

**This set of minutes was approved at the Town Council meeting on February 18, 2008**

**DURHAM TOWN COUNCIL  
MONDAY, JANUARY 14, 2008  
DURHAM TOWN HALL - COUNCIL CHAMBERS**

**MEMBERS PRESENT:** Chair Neil Niman; Councilor Mark Morong; Councilor Karl Van Asselt; Councilor Jerry Needell; Councilor Diana Carroll; Councilor Julian Smith; Councilor Henry Smith; Councilor Peter Stanhope; Councilor Cathy Leach

**MEMBERS ABSENT:** None

**OTHERS PRESENT:** Town Administrator Todd Selig

**I. Call to Order**

Chair Niman called the meeting to order at 7:02 pm.

**II. Approval of Agenda**

*Councilor Julian Smith MOVED to approve the Agenda as submitted. Councilor Henry Smith SECONDED the motion, and it PASSED unanimously 9-0.*

**III. Special Announcements**

Councilor Julian Smith noted that this was the 20<sup>th</sup> anniversary of the Town Council.

**IV. Approval of Minutes**

November 26, 2007

Page 19, 6<sup>th</sup> paragraph, should read “..didn’t think they should take precedence...”

*Councilor Van Asselt MOVED to approve the November 26, 2007 Minutes as amended. Councilor Julian Smith SECONDED the motion, and it PASSED unanimously 9-0.*

December 3, 2007

Page 1, under Members Present, should say Councilor Van Asselt arrived at 7:20 pm

Page 8, 1<sup>st</sup> full paragraph, should read “..would revert to the Council.”

Page 10, 5<sup>th</sup> paragraph, should read “..reassessed next year, so there were likely...”

*Councilor Van Asselt MOVED to approve the December 3, 2007 Minutes as amended. Councilor Morong SECONDED the motion, and it PASSED 8-0-1, with Councilor Leach abstaining because of her absence from that meeting.*

**V. Councilor and town Administrator Roundtable**

- Administrator Selig said he had planned to have Maryanna Hatch at the meeting, noting that she was a member of Durham's first Town Council. He said this couldn't be arranged, but said he would try to get her to come speak with the Council at a future date.
- Administrator Selig said the Town had received a \$250,000 grant from the Natural Resource Conservation Service for Jackson's Landing. He said the design for Jackson's Landing, which had been modified since the original design was presented to the Council, would be presented at the January 28<sup>th</sup> Council meeting. He said it was important that everyone understood what was planned, before moving forward with the project.

Councilor Carroll asked if a public hearing was planned for this.

Administrator Selig said a public hearing wasn't planned, noting that there already had been a fairly open process. He said there would, however be an opportunity for members of the public to make comments during the public comment period at Council meetings, or in writing.

- Administrator Selig said he had been working with Lee regarding a proposed assessing services agreement. He provided details on this, and said it was possible that rather than having an inter-municipal agreement, there might be an administrative agreement. He explained that they were trying to come up with an agreement that worked for both towns, also noting that they were trying to assure residents of Lee that when the Durham assessor was working in Lee, he would be reporting to the Lee Selectmen..
- He said that Chinburg Builders had been exercising due diligence with respect to its project, but he said that because of delays with NHDOT and the slowing market, the company was requesting a one-year extension concerning the purchase and sales agreement. He said he would be discussing this further with the company, and said he hoped to bring back to the Council revised documentation concerning this.
- Administrator Selig said he had been in active discussions with owner representative Dave Garvey with respect to the creation of a development agreement regarding the TIF District for Stone Quarry Drive. He said this had included discussion on terms so that if the Town paid for water and sewer to the site, and the development didn't proceed on the schedule that had been anticipated, the developer would protect the Town in terms of meeting the debt service until such time as there was sufficient taxable value to cover the debt service.

He said there had been a series of meetings on this, which had included the Town Attorney and consultant Don Jutton. He said he was hoping to have something on this for action by the Council on January 28<sup>th</sup>. He said the Town had put out an RFP for engineering services for the water and sewer infrastructure improvements, so that when the development agreement was in place, the engineering could move ahead. He also said that once this agreement was in place, the Town would advertise concerning the establishment of the TIF Advisory Committee.

- Administrator Selig noted that he had initially asked Councilor Needell and Councilor Leach to work with him concerning discussions with the University on policing services. He said some concerns had been expressed regarding Councilors who were attached to the

University in some way being involved in these discussions. He said the Council could discuss this if it wanted to, but said in the meantime he would move forward to set up discussions with the University, and would involve the Council as he felt it was prudent to do so.

- Administrator Selig said that Scott Mitchell, the owner of the Irving Station, had indicated that he had a serious client who was interested in acquiring the Town Office parcel. He noted that there had been discussion a few years back about a \$1 million purchase price, and said the client was interested in paying \$2 million, plus or minus, for the property. He said he would be learning more about this, and would then update the Council. He said he didn't know who the client was.
- He said if it chose to, the Council could discuss the issue that had come up as to whether there should be static cling or adhesive permit stickers.
- He noted that the filing period for elected Town positions would run from January 23<sup>rd</sup> to February 1<sup>st</sup>, 2008.

Councilor Needell noted the issue regarding policing services. He said the entire process was an administrative decision, and said he was happy with this. But he said some issues had been raised that he would like to comment on. He said it was always appropriate to point out conflicts of interest, but he said it was important to be careful that final resolution, when there was one, and given the community they lived in, was an individual one, and he said Councilors had to make these decisions responsibly.

He said in this case, he didn't understand why his position with the University would be considered to involve a potential conflict of interest. He said he was comfortable with his role, and said he didn't want it to be thought that a change was made, and that anyone withdrew, based on a conflict of interest decision. But he said attendance at these meetings was up to Administrator Selig, and said he was comfortable with whatever he decided.

Councilor Morong noted that the Council sometimes discussed and approved serious contracts involving the University, and said if people at the table who had any relationship with the University had recused themselves when there were those discussions, there wouldn't have been quorums. He said he trusted his fellow Councilors to vote on contracts and agreements, and said he didn't have any problem with any Councilor at the table entering into discussions on the policing agreements.

Councilor Julian Smith said that in the "good old days", University employees couldn't hold elected office, so things had come a long way. He asked when the committee would function, and who would be on it.

Administrator Selig said Town representatives would include himself, Business Manager Gail Jablonski, consultant Russ Thibeault, Chief Kurz and other members of his department as needed. He said Mark Rubenstein, UNH Vice President for Student Academic Affairs and Dick Cannon, Vice President, for Finance, would represent the University. He noted that the initial thought had been to have Council representation in order to represent the concerns of residents.

Councilor Julian Smith asked if the implication was that Administrator Selig had changed his mind regarding having some Council members involved in these discussions.

Administrator Selig said yes, simply because he had hoped to get the discussions started in January. He said individual Councilors had expressed their concerns regarding possible conflict of interest, and said it had been challenging to set up meetings with UNH until it was known who would be on the group. He said he felt it was important to set up the meetings, and said there was a tentative first meeting scheduled for January 23<sup>rd</sup>. He said he had uninvited all of the Councilors, and said if the Council as a group felt it wanted to involve someone from the Council in the meetings, there would need to be discussion on the criteria for involvement.

Councilor Julian Smith noted for members of the public that he had asked to be involved, since his connection to the University was almost 40 years in the past. He said he had some other things to say but would wait until other Councilors had spoken.

Councilor Van Asselt noted the Unanimous Consent Agenda item regarding water and sewer abatements, and asked if it was the Town's practice to give an abatement if a resident chose to put in a new garden, and ran up a big water bill.

Administrator Selig provided details on this, explaining that the Town was requiring that those receiving abatements would have to hire a plumber to install a meter to monitor water usage for the garden. He said the Town's goal here was to be user friendly, and explained that the abatement would be for sewer usage, not for water usage, and would be a one time abatement.

Councilor Van Asselt asked if this approach would apply to new construction.

Administrator Selig said those kinds of inquiries were typically not made, noting that landscaping details were the kind of thing that should be put into a development plan.

Councilor Van Asselt said he felt that providing these abatements set a terrible precedent.

Councilor Needell requested that this item be taken off of the Unanimous Consent Agenda, for further discussion.

Councilor Van Asselt said he was not excited about the Town's consultant for Stone Quarry Drive TIF district, stating that the Council had ended up with confusing data and documents. He asked what kind of contract the Town had with him.

Administrator Selig said there was no contract, and said his services were used on an as-needed basis. He said it had been helpful to bring in someone who had done these kinds of agreements before.

Councilor Carroll said the Planning Board had met on January 9<sup>th</sup>, and she provided the following summary of the meeting:

- She said the public hearing on the Caldarola Conservation subdivision (corner of Canney and Bagdad Roads) was continued to February 9<sup>th</sup>. She noted that the Planning Board was waiting for the storm water management report.

- She said the Board had deliberated on the Christie site plan review application for a 3-story, mixed use, infill development on Jenkins Court, and had approved the application. She said the applicant did not end up scaling back the project.
- She said there was a presentation and public hearing on a proposal to construct a parking area, a pedestrian trail, and a lookout area with a small kiosk and interpretative panels on a property owned by Fish and Game on Dame Road. She provided details on this, and said the lookout area, which looked out over a large wetland area on Great Bay, would be accessible to people with disabilities.
- She said there was a public hearing on proposed amendments to the Zoning Ordinance (definitions, Table of Uses, Table of Dimensional Requirements, etc.), and the Board then approved these amendments and sent them on to the Town Council.
- She said the Planning Board had approved a boundary line adjustment for two properties on Mill Road.
- She noted that Perry Bryant was bringing forth a proposal for a development on Mast Road, which would be either a multi-unit or a mixed use development. She said it was intended to be the first green building development in Durham.

Councilor Julian Smith said the Conservation Commission had met the previous week, and said there had been a long agenda. He said one issue discussed was the fact that Mill Pond would not be dredged by the Army Corps of Engineers, and the Town would have to find another way to get this done. He also said the Conservation Commission had asked him to ask the Council whether it would be interested in pursuing the idea of creating an agricultural commission.

Councilor Smith said the Mill Plaza Study Committee would be have an important meeting on Wednesday at 6:30 pm in Gregg Hall, and said one of the things to be discussed was an idea having to do with trading land to make room for the new library at the edge of the Mill Plaza property.

Councilor Carroll said there would be a birthday party for Marjorie Milne at the Durham Town Library on January 24<sup>th</sup> a 7 pm. She said this would be an annual event, and said there would be a slide show of photos from the Milnes' collection, reflecting their travels and their life in Durham.

## **VI. Public Comments**

**Bill Hall, Smith Park Lane**, provided examples of what he said were conflicts of interest on the part of Town Council members. He said Councilor Needell had made comments at times that would lead one to believe that he was not looking at an issue objectively. He said an economist on the Council had observed to him some time ago that University deals were costing Durham taxpayers into the millions per year. He said there were serious questions regarding the Town's relationship with the University, and who should handle this. He said the taxpayers had a history of being left in the lurch concerning this. He said the former Town and Gown committee had definitely worked in the University's favor.

Mr. Hall read from some articles on water supplies in other NH towns, and he also discussed existing water supplies in Durham. He then noted that Mr. Metcalf's report had said the cheapest and most consistent water in Durham came from the Lamprey River. Mr. Hall said the only improvement on this would be to put in gravel pack wells next to the pumping station

there. He provided details on this, and on why this approach would be so much better than going with the Spruce Hole project.

Mr. Hall also said the Town should have only paid a third of the price for the pipe from the Lamprey to the pumping station, noting that this had happened before Administrator Selig came to Durham. He said now that it was recognized that the Town should only have paid a third, the Town should be able to recover some of its money in future negotiations. But he said he seriously questioned the Town's ability to negotiate with the University.

There was detailed discussion between Mr. Hall and Administrator Selig concerning this.

## **VII. Unanimous Consent Agenda**

- A. Shall the town Council approve the purchase of roadway salt as authorized in the approved FY 2008 Budget?

***Councilor Leach MOVED to approve Unanimous Consent Agenda Item VII A. Councilor Van Asselt SECONDED the motion, and it PASSED unanimously 9-0.***

- B. Shall the Town Council approve abatements for water and sewer and authorize the Town Administrator to sign said abatements.

Administrator Selig provided background on this issue, concerning various reasons why a resident might request an abatement like this. He said right now, there were 3 residents requesting an abatement. He said one of the requests involved an error on the part of the Town, and the other two involved situations where residents' bills were higher than usual, because of new landscaping projects that required significant water use.

He said the Town was recommending sewer abatements for these two situations. He said the Town had determined that if this kind of thing appeared to be a one time situation, it would give the owner the benefit of the doubt if this seemed reasonable, and would also recommend modifications so the owner could track sewer usage.

Councilor Needell said he fully understood that people should pay for the water and sewer they used, that usually the two were connected, and that the Town's mechanism for monitoring sewer usage was to monitor water usage, which was a standard approach. He said if it was known that the water used was not entering the sewer system, he didn't have a problem with an abatement. But he asked if it was a shift in policy to do something like this. He also said he didn't want to encourage this kind of water use. He noted that given that the sewer cost was generally twice as much as the water cost, granting this abatement represented a significant reduction in the bill.

There was discussion on when this kind of thing had been done in the past, and that when it had happened, it had been on a one time basis.

Councilor Needell said asking that a meter be installed was a good policy. He said this should be required, and said an abatement shouldn't be allowed a second time. He said a lot of water was being used for landscaping, and said he wasn't sure what role the Town wanted to play

concerning this. He noted that if a person had to pay three times as much for using the water, this might cut down usage.

Councilor Julian Smith said the water table was high in many places in Durham, and said that in many instances, the Public Works Department could recommend that property owners dig a shallow well for landscaping needs, to take advantage of the water in the soil. He noted that there would be a number of social and cultural advantages to neighbors getting together to share a shallow or even a drilled well for this purpose.

Councilor Morong asked how what was proposed for the properties in question would work, stating that he had never seen this kind of thing before.

Administrator Selig provided further details on this, and noted that unless one used a lot of water, the installation of the meter and the monitoring wouldn't necessarily be worthwhile.

Councilor Stanhope said the Town could adopt a policy that said if a resident wanted to obtain an abatement like this, the installation of a meter would be required. He said most people would probably then just pay the bill. He said he was concerned about how much water was used to water lawns, and also expressed his concern about water shortages in the future. He said he wasn't sure that keeping up with one's neighbors by having the greenest lawn on the street was the best policy, from an environmental perspective. He said he was generally opposed to the abatements.

Administrator Selig said if a resident did decide to install a meter, that wouldn't necessarily trigger an abatement request that would come before the Council. He also spoke about the idea of developing some kind of mechanism to encourage water conservation, and said that would be better done through an ordinance of some kind that would include certain criteria. He provided details on this, and said he simply hadn't had the time to put an ordinance like this together.

He noted that there had been debate on the Water committee as to whether such an ordinance would be useful, when most of the year, the Town had enough water.

Councilor Henry Smith asked if the Public Works Department installed the meters that had been discussed.

Administrator Selig said the Public Works Department provided the criteria and did an inspection once the meter was installed. He said the owner was responsible for having the meter installed, and paid the full cost for this.

Chair Niman said Council members should restrict their comments to whether the Councilor should approve the abatement requests.

Councilor Needell said the amount of money involved was trivial in relation to the Town Budget, but was not insignificant to the homeowners who had asked for it. He said these didn't seem to be an unreasonable requests, and said he didn't want to hold those requesting the abatement hostage to a decision by the Council. But he said he thought the Council should agree to change the policy, and as part of this should put out notice that meters should be

installed first, and not after the abatement request was made, and that property owners should therefore not come forward with these kinds of requests.

Chair Niman said he would like Councilors to speak specifically concerning a motion.

***Councilor Julian Smith MOVED to approve abatements for water and sewer and authorize the Town Administrator to sign said abatements. Councilor Carroll SECONDED the motion.***

Councilor Julian Smith said he agreed with Councilor Needell. He said he would vote in favor of the motion, but said he hoped it would be passed on to the community and to the Public Works Department, that property owners who had elaborate gardens should be encouraged and challenged to consider other ways to water them, without using Town water and asking for abatements. He noted the amount of staff time and Council time involved in considering these abatements.

He suggested that the Friday Updates could encourage this kind of thing, as could the Town Report, and the Public Works Department newsletter. He said if the Town had an agricultural commission, it too could encourage people to make more sensible use of water.

Councilor Stanhope said he could vote in favor of the first abatement request, but not the other two requests, and asked if they could be separated out.

***Councilor Stanhope MOVED to amend the motion, to vote on the three abatement requests individually. Councilor Needell SECONDED the motion, and it PASSED 8-1, with Councilor Henry Smith voting against it.***

Councilor Morong said he agreed with Councilor Needell. He said he would vote for these grudgingly, but would like to discuss the policy in the future.

Councilor Carroll said she would be voting for all three abatement requests, stating that with the second and third requests, the homeowners had made a mistake, and knew this. She said the concern was that other people would make this same mistake next year, and said the Town needed to educate residents concerning this.

Administrator Selig said while the Town would try to get the word out concerning this, this kind of thing might still happen in the future.

Chair Niman suggested that a note could be sent out with water bills regarding this issue.

Administrator Selig said this kind of thing happened so infrequently that he was comfortable allowing these abatements to go through. He said the Town was trying to be customer friendly.

Councilor Van Asselt said Councilor Needell's point was that the Council needed to adopt a policy that if property owners wanted to use extra water, they needed to use the meter process, and ignorance of the law would be no excuse.

Councilor Needell agreed that the Council should try to set a policy concerning this, because this was an issue worth addressing. He said that while it was nice for the Town to be user



friendly, the next time there was an abatement request, it should face more scrutiny.

1<sup>st</sup> abatement request: ***The motion PASSED unanimously 9-0.***

2<sup>nd</sup> abatement request: ***The motion PASSED 8-1 with Councilor Stanhope voting against it.***

3<sup>rd</sup> abatement request: ***The motion PASSED 8-1, with Councilor Stanhope voting against it.***

#### **VIII. Presentation Item**

There was no presentation item.

#### **IX. Unfinished Business**

- A. Shall the town Council approve and sign the Warrant for the March 11, 2008 Town Election?

***Councilor Van Asselt MOVED to approve the Warrant for the March 11, 2008 Town Election. Councilor Needell SECONDED the motion and it PASSED unanimously 8-0.***

(Councilor Henry Smith was not in the room for this vote.)

Councilor Needell thanked the Council for agreeing to put the question on the Warrant relative to the property tax issue, so citizens could express their views on it.

Councilor Carroll thanked Councilor Needell for bringing this initiative to the Council's attention.

- B. Action on Resolution #2007-33 establishing a Municipal and Transportation Improvement Capital Reserve Fund with funds collected through motor vehicle registrations

Administrator Selig said as part of the Budget process, he had tried to find creative ways to support the operations of the Town other than through the use of tax dollars. He said the Fund was estimated to bring in about \$30,000 in 2008, and said the money would be used to offset the cost of the Town's Roads Program. He noted that the State Statute that authorized the development of this kind of fund didn't limit the spending of these funds to just road improvements. He said the proposal was to use these funds for roads in 2008. He said in general, the fee would go into the Fund, and would accumulate until the Council decided when and how it would be expended.

Administrator Selig noted that Town Clerk Lorrie Pitt was present to answer any questions that Councilors might have. He noted that one benefit of this fee was that it captured fees from individuals who were not residents, but who had cars registered in Durham.

***Councilor Julian Smith MOVED to approve Resolution #2007-33 establishing a Municipal and Transportation Improvement Capital Reserve Fund with funds collected through motor vehicle registrations. Councilor Carroll SECONDED the motion.***

Councilor Julian Smith said he fully supported this although it didn't go far enough. He said he would rather see a fee of \$5 for each cylinder, and said perhaps that would be possible down

the road.

Councilor Leach asked where the Town portion of a car registration current went, and Ms. Pitt said it went into the General Fund.

Councilor Morong asked if this fee would be required for non-motorized vehicles. There was detailed discussion about this, and Councilor Morong asked if it would be a problem to exclude non-motorized vehicles.

Ms. Pitt said the software that was used could address this. She noted that the Town Attorney had said a fee could be charged for trailers even though the RSA didn't specifically address them.

There was discussion about how many student cars would be involved. There was also discussion as to how much the Town would be giving up, if it didn't require that the fee be paid for trailers.

Councilor Stanhope asked if there would be any additional cost to the Town for the processing of these fees.

Ms. Pitt said about \$0.50 of every \$5.00 fee went toward administrative costs.

***Councilor Morong MOVED to exclude trailers and tractors. Councilor Henry Smith SECONDED the motion.***

There was further discussion of what was meant by "trailer". Councilor Needell received clarification from Ms. Pitt that regardless of what kind of trailer it was, it would be charged the fee.

Councilor Julian Smith asked if Councilors with trailers would recuse themselves.

***The motion to amend PASSED 8-1, with Chair Niman voting against it.***

Councilor Van Asselt said he would vote against the motion. He said this was a nuisance tax, and said he didn't see the justification for it. He also said he didn't like the way it wound up at the table, where it was stated that if the Council didn't vote to approve it, the same amount of money that would have been raised by the fee would be taken out of the fund balance. He provided details on this.

Councilor Stanhope said he would vote against the motion, stating that it was a nuisance tax, when people were already grossly overtaxed in Durham. He said he realized it wasn't a significant expense, but said there were residents for whom every dollar counted. He said he thought it was outrageous that the Town was nickel and diming residents.

Councilor Henry Smith said this was a fee, not a tax.

Councilor Julian Smith said he agreed with Councilor Henry Smith.

Councilor Carroll said she agreed with Councilor Van Asselt that it would have been better if this had come up earlier in the year, rather than during the Budget season. But she said she understood that the Council had said that Administrator Selig should try to find ways to save the Town money or bring in more money.

She said this was a user fee, and said she didn't have any objection to that. She said she was very pleased with what Administrator Selig had said in introducing this, concerning the fact that the intention with this fee was to pay for many aspects of transportation, whether it was mass transit, sidewalks, etc. She said communities in the area were using these funds to match federal dollars, noting that Dover was using it for bicycle paths and Exeter was using it for mass transit.

She said she was interested to see what Durham could do with it in future years.

Councilor Needell said he didn't disagree with what Councilor Van Asselt had said regarding the timing of this proposal. He also said that what had been of concern to him during the Budget process was that if this didn't pass, the Roads Program would therefore be reduced by \$30,000. He said he would rather have seen an increase in taxes to cover this cost.

He noted that he had done some calculations, and had determined that taking this money from taxes or as a user fee turned out to be a wash. He agreed it was a nuisance tax, but said property taxes were a nuisance as well. He said he didn't have a problem with spreading this out over a somewhat different group of people.

Councilor Morong said he agreed with Councilor Van Asselt, and said he had voted for the Budget, but not for the Budget plus or minus this. He said he wouldn't vote for this motion unless the funds were designated for something other than the Roads Program. He noted that he had wished a dollar gas tax had been instituted in the 1970's, and said he felt the same way about this particular fee.

Chair Niman said if Councilors wanted to discuss how the funds from this fee would be spent, his preference was that this should be done at another time, when the different options could be laid out more clearly.

Councilor Needell asked whether, when money to be spent from this fund was needed for the Roads Program, that would have to come back to the Council.

Administrator Selig said yes, it would come back to the Council.

Chair Niman said he agreed with Councilor Needell, and said this fee was a tax cut in that it would reduce property taxes. He said he didn't see it as a tax increase.

Councilor Julian Smith said this was a fee in lieu of taxes. He said he agreed that any money collected should be used to encourage other forms of transportation, more walking, and making it easier for people to get around Town. He said he hoped there would be a serious discussion by the Council as to how to use these funds other than for paving roads.

***Councilor Carroll MOVED to amend Resolution #2007-33 by striking the word "roads" from the 3<sup>rd</sup> paragraph. Councilor Morong SECONDED the motion.***

Councilor Morong noted that putting in sidewalks downtown and elsewhere had been put off in time in the CIP. He said using these funds would be a way to do these kinds of projects the Town had been planning to do for quite some time.

Councilor Needell said he completely supported the intent of the motion, but asked if this would represent a substantive change, which would therefore require another public hearing.

Administrator Selig said he wouldn't view this as a substantive change.

Councilor Needell said there were two technical issues relating to the Budget discussion that had put him in an awkward position. He said to vote to restrict this from being used for the Roads Program would be tacit approval of taking an additional \$30,000 out of the fund balance next year, according to the way the Council had passed the Budget. He said otherwise, it would mean taking \$30,000 out of the Roads Program, which he very much would oppose.

He said he was also opposed to taking \$30,000 out of the fund balance, and said he was troubled with placing that requirement here. He said he would prefer to leave the Resolution unchanged, and then as a Council discuss what it wanted to use these funds for this year and next. He said he felt he had made a commitment to use those funds for the Roads Program this year. He also said he was reluctant to make an amendment to remove the ability to use these funds for roads once and for all.

Councilor Carroll said she was willing to see if Councilors were interested in a compromise, where the money would be left in for the Roads Program in 2008, and the amended Resolution would apply for 2009 and beyond.

Chair Niman said he wasn't sure that the Council could bind future Councils in that way.

***The motion to amend FAILED 4-5, with Councilor Needell, Councilor Leach, Councilor Van Asselt, Chair Niman and Councilor Henry Smith voting against it.***

There was discussion that the change regarding trailers and tractors was an administrative change and was not substantive, and that this change would be reflected in the Minutes. He said the Resolution itself didn't need to be changed.

***The amended motion PASSED 5-4 with Councilor Leach, Councilor Van Asselt, Councilor Stanhope, and Councilor Morong voting against it.***

Recess from 8:36- 8:46 pm

## **X. New Business**

- A. First Reading on Ordinance #2008-01 amending Chapter 4 "Administrative Code", Article VI "Procurement", Sections 4-20 "Competitive Purchases", 4-21 Professional Services", and 4-24 "Sale of Surplus Materials", of the Durham Town Code by increasing purchasing amounts requiring Town Council approval**

Administrator Selig explained that in 2001, the Town Council had adopted Ordinance 2001-05, which was presented by Interim Town Administrator Patrick McQueen. He said this Ordinance had established a purchasing and contract procedure within the Administrative Code. He said thresholds were set at which point Council action would be required to approve purchases.

He said the threshold was set at \$25,000 for purchases or contracts; \$10,000 for professional services contracts; and \$5,000 for the sale of surplus material. He said these numbers had been fair at the time, but were not realistic now, and he provided details on this. He noted that more and more, seemingly routine purchases for goods and services were exceeding the threshold, which took up valuable administrative and Council time.

He said he recommended increasing the threshold for purchases or contracts from \$25,000 to 35,000. He said the threshold for professional services contracts should be increased from \$10,000 to 15,000, noting that he could argue for more than that, but that \$15,000 was workable. He also said he was recommending that the sale of surplus materials threshold should be increased from \$5,000 to \$10,000.

***Councilor Van Asselt MOVED on First Reading Ordinance #2008-01 amending Chapter 4 “Administrative Code”, Article VI “Procurement”, Sections 4-20 “Competitive Purchases”, 4-21 Professional Services”, and 4-24 “Sale of Surplus Materials”, of the Durham Town Code by increasing purchasing amounts requiring Town Council approval. Councilor Morong SECONDED the motion.***

Councilor Morong said when he had gone through the Council packet and had seen that Council approval was needed for the purchase of road salt, he had realized the relevance of the proposed change in these thresholds.

Councilor Stanhope said his concern was that these thresholds might still be low. He also said he assumed that any act by the Administration in terms of buying and selling good and services was reported to the Council, and was told that was not necessarily the case. He said he therefore thought the limits were high enough.

***The motion PASSED 8-1, with Councilor Stanhope voting against it.***

## **B. Update on status of goals established by the Town Council for 2007/08**

Administrator Selig said the Council had done extremely well in moving these goals forward over the past year, noting that the goals had either been accomplished, or substantial inroads had been made concerning them.

He said one goal that needed to be focused on now was to “review and evaluate the existing regulatory process in Durham and move ahead with modifications if needed to streamline it.” He noted that there had been discussion about bringing in a panel of landlords and others who had gone through the Town’s regulatory process, and said that was still something to consider.

Administrator Selig said another goal that should be looked at was “addressing ordinance changes to promote new development in the downtown compact area.” He noted that the Housing Task Force had worked on this but had not reached a conclusion, and said this was an

area where the Economic Development Committee could spend some time.

He said although the Council had addressed the goal concerning the senior citizen exemption amount, it hadn't addressed the issue of veteran tax credits. He noted that under State Statute, this exemption could be \$500, whereas in Durham it was \$100. He recommended that the Council talk about this.

Chair Niman asked if Councilors had any thoughts or comments on the existing goals list, or on other possible goals.

Councilor Van Asselt said he didn't disagree with what Administrator Selig had said regarding downtown development and the Housing Task Force. He said didn't see that the Council needed to spend time on this issue right now. He said he was confident that the EDC had made this a priority, and said by March, it would be coming to the Council with some proposals.

Councilor Stanhope said he hoped the Council would address the veterans' exemption. He noted that various other things were being adjusted for inflation, and said that this should be given a high priority in terms of making such an adjustment.

Chair Niman and Administrator Selig determined that the veterans' benefit adjustment could be put on an upcoming agenda.

Councilor Henry Smith said he agreed that the veterans' benefit adjustment was an important item. He also said the EDC was the entity that should move forward concerning possible ordinance changes to promote development downtown, and also said the Council should discuss this at some point.

Councilor Van Asselt said he thought it was important to acknowledge the Councilors who had worked so hard to achieve the goals on this list.

Councilor Carroll noted goal #7 concerning the expansion of the tax base, and asked if the Town had received any money yet concerning the Chinburg Builders agreement.

Administrator Selig said he didn't believe so, and said money would be received when certain benchmarks in the process were reached. He noted the extended deadline, and said another extension was being requested, which the Council would have to approve.

Councilor Needell said if a one year extension was granted, his understanding was that no money would be exchanged until the end of the year.

Administrator Selig said if the terms of the agreement stayed the same, that was true, but noted that the Council might want to talk about showing good faith.

Chair Niman said if the NHDOT issue was resolved and there was someone who was ready to go forward to build, some dollars would be forthcoming.

Administrator Selig provided details on how this would work, in terms of dollars being forthcoming.

Councilor Leach said between now and April, when it was time for the Council to come up with a new list of goals, it would be nice to do something regarding the Budget process. She suggested that a work session on the Budget could be scheduled, and said she was looking for a way to try to simplify the Budget process. She said if the Council started this process sooner, it could be made simpler for the Council and for residents.

Councilor Henry Smith said it might make sense to have a special work session on the Budget in April, after the new Council took office.

Councilor Leach noted that she was more interested in trying to look at the Budget process as a whole than in looking at specific items.

Councilor Van Asselt said he agreed that the Council should look at the process earlier, and should take another look at the Council's role in this process. He said a number of Councilors for a variety of reasons were frustrated with the most recent Budget process.

Chair Niman said that in February, the Council could discuss how to potentially change the Budget process, and could then share its knowledge on this with the new Council, in March.

Councilors agreed to put this discussion on the Agenda for a Council meeting in February.

Councilor Van Asselt said that over the last 10 months, the Council had done well with the goals that had been established, and had collectively gotten some things done. He said it was a different situation as compared to what had happened in some past years.

Councilor Carroll said this reflected a lot of good work on the part of Town staff as well.

Councilor Morong said it also had a lot to do with the leadership and hard work of Chair Niman.

C. Discussion on the process to use for the Town Administrator's annual performance evaluation

Chair Niman asked Councilors how they would like to proceed concerning the evaluation process.

Councilor Julian Smith suggested that the Council not fill out surveys, and instead do a round table discussion with Administrator Selig, starting that evening. He asked if anyone at the table saw why the Town would not continue, gladly, with the present Town Administrator. He said his second question was whether Administrator Selig was happy in his position at this point. He said his point was that this performance evaluation would be a practical discussion, not an academic one.

Councilor Leach suggested that the Council should focus on areas identified the previous year as needing improvement, as a starting point. She said she thought it might be helpful to look at the results from the 360 process done last year as part of this, and said this approach might be helpful for Administrator Selig as well.

Councilor Stanhope said in the private sector, as part of the annual review, the individual was asked to do a self evaluation. He provided details on how he thought that would be useful as part of the evaluation process.

Chair Niman asked if it would be helpful to give Administrator Selig items the Council would like him to evaluate himself on, or if it would be better for Administrator Selig to figure out what these items were.

Councilor Stanhope said there should be some structure to this, but said there shouldn't be a limit on the specific items to be addressed.

Councilor Leach said perhaps Administrator Selig could look at the areas the Council had previously identified as needing some improvement. She said the Council already agreed on the strengths, and also said she didn't think this would be a negative conversation.

Councilor Van Asselt said that approach made sense, and also said he agreed with what Councilor Stanhope had suggested. He also said that assuming the Council wanted to continue Administrator Selig's employment, the evaluation was as much about the organization and his relationships with staff as it was about him. He said if these things ran well, the Town ran well.

Councilor Needell noted that the format for the 2005 evaluation was interesting, and said he thought it captured what Councilors were now saying they wanted.

Councilor Henry Smith said he agreed that the 2005 evaluation provided a good guide. He also said he thought that submitting written evaluations was a good idea, and that a roundtable discussion should be secondary.

Councilor Van Asselt asked Administrator Selig what he wanted to get out of the evaluation process.

Administrator Selig said when he was hired, one of the things he had insisted upon was an evaluation process of some kind. He provided details on why he thought this was important. He said the challenge every year was that he got nine perspectives, and it was hard to get an overall perspective on how he was doing in a particular area. He said the previous evaluations had therefore not been that helpful.

He said he had hoped that the 360 evaluation last year would help to provide that kind of overall perspective, but said the process had been cumbersome. He said this year, he thought it would be helpful to have a roundtable discussion on areas for improvement. He said he would be pleased to do a self evaluation, but said he hadn't felt this had added to the process in the past.

Administrator Selig said the past year, he had made the Council's goals statements his own, and said one of the reasons things were happening was that he was working with this list. He said he wanted direct feedback, and would be happy to do the evaluation in public. But he said if Councilors were more comfortable doing the evaluation regarding him and staff in nonpublic session, they should do this.



Councilor Morong said having a roundtable discussion in a public session bothered him.

Councilor Needell said he felt it was up to Administrator Selig whether there should be a public or nonpublic session. But he said that while it was important to focus on the things Councilors were dissatisfied with, the evaluation was also the opportunity to stress the things they thought Administrator Selig was doing right, as a statement that this was the direction Councilors wanted to see him take the Town in.

Councilor Julian Smith said there might be some issues, criticism and questions Councilors had which, if Administrator Selig knew them in advance, would allow him to say he would rather discuss some of them in nonpublic session.

Chair Niman said that rather than write out an evaluation, he thought Councilors should make a list of concerns, successes, strengths and weaknesses. He said they could then see areas of commonality, as well as fringe issues, and could then determine those issues Councilors all agreed were important, and could focus on those. He said peripheral issues that were important to individual Councilors might or might not be discussed.

He said the Council could also see if its list had some of the same things on it as Administrator Selig's list. He said the discussion on the shared issues could then take place either in public or nonpublic session. He suggested that just the areas/issues for possible discussion needed to be identified by Councilors, and said written commentary on them wasn't necessary.

Chair Niman said if Councilors thought this was a good idea, the discussion could take place on either February 4<sup>th</sup> or February 18<sup>th</sup>. He said Councilors could provide their lists to him by the end of January so the information could be compiled in time for the February meeting.

Councilor Henry Smith said this was a good idea, but said he would prefer that the discussion take place in nonpublic session.

Administrator Selig said he would therefore insist that this be a nonpublic session.

Councilor Leach said that no matter what the evaluation vehicle was, she wasn't sure it would solve Administrator Selig's uneasiness concerning the idea of being able to get a clear perspective from nine Councilors.

Administrator Selig said he was confident they would never get there, but he said the process was still useful to him.

Councilor Morong said if they had this discussion in nonpublic session, a written evaluation could then be produced, and if Administrator Selig approved, it could become a public document. He also said he thought a roundtable discussion could clarify issues better than providing comments individually to Administrator Selig.

Councilor Stanhope said he liked the approach Chair Niman had outlined.

Councilor Julian Smith said if Councilors each gave Chair Niman their list of bulleted items,

some which they felt could be discussed in public session and some they thought should be discussed in nonpublic session, a list could be developed that would avoid having to have a random discussion.

He noted that there had been mention of the reality of having a nine member Council, and said perhaps the Council should start thinking about developing a Charter amendment to get the Town Council down to a smaller size. He noted that while this might be a very uncomfortable thing to do, it might still be worth doing. He also mentioned that Council meetings were getting longer and longer because of the current number of Council members.

Councilor Van Asselt said he thought that the revised goals that would soon be developed by the Council would be even stronger than the previous goals. He said a question was whether the Town had the organizational ability to move forward with such goals, and said this was a real question he came to the table with. He said the question was whether Administrator Selig had the capacity around him to do what the Council was asking him to do. He said this was a critical part of the evaluation, and he asked Administrator Selig to think about this.

Councilor Needell noted that the proposed increase would be discussed during the evaluation, and he asked when the proposed contract modification would be discussed. Administrator Selig said this would be discussed when the Council talked about compensation.

Chair Niman asked that he receive the bulleted items from Councilors by January 28<sup>th</sup>, and said the evaluation would then be done at either the first or second Council meeting in February.

#### **D. Other Business**

There was no other business.

### **XI. Nonpublic Session**

*Councilor Van Asselt MOVED to go into Nonpublic session in accordance with RSA 91-A:3 II (d) and (e). Councilor Julian Smith SECONDED the motion, and it PASSED unanimously 9-0, by roll call vote.*

<i>Chair Neil Niman</i>	<i>yes</i>	<i>Councilor Julian Smith</i>	<i>yes</i>
<i>Councilor Mark Morong</i>	<i>yes</i>	<i>Councilor Henry Smith</i>	<i>yes</i>
<i>Councilor Karl Van Asselt</i>	<i>yes</i>	<i>Councilor Peter Stanhope</i>	<i>yes</i>
<i>Councilor Jerry Needell</i>	<i>yes</i>	<i>Councilor Cathy Leach</i>	<i>yes</i>
<i>Councilor Diana Carroll</i>	<i>yes</i>		

The Council entered Nonpublic Session at 9:35 PM.

The Council entered public session at 10:35 PM.

*Councilor Julian Smith MOVED to seal the Minutes for the January 14, 2008 Nonpublic Minutes. Councilor Henry Smith SECONDED the motion, and it PASSED unanimously 9-0.*

### **XII. Extended Councilor and Town Administrator Roundtable (if required)**

There was no roundtable discussion

### **XIII. Adjournment**

***Councilor Leach MOVED to adjourn the meeting. Councilor Van Asselt SECONDED the motion, and it PASSED unanimously 9-0.***

Adjournment at 10:36 PM

Victoria Parmele, Minutes taker