

**This set of minutes was approved at the April 17, 2006 Town Council meeting.**

**DURHAM TOWN COUNCIL  
MONDAY, MARCH 20, 2006  
DURHAM TOWN HALL – COUNCIL CHAMBERS  
7:00 PM**

**MEMBERS PRESENT:** Councilor Niman; Councilor Peter Smith; Councilor Morong; Councilor Needell; Councilor Van Asselt; Councilor Julian Smith; Councilor Carroll; Councilor Catherine Leach; Councilor Henry Smith

**MEMBERS ABSENT:** None

**OTHERS PRESENT:** Town Administrator Todd Selig; Gail Jablonski, Financial Analyst; Town Clerk Lorrie Pitt; Public Works Director Mike Lynch

**I. Call to Order**

Councilor Niman explained that he was acting as chair pro tem of the old Council for the time being.

**II. Approval of Agenda**

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

**III. Swearing in of Council Members**

Administrator Selig said Town Clerk Lorrie Pitt was present to swear in new Council members Henry Smith and Catherine Leach. He said as was customary, this was also an opportunity for other Councilors to re-invoke their duties and responsibilities.

Ms. Pitt administered the oath of office to members of the Council.

Councilor Julian Smith noted there were now three Councilors whose last name was Smith, and asked if the Chair intended to call them by their first names to avoid confusion.

Councilor Niman agreed with this idea.

**IV. Selection of Council Chair and Chair Pro Tem**

*Councilor Peter Smith **MOVED** that Neil Niman be the Chair of the forthcoming Town Council year. Councilor Morong **SECONDED** the motion, and it **PASSED** unanimously 9-0.*

***Councilor Morong MOVED that Diana Carroll be the Chair Pro tem of the Council for the next year. The motion was SECONDED by Councilor Julian Smith, and PASSED unanimously 9-0.***

Councilor Niman thanked the Council for voting for him and Councilor Carroll, and said they looked forward to working with the Council productively this year.

**V. Special Announcements**  
None

**VI. Approval of Minutes**

February 20, 2006

***Councilor Van Asselt MOVED to approve the February 20, 2006 Minutes. The motion was SECONDED by Councilor Needell.***

***Councilor Needell MOVED to amend the February 20, 2006 Minutes by removing the wording on page 5, paragraph 4, “formal action by the Council”, and replacing it with “an amendment to the Charter”. The motion was SECONDED by Councilor Morong, and PASSED 7-0-2, with Councilor Henry Smith and Councilor Catherine Leach abstaining because they were not on the Council at the time of the February 20, 2006 meeting.***

***The February 20, 2006 Minutes as amended PASSED 7-0-2, with Councilor Henry Smith and Councilor Catherine Leach abstaining because they were not on the Council at the time of the February 20, 2006 meeting.***

**VII. Report of Administrator**

Administrator Selig said with the beginning of the new Council, he would be encouraging more citizens to sign up to the Town’s Listserv in order to receive his weekly Friday Updates, so it would not be necessary for him to spend as much time doing the Report of Administrator, and this time could be used for other kinds of communications.

He provided the following updates, which were also available in the Friday Updates:

- The Town has engaged the Sumner Davis architectural firm to determine if the current Town Hall facility will meet the Town’s needs in the long term; to look at ADA issues; and also to look at the idea of a combined Library/Town Office facility at the present location and at another location in Town, and what this might look like.
- There are a number of vacancies for Town boards and commissions; residents should go to the Town website for more information on this.
- The plan was to move forward with the modifications to the railings of the Packers Falls Bridge on May 17<sup>th</sup>. The roadway will be closed for about 3 weeks during construction.
- The Annual Spring Cleanup is scheduled to begin on Monday, May 1<sup>st</sup>.

Administrator Selig introduced the Town's Financial Analyst, Gail Jablonski to the community and the Council, noting that he was moving her name forward for appointment as the Town's Business Manager.

Administrator Selig explained that there had been a great deal of discussion statewide on the issue of mosquito control, regarding what towns and cities were doing to stop the spread of West Nile Virus and Eastern Equine Encephalitis. He said these were bird-borne diseases that were transmitted to humans by mosquitoes, and said the way to prevent the spread of these diseases was to treat the mosquitoes, or to inform the public of the reality of how the diseases were spread, and to encourage them to take proper precautions themselves.

He said the Town had submitted an application to the State Department of Health and Human Services, so that if the need arose, the Town would be able to apply the proper chemicals, either later or earlier in the season, depending on what the need was. He also said the Town planned an education effort as well.

Administrator Selig said he had scheduled a meeting with the University so the Town and the University could talk about this issue jointly. He also said he was planning to bring the issue forward as an Agenda item for the next Council meeting, so the Council could discuss possible approaches for dealing with the problem, and the cost ramifications of each. He said he would recommend a particular approach, but would provide a list of ways the Council could proceed if it disagreed with his approach. He said a public hearing would also allow input from the public on this issue.

Administrator Selig said he had sent an email to Councilors that day apprising them of the Right-to-Know law, concerning electronic communication. He noted that he always sent email or written letters to all Council members, and said all of this correspondence, with few exceptions, was public information. He said that if Councilors responded to these emails or letters, this was also public information. He said anything put in an email could possibly wind up in the paper, so Councilors should not be surprised if this happened.

Administrator Selig noted that the Town had a very liberal operating policy in terms of communication, so received very few right-to-know complaints from citizens.

## **VIII. Reports and Comments of Councilors**

Councilor Needell said that at its most recent meeting, the Planning Board had begun its review of the Master Plan recommendations, and development of implementation strategies for those recommendations that had not been implemented yet. He said they had made it through Chapter 1 at the meeting, and would review Chapter 2-3 at the next Board meeting.

He also said that Mr. Campbell had provided a Powerpoint presentation on the role of the Planning Board, which would be available for rebroadcast to the public.

Councilor Julian Smith said he had attended some Integrated Waste Management Advisory Committee meetings recently, as a member of the public, noting that he was interested in waste

management issues. He said the committee's spring newsletter was about to go to press, and contained some very helpful articles, including one written by Tracy Wood on the disposal of old medications. He said he hoped Administrator Selig would include information on this particular issue in his weekly update, because it was something the public should be reminded of occasionally.

Councilor Peter Smith said he wanted to speak briefly on the approval of Gail Jablonski as the new Financial Manager for the Town, stating that he wouldn't want it to simply slip by on the Unanimous Consent Agenda without further discussion. He said Ms. Jablonski, who he was sure would receive unanimous consent from the Council to assume the new position, had worked for the Town of Durham for almost 20 years, the last five of them in the Business Office.

He reminded the Council of the precarious state of that department for a number of years before that time, and said Ms. Jablonski was instrumental in cleaning up the mess and fixing things. He said in the succeeding years, she had been an incredibly valuable employee of the Town, and said it was good that in this instance the Town could reach within to select someone. He said he was fully confident that further search for a Business Manager was not necessary, because the right person was already here. He said the Town should be in very good hands for many years to come.

Chair Niman made note of one of the goal statements the Council had developed the previous year, concerning the idea of streamlining Council meetings. He said he would like input from other Council members on this under Other Business that evening, as to how they would like to see the format for the meetings change. He said he had some ideas on this as well, and said the Council would experiment with some new approaches, noting that if they didn't work, they could go back to the old way of doing things. He said the objective was to see if the Council could have more productive and expeditious meetings, and perhaps could make some policy.

#### **IX. Public Comments**

No public comments

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

Councilor Van Asselt asked that Items A be removed from the Unanimous Consent Agenda. Councilor Peter Smith asked that Item C be removed.

- B. Shall the Town Council authorize the Town Administrator to sign the Supplemental 2005 Property Tax Warrant as requested by the Town Assessor and Town Clerk-Tax Collector?
- D. Shall the Town Council approve the Special Events Permit application to close certain sections of Town roads to conduct a 5k road race on Saturday, April 8, 2006, as requested by the Oyster River High School "Friends of Oyster River Track"?

- E. Shall the Town Council confirm the appointment of Gail Jablonski as Business Manager as recommended by the Town Administrator?

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

- A. **RESOLUTION #2006-06** establishing regular Town Council meeting dates for April 2006 through March 2007

Councilor Van Asselt recommended that in addition to adopting this schedule, the Agenda for each meeting should include a planned work session for one hour before each Council meeting. He said if it was scheduled, it could be used if needed, but if it wasn't needed, could be taken off the agenda. He noted there had been discussion the previous year about having these kinds of extra sessions.

He said there were a lot of topics--housing policy, the impact fee schedule, water issues, and timber harvesting issues that some Councilors didn't have a detailed understanding of, and spoke specifically about the Oyster River dredging issue, where two well respected people had totally opposing views it at a Council meeting. He said he personally had sat there not knowing what the issue was about, yet was going to be asked to vote on it.

Councilor Van Asselt said it would be good to have these issues laid out in detail before the Council, so they would be dealing with a level playing field. He said if in Administrator Selig's judgment this kind of more detailed session wasn't needed on a particular issue, he could state this to the Council.

He provided clarification that what he had in mind was having a work session at 6:00 pm if one was needed on the night of a regular Council meeting. He said the work session would be put on the calendar and agenda for every meeting, to be held before the regular meeting, but if there were nothing specific to discuss, it would be taken off.

Councilor Carroll suggested that one Monday night per month could be considered a work session. She also stressed the importance of having technical people present at these sessions to discuss the issues with Councilors.

Councilor Peter Smith said he would be perfectly happy to allow additional time for work sessions, but said as someone who scheduled his appointments months in advance, it would be very inconvenient for him if the Council scheduled a work session, and then did not meet. He said he would like there to be a specific schedule, which in all likelihood would be followed.

Councilor Peter Smith also said he was strongly in favor of starting Council meetings at 6:30 pm at the earliest, explaining that it was very inconvenient to start meetings at 6:00 pm. He said he suspected this would be difficult for members of the public as well. He said he was also strongly in favor of treating the extra meetings as public meetings, like other Council meetings, which reinforced the importance of actually meeting when a work session was scheduled.

Councilor Morong said this discussion was long overdue, and said he would prefer to take some of the Mondays when the Council didn't meet and schedule meetings in advance. He also said they needed more than an hour, if they were really going to get into the details of a particular issue.

Councilor Needell agreed that an hour for a work session might not be enough. He suggested the idea of having a quarterly meeting, which was what the Planning Board did, or perhaps one extra meeting a month if the Council thought it would use it. He noted the impact of these extra meetings on Town staff, although stating that the Council might not feel the need for staff support for these extra meetings.

Chair Niman said they were really only talking about 6 extra meetings per year, from May through October.

Councilor Julian Smith said he was open to the ideas that had been presented. He also noted it was likely that there would be movement on the library issue, which might require a public hearing in the spring or summer.

There was further discussion on how to schedule the extra sessions. Administrator Selig suggested that the Council move ahead with the regular meeting schedule, and said a schedule could be developed separately for the other meetings. He also pointed out that the work sessions were not intended to resolve issues.

Councilor Peter Smith recommended not scheduling any work sessions after the month of September. He also said he hoped there could be a preliminary list of topics, and then some agreement on the scope of the work to be undertaken on them. He also suggested coming up with alternative dates.

Councilor Niman said he would schedule five work sessions, starting in May, and would come up with a list of topics.

Councilor Van Asselt said he appreciated this discussion, but didn't agree with the approach, stating that the Council had discussed the need for work sessions the previous year, but it didn't happen.

Chair Niman assured Councilor Van Asselt that he, Councilor Carroll, and Administrator Selig would come up with firm dates, as well as topics with his help, and this would be on the agenda for the next Council meeting.

***Councilor Peter Smith MOVED to adopt Resolution #2006-06 establishing the regular Town Council meeting dates for the period April 2006 through March 2007. Councilor Julian Smith SECONDED the motion.***

Councilor Peter Smith provided details on the fact that as had been the case for the past several years, a Council meeting was scheduled for February 19, 2007 even though it was a national holiday. He suggested the Council might want to change this.

After some discussion, there was no Council recommendation to change this date.

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

- C. Shall the Town Council authorize the Town Administrator to sign a contract with Underwood Engineering, Inc. for engineering services relative to the Madbury Road water line replacement project?

Councilor Peter Smith said he had wanted to take this item off the Unanimous Consent Agenda. He noted that if the amount appropriated for a project was over a certain amount, competitive bidding was required, although exceptions could be made to this. He said for this particular item, there had been a request that an exception be made, because the particular contractor involved was unusually qualified, and there would be several advantages to the Town of working with him.

Councilor Smith said he had some trepidation about this approach. He said first that the reasons expressed for why this contractor should be used seemed almost overdone, and provided details on this. He also said he was not sure what was in the memo was enough to overcome what could be a substantial difference in the cost of the project if it went out to competitive bid.

Councilor Smith also said that while the amount in question was set forth as being up to \$30,000, there was text that this was not a firm figure at all. He said apparently a firm figure couldn't be calculated at present, so it wasn't known whether another contractor could provide the same services for less than \$30,000. He also said as he read the document, the contractor was not bound to conform to the \$30,000 figure.

He said he agreed that knowledge of the contractor's skills was important in this case, but said they had nothing to compare it to. He said this was not an emergency item, and said he wondered if there was something to be gained by doing this on a competitive basis.

Councilor Leach asked if the amount of time the bid process would take was part of the concern.

Administrator Selig provided background on the proposed work, which was included in the approved Capital Improvement Program, and then provided a detailed explanation on why the Public Works Department felt this was the firm to go with. He noted that Mr. Metcalf had done a significant amount of work for the Town, and now worked for Underwood Engineering. He provided details on Mr. Metcalf's qualifications.

He said the wording "Not to exceed \$30,000" in the Council Communication concerning this project provided some flexibility in terms of what work the Public Works Department would provide, explaining that the Public Works Department planned to supplement the overall engineering cost of the project with in-house labor.

Councilor Morong pointed out that Underwood Engineering was the firm that had capped the Town landfill, and said this project had gone smoothly.

There was discussion about the work Wright Pierce had done for the Town.

Administrator Selig noted the relationship with this firm concerning a multi-phase improvement plan for the wastewater treatment plan, and said the Town had done this type of exclusive award many times with Wright Pierce. He also noted that Town Engineer had two jobs ago worked for Underwood Engineering, and had done the design work on the landfill. He said Mr. Cedarholm left to work for another firm, and the Town had hired him from that firm. He said the Town's relationship with Mr. Metcalf began when he worked for Dufresne Henry. He stressed that the interest in Underwood Engineering was not because Mr. Cedarholm had worked for this firm.

Councilor Needell said he didn't see where it said the cost of the project could go over \$30,000, and there was discussion on this.

Administrator Selig said it was on the second page of the Council Communication. He noted that the Public Works Department would monitor costs very carefully, and if the cost went over \$30,000, the Department would step in to contribute more in-house labor to ensure they stayed within the \$30,000 limit.

Councilor Needell asked if it was the case that if the cost for the project went over \$30,000, this would have to come back to the Council for approval, and Administrator Selig said that was correct. Councilor Needell then asked who owned the computer model Mr. Metcalf had developed of the Town's water system.

Public Works Director Mike Lynch stated that Mr. Metcalf owned it.

Councilor Needell said he assumed that Mr. Metcalf had developed this model as part of his previous work for the Town, and said he was concerned that this was a situation where it looked like it would always be appealing to use this model since it existed. He said in many situations where a model such as this was developed, the customer actually owned the model.

Mr. Lynch said Mr. Metcalf had developed the model when he worked as a water resource engineer for Dufresne Henry, and in fact had developed several models of community water systems. He said he had worked out an arrangement where he was the owner of these models.

Councilor Needell asked if the Town entered into an arrangement with another engineer, if it would have to start from scratch in terms of a model, or if it would have any rights to the model developed by Mr. Metcalf.

Councilor Peter Smith said he gathered that whatever the Town was paying Mr. Metcalf when he developed the model, it was not paying him for the model itself, but would like to know this for certain. He said the case was being made that no bidding was needed because Mr. Metcalf had special expertise, which he assumed other people in other firms would also assert that they had.

He said the preference was substantially based on the fact that it would cost the Town a considerable amount to have another model developed, and that Mr. Metcalf owned the model, and the Town did not.

Councilor Smith also noted the phrase in Administrator Selig's communication to the Council that Mr. Metcalf consulted with Town staff on a regular basis regarding Durham's water system,



“many times at no cost to the Town”, and asked if he was to infer that this was a key reason why the Town wanted to work with Mr. Metcalf.

Mr. Lynch said that was absolutely an accurate statement.

Councilor Peter Smith noted that the reason given that the cost of the project wouldn't go beyond \$30,000 was that the Town would absorb the remaining duties. He asked if Mr. Cedarholm would be able to do this, time wise, given other work he had to do.

Mr. Lynch said yes, noting other staff would be involved as well.

Administrator Selig said he had discussed these issues with Mr. Lynch the previous week, and among other things discussed, had asked for a list of all the engineering firms doing work for the Town, and their particular specialties. He provided this list to Council members.

Chair Niman said Administrator Selig's Council Communication had talked about the value of the computer model, which the Town didn't own. He said the Town would have a serious problem if something happened to Mr. Metcalf, and said it would be in the Town's best interest if it owned the model. He said he would like the Town to be able to have competitive bidding on projects, and said in this case, until the Town owned the model, it wasn't in a position to do this.

He stated that the Town hadn't had very good experiences lately with the bid process, noting this issue with the clarifier for the wastewater treatment plant. He said he was nervous about developing relationships with engineering firms without having a competitive bid process, and provided details on this. He said he therefore felt it was premature to vote on this item that evening.

Councilor Needell said this kind of situation was to him a red flag, and said he felt the Council should find out what the model was worth before going any further toward obtaining the model, noting that depending on its complexity, it could be something that was more costly than the contract itself, or might be something that wasn't that big a deal.

He also questioned what good it would be if the Town owned the model but didn't know how to use it, or didn't have the software to run it. He said it was worth considering whether buying the model was a viable approach, and if the Town had the desire to do this.

Councilor Morong said he did not think the Council should use this contract as a bludgeon against Underwood Engineering. He also said he had no problem with the idea of asking Mr. Metcalf if he would consider selling the model, and with the idea of the Town considering whether it would be useful to own it. He said if Mr. Metcalf didn't want to sell the model, the Town could go out and look for other firms to develop a model for the Town.

Councilor Peter Smith said he was inclined to think the Council should not vote on this. He said it was being set forth that the project would cost the Town considerably more money if it didn't use this model, and said he wanted to know absolutely whether or not the Town owned the model. He also said he didn't think a persuasive case had been made for not doing competitive

bidding. He said he didn't have any problem with recognizing the good work that Mr. Metcalf had done for the Town in the past, but said the situation was still too fuzzy for him.

Councilor Carroll asked Mr. Lynch if he had anything to add as to how the issue of the computer model fit into this matter.

Mr. Lynch said the Town definitely did not own the computer model, and it was owned by Mr. Metcalf.

Councilor Needell asked what the impact would be of not voting on this matter that evening.

Administrator Selig said it would not create an operational crisis if the Council didn't vote on this item that evening. But he explained that when the Town looked for professional services, it looked at what firm was best qualified. He said Mr. Metcalf had significant experience with the Town's water system and the University's water system, which was very important. He also said the pricing was competitive.

Councilor Needell asked if there was anything to be gained by postponing action on this item, and if there was any information the Council didn't have that would help it make a decision.

Administrator Selig said there would be water projects in the future, such as Spruce Hole, where there would be an opportunity to bring up the leverage issue. He said this project involved a water line replacement, and was one that many other firms could handle. He said Town staff had looked for the firm with the most experience, and said the Public Works Department was comfortable with Underwood Engineering.

He noted that Mr. Metcalf had done a lot of the modeling on the water behind the Wiswall Dam impoundment, and said there were a lot of synergies in continuing to use him. He acknowledged there had been some issues in recent months with another engineering firm, Wright Pierce, but said he had no concerns about Mr. Metcalf. He said the fact that he was also working on a number of University projects helped the Town, in terms of his familiarity with the water system as a whole.

Councilor Peter Smith said with the understanding that, for the reasons Mr. Lynch had given, the cost of the project would not go beyond \$30,000, and with the understanding from Administrator Selig that if the Town had to pick up more of the work, this would not interfere with other projects budgeted for this year, he was persuaded that this was not the time to take a stand.

***Councilor Morong MOVED upon the recommendation by the Town Administrator, to award the Madbury Road water line replacement engineering contract to Underwood Engineering Inc. of Portsmouth, NH for the sum not to exceed \$30,000 and authorizes the Town Administrator to sign said contract, with the monies coming from Account #07-4900-1041-999-06. The motion was SECONDED by Councilor Needell, and PASSED unanimously 9-0.***

### **XIII. Unfinished Business**

### **XIV. New Business**

- A. PUBLIC HEARING ON RESOLUTION #2006-03** authorizing the acceptance of \$19,709.04 in funds from the State of New Hampshire Department of Safety following the FEMA disaster January 2005 snow event

***Councilor Peter Smith MOVED to open the public hearing ON RESOLUTION #2006-03 authorizing the acceptance of \$19,709.04 in unanticipated funds from the State of New Hampshire for a Snow Emergency Declaration for the events of January 22-23, 2005. Councilor Morong SECONDED the Motion, and it PASSED unanimously 9-0.***

There were no members of the public who wished to speak.

***Councilor Julian Smith MOVED to close the public hearing. The motion was SECONDED by Councilor Henry Smith, and PASSED unanimously 9-0.***

***Councilor Peter Smith MOVED to Adopt RESOLUTION #2006-03 authorizing the acceptance of \$19,709.04 in unanticipated funds from the State of New Hampshire for a Snow Emergency Declaration for the events of January 22-23, 2005. Councilor Morong SECONDED the Motion.***

Administrator Selig said Town departments were always looking for grant opportunities, and said when the State had made FEMA funds available, the Public Works Department had put together a grant application. He said he was very pleased that the Town had received almost \$20,000 as a result of this process.

In answer to a question from Councilor Carroll, Mr. Lynch said FEMA's pricing was very close to what the Town's pricing was.

Councilor Needell said he assumed this was federal money that was funneled through the State, and Administrator Selig said that was correct.

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

- B. Appoint Council representatives to the various Town boards, commissions, and committees**

Chair Niman suggested that they go around the table and work out among themselves which Councilor would represent the Council on which board, commission, or committee.

As part of this, there was detailed discussion as to which Councilor should serve as the Council representative to the Integrated Waste Advisory Committee.

Councilor Julian Smith provided his qualifications for serving on this committee, providing details on his long interest and experience with this issue. He noted that he had advocated to Administrator Selig some years back on not continuing to recommend the privatization of trash and recycling pickup as a way to cut costs.

He said he had been told there was some thought that he might have an agenda, as a member of the IWMAC, to the extent that he had expressed his advocacy for rethinking the need for the extensive fall and spring cleanup in Town. He promised that if he were appointed, he would not bully or intimidate the committee on this issue, stating he was not capable of doing this.

He said while he might not be wanted on the committee, it was an ideal committee for him, allowing him the opportunity to take positions, give advice, and accept the advice given to the Town Administrator. He said that was his promise.

Chair Niman asked Councilor Henry Smith to speak about why he would like to serve on the IWMAC.

Councilor Henry Smith said given Councilor Julian Smith's qualifications, he would defer to him concerning this position.

Councilor Peter Smith said he would like to nominate Councilor Henry Smith to serve on the IWMAC. He said he would hope he would not insist on withdrawing.

Councilor Henry Smith said he was a novice, and had other responsibilities as a new Council member. He said the committee interested him a great deal, and had been a great encourager of recycling and sustainability, but said he would withdraw concerning this position.

Councilor Needell said he was uncomfortable with the level of advocacy he was hearing from Councilor Julian Smith for this position. He said with an agenda as strong as that of Councilor Smith, it might be better for him to advocate as a member of the public rather than as a member of the committee.

Councilor Julian Smith said he didn't have an agenda, but instead had beliefs and preferences. He said he had seen some very good ideas coming out of this committee concerning the fall and spring cleanup issue, and also said he was capable of changing his position. He said he simply took a different position than many others in this Town, and would like to be able to sit on that committee.

Councilor Carroll said she felt the strong need to be an advocate for the IWMAC in this instance, and said the committee would like to have someone other than Councilor Julian Smith as its liaison to the Council. She said as a voting body, the Council needed to be concerned with how the IWMAC would like to be represented.

Councilor Morong said he had no particular agenda, and said he had decided that he would like to be the Council representative on the IWMAC.

There was additional discussion on reshuffling of positions.

Councilor Julian Smith said if he were appointed to the IWMAC, if after the first meeting, the Committee wished to recommend to the Council that another Council member be appointed in his place, he would step down without a word.

Councilor Peter Smith provided some history on the appointment of Council members to other committees. He said Councilor Julian Smith was aware before coming to the meeting that night that substantial concern had been expressed about how his involvement, as a citizen, had gone down on that committee. He said he personally was also aware of this.

He said while the Council didn't take orders from Town committees, it did have a strong obligation to see that these committees, as volunteers, had the greatest possibility of working together as constructively as possible. He said it was a fact that Councilor Julian Smith's participation with the committee hadn't worked very well as a citizen, never mind as a Council

representative, and said while it gave him no pleasure to say this, it was beyond any reasonable doubt that the committee would be served much better if the Council representative was Henry Smith or Mark Morong. He said he could not ignore something that was in the best interest of the community.

Chair Niman said it was good that the Council members could talk about these kinds of things, stating that he thought the Council needed to be able to agree to disagree. He said he found Councilor Julian Smith to be a reasonable person, and said he appreciated the fact that he was asking for a second chance. He said Councilor Smith had gotten a lot of feedback that day, and said he personally would like to see him get a second chance, noting that the Council could always remove him if necessary. But he said he recognized that some Council members might not be comfortable with this approach.

Councilor Morong said the IWMAC was a good fit for him in terms of his interest, and fit into his schedule well.

Chair Niman suggested that in the interest of reaching a consensus, it made sense to put Councilor Morong on the IWMAC, and to put Councilor Julian Smith on the Parks and Recreation Committee, noting he would continue to attend those meetings as a private citizen.

Councilor Julian Smith said he would be happy to serve on the Parks and Recreation Committee, as suggested by Chair Niman. He noted that Councilor Peter Smith had twice used the word “fact” without stating any facts and had also said it was beyond a reasonable doubt that the IWMAC and the Town would be served better by someone else.

Councilor Julian Smith said he didn’t think it was beyond a reasonable doubt, and said he resented that phrase being used about him. But he said he would accept the compromise Chair Niman had suggested, and said he would attend meetings of the IWMAC as a member of the public. He said although he did not have an agenda, he hoped that future agendas of the IWMAC committee would allow time for public input.

The following appointments of Council members were made to the various town boards, commissions and committees.

**Appointments to Standing Committees:**

***Councilor Van Asselt MOVED that the Town Council hereby appoints Councilor Peter Smith, Councilor Morong, and Councilor Henry Smith as the Council representatives to the Cemetery Committee. The motion was SECONDED by Councilor Carroll, and PASSED unanimously 9-0.***

***Councilor Van Asselt MOVED that the Town Council hereby appoints Councilor Peter Smith as the Council representative to the Conservation Commission. The motion was SECONDED by Councilor Carroll, and PASSED unanimously 9-0.***

***Councilor Van Asselt MOVED that the Town Council hereby appoints Councilor Leach as the Council representative to the Historic District Commission. The motion was SECONDED by Councilor Carroll, and PASSED unanimously 9-0.***

***Councilor Van Asselt MOVED that the Town Council hereby appoints Councilor Julian Smith as the Council representative to the Parks and Recreation Committee. The motion was SECONDED by Councilor Carroll, and PASSED unanimously 9-0.***

***Councilor Van Asselt MOVED that the Town Council hereby appoints Councilor Needell as the regular Council representative to the Planning Board, and Councilor Carroll as the alternate Council representative to the Planning Board. The motion was SECONDED by Councilor Henry Smith, and PASSED unanimously 9-0.***

***Councilor Carroll MOVED that the Town Council hereby appoints Councilor Van Asselt as the Council representative to the Rental Housing Commission. The motion was SECONDED by Councilor Leach, and PASSED unanimously 9-0.***

**Appointments to Town Working Committees:**

***Councilor Van Asselt MOVED that the Town Council hereby appoints Chair Niman as the Council representative to the Advisory Committee for a Permanent Library Site. The motion was SECONDED by Councilor Julian Smith, and PASSED unanimously 9-0.***

***Councilor Van Asselt MOVED that the Town Council hereby appoints Councilor Henry Smith as the Council representative to the Durham Cable Access Television (DCAT) Governance Committee. The motion was SECONDED by Councilor Carroll, and PASSED unanimously 9-0.***

***Councilor Henry Smith MOVED that the Town Council hereby appoints Councilor Morong and Councilor Van Asselt as the Council representatives to the Economic Development Committee. The motion was SECONDED by Councilor Julian Smith, and PASSED unanimously 9-0.***

***Councilor Van Asselt MOVED that the Town Council hereby appoints Councilor Morong as the Council representative to the Integrated Waste Management Advisory Committee. The motion was SECONDED by Councilor Carroll and PASSED unanimously 9-0.***

**C. Establish a date for a goal setting session for the Durham Town Council**

After some discussion, Council members agreed that the goal setting session should be held on Monday, April 10<sup>th</sup>. Chair Niman said he, Councilor Carroll and Administrator Selig would put some ideas together for this.

**D. Shall the Town Council encourage the New Hampshire General Court to adopt legislation relative to the siting of landfills located near rivers?**

Administrator Selig said State Representative Judith Spang was present to provide a brief overview on House Bill 1495 which focused on how close new landfills could be sited in relation to certain rivers in the State. He said Councilor Carroll had expressed an interest in bringing this topic forward for Council discussion. He said a copy of the bill, which had very recently been amended, had been provided to Councilors that evening.

Councilor Peter Smith said he would be happy to hear the presentation, but noted that this material had not been read yet by Councilors.

Chair Niman asked Representative Spang to explain why it would be of value for the Town of Durham to provide input on this bill, given that it wouldn't affect the Town, and that the Town would never allow something like this to occur in Durham.

Representative Spang said this bill basically affected the Lamprey River in Durham, noting that in 1989 that the river had through the actions of the Town become a State protected river, under the State's Rivers Management and Protection program. She explained that there were four classifications for a NH river, natural, rural, rural-community, and community, which were based on the amount of development along the shore. She said rivers were managed according to this classification, and provided details on this.

She said the intent of the sponsor of this bill was to afford the rural rivers in New Hampshire the same protection from landfills that the natural rivers now had. She said while there was not now a landfill located anywhere near the Lamprey River now, this was not to say that this might not happen further upstream, where communities were now attempting to become designated under the State program.

She also said this was a chance for communities with designated rivers to hang together in a steadfast desire to protect rivers. She noted another piece of legislation this year that was an attempt to allow sludge to be spread closer to rivers, and said this was been beaten back by the communities on state designated rivers. She said this would be a similar statement to the Legislature and NHDES that that these communities did indeed still treasure the rivers they had worked so hard to protect.

Chair Niman asked what specifically Representative Spang was looking for from the Council at this point.

Administrator Selig explained that the action that evening had started when the Conservation Commission had expressed an interest in the topic, and approached Councilor Carroll about this, who then asked that the topic be discussed by the Council. He said Representative Spang was present because of her interest in environmental issues, noting she was on the House Resource and Development Committee. He said he had asked that she come to the Council to provide the Council with some context on this bill, and to answer questions they might have. He said the version of the bill that Councilors now had before them was hot off the presses. He stressed that Representative Spang was not present to urge the Council to take action.

Chair Niman said he hadn't meant to imply that, and said he simply wanted to know what the Council could do to be helpful.

Representative Spang said the bill would be coming to the floor of the House within the next day or so, and if it passed, would go on to the Senate, where there would be hearings. She said it would be helpful if at that point she could present a letter of support from her town at the hearing. She acknowledged it was awkward for Councilors to vote on this when they didn't yet know whether the bill would pass the House.

Councilor Peter Smith asked if there was anything in the federal statute relative to the Lamprey River designation that caused any federal power to affect what could be done with respect to landfills.

Representative Spang said anything that would negatively impact the river would be carefully looked at by the National Park Service, but she noted that there were no setbacks under the existing federal laws.

Councilor Peter Smith said protection under this bill could therefore override the federal protections, so could be viewed either as independent or complementary protection. He said there would be no impact in the next day or two of a letter from the Council, and said if the Council thought this bill was of direct interest to the Town, or of interest in general, the benefit from endorsing it would come at the Senate. He said he was not comfortable with taking action on this without reading the amended bill.

Representative Spang said there was the potential that the bill could come before the Senate before the Council met again.

There was discussion about this.

Chair Niman said the suggested motion was general in nature, so the Council would be endorsing a concept, not a specific piece of legislation. He said it could take this position without understanding the particulars of this bill.

Councilor Leach suggested that the Council take a few minutes to read the bill. She also asked what impact Representative Spang thought the letter would have on the Senate floor.

Representative Spang said the greatest impact would occur in the Senate committee hearing, and said if a letter were developed, it would go to that committee.

Councilor Van Asselt asked if there was a town with a rural river designation that this legislation would impact.

Representative Spang said Canterbury had already done extensive work in siting a landfill, and said the amended bill would exclude this town.

Councilor Van Asselt said at the maximum, he would agree to the language Administrator Selig had suggested, stating that supporting this particular bill could open up a can of worms.

Administrator Selig said he had asked Representative Spang what language would work in a motion by the Council, and she had suggested the language he had then provided to Councilors. He said this language gave the Council the flexibility to state a policy position without conflicting with the Town of Canterbury.

***Councilor Van Asselt MOVED that the Town Council hereby encourages the New Hampshire General Court to move forward with adoption of legislation that provides the same protection for rural rivers as natural ones, when siting landfills. The motion was SECONDED By Councilor Henry Smith.***

Councilor Needell asked what the revision to the bill had involved.

Representative Spang said it previously had said a landfill couldn't be put within the corridor of a designated river, which was 1,320 ft. He said the amendment added a topographical element, stating that a landfill couldn't be placed less than a 100 ft. beyond the 500 year floodplain.



There was additional discussion on this, and how this related to the distinction between natural and rural rivers. Representative Spang provided details on this.

Councilor Julian Smith said he liked the motion, but asked what form the “encouragement” would take.

Administrator Selig said he would write a letter to the appropriate committee, and would send a copy of it to all Senate members. He said he would not be traveling to Concord unless the Council asked him to do this.

Councilor Julian Smith said in another words, it was understood through this motion that part of the “encouragement” was that Administrator Selig would write a letter.

Councilor Carroll made note of the fact that Dwight Baldwin, Chair of the Conservation Commission, had written to her about this issue, and would have been here to address the Council about it, but was out of town.

Representative Spang said it was a real boost that the Town was supportive of this, noting that when she spoke on the floor of the House on this, it would be good to say that her town supported the bill.

Councilor Peter Smith said he was not comfortable voting without having the definitions of rural rivers and natural rivers in front of him.

After some discussion, other Councilor members said they were ready to vote.

***The motion PASSED 8-0-1, with Councilor Peter Smith abstaining because of lack of adequate opportunity to examine the definitions.***

Councilor Van Asselt said on the general matter of bills relating to issues facing towns in New Hampshire, he felt the Council needed to be very careful about what bills it wanted to play mini-legislature on.

Councilor Peter Smith said the Council should not get into the habit of doing this kind of thing.

Administrator Selig said there was team approach in Durham to dealing with the State Legislature. He said the Town continuously followed bills that might impact the State, region, or Durham, and also said Durham’s State Representatives reached out if they felt there was something that might impact Durham. He also noted he personally monitored bills before the Legislature.

E. Other Business

Discussion on streamlining Council meetings.

Chair Niman first said he would like the entire Council to be more involved in the agenda setting process. He then said that instead of the Item “Reports and Comments of Councilors”, he thought there could be more of a round table discussion. He suggested that in the Report of the Administrator, they could dispense with formal announcements, and there could be more of a roundtable discussion with Administrator Selig for about 15-20 minutes, perhaps on the kinds of

things that didn't merit a Council Communication, but that particular Councilors thought should be discussed, and might merit a Council Communication in the future.

Chair Niman suggested that perhaps the approval of the Minutes could be moved to the end of the meeting.

There was discussion on this, with Councilor Needell suggesting that should perhaps be left where they were on the agenda, but could be dispensed with quickly.

Councilor Julian Smith asked if what Chair Niman was suggesting was an "agenda". He also said he would like it if at the end of Public Comments, Councilors could ask some questions, and discuss what a particular member of the public had just brought forward. He said he wished the Council could be a little less rigid about this.

Councilor Needell said he had felt the same way about this, but also that allowing this was similar to Councilors having a piece of paper in front of them that they hadn't read before the meeting. He said it was important that the Council not get sidetracked with new information, and that it be careful about suddenly dealing with a new issue, noting, Councilors might not be prepared to discuss it fully.

Councilor Leach said an issue brought up under Public Comments could be something that could be jotted down and then brought up as part of agenda setting, as something to bring up at a future meeting.

Chair Niman asked whether there might be a benefit to having members of the public speak during a particular agenda item, to better match public comments with what was on the agenda.

Councilor Peter Smith noted it had been the custom for the Chair to say at the beginning of the Public Comments period that members of the public should make their comments on a particular item on the agenda during that portion of the agenda. He also said that according to the Town Charter, public comments could be made on just about anything.

Councilor Van Asselt suggested that Council members email their ideas.

**XV. Adjourn (NLT 10:00 PM)**

***Councilor Van Asselt MOVED to adjourn the meeting. The motion was SECONDED by Councilor Julian Smith, and PASSED unanimously 9-0.***

Adjourned at 10:00 pm

Victoria Parmele, Minutes taker