University came up with a tuition amount and deducted this from what it paid the Town. He said the new agreement eliminated this, and said the University would discuss that issue directly with the District.

Councilor Morong said he disagreed with Councilor Needell in that he didn't have a problem with singling out University-related students. He said this was different than singling out a particular neighborhood.

He said that looking at the numbers, tuition should be what the cost was to Durham, not the marginal cost of what it cost the School District for additional kids. He said this was not a burden being shared by Madbury and Lee, and provided details on this. He said the burden to Durham taxpayers was what he was concerned with. He said it cost the taxpayers \$11,000 per student, and he thought that number was the one that should be used. He said he was not happy with the agreement but said that didn't mean he wouldn't vote for it.

Administrator Selig said he didn't disagree with this, explaining that the negotiating team made that argument, but the University said no. He said the negotiating team proceeded from there, and the University bought into the current proposed agreement.

Councilor Morong said he was not saying Town staff didn't negotiate the best deal it could, and said his point was that he didn't think there was a level playing field for negotiations.

Councilor Carroll asked why the University didn't deal with the School District separately concerning its K-12 kids, and why the Town couldn't say this should be done. She said she realized the Town would lose some money as a result of this, but said the question was why Durham residents were subsidizing the education of these students.

Councilor Van Asselt said he still didn't understand why the University wouldn't deal directly with the School District, and Mr. Beaudoin provided additional numbers on this. Administrator Selig said the negotiating team decided that Durham came out better with the present formula than having the University deal with the School District separately.

Mr. Beaudoin said the cost for the 45 students, wherever they lived, averaged about \$11,000. He said the marginal cost the University was trying to get to was what the cost impact would be if those students from Forest Park didn't exist.

Councilor Peter Smith said he understood the point made by Mr. Beaudoin that if the money for the students flowed through the School District rather than through the Town it would cost the Town money. However, he said it was essential that all Council members understand why that was, and said this needed to be laid out clearly.

He also said that a few years back there had been a joint meeting where there was discussion on why the School District allowed students to tuition in from other communities. He noted that at one time, the District did this quite a bit, but said it had now come down to only kids of faculty members.

There was discussion as to whether the tuition rates reflected actual costs. Councilor Niman said that when he was on the funding formula study committee, he had asked about raising tuition because it would be helpful to Durham.

Councilor Peter Smith said to the extent that this was the most appropriate way to judge what the Town should get from the University, the Town was losing out by not solving this problem with the School District. He said this was true regardless of how the Council voted on the school agreement.

He suggested a possible way to get at the marginal cost and its fairness. He said one could suppose that all 45 students left the School District, and then could consider what would happen when the district recognized they were gone. He said it could then be observed what the cost to the district would be the following week, and if the cost would suddenly drop significantly.

Mr. Beaudoin said he didn't think this would happen, and provided details on this.

Councilor Smith said he suspected there would likely be no change at all, or if there were a change, it would be because something like a special education teacher was no longer needed. He asked what the University would say about the marginal cost if those 45 students then came back.

He said his point in saying this was to show that there were different ideas of what money was to be spent on for schools, conceptual money as compared to real money. He said he was having trouble deciding the extent to which the marginal cost idea was fair, based on whether it was assessed on real money or conceptual money.

Councilor Julian Smith said if the students hypothetically left, Item #10 of the school agreement would kick in, and there would be new negotiations between the University and the Town. He said if the students came back, the Town would want to enter into new negotiations.

Councilor Needell said a simple point was that it was not the University's conception of marginal cost that impacted this agreement, it was the School District setting the tuition rate.

Councilor Kraus noted Councilor Peter Smith's comment about a meeting a few years back. He said he was at that meeting, and provided clarification concerning Councilor Smith's comments that UNH faculty were the only people who got tuition waivers. He said it was the teachers in the school who got waivers, not the people at the University.

Councilor Morong said this discussion was pointless, in that what Councilor Peter Smith had described was not how school budgets were developed. He said this didn't happen on a week-to-week basis.

In answer to a comment from Councilor Morong, Mr. Beaudoin admitted he had previously misspoken. He provided clarification concerning this, and there was further discussion with Councilor Morong. Mr. Beaudoin said based on the reality of the Town's agreement with the cooperative school district, and the tuition rates, if the 45 kids were sent directly to the school

district on a tuition basis, there would be no impact to the taxpayers.

Chair Sandberg said he would like to see Councilors argue why they would vote for or against the school agreement.

Councilor Niman provided numbers regarding the marginal cost issue, giving an example of a situation where there might have to be a significant outlay of money for students. He said in that case, the marginal cost would be of consequence.

He said there were two issues, and said the first was whether the Town could get out of the education business concerning Forest Park students. He said the second issue was whether this made sense.

Councilor Niman went through several RSA's that related to the current proposed school agreement, including what the Town's obligation was concerning the children of University faculty, and whether if it wanted to, it could get out of the education business.

There was detailed discussion about this, and about how the RSA's Councilor Niman had cited related to the present situation concerning the school agreement.

Chair Sandberg said the question was whether this discussion was germane to the question before the Council. He said that perhaps the question raised by Councilor Niman could be addressed through another venue, such as the courts.

Councilor Niman said he had brought this up because he in fact felt it was very germane. He said if there was an alternate way to raise funds or to remove the Town from having to bear the cost of Forest Park students, it would be prudent to explore these potential other avenues.

Councilor Peter Smith spoke in detail about Councilor Niman's comments. He said that while some of the provisions in his argument were very appealing, he had no doubt that 187-A:25 would override all of them. He noted this statute said these arguments couldn't be made with an institution that the State has decided to exempt from taxation. He also said these arguments would be more appealing if the whole tax system was not based on property taxes. He said he felt the line of thought Councilor Niman was using was not going anywhere.

Councilor Needell said if there were concerns about the way tuition was calculated, it was the tuition formula that should be changed, not the method of calculating it. He said he agreed it was unfair for Durham to have to absorb all the costs of students in University housing, and said this agreement got some money back. But he said he had no objection to having these students be part of the Durham community and the School District.

Councilor Julian Smith asked if there were any other tax-exempt institutions in the Town that put children into the school system. There was discussion about this. Councilor Smith asked Councilors to imagine that a church in Town created an orphanage, and the children needed to be educated so were put into the school system. He asked what recourse there would then be to recover costs for this.

Councilor Peter Smith said if the University established an orphanage, unless it was an

unusual type of orphanage, the Town could tax the University with respect to that, because it had nothing to do with the core purpose of the University.

Chair Sandberg said there was a negotiated agreement for school services, where the University had acknowledged it did have an obligation to assist with the funding of 45 students. He said unless Councilors had other specific questions to clarify the language before them, they should speak about why they wanted to vote for or against this agreement.

Councilor Van Asselt asked if Durham taxpayers subsidized the students of Forest Park to attend the School District. Mr. Beaudoin said they did not under the formula of this agreement.

Councilor Van Asselt said he thought the agreement needed to have a shorter term, and said perhaps it should be renegotiated every two to three years.

Administrator Selig said it was a tremendous time investment to work on these agreements. He said it was felt that ten years was a reasonable period of time, and noted the agreement also had a safety valve.

Councilor Van Asselt asked if there was a way to include language that required the parties to come to the table at a given point, say within 36 months, which would be other than when there were changes. He said ten years was a long time to live with an agreement.

Administrator Selig said he wanted the opportunity to think about this idea.

Councilor Peter Smith asked if Administrator Selig could explain what the substance was of the recent communication from Candice Corvey, regarding the paragraph he had discussed at the last meeting in the fire agreement and also the other two agreements.

Administrator Selig said Councilor Smith's question was whether the Town could re-open negotiations if new information came to light that provided a fresh perspective.

Administrator Selig said the University response was yes, and new language was suggested to address this: "or if important new information becomes available, the affected party may initiate....."

Concerning Councilor Van Asselt's comment, Administrator Selig said it was preferable not to be required to sit down and negotiate every few years, but instead to do so as important new information became available. He said with the suggested phrase, there could be discussions when they were needed. In answer to Chair Sandberg, Administrator Selig said he didn't think the phrase would be a problem for the University.

Councilor Smith asked if would also be in the spirit of the understanding with the University to substitute the word "relevant" for the word "important".

Administrator Selig said he thought the word needed to be weightier than "relevant" in order to create the need for discussion.

Councilor Smith said his problem with this was that he didn't want there to be a situation

where a party to the agreement said it wouldn't negotiate because the issue involved wasn't important enough to it.

He said it was reasonable that if one of the governing bodies thought there should be negotiation because there was information that made it relevant to the fairness in the formula, the other side should be willing to meet. He said he thought this was the fair way to approach this matter.

Administrator Selig said the word "relevant" was fine, but that it was important to remember the language worked both ways, and there no certainty that an agreement would be reached. Councilor Peter Smith asked Administrator Selig if he would agree that nothing in paragraph #10 would prevent the Town government from taking a particular position on legislation pending before the Legislature that would be relevant to these issues. He said he personally didn't see how it would.

Administrator Selig said he didn't believe introduction of legislation would affect this in any way. He noted Item #8 of the school agreement, concerning the University's exemption from taxation.

Councilor Julian Smith said he was quite bothered by #8 in this agreement and also in the other agreements, which meant that if the Town lobbied to change the regulatory status of the University to put the Town in a better position in terms of future agreements, the University had the right to cease payment. He said there should be discussion about this concerning all the agreements.

Chair Sandberg said it would be wise to keep in mind that the University had agreed to enter into this agreement willingly. He said the alternative to approving the agreement was to reject it and remain with the "Forest Park agreement", which was not as lucrative as this one.

Councilor Niman said he didn't understand Mr. Beaudoin's answer when he said the Town would not be subsidizing the cost of sending University students to the School District. He went through the numbers on this, and there was discussion on this with Mr. Beaudoin. Councilor Needell also provided his perspective on this.

Councilor Kraus called the question. It was SECONDED by Councilor Morong and FAILED 4-5, with Councilors Kraus, Carroll, Van Asset, and Morong voting for it, and Councilors Peter Smith Julian Smith, Needell, Niman, and Sandberg voting against it.

Councilor Kraus said he had called the question to see where things were headed that evening concerning the agreements.

There was a 5-minute recess, and the meeting reconvened at 9:01.

Councilor Peter Smith MOVED to amend paragraph 10 to insert the words starting at ".....agreement, or if relevant new information becomes available...." The motion was SECONDED by Councilor Needell.

Councilor Peter Smith said the concerns he had raised at the previous meeting had been satisfied.

The motion PASSED 6-3, with Councilors Kraus, Van Asselt, and Niman voting against it.

Chair Sandberg asked if there was further discussion on the original motion. There was discussion about whether the motion should be amended to include language to address the point made by Councilor Van Asselt about revisiting the agreement more often.

Councilor Peter Smith noted the reference to “UNH students” in the agreement, in several places, was confusing.

Councilor Peter Smith MOVED to amend the motion by inserting the following words “Children residing in UNH owned, tax exempt property” (hereinafter “children”) in paragraph 3 in line 4 and inserting the word “children” in line 5, also striking “UNH students”; and in paragraph 4 in two different places,- line 6 and line 8, inserting the word “children”, and striking the words “UNH students”. The motion was SECONDED by Councilor Julian Smith, and PASSED 7-2 with Councilors Niman and Van Asselt voting against it.

Councilor Niman said he would not support the original motion. He said he didn’t feel the State had the right to compel him to support UNH, and said it was not just the school agreement he was thinking of, but also the cost of other services. He said if the Town just took the money, it would find itself in the position in the future of saying it was not happy with the agreement, and having the University ask why the Town was complaining since it had signed the agreement. He said even if it cost the Town some money in the short term, not approving the agreement would get it to a more equitable solution.

Councilor Morong said he wished he had the luxury to assert his rights concerning this issue, but he didn’t as a Councilor. He said he supported Councilor Niman concerning the need to change the law, but said he didn’t think this was the time to be considering that.

Councilor Kraus said he would vote against the agreement, and also said he disagreed with the idea of having to vote for something even if one was against it. He said the Town could do better than this agreement, although thanking Town staff for their efforts.

Councilor Peter Smith said he would vote in favor of the agreement. He said he was not motivated to vote against it based on the broad argument Councilor Niman had made, which he believed was legally incorrect, and said he didn’t see that the fundamental laws on this would change.

He said he had difficulty with the degree to which the Town was burdened by the University, but said the University was also burdened by the way the State funded it. He said in the end, one had to determine whether enough progress was being made to warrant taking this step. He said he thought there was. He said he would vote for this, and would also support efforts to substantially improve the situation, legislatively and otherwise.

Councilor Needell said he intended to support the agreement, for the reasons he had

previously stated. He said he agreed that there were areas where the tax-exempt status of the University impacted Durham. But he said he had not heard anything that indicated that this agreement was unacceptable, and said he accepted the judgment of the negotiating team on this.

Councilor Carroll said she would vote for the agreement, although it was not an easy decision and noting this was a complicated issue. She said she would like to see an easier answer to this complicated question. She said the negotiating team worked very hard on this agreement.

There was discussion as to whether to include language in paragraph #10 to reflect Councilor Van Asselt's concerns. Councilor Van Asselt said this was not needed, noting he would vote no on the agreement. He also said Administrator Selig and Mr. Beaudoin had spent three years on the agreements, and said he did not think the Council should be rewriting them.

Councilor Peter Smith said Councilor Van Asselt was substantially mischaracterizing the suggested wording changes, stating that one was essentially grammatical, and the wording change to paragraph #10 simply gave more assurance to the Town that it could open up the agreement if new relevant information came to light.

The original motion PASSED 5-4, with Councilors Kraus, Julian Smith, Van Asselt, and Niman voting against it.

Water/Wastewater Agreement

Councilor Needell MOVED to adopt the Water and Wastewater Usage agreement between the Town of Durham and the University of New Hampshire. Councilor Peter Smith SECONDED the motion.

Councilor Van Asselt said he needed to leave the meeting because his daughter had been injured.

Councilor Van Asselt left the meeting at 9:27 pm.

Administrator Selig said he had reviewed this proposed agreement in the Council communication, and also had discussed it at the previous Council meeting. He said he had no further comments on it.

Councilor Needell asked Administrator Selig whether there was any change in his opinion of this agreement, standing alone without the other agreements.

Administrator Selig first noted again that the University would only consider these agreements as a package, and would not approve them if they were not. With respect to the water agreement, he said it was impossible to say how this agreement would have been approached if there was not discussion of the other two agreements. He explained that considering the agreements as a package provided flexibility and allowed tradeoffs. He said he felt the proposed agreement was good for the Town, and allowed it to pursue the water management plan.

Councilor Niman asked why the agreement said the University had the license for operation of the Lee Well, when the Town owned the well.

Administrator Selig explained that the University ran the Water Treatment Plant, so was awarded the license.

Councilor Niman asked about language that appeared in the original agreement that was missing in the new agreement concerning the Town and UNH agreeing that 150,000 gallons of water per day shall be reserved for new town nonresidential uses.

Mr. Beaudoin said because there was agreement to use best management practices, this didn't really need to be in the agreement with UNH moving forward.

Councilor Niman provided details on why a competitive approach concerning water supplies should be developed, where there could be one agreement for delivery of water, but a second agreement concerning where water would be bought from. He noted the water from the Lee Well was healthier than the water from the Oyster River, so the marginal cost of that water was less. He said the water users in Durham should get a benefit from the fact that the Town owned the well.

Administrator Selig said the proposed agreement accomplished this, and provided more detail. He said water users paid for what they used, and also said the agreement allowed water to be utilized in the optimum way, where when flows were plentiful, usage of the well was reduced, allowing it to recharge, and during low flows, the well was tapped into so the rivers could recharge.

He provided details on how expenses were apportioned in the water bills. He said rate payers were getting the benefit of the fact that the water from the Lee Well required less treatment than water from the Oyster River.

He said there had been considerable discussion as to how the water system could be viewed as one system. But he said he had concerns about this approach, because of potential capital costs involved with the Water Treatment Plant over time.

Councilor Niman asked if everyone paid the same price for water, regardless of how much it cost.

Administrator Selig said Durham rate payers paid less because of the segregated system. He said with an ideal system, Durham would run the whole system, and would determine the University's fair share. But he said the University was not inclined to give the Town the treatment plant, and the Town was not inclined to buy it. He said at the present time, there was a good arrangement for Durham rate payers.

Councilor Morong asked how Durham rate payers fared compared to other communities, noting this was important in his thinking on how to vote on the agreement.

Mr. Beaudoin said what Durham rate payers paid was in line with what they paid in other

communities in the area.

In answer to a question from Councilor Kraus, it was determined that Councilors Morong, Needell, and Van Asselt were on the water and wastewater system, and Administrator Selig was also on the system.

Councilor Needell asked why the water capital reserve account had been abolished.

Mr. Beaudoin explained that there was a reduction in the need to have a joint account because of a reduction in the amount of joint components to the system.

Chair Sandberg noted the Town would still have its own capital reserve account for water, and the University could have its own, but these were not part of this agreement.

Administrator Selig provided details on what the thinking was concerning this change.

Councilor Julian Smith noted the University held the license for water withdrawals, and asked if this applied to withdrawal of water from the Lamprey River, and if so, did this affect the Town's ability to challenge the State's restrictions on the amount of water than could be drawn down from the river at the Wiswall Dam impoundment.

Administrator Selig said the Town owned the rights to the water behind the dam, and said the Town and the University had jointly asked the State to revisit that restriction.

Councilor Julian Smith asked if there was therefore no reference to this in the agreement because it was a side issue being negotiated.

Administrator Selig said that was correct. He provided details on the ownership of the different portions of the system, which showed the complexity of the interrelationship between the Town and University water systems.

Councilor Julian Smith said that given the complexity of this relationship, he didn't understand why the Town had not agreed to begin negotiating a way out of the situation so that the system would be entirely owned and administered by the Town. He said he felt this would make sense, and said that in the best of all possible agreements, it would include language that moved the Town toward this. There was discussion about this.

Councilor Julian Smith said the Town was going to have to make significant repairs to the Wiswall Dam, and asked if this would lead to losing the capacity of the dam to store water.

Public Works Director Mike Lynch provided details on this. He said the initial engineering concerning the repairs would be done with divers, etc. so the impoundment wouldn't be impacted.

Administrator Selig said the changes were designed to have the most modest possible impact on the water. He noted that under the agreement, the Town was responsible for the cost of the repairs, and was pursuing grant funding to offset this.

Councilor Julian Smith said if the Wiswall Dam lost its water storage capacity, they would have to rely on the Lee Well and the Oyster River reservoir. He said he had heard questions from citizens as to when the Oyster River reservoir was going to be dredged, and noted it had been silting for many years.

He said he realized this issue was not addressed in the agreement, but said it was an issue to him that it wasn't. He said a study on this was needed, which would begin to move toward plans for dredging if necessary. He said it was issues like this that made him uneasy about the agreement, and said he was tending to not want to support it.

Administrator Selig said one of the potential improvements would be to dredge the impoundment behind the Oyster River dam. He said the University was not inclined to do this now, and provided details on this.

Councilor Kraus called the question, and it FAILED for lack of a second.

Councilor Niman said if there was not a specific charge for the water within the system, what was the incentive for the University to not to rely more heavily on the Lee Well, and to develop more water sources, as it grew. He said he wondered if this would create a problem down the road for the Town.

Administrator Selig said it was his view that the Town had more leverage, concerning water usage, than for other agreements, because the University used more water. He said if the University didn't cooperate, the Town could easily make a credible case easily beyond the boundaries of Durham to encourage the University to move ahead to develop additional water sources.

He also said the University was aware of the limitations of the system, and was are using technology to be more efficient, so even though there would be more construction, it might not directly equate to greater demand for water.

Councilor Niman noted the Town owned the water rights to the Lee Well and the Lamprey River, and asked if it also owned the rights to the Oyster River. Administrator Selig said that was unclear.

Councilor Niman asked what the rationale was for the policy decision to not charge for rights the Town owned.

Administrator Selig said if the Town went down that path, it would tend to work against a best management practices approach.

Councilor Carroll said when they talked about economic incentives to develop water sources, she hoped they would also talk more about increased economic incentives to conserve water resources.

Mr. Beaudoin said there had been discussion about the idea of the Town marketing water, noting among other things that they saw this might result in a lawsuit, or perhaps state legislation to protect the University. He said Town staff didn't see the upside of this

approach, and said the bottom line was that they were trying to use best management practices, and said the agreement would save water users some money.

Councilor Peter Smith MOVED to amend the original motion to include in paragraph 24, page 8, on the third to last line after the word “agreement”, “... or if relevant new information becomes available...” The motion was SECONDED by Councilor Morong, and PASSED unanimously 8-0.

The original motion as amended PASSED 5-3, with Councilors Julian Smith, Kraus, and Niman voting against it.

Chair Sandberg noted the fact that the University wanted to consider all three agreements as one package, and the fact that the Council had voted against the fire agreement. He said a motion would be needed to reconsider the fire agreement.

Councilor Peter Smith said now was the time to consider what he had suggested was a very relevant factor when he made the motion to sever the agreements, and take them separately. He said that based on what Administrator Selig had said, the University would refuse to consider the positive actions being taken that evening, if the Council didn't pass the third agreement.

He said he regretted this, but said the Council must therefore decide whether, despite disappointment with the University's attitude, it served the Town to take an action that it would otherwise not take, to revive its consideration of the fire agreement. He said it was his own view that the Council should do this.

Councilor Niman asked if he made a motion to reconsider, if this obligated him to then vote in favor of that motion. There was discussion about this, and it was determined he could vote either way.

Councilor Kraus said Councilor Peter Smith was in error, stating that it was very clear at the last meeting that if the Council didn't deal with the agreements as a package, the University would not accept them. He said recent letters from the University had simply confirmed this.

Councilor Peter Smith said he had misconstrued nothing regarding this. He said he moved to separate the agreements for a sensible procedural reason, and at the time pointed out the difficulties posed if the Council passed some but not all of the agreements. He said this difficulty was now plainly before them, because the University had stated it would not move forward unless the agreements were treated as a package.

Councilor Niman said he found Councilor Smith's arguments compelling, and said he was therefore inclined to reconsider the fire agreement. He noted Councilor Van Asselt was not present, so any motion to reconsider would therefore probably pass, and the fire agreement would also probably pass.

Councilor Van Asselt re-entered the meeting at this time.

There was detailed discussion about whether the fire agreement should be reconsidered and possibly re-debated that evening, since it was 10:30 pm.

Chair Sandberg asked Administrator Selig what would happen if the Council didn't decide on the fire agreement before the University Board of Trustees met. It was determined that it was likely the Trustees would approve the three agreements, contingent upon Council approval of the fire agreement.

Councilor Julian Smith MOVED to reconsider the vote on the fire agreement. Councilor Morong SECONDED the motion.

Councilor Niman MOVED to postpone the motion to reconsider until Monday, September 26th, 2005. Councilor Morong SECONDED the motion.

There was discussion on who would be able to attend that meeting, and whether it was necessary that all Councilors be present. Needell also said would vote against this,

The motion FAILED 0-9.

There was a 5-minute recess, and the meeting reconvened at 10:37 pm.

Councilor Kraus left the meeting during the recess.

Councilor Julian Smith said he had made his motion because he didn't want to leave Administrator Selig or the agreements in limbo. But he said he wished to have some discussion on the fire agreement. He noted he had voted against the agreement the previous week because he didn't feel there was sufficient discussion.

Councilor Morong said for similar reasons, he agreed the Council should reconsider the fire agreement, but said he also still had a lot of questions on it.

Councilor Niman said he agreed there was new information that warranted reconsidering the fire agreement, and also said that given the fact the Council had passed the other two agreements, it was in the public interest to reconsider this agreement.

The motion PASSED 7-1, with Councilor Van Asselt voting against it.

10:40 pm

Councilor Peter Smith MOVED to include in paragraph #20, line 8 after the word "agreement" "...or if relevant new information becomes available.." The motion was SECONDED by Councilor Julian Smith, and PASSED unanimously 8-0.

Councilor Morong MOVED to postpone action until such time as there was 100% attendance. The motion was SECONDED by Councilor Niman.

Councilor Morong said it was important that all Councilors weigh in on this agreement. He said he didn't blame Councilor Kraus for leaving, and said he didn't think this was the hour to do be deliberating on the agreement.

There was detailed discussion on when the meeting could be continued to, and whether it was necessary that all Council members be present for the vote on the fire agreement.

Councilor Needell MOVED to amend the motion, to postpone action on the fire agreement until the October 17th, 2005 meeting. Councilor Niman SECONDED the motion.

Councilor Morong asked if all the Councilors were not at the October 17th meeting, if action on the agreement could be postponed again. Chair Sandberg said that was correct.

Councilor Needell said he was concerned that more meetings would be needed, and there was discussion on this.

Chair Sandberg said if Councilors still had specific questions on the fire agreement, it was important to get answers to these so the Council could move forward with voting.

The motion PASSED 7-1, with Councilor Julian Smith voting against it.

The original motion as amended to have deliberation on the fire department agreement on October 17, 2005 PASSED unanimously 8-0.

Councilor Van Asselt MOVED to continue the current meeting until September 26, 2005. Councilor Niman SECONDED the motion.

There was detailed discussion on whether the deliberation on the Zoning Ordinance should be scheduled for a meeting when all Councilors could attend, given the weightiness of the matter.

The motion PASSED 5-3, with Councilors Peter Smith, Carroll, and Morong voting against it.

The meeting concluded at 10:56 pm

Victoria Parmele, Minutes taker