

This set of minutes was approved at the March 6, 2006, Town Council meeting.

DURHAM TOWN COUNCIL
MONDAY, FEBRUARY 6, 2006
DURHAM TOWN HALL – COUNCIL CHAMBERS
7:00 PM

MEMBERS PRESENT: Chair Malcolm Sandberg; Councilor Peter Smith; Councilor Kraus; Councilor Needell; Councilor Van Asselt; Councilor Julian Smith Councilor Carroll

MEMBERS ABSENT: Councilor Morong; Councilor Niman

OTHERS PRESENT: Town Administrator Todd Selig; Public Works Director Mike Lynch; Town Engineer David Cedarholm

I. Call to Order

Chairman Sandberg called the meeting to order at 7:05 PM.

II. Approval of Agenda

Councilor Kraus MOVED to approve the Agenda as submitted. The motion was SECONDED by Councilor Julian Smith, and PASSED unanimously 7-0.

III. Special Announcements

No special announcements

IV. Minutes

December 12, 2005

Page 8, insert as the 8th paragraph: “Chief Kurz said yes.”

Page 9, 4th paragraph, should read (which Councilor Peter Smith stated was illegal under...)

Page 11, motion on page should say “Councilor Niman SECONDED the motion.”

Pages 12, top paragraph, strike the sentence beginning “He asked how it was possible....”

Page 14, motion at top should read “...for the Town Council \$70,000 contingency be reduced.”

Page 19 - There was discussion that Councilor Peter Smith’s first motion on this page needed to be checked

Page 24 – in 5th paragraph, add word “trouble” before “absorbing”

Councilor Julian Smith MOVED to approve the proposed amendments to the December 12, 2005 Minutes, with the exception of the outstanding question concerning page 19. The motion was SECONDED by Councilor Kraus, and PASSED unanimously 7-0.

Councilor Needell MOVED to postpone final action on the December 12, 2005 Minutes until the question concerning page 19 could be answered. Councilor Kraus SECONDED the motion, and it PASSED unanimously 7-0.

December 19, 2005 Minutes

Councilor Kraus MOVED to approve the December 19, 2005 Minutes as submitted. The motion was SECONDED by Councilor Carroll.

Page 6, 2nd sentence in 3rd paragraph, should read “She said the people who pushed hard for this felt more people would turn out to vote if voting took place outside of the traditional school meeting, where those who turned out for school meetings were....”

Page 17, 4th paragraph, should say “...indicated a motion to remove \$100,000 from the Budget.

Page 21, motion at bottom, should read “The motion FAILED 2-7, with Chair Sandberg and Councilor Carroll voting in favor of it.

Councilor Julian Smith MOVED to approve the amendments to the December 19, 2005 Minutes. The motion was SECONDED by Councilor Kraus, and PASSED unanimously 7-0.

The December 19, 2005 Minutes as amended PASSED unanimously 7-0.

Administrator Selig said the correct wording on page 19 of the December 12, 2005 Minutes was “Councilor Peter Smith MOVED to amend the motion to delete Item #23...”

Councilor Peter Smith MOVED to reconsider the December 12, 2005 Minutes. The motion was SECONDED by Councilor Needell, and PASSED 7-0

Councilor Peter Smith MOVED to accept the amendment to the December 12, 2005 Minutes, with the change on page 19 to read “Councilor Peter Smith MOVED to amend the motion to delete Item #23...” . Councilor Kraus SECONDED the motion, and it PASSED unanimously 7-0.

Councilor Peter Smith MOVED to approve the December 12, 2005 Minutes as amended. Councilor Kraus SECONDED the motion, and it PASSED unanimously 7-0.

Jan 9th, 2005 Minutes

Councilor Julian Smith MOVED to approve the January 9, 2005 Minutes as submitted. The motion was SECONDED by Councilor Kraus.

Page 6, 3rd paragraph from bottom, should read “...noted that labor valued at \$2,000..”

Page 9, 3rd paragraph, should read “..and said, if people were..”

Page 19, 3rd paragraph from bottom, should read “..that one Council might have evaluated him...”

Councilor Julian Smith MOVED to approve the amendments to the January 9, 2005 Minutes. The motion was SECONDED by Councilor Kraus, and PASSED 5-0-2, with Councilor Carroll and Councilor Van Asselt abstaining because of their absence from this meeting.

The January 9, 2005 Minutes as amended PASSED 5-0-2, with Councilor Carroll and Councilor Van Asselt abstaining because of their absence from this meeting.

Dec 19th TC Minutes Nonpublic Minutes

Councilor Needell MOVED to approve the December 19, 2005 Nonpublic Minutes as submitted. The motion was SECONDED by Councilor Kraus, and PASSED unanimously 7-0.

Councilor Kraus MOVED to seal the December 19, 2005 Nonpublic Minutes. The motion was SECONDED by Councilor Julian Smith, and PASSED unanimously 7-0.

Councilor Kraus commended Victoria Parmele for the wonderful job she had done on the Minutes.

V. Report of Administrator

Administrator Selig said he was pleased to report that the League of Women Voters would be holding the upcoming Candidates Forum. He listed the candidates who were running for offices.

Administrator Selig said the Cooperative School District was in the process of hiring a new superintendent, and said Councilors were invited to meet with finalists for the position from 3:00-4:30 pm on February 14th. He said if the Council wanted to have a more personal meeting with the candidates, the School District was willing to do this, and said if the Council could provide him with feedback on this, he would put together a consensus document.

Councilor Carroll asked if the League of Women Voters was based in Durham, noting that there had been a very active one year ago, but it had disbanded.

Administrator Selig said in the past, the Forum was run alternately by the Main Street Program or DCAT. He noted that the Main Street Program was no longer in existence, and said DCAT was uncomfortable with having the responsibility of holding the Forum.

Councilor Peter Smith asked Administrator Selig to verify the existence of the League of Women Voters organization in Durham, stating that he had the same impression as Councilor Carroll, - that the organization had not been active in recent years. There was discussion about this.

III. Reports and Comments of Councilors

Councilor Needell updated the Council on recent and upcoming matters before the Planning Board.

- He explained that an amendment concerning vending machines had inadvertently been left off the Council's copy of Section B of the proposed Zoning Ordinance amendments, but said for the public hearing, the words would in fact be stricken.
- He said that at the Planning Board meeting on January 25th, there had been a presentation from the University on three developments that were planned, - the building of dorms at Forest Park, relocation of the daycare center from Forest Park to the Woodside Apartments, and construction of a new housing office. He said there had been substantial discussion on the impacts of these changes on traffic patterns and water use in Durham. He also said there had been a lengthy discussion on a long-standing agreement between the University and abutters to the Woodside Apartments as to what should happen in that neighborhood. He said the University had 30 days to respond concerning this, and also said the Planning Board planned on responding to the University by letter concerning issues that had been raised at the meeting.
- He said the Planning Board had approved its revised Rules of Procedure at its February 1st meeting, and he explained that as part of deliberations on this, the Board had decided not to make permanent the temporary change in the role of alternates, which meant that they would still be able to participate in deliberations.
- Councilor Needell said the Board would be reviewing the as-built site plans for the Hotel New Hampshire at its meeting on February 8th, and provided some detail on this. He said the Planning Board would be discussing possible approaches for Master Plan implementation at its meeting on February 8th.
- Councilor Needell said the following evening, the deliberative session on the Oyster River School District warrant articles would be held.

Councilor Julian Smith said the issue regarding DCAT and the Candidates Forum was that although DCAT had held this event the previous year and Dave Langley did a fine job, most members of DCAT thought it was inappropriate for a member of the DCAT Governance Committee to produce the program.

Councilor Peter Smith noted that some time ago, he had spoken to the Council about the work of the State's Right to Know Commission, regarding the Right to Know law. He said the Commission had drafted legislation that dealt with a major piece of the issue, and the House Judiciary Committee had held hearings and made some small amendments to the bill.

Councilor Smith said the legislation had recently been approved 260-40 in the House, and said the bill would now be going to the Senate, where hopefully there would be similar support there for it. He noted that there had been some vigorous editorials on the bill, which were consistently incorrect. Councilor Smith said this bill represented a major advance in the right to know law, and said if it passed, he would talk with Administrator Selig about doing some local education concerning it.

VII. Public Comments

There were no public comments.

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

Councilor Peter Smith asked that Items B and C be removed from the Unanimous Consent Agenda.

- A. Shall the Town Council schedule public hearings for its meeting of February 20, 2006 on the following sections of Ordinance #2005-06 relative to the additional amendments made by the Durham Planning to Chapter 175 "Zoning" of the Durham Town Charter:
 - 1. Ordinance #2005-06, Section (B) - to Implement the Master Plan Recommendations Dealing with the Non-Residential Zones.
 - 2. Ordinance #2005-06, Section (C) - Shoreland Protection Overlay District.
 - 3. Ordinance #2005-06, Section (D) - Wetland Conservation Overlay District.
 - 4. Ordinance #2005-06, Section (G) - Personal Wireless Service Facilities Overlay District.
- D. Shall the Town Council authorize the purchase of decorative street lights for the downtown sidewalk project?

Councilor Julian Smith MOVED to approve Unanimous Consent Agenda Items A and D. Councilor Kraus SECONDED the motion, and it PASSED unanimously 7-0.

- B. Shall the Town Council approve a water and sewer abatement request by Alpha Xi Delta Corporation and authorize the Town Administrator to sign said abatement?

Councilor Peter Smith said he was surprised by the breadth of the error in the reading of the water/sewer meter, and asked whether Administrator Selig could speak briefly on what the Town did on a routine basis to keep on top of the meters.

Administrator Selig provided details on the fact that the outside water/sewer meter had been faulty, and therefore had been giving false readings for several years. He said it had been decided to average out the past ten billing amounts, and bill the owners of the property for the average usage during this time.

Councilor Peter Smith asked who the responsible party was when something like this happened.

Administrator Selig said it was the Town's water meter, and it was the Town's responsibility to keep track of it.

There was discussion on the 312,285 cu. ft. figure, and whether it represented a cumulative error of the meter over time.

Chair Sandberg asked for details on the water/sewer measuring and reading devices, and also asked what the last time was when the devices had been reliably read.

Public Works Director Mike Lynch said the interior device measured the water, and sent the reading to the outside device, which his department then read. He said it was believed there was simply an error in the reading equipment, and the Department was trying to adjust it.

Chair Sandberg asked what the last time was when a Public Works Department employee had actually gone inside to the meter and read it directly. He said the cost of the water and sewer abatement to water and sewer users was large, and said he felt there should be some real data on it.

Administrator Selig explained that a service technician had found the discrepancy when he read the meter inside.

Councilor Peter Smith said it was important that someone with engineering experience should be coming up with the best possible data on this situation, and then should take this data to the Business Office, to translate this into a dollar amount.

Administrator Selig said he would find out more on when the last audit had been done, and if this information was available.

Councilor Kraus said this situation was a micro-issue that needed to be taken to a macro level, and was a wakeup call. He said it was important that other checks be made to see that this kind of thing didn't exist in other instances in Town.

Councilor Carroll asked how this error had been discovered, and also asked how it was that it went back 10 years. There was discussion about this.

Councilor Peter Smith MOVED to postpone action on Item IX. B. The motion was SECONDED by Councilor Kraus, and PASSED unanimously 7-0.

- C. Shall the Town Council approve a non-industrial sewer connection/extension application for the University of New Hampshire Daily Research building as recommended by the Department of Public Works?

Councilor Peter Smith said the bottom line with this application was that the University was saying that the same activities would be performed in the same way as had occurred in the building that was being replaced. He asked if it was correct that there would be no difference in the amount of wastewater flow, as a result of this.

Town Engineer David Cedarholm said it was correct that there would be the same use of the facility. He spoke about the use of the word "contention" in his Memo to the Council. He said

Mr. Cedarholm said the letter from Mr. Van Dessel hadn't made him completely comfortable concerning wastewater flows, explaining that he hadn't seen anything in it that provided data that

demonstrated there would be no greater water usage. He said given the fact that the connection was close to capacity, he was uneasy about this, and had therefore taken a tour of the facility. He said he discovered that there were very few activities that actually happened there, and noted that the labs there performed only dry analyses. He said he had concluded that the only wastewater flow related to the toilets.

Councilor Peter Smith said that assuming the wastewater collection system in that area was already at maximum capacity, the proposed use was so small that if it went over capacity, it would not be by much. But he recommended that in the future, Mr. Cedarholm provide to the Council documentation on the kind of additional information he had just provided, - about his concerns about the use of the word “contention” by the University, and the fact that he had checked this out.

Councilor Peter Smith MOVED to approve a non-industrial sewer connection/extension application for the University of New Hampshire Daily Research building as recommended by the Department of Public Works. Councilor Kraus SECONDED the motion, and it PASSED unanimously 7-0.

X. Unfinished Business

Shall the Town Council accept the additional minor amendments made by the Durham Planning Board to Ordinance #2005-06, Section #2005-06(F) – Relative to the Historic Overlay District contained within the Zoning Ordinance?

Chair Sandberg made note of the fact that at the previous Council meeting, he had urged postponement of this Item on the Agenda.

Councilor Van Asselt MOVED that proposed Ordinance #2005-06, Section #2005-06(F) – Relative to the Historic Overlay District contained within the Zoning Ordinance, be postponed until the March 6th 2006 TC meeting. The motion was SECONDED by Councilor Peter Smith.

Councilor Van Asselt said that at its February 1st meeting, the Historic District Commission had voted 5-0 that the Council defer action on this Ordinance until the document could be reviewed again, and then resubmitted. He explained that there were some drafting problems as well as wording problems that actually weakened the Ordinance, and said it made sense to take the changes recommended by Chair Sandberg and Councilor Peter Smith, rework the document, and then send it back to the Council. Councilor Van Asselt acknowledged in response to Councilor Kraus that he was aware of this situation because he was the Council representative to the Historic District Commission.

Councilor Needell said he had some procedural questions, noting that the amendments to this Ordinance had come from the Planning Board, not the HDC. He said he understood that whatever changes to the Ordinance came forth would be substantive, and would mean remanding it back to the Planning Board, and then the new Council, before the matter was resolved. He asked if would be cleaner to vote the amendments down and then resubmit a document, noting that this could be initiated by the Council.

Chair Sandberg said that technically, the Council didn't have anything before it on this other than a motion to postpone action. But he said the point was well taken about the role of the Planning Board in the process.

Councilor Needell provided additional details on what he saw as the procedural problems.

Councilor Peter Smith said he supported the motion. He said the process with this particular Ordinance was somewhat confusing because it had involved much more of the work of three bodies over the years than the other ordinances. He said it had gone through a series of permutations over the years, and also said he didn't think the planning consultant had played the same role concerning this Ordinance as he did with the others.

Councilor Smith said there was a substantial amount of work still to be done on it, but said he thought the Historic District subcommittee could clean it up in a few days. He said it would then go to the Planning Board in short order, and said he didn't think the Board would need to spend much time with it once it had been cleaned up.

Chair Sandberg noted that the Town Council was authorized to make minor substantive changes without having to go back to the Planning Board. He said it sounded like what Councilor Van Asselt had described didn't involve major changes to the Ordinance, and was meant to address some accuracy issues.

Councilor Peter Smith said reasonable people could disagree on how substantive the changes were, but said he would prefer to do as Councilor Van Asselt's motion suggested, which would avoid potential complications.

Chair Sandberg said he wanted to be sure that what the Council took up on March 6th reflected the sentiment of what the Planning Board intended the Council take up.

Councilor Van Asselt said it would, and said the changes would be coming from the Historic District subcommittee, made up of HDC members, Councilor Peter Smith, Chair Sandberg and others. He said it would be a cleaned up version of what the Planning Board had put before the Council, with the blessing of the HDC, which had spent several years on it.

Councilor Kraus said he didn't understand why Councilor Needell was so hung up on the process. He noted the statement Councilor Needell had made at the December 5th Council meeting concerning an issue, which reflected the fact that he wasn't hung up on process concerning that issue. Councilor Kraus said he concurred with Councilor Van Asselt's motion.

Councilor Needell provided clarification of his statement on December 5th. He then said there had been a huge amount of time available for these matters concerning the Historic District Overlay Ordinance to be raised, and said it was frustrating to see the Ordinance come back and forth at this point.

The motion PASSED unanimously 7-0.

XI. New Business

Other Business

Administrator Selig spoke again about the fact that the Oyster River School District had asked if the Council was interested in the Candidates Forum for the Supervisor position. He said it would be helpful to know if in fact the Council had an interest in this.

Councilor Peter Smith said this was an opportune time and a wonderful opportunity for the Council to meet the candidates, and to have a discussion on concerns the Town had. He said he didn't see any downside to this, and saw a potential upside, and said it could open the door for important collaborative efforts in the future.

Chair Sandberg said he preferred that there be a separate session with each candidate, in order to be able to ask probing questions.

Councilor Kraus concurred that the Council couldn't lose in meeting with the candidates, but said the questions asked needed to be well considered. He also noted it might be difficult to get candid answers.

There was discussion on whether there was interest in having a one on one discussion with the candidates, and whether this could be set up.

Councilor Peter Smith noted that the University had invited the Council to meet finalists for a key position a few years back, and said he welcomed this kind of opportunity now with the School District.

Councilor Needell said it should be made clear that it was individual Council members who were meeting with the candidates, and that this did not represent a consensus.

Councilor Kraus said there were significant differences between Councilors, and said that had to be considered in the context of this opportunity. He said there should be a consensus as to how this was going to be done.

8:26-8:35 Recess

XII. Nonpublic Session

Councilor Kraus MOVED to go into Nonpublic Session in accordance with RSA 91-A:3 II (a) and (c) relative to the annual evaluation for the Town Administrator. Councilor Julian Smith SECONDED the motion.

Councilor Peter Smith asked if it was Administrator Selig's preference to have this discussion in public or nonpublic session.

Administrator Selig said he would like to start the discussion in nonpublic session, and said if it then appeared it was appropriate to go into public session, he would be agreeable to this.

There was discussion as to whether Administrator Selig should stay during the evaluation process.

The motion PASSED on a roll call vote of 7-0 as follows:

| | | | |
|------------------------|------------|-------------------------|---------------|
| Julian Smith | AYE | Neil Niman | ABSENT |
| John Kraus | AYE | Malcolm Sandberg | AYE |
| Diana Carroll | AYE | Mark Morong | ABSENT |
| Karl Van Asselt | AYE | Jerry Needell | AYE |
| | | Peter Smith | AYE |

10:00 pm

Chair Sandberg noted that the Council had just come out of nonpublic session, and had been discussing personnel matters.

XII. Adjournment

Councilor Kraus MOVED To adjourn the meeting. The motion was SECONDED by Councilor Carroll, and PASSED unanimously 7-0.

Adjournment at 10:05 pm

Victoria Parmele, Minutes taker