

TOWN OF DURHAM 15 NEWMARKET ROAD DURHAM, NH 03824-2898 Tel: 603/868-5571 Fax: 603/868-5572

# AGENDA

# DURHAM TOWN COUNCIL Monday, October 15, 2012

# DURHAM TOWN HALL – COUNCIL CHAMBERS 7:00 PM

## <u>NOTE:</u> THE TOWN OF DURHAM REQUIRES 48 HOURS NOTICE IF SPECIAL COMMUNICATION AIDS ARE NEEDED

- I. Call to Order
- II. Approval of Agenda
- III. Special Announcements Activities, services, and opportunities available to Durham residents on the UNH campus – Erika Mantz, UNH Director of Media Relations
- IV. Approval of Minutes September 10, 2012
- V. Councilor and Town Administrator Roundtable
- VI. Public Comments (Not earlier than 7:45 PM)
- **VII. Unanimous Consent Agenda** (*Requires unanimous approval. Individual items may be removed by any councilor for separate discussion and vote*)
  - A. Shall the Town Council sign the warrant for the General Election to be held on Tuesday, November 6, 2012?
  - B. Shall the Town Council, upon recommendation of the Administrator, approve the engineering construction phase contract with Wright Pierce of Portland, Maine for the Old Concord Road Pump Station upgrade project in the amount of \$102,187 and authorize the Administrator to sign said associated documents?
  - C. Shall the Town Council, upon recommendation of the Administrator, schedule a Public Hearing for Monday, November 5, 2012 on a request by the Durham Conservation Commission for the Town of Durham to accept fee title in a 176-acre property located along Mill and Packers Falls Roads known as Sprucewood Forest (Tax Map 13, Lots 14-2 and 6-3), subject to an easement owned by the USDA Natural Resource Conservation Service, and to authorize the Administrator to sign a purchase and sale agreement and other related documents with The Trust for Public Land on behalf of the Town?



Durham Town Council Meeting Agenda October 15, 2012 - Page 2

## **VIII.** Committee Appointments

- A. Shall the Town Council appoint Mary Downes, 43A Bagdad Road, to the Durham Energy Committee?
- B. Whom shall the Town Council appoint as a neighborhood representative to the Rental Housing Commission?

# IX. Presentation Items

- A. Update on Durham Public Library Construction Project Doug Bencks, Chair, Library Board of Trustees
- B. Receive annual report of the Rental Housing Commission Kitty Marple, Chair
- C. Update on preliminary design and next steps for the Durham Fire Department building Lynn Reda, Architect

# X. Unfinished Business

- A. PUBLIC HEARING ON RESOLUTION #2012-17 amending Resolution #2012-11 to: 1) Change the \$745,000 funding designation within the 2012 Capital Fund Budget to come from short-term borrowing rather than the Undesignated (Unassigned) Fund Balance; and 2) Authorizing the short-term borrowing of said \$745,000 for up to one year to purchase the People's United Bank building located at 8 Newmarket Road for use as the future Town Hall?
- B. **PUBLIC HEARING AND ACTION ON RESOLUTION #2012-18**, in accordance with Revised Statutes Annotated (RSA) 31:95-b III (a), authorizing the acceptance and expenditure of \$5,000 in unanticipated revenue in the form of a donation from Liberty Mutual Insurance Company in celebration of its 100<sup>th</sup> anniversary?
- C. **PUBLIC HEARING AND POSSIBLE ACTION** on an application for the Community Revitalization Tax Relief Incentive (RSA 79-E) submitted by Xemed Holdings, LLC, c/o Bill Hersman, for property located at 16 Strafford Avenue, Map 2, Lot 8-3
- D. Shall the Town Council endorse a letter of support for the Strafford Regional Planning Commission to apply for local source water protection grants through the NHDES Drinking Water Source Protection Program and for the preparation and submittal of associated application materials to develop a River Management Plan for the Oyster River?

# XI. New Business Other Business

- XII. Nonpublic Session (if required)
- XIII. Extended Councilor and Town Administrator Roundtable (if required)
- XIV. Adjourn (NLT 10:30 PM)



TOWN OF DURHAM 15 NEWMARKET ROAD DURHAM, NH 03824-2898 Tel: 603/868-5571 Fax: 603/868-5572



DATE: October 15, 2012

# **COUNCIL COMMUNICATION**

<b>INITIATED BY:</b>	Durham Town Council
AGENDA ITEM:	APPROVE THE TOWN COUNCIL MEETING MINUTES FOR SEPTEMBER 10, 2012
CC PREPARED BY:	Jennie Berry, Administrative Assistant
PRESENTED BY:	Todd I. Selig, Town Administrator

# AGENDA DESCRIPTION:

Attached for the Council's review and approval are the minutes for the Town Council meeting held on Monday, September 10, 2012.

Please call Jennie Berry with any grammatical/spelling changes prior to the meeting. Discussion at Monday evening's meeting should be limited only to substantive changes.

# LEGAL AUTHORITY:

RSA 91-A:2 (II) specifies what must be contained in minutes of public meetings: "*Minutes of all such meetings, including names of members, persons appearing before the bodies or agencies, and a brief description of the subject matter discussed and final decisions, shall be promptly recorded and open to public inspection not more than 5 business days after the public meeting, except as provided in RSA 91-A:6, and shall be treated as permanent records of any body or agency, or any subordinate body thereof, without exception."* 

# **LEGAL OPINION:**

N/A

# **FINANCIAL DETAILS:**

N/A

# SUGGESTED ACTION OR RECOMMENDATIONS:

# MOTION:

The Durham Town Council does hereby approve the Town Council meeting minutes for September 10, 2012 (as presented) (as amended).





TOWN OF DURHAM 15 NEWMARKET ROAD DURHAM, NH 03824-2898 Tel: 603/868-5571 Fax: 603/868-5572 AGE



DATE: October 15, 2012

# **COUNCIL COMMUNICATION**

INITIATED BY:	Durham Town Council
AGENDA ITEM:	SHALL THE TOWN COUNCIL SIGN THE WARRANT FOR THE GENERAL ELECTION TO BE HELD ON TUESDAY, NOVEMBER 6, 2012?
CC PREPARED BY:	Jennie Berry, Administrative Assistant
PRESENTED BY:	Todd I. Selig, Administrator

# **AGENDA DESCRIPTION:**

In accordance with RSA 658:1 and the Secretary of State, William M. Gardner, the Durham Town Council is required to post an Election Warrant at least fourteen (14) days prior to the November 6, 2012 General Election. The Town Council must sign the original Warrant. One attested copy of the Warrant is to be posted at the election site and one attested copy is to be posted at the office of the Town Clerk or Town Hall. Attached for the Council's review is a copy of the General Election Warrant to be signed at the meeting on Monday evening.

# **LEGAL AUTHORITY:**

**658:1 General Election.** – At least 14 days before any state general election, the selectmen shall post a warrant at all the polling places and at the office of the town or city clerk or at the town hall. Said warrant shall prescribe the hour the polls are to open and the hour before which they may not close as provided in RSA 659:4 and RSA 659:4-a. It shall also state all offices and questions which are to be voted on and the location of the central polling place and of any additional polling places. If the selectmen neglect to issue a warrant for the state general election, or if they neglect to cause copies of such warrant to be posted agreeably to any vote of the town, they shall for each offense be guilty of a violation and any fines collected shall be remitted to the town.



Council Communication, 10/15/12 – Page 2 Re: Sign Warrant for General Election on November 6, 2012

## **LEGAL OPINION:**

N/A

# FINANCIAL DETAILS:

N/A

# SUGGESTED ACTION OR RECOMMENDATIONS:

Recommend that on Monday evening Councilors sign the Town of Durham Warrant for the November 6, 2012 General Election. Two attested copies of the Warrant will be signed by the Town Clerk and posted at the polling place and the Town Hall.

# WARRANT

# GENERAL ELECTION, TUESDAY, NOVEMBER 6, 2012

To the inhabitants of the Town of Durham, the County of Strafford, New Hampshire.

You are hereby notified to meet at the Oyster River High School, Coe Drive, in said Durham, New Hampshire, on Tuesday, the sixth day of November 2012. The polls will be open between the hours of 7:00 A.M. and 7:00 P.M. to act upon the following subjects:

To bring in your votes for President and Vice President of the United States, Governor, United States Representative, Executive Councilor, State Senator, State Representatives and County Officers.

To bring in your votes for Constitutional Amendment Questions.

## Absentee ballots will be processed beginning at 1:00 PM.

Given under our hands and seal this fifteenth day of October, in the year of Our Lord two thousand and twelve.

Councilors of Durham

A TRUE COPY

ATTEST:

Lorrie Pitt, Town Clerk



TOWN OF DURHAM 15 NEWMARKET ROAD DURHAM, NH 03824-2898 Tel: 603/868-5571 Fax: 603/868-5572 **#** 

DATE: October 15, 2012

# **COUNCIL COMMUNICATION**

**INITIATED BY:** Public Works Department

AGENDA ITEM: SHALL THE TOWN COUNCIL, UPON RECOMMENDATION OF THE ADMINISTRATOR, APPROVE THE ENGINEERING CONSTRUCTION PHASE CONTRACT WITH WRIGHT PIERCE OF PORTLAND, MAINE FOR THE OLD CONCORD ROAD PUMP STATION UPGRADE PROJECT IN THE AMOUNT OF \$102,187 AND AUTHORIZE THE TOWN ADMINISTRATOR TO SIGN ASSOCIATED DOCUMENTS?

**<u>CC PREPARED BY</u>**: April Talon, Assistant Town Engineer David Cedarholm, Town Engineer

PRESENTED BY: Todd Selig, Administrator

# AGENDA DESCRIPTION:

The purpose of this Council Communication is to request the Town Council's approval of the Engineering Construction Phase Contract in the amount of \$102,187 for the Old Concord Road Pump Station Upgrade Project with Wright-Pierce of Portland, Maine. This scope of services, which Wright-Pierce will perform, includes construction observation and administration and preparation of record drawings and O&M manual.

The Old Concord Road Pump Station is an above ground self-priming duplex pump station with associated wetwell that was originally constructed in 1963 and subsequently upgraded in 1985. The original structure included a pre-cast concrete wetwell, slab on grade foundation, two self-priming centrifugal pumps prefabricated enclosure and approximately 700 linear feet of forcemain. The 1985 upgrade involved wetwell modifications, new piping, pumps instrumentation concrete footing/slab placement, and concrete block building with wood siding. No modifications to the station have been made since 1985 and the building and its contents are now in need of an upgrade. Current peak flows to the station are 185 gallons per minute (gpm).



Council Communication, 10/15/12 Old Concord Road Pump Station Upgrade Project Page 2 of 2

The Old Concord Road station pumps wastewater from the west end of Durham into the College Road and College Brook Interceptors. The interior upgrades will include new pumps, new electrical equipment and wiring, plus new emergency standby power supplied by the newly installed natural gas pipeline on Old Concord Road. Additionally, the site will be regraded and additional fill placed to promote better site drainage.

The new pump station will be sized to handle the estimated future flows from the west end.

The New Hampshire Department of Environmental Services (NHDES) has reviewed the contract and indicated their approval conditional upon the Town Council's approval.

# LEGAL AUTHORITY:

Article 4-20 of the Administrative Code of the Town of Durham requires every purchase or contract in excess of \$15,000 shall be made only after receipt of publicly invited sealed competitive bids on uniform specifications and that all purchases in excess of \$35,000 requires approval by the Town Administrator and Town Council by affirmative vote.

# LEGAL OPINION:

N/A

# FINANCIAL DETAILS:

The 2011 Capital Fund Budget includes an appropriation of \$750,000 for engineering design and construction for the rehabilitation of the Old Concord Road Sewer Pumping Station. The Town is approved for an SRF loan in the amount of \$750,000.

# SUGGESTED ACTION OR RECOMMENDATIONS:

## MOTION:

The Durham Town Council does hereby, upon recommendation of the Administrator, approve the engineering construction phase contract for the Old Concord Road Pump Station Upgrade Project to Wright-Pierce Engineers in the amount of \$102,187 and authorizes the Town Administrator to sign said contract with the monies to come from Account #07-1133-360-36-000.

# ENGINEERING CONSTRUCTION PHASE CONTRACT FOR PROFESSIONAL SERVICES FOR TREATMENT WORKS

#### CITY/TOWN OF DURHAM, NEW HAMPSHIRE

This AGREEMENT made and entered into at <u>Strafford</u> County, New Hampshire, this \_\_\_\_\_\_ day of \_\_\_\_\_\_ 2012, by and between City/Town of <u>Durham</u> hereinafter called the OWNER, and Wright-Pierce hereinafter called the ENGINEER.

#### WITNESSETH:

WHEREAS, the OWNER intends to construct Treatment Works

UPGRADE AND IMPROVEMENTS TO OLD CONCORD ROAD PUMP STATION

hereinafter called the PROJECT, and

WHEREAS, professional sanitary engineering services will be required for construction administration, resident engineering and related services, and

WHEREAS, such services are of a distinct professional nature and hence not subject to the bidding process,

NOW THEREFORE, in consideration of these premises and of the mutual covenants herein set forth, the OWNER hereby employs the ENGINEER to furnish the following engineering services in connection with the proposed PROJECT; and it is agreed by and between the OWNER and the ENGINEER as follows:

#### I. Services to be Performed by the ENGINEER

A. Upon execution of this AGREEMENT, the EN-GINEER shall proceed with the general administration of construction and full-time inspection by qualified personnel of the contractor's work to assure compliance with the contract documents and any coincident or subsequent changes or change orders for the construction of the treatment works for the (Town/City) of Durham

Said services shall include, but shall not necessarily be limited to:

1. General Construction Administration

a. Updating and modifications of contract documents to meet changed site and project conditions or variations in State or Federal requirements.

b. Assistance in securing construction bids, conduct bid opening, tabulation and analysis of bids, and recommendation regarding award of contract. A copy of the bid analysis will be furnished to the Department of Environmental Services, Water Division, hereinafter called the DIVISION, and EPA. (Where applicable)

c. Completion of formal contract documents for the award of contracts.

d. Checking detail construction, shop and erection drawings submitted by the contractor.

e. Reviewing laboratory, shop, and mill test reports of materials and equipment.

f. Preparation of drawings and technical material as required to supplement and/or clarify the contract documents.

g. Review, verification, and approval of estimates for periodic and final payments to the contractors for submittal to the OWNER and the DIVISION.

h. Periodic inspection of work and final inspection.

i. Observing and reporting performance and qualifying tests required by specifications. j. Keeping daily records of construction progress and compiling same into progress reports for submission to the OWNER and DIVISION.

k. Verifying and keeping records of construction items of work accomplished for use as a basis of checking contractors' monthly estimates.

l. Consultation and advise during construction.

m. Determination of need for and preparation of change orders for approval by the OWNER and DIVISION based on conditions found during construction and/or additions or modifications to the work requested by the OWNER and approved by the ENGINEER and the DIVI-SION and implemented at a price recommended by the ENGINEER as equitable. For change order items exceeding \$10,000, the ENGINEER shall prepare an independent cost estimate.

n. Determination of "equality" for substitution of materials and equipment specified and securing DIVISION approval thereof.

o. Provide and maintain construction control lines and grades. For sewers offset lines and grade elevations, with cut depths at manholes; at treatment plant and pumping station sites - base lines for layout and benchmarks.

p. Preparation of application, supporting and associated documents for Federal, State, and other grant or loan programs, including monthly reimbursement requests.

q. Preparation of certificate of substantial completion and contract completion.

r. Assist the OWNER in obtaining the required project related approvals of State and Federal agencies.

2. Resident Inspection and Other Special Services

a. The ENGINEER agrees to provide at least one Registered Professional Civil

Engineer on the project site and one or more inspectors as necessary (full or part time) to assist the ENGINEER in the work of General Administration as described under I(A) and in observing construction activity for compliance with the contract documents and any associated change orders. The DIVISION shall be notified in writing of the name of the resident engineer, assistant engineers, and construction inspectors, and shall be provided with a brief history of the resident engineer's construction experience. The resident engineer and his inspectors shall be in the employ of and under direct control of the ENGINEER. It is further agreed that failure of the resident engineer to administer the PROJECT to the satisfaction of the DIVISION or OWNER is deemed to be sufficient basis for his removal from the PROJECT and replacement.

b. The ENGINEER agrees to provide supervision of initial start-up and operation and for services during the twelvemonth warranty period and to prepare the Project Performance Certification and associated documentation.

c. Preparation of an Operation and Maintenance Manual for approval by the DIVISION. After DIVISION approval, the ENGINEER agrees to supply five (5) sets of the completed manual, one (1) of which will be for the DIVISION.

d. Preparation of record drawings of the work as constructed. Three (3) sets of prints to be furnished, one (1) of which shall be for the DIVISION.

#### II. The OWNER'S Responsibilities

A. Assist the ENGINEER by placing at his disposal all available information pertinent to the PROJECT, including previous reports and other data relative to the reports.

B. Make provisions for the ENGINEER to enter upon public and private lands, municipal facilities and industrial establishments as required to perform work under this AGREEMENT.

C. The OWNER also agrees to comply with DI-VISION and Federal (Where applicable) requirements as they relate to this project.

#### III. Compensation to be Paid the ENGINEER

A. Method of Payment - Amount of Fee

1. Payment to the ENGINEER, for services rendered, shall be according to the following schedule:

Statements will be rendered (with modifications if necessary) monthly with billing by the hour and rate by labor category with mark-up and incidental expenses in accordance with the attached fee schedule.

2. The OWNER agrees to pay and the ENGI-NEER agrees to accept for all services under this AGREEMENT, a fee not to exceed

One Hundred Two Thousand and

One Hundred Eighty Seven Dollars

(\$ 102,187.00).

B. Limits of All Payment

1. The ENGINEER further agrees that the following fee for his services under I(A)(1), for Construction Administration on this PROJECT, (exclusive of work performed by resident engineering staff) is adequate to complete the work and shall not exceed

Forty Three Thousand and Four Hundred

And Fifty

(\$ 43,450.00 ).

2. Payment to the ENGINEER for resident engineering and other special services shall be as follows:

a. Resident engineering and supporting staff (as agreed to by the OWNER and DIVISION) as described under I(A)(2)(a) for a period of <u>85</u> working days for an assumed on-site period of 17 weeks averaging 6 hours per day overall, with Town staff providing inspection as appropriate during times ENGINEER not on-site, an amount not to exceed

#### Thirty Seven Thousand and Nine Hundred

#### And Fifty Seven Dollars

Dollars

Overtime shall be converted to equivalent fractions of 8-hour days. If the number of working days for inspection personnel stated above is not sufficient to provide adequate inspection of the PROJECT, it is agreed that the additional cost of resident services may be negotiated with the OWNER and the DIVISION.

b. For supervision of initial start-up and operation of the project and Project Performance Certification as described under I (A)(2)(b), during a period of twelve (12) months, an amount not to exceed

Five Thousand Two Hundred

\_Dollars

Dollars

(\$ 5,200.00 ).

c. For preparation of the Manual as described under I (A)(2)(c) and instructions on its use, an amount not to exceed Five Thousand Nine Hundred and

Seventy

(\$ 5,970.00 ).

d. For special services, an amount equal to the actual cost of such work. The actual cost shall include compensation to the ENGINEER for his work on these services. The ENGINEER also assures the OWNER that the moneys to be paid under this item are adequate for the work proposed and shall not exceed

Four Thousand and Ninety Dollars (\$ 4,090.00 ).

e. For preparation of the Record Drawings as described under I (A)(2)(d), an amount not to exceed

Five Thousand Five Hundred and

Twenty Dollars

#### **IV.** Additional Covenants

A. The ENGINEER agrees to provide in active charge of this PROJECT for the life of the contract a

Project Engineer who is a permanent employee of the ENGINEER and who is a "qualified sanitary engineer" as defined under the DIVISION'S "Rules and Regulations for the Prequalification of Consulting Engineers". The Project Engineer shall be\* Timothy R. Vadney, PE

(name and address)

230 Commerce Way, Suite 302, Portsmouth, NH 03801

Resume clearly describing the candidate's qualifications for the assignment is appended for convenience of reference.

Any proposed change in identity of the Project Engineer on the PROJECT shall first be approved by the DIVISION before transfer of responsibility is made. Failure of the Project Engineer to administer the PROJECT to the satisfaction of the OWNER and/or DIVISION is deemed sufficient basis for his removal and replacement.

B. The ENGINEER agrees to be solely responsible for all bills or claims for payment for services rendered by others and for all services and materials employed in his work, and to indemnify and save harmless the OWNER, and all the OWNER'S officers, agents and employees against all suits, claims or liability of every name and nature arising out of or in consequence of the negligent acts or failures to act of the ENGINEER or others employed by him in the performance of the work covered by this AGREEMENT.

C. The ENGINEER further agrees to procure and maintain at his expense such workmen's compensation insurance as is required by the statutes and public liability insurance in amounts adequate to provide reasonable protection from claims for bodily injury, death or property damage which may arise from his performance and the performance of his employees under this AGREEMENT.

D. All documents, including original drawings, design calculations, work sheets, field notes, estimates, and other data shall remain the property of the OWN-ER; they shall be transmitted to the OWNER in clean and orderly condition on demand by the OWNER; however, these may be left in the possession of the ENGI-NEER at the OWNER'S discretion.

E. The ENGINEER shall not sublet, assign or transfer any part of the ENGINEER's services or obligations (except special services) under this AGREEMENT without the prior approval and written consent of the OWNER, and the contract shall be binding upon and inure to the benefit of the parties, their successors and assigns. F. It is further agreed that before any construction is undertaken the ENGINEER will assist the OWNER or his authorized agent in providing the DIVISION with clear documentation certifying that the purchases of land have been secured to provide for location of the treatment works and other associated structures and equipment as shown on the construction plans or described in the specifications. Similar documentation shall be submitted on approvals from the State Highway Department regarding location of the treatment works and other project related facilities within rights-of-way and other lands under its jurisdiction.

G. The ENGINEER also agrees to provide in active residence and full time control at the site of the proposed construction a DIVISION approved registered eivil engineer project representative and DIVISION approved inspectors (full time, part time) as needed with the experience and other approved background to assist the ENGINEER in the work of General Administration and to assure contractors conformance with the plans and specifications and any approved coincident or subsequent changes or change orders related to the PROJECT. The resident registered engineer-representative for the life of this contract shall be

To be provided for review and acceptance prior to on-site construction

> (Name and Address) (Append resume describing Candidate's qualifications)

Any Proposed change in the identity of the resident engineer-representative on this PROJECT must first be approved by the DIVISION before transfer of responsibility is made. Additionally, if it is found by the DIVISION that a resident engineer representative (or inspector) cannot or will not administer the PROJECT in a manner satisfactory to the DIVISION, the ENGINEER agrees to replace him promptly upon receipt of a written request from the DIVISION with a qualified resident engineer representative who will acceptably administer the PROJECT. It is further agreed that failure of the ENGINEER to abide by the above covenant is sufficient cause for removal from the DIVISIONS Roster of Prequalified Engineers.

#### V. Termination

A. The OWNER shall have the right at any time for any reason whatsoever to interrupt or terminate the work required of the ENGINEER under this AGREE-MENT, with a seven (7) day written notice of such interruption or satisfaction of the DIVISION and the OWNER, and pursuant to this AGREEMENT. In order that the ENGINEER shall receive payment under termination notice, all plans, drawings, tracings, field notes, estimates, specifications, proposals, sketches, diagrams, and calculations, together with all other materials and data prepared in connection with the PROJECT shall be transmitted to the OWNER in a form acceptable to the OWNER and DIVISION.

#### ENGINEERING CONSTRUCTION PHASE CONTRACT For Professional Services for Treatment Works

IN WITNESS WHEREOF, the parties hereto have affixed their hand and seals at <u>Strafford</u> County, New Hampshire, the day, month, and year first above written.

#### **ENGINEER:**

WRIGHT-PIERCE

By:

(Authorized Representative\*)

Date:

#### **OWNER:**

By:

(Authorized Representative\*)

Date:

#### **APPROVED: \*\***

DEPARTMENT OF ENVIRONMENTAL SERVICES
Water Division

By:

(Authorized Representative)

Date:

\* Signatures should be supported by appropriate document.

\*\* It is agreed that as an act in furtherance of its statutory authority to approve engineering agreements for treatment works, the DIVISION's approval does not impose any contractual obligation or liability on the State of New Hampshire, the Department of Environmental Services or the Division.



Water Wastewater Infrastructure

Approval as to form:

Town Counsel

At a meeting of the Directors of Wright-Pierce, held on April 6, 2011, at which a quorum of Partners/Directors were present, it was

VOTED:

That any one or all of the following officers of Wright-Pierce, on behalf of the Corporation, are authorized to execute all Wright-Pierce contracts, both service agreements and general contractual obligations:

> William E. Brown, President Peter C. Atherton, Vice President Paul F. Birkel Vice President John W. Braccio, Vice President Richard N. Davee, Vice President Jonathan C. Edgerton, Vice President Walter J. Flanagan III, Vice President Michael D. Giggey, Vice President Jeffrey P. Musich, Vice President John R. Nelson, Vice President

Attest:	WRIGHT-PIERCE		
Place of Business:	99 Main Street		
	Topsham, ME 04086		

I hereby certify that I am the Clerk of Wright-Pierce, that William E. Brown is the duly elected President, and that the above vote has not been amended or rescinded and remains in full force and effect as of this date.

WRIGHT-PIERCE

Walter J. Flanagan III, Clerk

Date: 2-28-2012

seal

Offices Throughout New England | www.wright-pierce.com

230 Commerce Way, Suite 302 Portsmouth, NH 03801 USA Phone 603.430.3728 | Fax 603.430.4083

## TOWN OF DURHAM, NEW HAMPSHIRE SPECIAL SERVICES PROVIDED (III B 2d)

- 1. Subcontractor costs associated with conducting radio path study to finalize telemetry approach for upgraded station (\$1,850).
- 2. Additional engineering time for modification of the existing easement to allow for the necessary improvements to the Pump Station. Extensive coordination through onsite meetings, email correspondence and draft review of legal documents with Fairpoint Communications, Town Staff, University of New Hampshire representatives, and PSNH representatives. Additional Drafting time also needed to finalize the extents of the easement on a recordable plot plan.

DR PRICE SUMMARY FORMAT FOR SUBAGREEMENTS UNDER NH SAG & SRF Form Ap	proved DES 3/96		
PART I - GENERAL			
	2. GRANT/LOAN NO.		
urham, New Hampshire OF CONTRACTOR OR SUBCONTRACTOR - 4. DATE O	F PROPOSAL		
Prce 10/2/2			
ESS OF CONTRACTOR OR SUBCONTRACTOR (Include ZIP) 6. TYPE OF SERVICE TO I			
nerce Way, Suite 302, Portsmouth, NH 03801 Engineering Construction	Phase Services		
PART II - COST SUMMARY			
HOURLY ESTIMATI	ED		
T LABOR (Specify labor categories) HOURS RATE COST	TOTAL		
anager 11 \$62.00 \$682.			
anager 84 \$46.00 \$3,864.			
ect Engineer 216 \$31.50 \$6,804.			
gineers 12 \$24.00 \$288.	the second se		
beering         5         \$31.00         \$155.           ral Engineering         15         \$41.00         \$615.	statement of the second statem		
ral Engineering 15 \$41.00 \$615. Engineering 15 \$38.50 \$577.			
al Engineering 27 \$34.00 \$918.			
ation Engineering 27 \$40.00 \$1,080.			
Engineering 27 \$46.00 \$1,242.			
rg Technician 76 \$24.00 \$1,824.			
essing/ Office Assistant 79 \$17.00 \$1,343.			
nspection / 510 \$27.00 \$13,770.	and the second design of the s		
	Address in the		
DIRECT LABOR TOTAL:	\$33,162.50		
ESTIMATI	ED		
CT COSTS (Specify indirect cost pools) RATE x BASE = COST	Sec. Sec.		
Office 1.68 \$ 19,392.50 \$32,579.	Contraction of the local division of the loc		
Field Inspection         1.20         \$ 13,770.00         \$16,524.	.00		
	A 10 100 10		
INDIRECT COSTS TOTAL:	\$49,103.40		
TRAVEL	ED .		
COST			
(1) TRANSPORTATION \$3,400.	00		
(2) PER DIEM \$200.			
TRAVEL COSTS TOTAL: \$3,600.			
IPMENT, MATERIALS, SUPPLIES ESTIMATI			
cify categories) QTY COST COST			
ping / Misc \$239.	.00 ,		
Copies \$1,000.	.00		
\$800.	.00		
EQUIPMENT SUBTOTAL : \$2,039.			
BCONTRACTS	=D		
1 Study COST \$1,850.	00		
n Study \$1,850.	00		
SUBCONTRACTS SUBTOTAL : \$1,850.	.00		
HER (Specify categories) ESTIMATI			
COST			
OTHER SUBTOTAL : \$0.	.00		
OTHER SUBTOTAL : 50.	\$7,489		
L ESTIMATED COST	\$89,755		
	\$12,432		
	\$102,187		
FIT L PRICE			

		0.01711.00			PRICE SL						
13. C	COMPETITOR'S CATALOG LISTINGS, IN-HOUSE ESTIMATES, PRIOR QUOTES (Indicate basis for price comparison)							MARKET PRICE (S)		PROPOSED	
					x						
										130	
										24	
										1	
			PART IV	- DIREC	LABOR	BY CATE	GORY				
14.			PRIATE V	ORK CAT	EGORY IN	THE TAB	LE BELOV		TEGORIES WOU		
									T DOCUMENTS S TON, INSPECTION	-	1
			RECOF	DWGS.	, START-L	IP, SPECI	AL SERVIC	ES, ETC.		-	
Work category	Special Services		CA	Inspecti on	Start-up	O&M Manua	Record Drawing	Estimates Hours	Average Rate		Estimated Cost
$\rightarrow$							S				
Division Manager			11					11	\$62.00	\$	682.00
Project Manager			70		4	8	2	84	\$46.00	\$	3,864.00
Lead Project Engineer	20		160		8	20		216	\$31.50	\$	6,804.00
Project Engineers			4		4	4		12	\$24.00	\$	288.00
Civil Engineering			4				1	5	\$31.00	\$	155.00
Architectural Engineering			14				1	15	\$41.00	\$	615.00
Structural Engineering			14				1	15	\$38.50	\$	577.50
Mechanical Engineering			14		8	4	1	27	\$34.00	\$	918.00
Instrumentation Engineer	ing		14		8	4	1	27	\$40.00	\$	1,080.00
Electrical Engineering			14		8	4	1	27	\$46.00	\$	1,242.00
Engineering Technician	4		24		4	4	40	76	\$24.00	\$	1,824.00
Word Processing/ Office /	Assistant		67		2	8	2	79	\$17.00	\$	1,343.00
Resident Inspection				510	)			510	\$27.00	\$	13,770.00
	24		410	510	46	56	58	1104		\$	-
Total - Direct Labor Cost										\$	33,162.50

comments:

#### TIMOTHY R. VADNEY, P.E. Project Engineer

#### PROJECT ASSIGNMENT:

#### Education

B.S., Civil Engineering, University of New Hampshire

**Professional Registration** 

New Hampshire Maine Massachusetts

> Experience 11 Years

Joined Firm

#### Professional Affiliations

Water Environment Tecleration, Maine and New Hampshire Water Pollution Control Associations

#### Presentations

Vadney, T. R., "Pump Station and Forcemain Improvements Ogunquit Sewer District" NEWFA Annual Conference Boston, MA - January 2010

Vadney, T. R., "Optimization of the Activated Sludge Process" NEWFA Spring Conference Hyannis, MA June 2008

Varlney, T. R., "Energy Audit Process for Wastewater treatment Facilities" CTAWWA Specialty Conference Hartford, C.L. Jan 2008

#### Senior Project Engineer

#### EXPERIENCE SUMMARY

Mr. Vadney is a senior project engineer in the Wastewater Practice Group. Mr. Vadney is currently serving several New Hampshire clients as a senior project engineer and project manager. Mr. Vadney has extensive experience in a wide variety of wastewater fields including wastewater treatment, odor control, residuals management, septage treatment, collection systems, and pump stations.

#### RELEVANT PROJECT EXPERIENCE

#### Wastewater Treatment

- Sludge Dewatering Upgrade Nashua, NH
- Wastewater Treatment Facility Upgrade Hudson, MA
- Wastewater Treatment Facility Upgrade Sanford, ME
- Water Pollution Control Facilities Upgrade, Manchester, CT
- Water Pollution Control Facilities Upgrade Glastonbury, CT
- Wastewater Treatment Facility Upgrade Farmington, NH
- Wastewater Treatment Facility Feasibility Study Rockport, MA
- Wastewater Treatment Facility Evaluation Seacoast, NH
- Construction Administration Old Town, ME
- Pilot Testing Sanford, MF

#### **Pump Stations**

- Mechanic Street Pump Station Upgrade Portsmouth, NH
- Pump Station and Headworks Facility Evaluation and Design Dover, NH
- Mousam River Sewerage Pump Station Upgrade Sanford, ME
- Mousam River Sewerage Pump Station Upgrade Sanford, ME
- Goodall Brook Sewerage Pump Station Upgrade Sanford Maine
- Numerous Pump Station Evaluation and Upgrades Ogunquit, ME

#### Odor Control

- Oclor Investigation Milford, NH
- Odor Investigation South Berwick, ME
- River Street Pump Station Dover, NH

#### Modeling

- CORMIX Model Rockland, ME
- Sewer CADD Model Somersworth, NH
- Water Distribution System Hydraulic Model Belfast, ME
- Water Distribution System Hydraulic Model Presque Isle, ME
- Hydraulic Model Bow, NH

#### Infiltration/Inflow

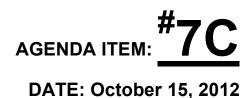
- I/I Study Farmington, NH
- 1/1 Study Skowhegan, ME
- I/I Study Pittsfield, NH
- I/I Study Greenville, NH
- I/I Study Newmarket, NH

# Wright-Pierce 🝣

Engineering a Better Environment

\*experience with previous employer

● 1/1 ● 1/1



# **COUNCIL COMMUNICATION**

<b>INITIATED BY:</b>	The Durham Conservation Commission				
AGENDA ITEM:	SHALL THE TOWN COUNCIL, UPON RECOMMENDATION OF THE Administrator, schedule a Public Hearing for Monday, November 5, 2012 on a request by the Durham Conservation Commission for the Town of Durham to accept fee title in a 176-acre property located along Mill and Packers Falls Roads known as Sprucewood Forest (Tax Map 13, Lots 14-2 and 6-3), subject to an easement owned by the USDA Natural Resource Conservation Service, and to authorize the Administrator to sign a purchase and sale agreement and other related documents with The Trust for Public Land on behalf of the Town?				
CC PREPARED BY:	Robin Mower, Councilor Gregg Caporossi, The Trust for Public Land				
PRESENTED BY:	Gregg Caporossi, The Trust for Public Land Todd I. Selig, Administrator				

# **AGENDA DESCRIPTION:**

The Council is in receipt of a letter dated October 8, 2012 from the Conservation Commission requesting that the Town accept legal interest in the property known as the Sprucewood Forest (also attached to this Communication). The boundaries of the property include Mill Road to the south and southeast and the UNH College Woods to the northeast, and on the west it abuts the Spruce Hole Conservation Area off Packers Falls Road.

On October 3, 2012 a duly noticed site walk was held on the Sprucewood Forest property. That evening the Conservation Commission held a public hearing related to the expenditure of monies from the Conservation Fund in support of this Proposal. Three members of the public spoke strongly in favor of the project. No members of

the public spoke against it. The Commission subsequently deliberated and reaffirmed that this project has been its *highest priority* for the past few years, primarily for the protection afforded to two public water sources: the Oyster River and the Spruce Hole Aquifer. It then voted unanimously to appropriate \$375,000 from the Conservation Fund and to request authorization from the Town Council to accept legal interest in the property in the form of fee title, subject to an easement owned by the USDA Natural Resource Conservation Service.

As prescribed by the Town's "Guidelines for Acquiring Legal Interest in Conservation/Open Space Land," the Town Council, with the recommendation of the Town Administrator, shall schedule the proposal for discussion at a regular meeting and determine whether to move the project forward to public hearing.

The Administrator recommends the expenditure of \$375,000 for the acquisition of the restricted fee title, weighed against the broader tax implications and various other municipal priorities faced by the community at this time.

Note: The property under consideration is sometimes referred to as the Oyster River Forest.

# **Brief history**

Efforts to protect this 176-acre combination of woodlands and open fields began more than three years ago, since which time the Durham Conservation Commission has worked in partnership with The Trust for Public Land (TPL). In 2010 the Council voted to support a grant application submitted by TPL on behalf of Durham to the Coastal and Estuarine Land Conservation Program (CELCP). Subsequently, the budget for that federal program fell significantly shorter than anticipated. As a result, despite its high national ranking, the grant was not approved. Since then, TPL has sought – and found – other funding sources. Despite the change in funding strategy, the goals for the project remain the same.

# The proposal

The proposal entails ownership of the property by the Town Durham, subject to an easement held by the U.S. Natural Resource Conservation Service (NRCS), which has expressed strong interest in the property for New England cottontail habitat restoration through its Wetlands Reserve Program (WRP). Indeed, NRCS would provide majority funding for the project and would become responsible for all costs related to NE cottontail habitat restoration and monitoring of the easement.

The Town would manage the Sprucewood Forest property in a manner consistent with its goals—as open space and for wildlife habitat, recreational use, and water quality protection. If conserved under the easement, the property would help protect

two current or future public water supplies, the Oyster River (a current public water supply and tributary to the Great Bay) and the Spruce Hole Aquifer (a future public water supply). The project would complement the Amber Acres property, conservation of which is underway, by providing over a mile and a half of protection along both sides of the Oyster River. The complementary nature of the two projects is underscored through a cooperative private fundraising campaign (the "Oyster River Initiative") recently launched by the projects' nonprofit land conservation partners, The Trust for Public Land and the Southeast Land Trust of New Hampshire.

For decades the UNH/Durham Water System has considered the Spruce Hole Aquifer as a prime potential public water source. Approximately 54.8 acres of the Sprucewood Forest property sit atop the aquifer. This aquifer protection would complement the approximately 35.6 acres of aquifer protection afforded by the Townowned Spruce Hole Conservation Area consisting of two parcels shown on Durham Tax Map 13: Lots 13-1 and 13-5. Regarding Lot 13-5, in the 1989 Annual Report for the Town of Durham Council Chair Donald Sumner wrote:

Acquisition of a 27.7-acre parcel of land in the Mill Road-Packers Falls Road area adjacent to the Town-owned Spruce Hole Bog was considered to be of utmost importance to protect a natural aquifer existing in that area. The aquifer was identified as a potential source for up to 1/2 million gallons of water per day by Dufresne-Henry, an engineering firm retained to study our water problems.

Negotiations between the Town and the owner of the land were unsuccessful so the Council voted to acquire the property through eminent domain action. The sum of \$430,000 was voted by the Council to secure the property and a final price will be established upon completion of the eminent domain proceedings.

Dr. Thomas Ballestero, a hydrologist and water resources engineer at the University of New Hampshire, was hired by the Town in the 1990s to study "the sand and gravel formation that contains the Spruce Hole Bog in order to more clearly delineate the hydrogeology of the system and the ecology of the bog." (A final report was issued in 2000 as "Final Report for Hydrogeologic Studies of the Spruce Hole Bog Sand and Gravel Formation," co-authored by UNH professor Thomas D. Lee. The report notes, "The Spruce Hole Bog appears to be insulated from the groundwater below by all of the dead and decomposed peat at its base" and includes a section titled "Biological Studies at Spruce Hole Bog" as Appendix 9.) This research work provided a basis of understanding that groundwater withdrawal from the Spruce Hole Aquifer would be unlikely to negatively affect the hydrology of the Spruce Hole Bog, which was designated a National Natural Landmark in 1972.

In 2010, Dr. Ballestero provided a letter of support to the Town Council for the Conservation Commission's request to seek grant funding to support the permanent conservation of the Sprucewood Forest property. On October 1, 2012, he commented in a phone conversation about the Sprucewood Forest project, "I can think of no town in New Hampshire that would have the kind of water security that Durham would have if it protects this resource."

On October 1, 2012 representatives from Underwood Engineers, Inc. and Emery & Garrett Groundwater, Inc. gave a presentation to the Town Council titled "Development of a New Public Water Supply Well with Artificial Recharge—Spruce Hole Aquifer." They commented that Durham is lucky to have the Spruce Hole Aquifer as a potential public water supply. Presentation slides note:

- The well site and the majority of the aquifer are on properties owned [and/or] controlled by the Town of Durham
- The groundwater recharge area surrounding Production Well DWP-PW2 is mostly undeveloped and provides a high level of protection to the quality of groundwater resources.

The Sprucewood Forest project would enhance these benefits by providing Durham with ownership rights to substantially more of the land around and adjacent to the aquifer. This would enable the Town to ensure that the well is kept free of contaminants – keeping the costs of water treatment affordable while protecting a critical water supply source for current and future residents and the University.

Public access for Sprucewood Forest would include low-impact recreational uses, such as birding, fishing, hiking, and cross-country skiing. The property provides easy access from an abandoned forest road and affords significant opportunity for trails on the property itself and as part of a network of trails on nearby properties.

# Boundary line adjustment

The Sprucewood Forest project consists of two existing lots of record with two different owners: (1) Map 13, Lot 14-2 owned by Sprucewood Retirement Trust and (2) that portion of Map 13, Lot 6-3 south of the Oyster River and approximately 47 +/- acres, owned by the Chet Tecce, Jr. Revocable Living Trust. Lot 14-2 in its entirety and only that portion of Lot 6-3 located south of the Oyster River would be included in the project. An application for a boundary line adjustment on Lot 6-2 is expected to be presented to the Planning Board in November. The Town of Durham may want to consider being a co-applicant with the Trust for Public Land.

# **Formal presentation**

Gregg Caporossi of The Trust for Public Land will attend Monday night's Council meeting but will not make a presentation until the Public Hearing. Jeremy Lougee, representing NRCS, will also be present on Monday night.

# SUPPORTING DOCUMENTS

Accompanying this Council Communication please find supporting documents that may also be downloaded from the Conservation Commission website at <http://www.ci.durham.nh.us/boc\_conservation/sprucewood-forest-conservationproject>:

- 1) Letter to the Durham Town Council from the Durham Conservation Commission, dated October 8, 2012, requesting that the Town accept legal interest in the property known as the Sprucewood Forest
- 2) Letter to Administrator Todd Selig from The Trust for Public Land, dated September 24, 2012. This letter incorporates other documents:
  - a) Summary of Ecological Benefits
  - b) Budget (showing land acquisition and program cost and sources of public and private revenues)
  - c) Maps titled "Aerial View of Oyster River Forest" and "Sprucewood Forest Aquatic Features"
  - c) Wetlands Reserve Program Easement, "Warranty Easement Deed in Perpetuity," including Exhibit D Water Uses and Water Rights
- 3) Documents provided by the Natural Resources Conservation Service:
  - a) Separate preliminary habitat restoration *plans* for New England cottontail rabbit for the Sprucewoods and Tecce parcels
  - b) A map showing the proposed habitat restoration areas
- 4) Press release for the Oyster River Initiative, a cooperative private fundraising campaign between The Trust for Public Land and Southeast Land Trust of New Hampshire
- 5) Map provided by the Strafford Regional Planning Commission titled "Sprucewood Forest Project Drinking Water Protection Map"
- 6) Durham Tax Map 13; Lots 14-2 and 6-3 each marked with a star
- 7) Opinion of Thomas P. Ballestero in the Matter of the Spruce Hole Formation (dated February 1, 2010 and submitted to the Durham Town Council)
- 8) Town of Durham "Guidelines for Acquiring Legal Interest in Conservation / Open Space Land" (May 19, 2008; formerly titled "Policy for Acquiring Legal Interest in Conservation/Open Space Land," dated May 3, 2004)

# COMMENTS ON SUPPORTING DOCUMENTS

NRCS Wetlands Reserve Program easements are non-negotiable and between NRCS and the current landowners. However, it should be emphasized that (1) the Durham Conservation Commission carefully reviewed the easement language and met twice with NRCS to discuss the easement terms and restoration plans to ensure that all of the Town's conservation objectives would be fulfilled by the easement; and (2) David Cedarholm, the Town Engineer, was an active participant in drafting Exhibit D–Water Uses and Water Rights, which the Commission also reviewed.

The question before the Town Council is to determine whether the Town of Durham shall take title to the land *subject to the recorded easement held by NRCS*. Note that because the deeds will be identical for the two parcels except for the names of the properties, only one (with blanks for name placeholders) is provided.

The appraisal was commissioned by NRCS to determine the purchase price that it would pay to the current landowners for the easement and therefore is not presented for Council review.

NRCS will be providing for the public hearing a statement of its financial responsibility for restoration and monitoring activities.

# LEGAL AUTHORITY:

RSA 36-A:4 and 5

Town of Durham "Guidelines for Acquiring Legal Interest in Conservation/Open Space Land" (May 19, 2008; formerly titled "Policy for Acquiring Legal Interest in Conservation/Open Space Land," dated May 3, 2004)

# LEGAL OPINION:

The NRCS Wetland Reserve Program Warranty Easement Deed was forwarded to Town Attorney Laura Spector-Morgan for review. The purchase and sale agreement between the Trust for Public Land and the Town of Durham for the fee title will also be reviewed and opinions made available for the Council's review prior to the public hearing.

# FINANCIAL DETAILS:

Described in the "Budget" sent as part of the September 24, 2012 letter from the Trust for Public Land to Administrator Todd Selig. (See line item labeled "Town of Durham Conservation Fund.")

# SUGGESTED ACTION OR RECOMMENDATIONS:

# MOTION:

The Durham Town Council does hereby, upon recommendation of the Town Administrator, schedule a Public Hearing for Monday, November 5, 2012 on a recommendation by the Durham Conservation Commission for the Town of Durham to accept legal interest in approximately 176 acres of property known as the Sprucewood Forest (Tax Map 13, Lots 14-2 and 6-3) in the form of fee title and authorize the Town Administrator to sign an agreement and other related documents with The Trust for Public Land regarding said interest.

# **MEMORANDUM**

- TO: Durham Town Council Todd Selig, Town Administrator
- FROM: Durham Conservation Commission

DATE: October 8, 2012

RE: Sprucewood Forest conservation proposal (aka, Oyster River Forest): Request to accept legal interest

As the Town Council is aware, since 2009 the Sprucewood Forest conservation proposal has continued to be of strong interest to the Conservation Commission. It now has funding support from the Commission, which turns to the Council with a request to accept legal interest in the property on behalf of the Town of Durham.

In its memoranda to the Council dated January 20, 2010 and February 12, 2010, the Durham Conservation Commission expressed strong support for the conservation of the property now known as Sprucewood Forest and requested that the Town Council lend its support for the submission of a CELCP (NOAA's Coastal and Estuarine Land Conservation Program) grant application to further explore this possibility.

In the intervening two and a half years, the Proposal evolved: Majority federal funding anticipated through CELCP was replaced with majority funding through the USDA Natural Resources Conservation Service's (NRCS) Wetlands Reserve Program (WRP). Additionally, the DCC voted earlier this year to support a complementary conservation project, Amber Acres, thereby enhancing the conservation values of the Sprucewood Forest property by providing additional protection for the Oyster River and contributing acreage to an unfragmented wildlife corridor.

On October 3, 2012 a duly noticed site walk was held on the Sprucewood Forest property. That evening the Conservation Commission held a public hearing related to the expenditure of monies from the Conservation Fund in support of this Proposal. Three members of the public spoke strongly in favor. The Commission confirmed that this project has been its *highest priority* for the past few years. It then determined that use of the Conservation Fund for the proper utilization and protection of the natural resources and the protection of watershed resources of the Property was justified and made the following motion:

Jamie Houle MOVED that the Durham Conservation Commission allocate \$375,000 from the Conservation Fund towards the purchase by The Trust for Public Land (TPL), of a 176-acre property located along Mill and Packers Fall Roads known as the Sprucewood Forest, aka Oyster River Initiative (Tax Map 13, Lots 14-2 and 6-3), and recommend that the Town thereafter accept the fee title in said property, subject to an easement owned by the USDA Natural Resource Conservation Service, and to

# authorize the Town Administrator to sign a purchase and sale agreement and other related documents with TPL; this was SECONDED by Derek Sowers. The motion was APPROVED unanimously.

The Town's *Land Acquisition Guidelines*, Section 8(B), stipulates, "When reviewing proposed projects, the Conservation Commission and Town Council shall give special attention and consideration to proposed projects that attract non-Town funds for the purchase and/or maintenance of the land in question." The funding requested by the Town toward the purchase of the property represents approximately 1/10th (one-tenth) of the purchase price. NRCS will maintain the easement at no cost to the Town.

In its memorandum to the Town Council dated January 20, 2010, the Commission specified the following benefits of the Proposal to the Town of Durham:

- 1. Protection of the Town's current and future water supply;
- 2. Cost avoidance associated with impacts of development in these sensitive areas to water quality and quantity;
- 3. Preservation of the Town's rural character and quality of life; and
- 4. Expansion of recreational opportunities and access to public lands.

The Commission further notes that this natural resource area has been identified as a conservation priority in the Town's Master Plan, by the Oyster River Watershed Association, and by various local and State agencies.

In light of these benefits, the Proposal's alignment with established conservation goals, the non-Town funds, and the considerable work contributed to the project by TPL and NRCS staff to date (and anticipated in the future), the members of the Conservation Commission officially recommend that the Town accept fee title in the Sprucewood Forest property, subject to the NRCS-owned easement.

Respectfully,

James Houle Acting Chair, Durham Conservation Commission

cc: Durham Conservation Commission Gregg Caporossi, The Trust for Public Land Jeremy Lougee, Natural Resources Conservation Service September 24, 2012

Mr. Todd Selig Town Manager Town of Durham 15 Newmarket Road Durham, NH 03824

## RE: Sprucewood Forest Project, Durham, NH

Dear Todd:

Please accept this letter and supporting documentation as a means to provide a brief update on the Sprucewood Forest project and request for the Town of Durham to consider the following: 1) taking ownership of the restricted fee on 176 acres of real property; and 2) authorize the expenditure of existing conservation funds to help acquire the property

As you may recall from our previous discussions, the proposed Oyster River project is a public/private collaborative to acquire 176 acres in Durham, NH. More importantly, acquisition of this key parcel will accomplish the following goals (see enclosed summary of ecological values):

- Protection of drinking water quality for two water sources
- Protect of important wildlife habitat, particularly for the New England Cottontail (NEC)
- Provide Public access for low impact recreational uses
- Provide connectivity to 2,200 acres of existing conservation land including the Amber Acres project currently in process

Over the course of the past three years, the Trust for Public Land has worked in partnership with the Town of Durham, NH Fish and Game, U.S. Natural Resource Conservation Service (NRCS) and other parties to secure significant funding for this project. To date, the project partners have raised \$2.964 towards our total goal of \$4.082 million to purchase the property and cover project related expenses (see enclosed budget). Funding secured to date includes: \$2,464,000 from the NRCS Wetland Reserve Program (WRP) and\$500,000 from the NH DES Aquatic Resource Mitigation Program.

In addition, we have applications pending for LCHIP and the NH Mooseplate program and will be embarking on an ambitious private capital campaign this fall to close the gap in public funding. While we are confident that these efforts will be successful, we cannot reach our goal without investment from the Town of Durham. Therefore, we respectfully request \$370,000 in funding from Durham, contingent upon the partners raising the remaining funds. If our fund raising efforts are successful, we propose that Durham consider owning the property subject to a conservation easement held by NRCS. At this time, we anticipate that the property will be acquired in a two step process. First, NRCS will purchase a conservation easement from the current landowners through WRP. Once the easement is in place, TPL will exercise its option, which currently expires on December 31, 2012, to purchase the restricted fee (subject to the WRP easement) from the landowners and convey it to the Town of Durham.

Although the ownership structure and funding sources described above represents a change from our previous discussions regarding potential Coastal and Estuarine Land Conservation Program funding, the outcome remains unchanged. Under the terms of the WRP easement, the Town of Durham will: 1) achieve protection of a substantial portion of the Sprucehole aquifer in close proximity to its new wellhead, 2) retain the right to withdraw groundwater, 3) protect 4,600 feet of frontage on the Oyster River, and 3) create opportunities for public access for low impact recreational uses as well as educational and research purposes that may be identified by the Town.

Thank you in advance for considering this request. I look forward to joining the Durham Conservation Commission at the upcoming site walk and public hearing on October  $3^{rd}$  and welcome the opportunity to address the Town Council at your earliest convenience. In the meantime, please do not hesitate to contact me at (207) 772-7424 x. 2.

Signed,

Gregg Caporossi Project Manager

Enclosures:

Summary of Ecological Benefits Project Budget Maps Wetland Reserve Program Easement Exhibit D – Reserved Water Rights Sprucewood Retirement Trust Draft Restoration Plan Tecce Draft Restoration Plan

# Summary of Ecological Values

#### Habitat Values

The property is entirely comprised of Tier 1 Habitat (highest habitat ranking) as determined by the New Hampshire Wildlife Action Plan due to the unique habitats and species found on the property, connectivity to existing conservation land and importance to maintaining water quality. According to the NH Natural Heritage Bureau, 14 threatened or endangered species have been found within one mile of the Property, some of which are likely to use the Property for foraging or breeding.

#### New England Cottontail

Of primary concern, the Property contains critical habitat for New England Cottontail (NEC) – a species that has recently been listed as endangered by the State of New Hampshire and a candidate species for federal listing. Recent surveys and modeling indicates that NECs inhabit less than 25% of their historic range from New York to Maine. In New Hampshire, wildlife biologists believe that as few as 100 individuals remain today. The population crash in New Hampshire is largely attributed to habitat loss as early successional habitat has grown into forestland or converted for development.

In recognition of this alarming trend, and in an effort to avoid federal listing, a broad based coalition of federal and state agencies, NGOs, municipalities and landowners are coordinating efforts to manage and restore habitat suitable for NECs through the New England Cottontail Initiative. Located within a NEC Focus Area, the proposed Sprucewood Forest project is regionally significant at a range-wide scale due to a number of factors.

According to NRCS Biologist Don Kierstead, the early successional habitat found on site could successfully be managed for NECs and is an ideal demonstration project due to the size of the habitat, connectivity with existing conserved lands and location within the existing NEC range. As a result, future migration along natural linkages without any major obstacles is likely to occur. For these reasons, protection of the Sprucewood Forest property is thought to be critical to maintaining NEC populations within the watershed. If acquired, NRCS would manage the Property to restore and maintain early successional habitat. All restoration and management costs associated with wetlands and/or NECs would be paid for by NRCS.

#### Water Quality Protection

The Sprucewood Forest project will help protect water quality in two important ways – both as a Durham/UNH drinking water supply and as a high-quality fresh water tributary to the Great Bay estuary.

#### Drinking Water Quality

The subject property includes 4,640 feet of river frontage on the Oyster River and lies in a critical location between two current drinking water sources (Oyster River reservoir and Lamprey River reservoir) and a future water source known as the Spruce Hole Aquifer. The Oyster River serves as the primary drinking water supply for the Town of Durham and the University of New Hampshire – serving a population of more than 16,000. The Oyster River provides about 54% (576 million gallons/day) of the water used by Durham and the University of New Hampshire today. The Property also abuts the parcel containing Durham's new municipal wellhead and sits atop the aquifer which supplies that well. According to Professor Tom Ballestero, a well-respected Civil Engineer at University of New Hampshire, protecting this property will help buffer all three water sources and help ensure high water quality now – and in the future.

#### Aquatic ecosystem and biodiversity

Given its location less than four miles from the point at which the Oyster River flows into Great Bay, protection of this property would help maintain the rich aquatic ecosystem that characterizes the Great Bay estuary. The Great Bay is formed by the outflow of five rivers that make up the Great Bay watershed, which encompasses nine percent of the land area of the state of New Hampshire. The abundance of fresh water dumped into this tidal estuary causes the mixing of fresh and salt water that provides a rich aquatic habitat and unusual biodiversity supporting more than 150 rare species and 55 exemplary natural communities and ecosystems. These communities and ecosystems include provide feeding, breeding, and nursery grounds for a variety of finfish, oysters, shellfish, waterfowl, wading birds, and shorebirds. The Great Bay is the most important waterfowl breeding, migrating, and wintering area in the state.

The section of the Oyster River that flows past the property has been designated as a **Special Significant Stream Reach,** in the State's Land Conservation Plan for NH's Coastal Watersheds due to the "significant living resources with the stream or river segment and their associated floodplain". In the Oyster River, this designation stems from the presence of American Brook Lamprey-rearing habitat and one of the largest remaining runs of anadromous blueback herring in the NH Seacoast region. NH Fish and Game, the Piscataqua Region Estuaries Partnership and the New Hampshire Coastal Program have made sustained investments to improve anadromous fish access and habitat in the Oyster River.

#### Connectivity

The Sprucewood Forest project represents a critical opportunity to connect over 2,200 acres of existing conservation land in a region of New Hampshire that is undergoing rapid urbanization. In response to these changes, federal and state agencies, NGOs and municipalities have invested considerable public and private funds to protect critical lands within the Great Bay estuary. As shown in the attached aerial map, the property is ideally situated to provide critical connectivity between some of the highest-ranking habitats in the state. Of note, the property abuts a 250 acre forest block owned by the University of New Hampshire (the "College Woods") which serves as an outdoor classroom and laboratory; Sprucehole Bog, a National sphagnum-heath bog that was designated a National Natural Landmark in 1972; and Amber Acres, a 44 acre agricultural project in progress.

At present, much of the Oyster River remains in a natural state with its banks lined by natural vegetation- enhancing its ability to serve as a wildlife travel corridor. If conserved, the subject property would significantly enhance the ability of wildlife to move in this densely populated area and help create a wildlife and recreational corridor through which the Oyster River flows to Great Bay.

Not only is the size of this conservation block important, but also the diversity of species and habitats represented. According to the NH Wildlife Action Plan, the Property contains *Critical Habitats for Species of Conservation Concern* including: 161.4 acres of Appalachian Oak Pine Forest, 29.3 acres of Grasslands, 5.4 acres of Wet meadow/shrub wetland, and one acre of Red Maple Floodplain Forest.

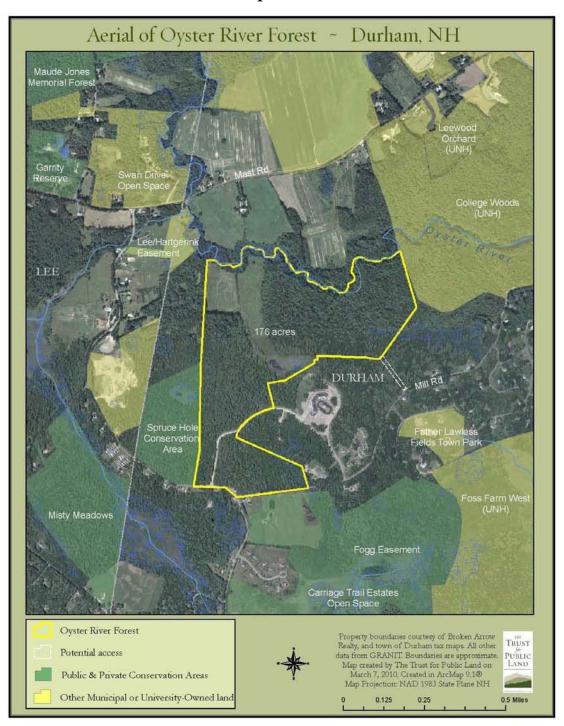
Due to the conservation values found on this property, it has been recognized in a numerous statewide and regional planning documents, the foremost of which are

- The Land Conservation Plan for New Hampshire's Coastal Watersheds (the "Coastal Plan") (2006)
- The NH Wildlife Action Plan (2006)
- The NH Rivers Management Protection Plan
- New England Cottontail Initiative priority focus area

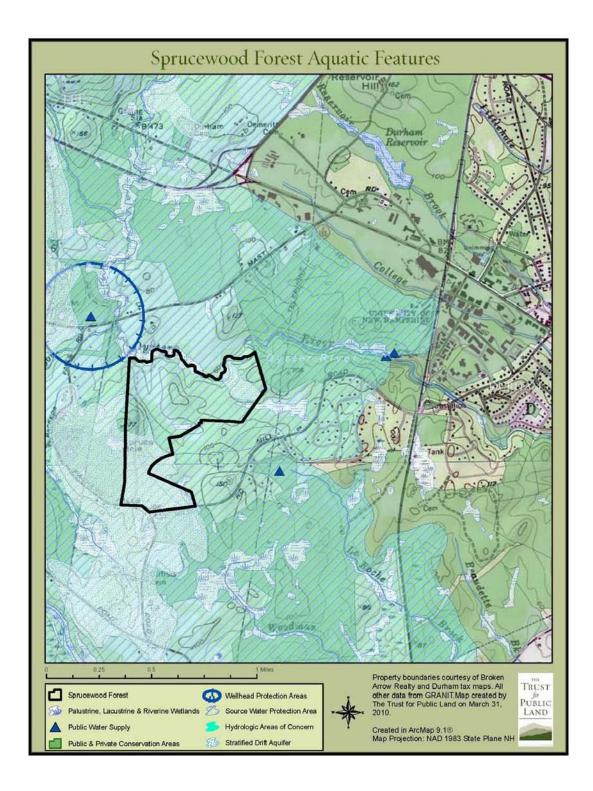
# Budget

EXPENSES	Amount	
Land Acquisition	\$4,000,000	
TPL Program Costs*	82,500	
TOTAL EXPENSES	\$4,082,500	
PUBLIC REVENUE		Status/Timing
NRCS Wetland Reserve Program	\$2,464,200	Confirmed
Town of Durham Conservation Fund	\$370,000	Requested
NH DES Aquatic Resource Mitigation	\$500,000	Confirmed
NH LCHIP Program	\$100,000	Pending/Application
		Submitted
NH Mooseplate	\$40,000	To be approached
TOTAL PUBLIC REVENUE	\$3,474,200	
PRIVATE REVENUE		
Lead Gift	\$50,000	Pledged
Private Foundations	\$60,000	In Process
Private Individuals	\$498,300	In Process
TOTAL PRIVATE FUNDING GOAL	\$ 608,300	
TOTAL REVENUE	\$4,082,500	

\* Includes staff time, due diligence and private capital campaign.



Maps



U.S. Department of Agriculture Natural Resources Conservation Service 12/2009 NRCS-LTP-30 01/2010

### WARRANTY EASEMENT DEED IN PERPETUITY

### WETLANDS RESERVE PROGRAM EASEMENT

NO.\_\_\_\_\_

### THIS WARRANTY EASEMENT DEED is made by and between

#### Witnesseth:

<u>Purposes and Intent</u>. The purpose of this easement is to restore, protect, manage, maintain, and enhance the functional values of wetlands and other lands, and for the conservation of natural values including fish and wildlife and their habitat, water quality improvement, flood water retention, groundwater recharge, open space, aesthetic values, and environmental education. It is the intent of NRCS to give the Landowner the opportunity to participate in the restoration and management activities on the easement area. By signing this deed, the Landowner agrees to the restoration of the Easement Area and grants the right to carry out such restoration to the United States.

<u>Authority</u>. This easement deed acquisition is authorized by Title XII of the Food Security Act of 1985, as amended (16 U.S.C. §3837), for the Wetlands Reserve Program.

NOW THEREFORE, for and in consideration of the sum of

\_\_\_\_\_\_Dollars (\$\_\_\_\_\_\_), the Grantor(s), hereby grants and conveys with general warranty of title to the UNITED STATES OF AMERICA and its assigns, (the Grantee), in perpetuity, all rights, title and interest in the lands comprising the easement area described in Part I and appurtenant rights of access to the easement area, but reserving to the Landowner only those rights, title, and interest expressly enumerated in Part II. It is the intention of the Landowner to convey and relinquish any and all other property rights not so reserved. This easement shall constitute a servitude upon the land so encumbered; shall run with the land for the duration of the easement; and shall bind the Landowner, (the Grantor(s)), their heirs, successors, assigns, lessees, and any other person claiming under them.

SUBJECT, however, to all valid rights of record, if any.

<u>PART I.</u> <u>Description of the Easement Area</u>. The lands encumbered by this easement deed, referred to hereafter as the easement area, are described on EXHIBIT A which is appended to and made a part of this easement deed.

TOGETHER with a right of access for ingress and egress to the easement area across adjacent or other properties of the Landowner. Such a right-of-way for access purposes is described in EXHIBIT B which is appended to and made a part of this easement deed.

<u>PART II.</u> <u>Reservations in the Landowner on the Easement Area</u>. Subject to the rights, title, and interest conveyed by this easement deed to the United States, including the restoration, protection, management, maintenance, enhancement, and monitoring of the wetland and other natural values of the easement area, the Landowner reserves:

- A. <u>Title</u>. Record title, along with the Landowner's right to convey, transfer, and otherwise alienate title to these reserved rights.
- B. <u>Quiet Enjoyment</u>. The right of the Landowner to enjoy the rights reserved on the easement area without interference from others.
- C. <u>Control of Access</u>. The right to prevent trespass and control access by the general public subject to the operation of State and Federal law.
- D. <u>Recreational Uses</u>. The right to undeveloped recreational uses, including undeveloped hunting and fishing and leasing of such rights for economic gain, pursuant to applicable State and Federal regulations that may be in effect at the time. Undeveloped recreational uses must be consistent with the longterm protection and enhancement of the wetland and other natural values of the easement area. Undeveloped recreational use may include hunting equipment, such as, tree stands and hunting blinds that are rustic and customary for the locale as determined by NRCS.
- E. <u>Subsurface Resources</u>. The right to oil, gas, minerals, and geothermal resources underlying the easement area, provided that any drilling or mining activities are to be located outside the boundaries of the easement area, unless activities within the boundaries are specified in accordance with the terms and conditions of EXHIBIT C which is appended to and made a part of this easement deed, if applicable.

F. <u>Water uses and water rights</u>. The right to water uses and water rights identified as reserved to the Landowner in EXHIBIT D which is appended to and made a part of this easement deed, if applicable.

<u>PART III</u>. <u>Obligations of the Landowner</u>. The Landowner shall comply with all terms and conditions of this easement, including the following:

- A. <u>Prohibitions</u>. Without otherwise limiting the rights of the United States acquired hereunder, it is expressly understood that the rights to carry out the following activities and uses have been acquired by the United States and, unless authorized by the United States under Part IV, are prohibited on the easement area:
  - 1. haying, mowing, or seed harvesting for any reason;
  - 2. altering of grassland, woodland, wildlife habitat or other natural features by burning, digging, plowing, disking, cutting or otherwise destroying the vegetative cover;
  - 3. dumping refuse, wastes, sewage, or other debris;
  - 4. harvesting wood products;
  - 5. draining, dredging, channeling, filling, leveling, pumping, diking, impounding, or related activities, as well as altering or tampering with water control structures or devices, except as specifically set forth in EXHIBIT D, if applicable;
  - 6. diverting or causing or permitting the diversion of surface or underground water into, within, or out of the easement area by any means, except as specifically set forth in EXHIBIT D, if applicable;
  - 7. building, placing, or allowing to be placed structures on, under, or over the easement area, except for structures for undeveloped recreational use;
  - 8. planting or harvesting any crop;
  - 9. grazing or allowing livestock on the easement area;
  - 10. disturbing or interfering with the nesting or brood-rearing activities of wildlife including migratory birds;
  - 11. use of the easement area for developed recreation. These uses include but are not limited to, camping facilities, recreational vehicle trails and tracks, sporting clay operations, skeet shooting operations, firearm range operations and the infrastructure to raise, stock, and release captive raised waterfowl, game birds and other wildlife for hunting or fishing;
  - 12. any activities which adversely impact or degrade wildlife cover or other habitat benefits, water quality benefits, or other wetland functions and values of the easement area; and
  - 13. any activities to be carried out on the Landowner's land that is immediately adjacent to, and functionally related to, the land that is subject to the easement if such activities will alter, degrade, or otherwise diminish the functional value of the eligible land.

- B. <u>Noxious Plants and Pests</u>. The Landowner is responsible for noxious weed control and emergency control of pests as required by all Federal, State, and local laws. A plan to control noxious weeds and pests must be approved in writing by the NRCS prior to implementation by the Landowner.
- C. <u>Fences</u>. Except for establishment cost incurred by the United States and replacement cost not due to the Landowner's negligence or malfeasance, all other costs involved in maintenance of fences and similar facilities to exclude livestock shall be the responsibility of the Landowner. The installation or use of fences which have the effect of preventing wildlife access and use of the easement area are prohibited on the easement or easement boundary.
- D. <u>Use of water for easement purposes</u>. The landowner shall use water for easement purposes as set forth in EXHIBIT D, which is appended to and made a part of this easement deed, if applicable.
- E. <u>Protection of water uses and water rights</u>. As set forth in EXHIBIT D, if applicable, the Landowner shall undertake actions necessary to protect any water rights and water uses for easement purposes.
- F. <u>Taxes</u>. The Landowner shall pay any and all real property and other taxes and assessments, if any, which may be levied against the land.
- G. <u>Reporting</u>. The Landowner shall report to the NRCS any conditions or events which may adversely affect the wetland, wildlife, and other natural values of the easement area.
- H. <u>Survival</u>. Irrelevant of any violations by the Landowner of the terms of this deed, this easement survives and runs with the land for its duration.

### PART IV. Compatible Uses by the Landowner.

- A. <u>General</u>. The United States may authorize, in writing and subject to such terms and conditions the NRCS may prescribe at its sole discretion, the use of the easement area for compatible economic uses, including, but not limited to, managed timber harvest, periodic haying, or grazing.
- B. <u>Limitations</u>. Compatible use authorizations will only be made if, upon a determination by NRCS in the exercise of its sole discretion and rights, that the proposed use is consistent with the long-term protection and enhancement of the wetland and other natural values of the easement area. The NRCS shall prescribe the amount, method, timing, intensity, and duration of the compatible use.

### PART V. Rights of the United States. The rights of the United States include:

- A. <u>Management activities</u>. The United States has the right to enter the easement area to undertake, on a cost-share basis with the Landowner or other entity as determined by the United States, any activities to restore, protect, manage, maintain, enhance, and monitor the wetland and other natural values of the easement area. The United States may apply to or impound additional waters, in accordance with State water law, on the easement area in order to maintain or improve wetland and other natural values.
- B. <u>Access</u>. The United States has a right of reasonable ingress and egress to the easement area over the Landowner's property, whether or not the property is adjacent or appurtenant to the easement area, for the exercise of any of the rights of the United States under this easement deed. The authorized representatives of the United States may utilize vehicles and other reasonable modes of transportation for access purposes. To the extent practical, the United States shall utilize the access identified in EXHIBIT B.
- C. Easement Management. The Secretary of Agriculture, by and through the NRCS, may delegate all or part of the management, monitoring or enforcement responsibilities under this easement to any entity authorized by law that the NRCS determines to have the appropriate authority, expertise and resources necessary to carry out such delegated responsibilities. State or federal agencies may utilize their general statutory authorities in the administration of any delegated management, monitoring or enforcement responsibilities for this easement. The authority to modify or terminate this easement (16 U.S.C. §3837e(b)) is reserved to the Secretary of Agriculture in accordance with applicable law.
- D. <u>Violations and Remedies Enforcement</u>. The Parties, Successors, and Assigns, agree that the rights, title, interests, and prohibitions created by this easement deed constitute things of value to the United States and this easement deed may be introduced as evidence of same in any enforcement proceeding, administrative, civil or criminal, as the stipulation of the Parties hereto. If there is any failure of the Landowner to comply with any of the provisions of this easement deed, the United States or other delegated authority shall have any legal or equitable remedy provided by law and the right:
  - 1. To enter upon the easement area to perform necessary work for prevention of or remediation of damage to wetland or other natural values; and,

2. To assess all expenses incurred by the United States (including any legal fees or attorney fees) against the Landowner, to be owed immediately to the United States.

### PART VI. General Provisions.

- A. <u>Successors in Interest</u>. The rights granted to the United States shall accrue to any of its agents or assigns. All obligations of the Landowner under this easement deed shall also bind the Landowner's heirs, successors, agents, assigns, lessees, and any other person claiming under them. All the Landowners who are parties to this easement deed shall be jointly and severally liable for compliance with its terms.
- B. <u>Rules of Construction and Special Provisions</u>. All rights in the easement area not reserved by the Landowner shall be deemed acquired by the United States. Any ambiguities in this easement deed shall be construed in favor of the United States to effect the wetland and conservation purposes for which this easement deed is being acquired. The property rights of the United States acquired under this easement shall be unaffected by any subsequent amendments or repeal of the Wetlands Reserve Program. If the Landowner receives the consideration for this easement in installments, the Parties agree that the conveyance of this easement shall be totally effective upon the payment of the first installment.
- C. <u>Environmental Warranty</u>. "Environmental Law" or "Environmental Laws" means any and all Federal, State, local or municipal laws, orders, regulations, statutes, ordinances, codes, guidelines, policies, or requirements of any governmental authority regulating or imposing standards of liability or standards or conduct (including common law) concerning air, water, solid waste, hazardous materials or substance, worker and community right-to-know, hazard communication, noise, radioactive material, resource protection, subdivision, inland wetlands and watercourses, health protection and similar environmental health, safety, building and land use as may now or at any time hereafter be in effect.

"Hazardous Materials" means any petroleum, petroleum products, fuel oil, waste oils, explosives, reactive materials, ignitable materials, corrosive materials, hazardous chemicals, hazardous wastes, hazardous substances, extremely hazardous substances, toxic substances, toxic chemicals, radioactive materials, infectious materials, and any other element, compound, mixture, solution or substance which may pose a present or potential hazard to human health or the environment. Landowner warrants that it is in compliance with, and shall remain in compliance with, all applicable Environmental Laws. Landowner warrants that there are no notices by any government authority of any violation or alleged violation of, non-compliance or alleged non-compliance with or any liability under any Environmental Law relating to the operations or conditions of the Property. Landowner further warrants that it has no actual knowledge of a release or threatened release of Hazardous Materials, as such substance and wastes are defined by applicable Federal and State law.

D. <u>General Indemnification</u>. Landowner shall indemnify and hold harmless the United States, its employees, agents, and assigns for any and all liabilities, claims, demands, loses, expenses, damages, fines, fees, penalties, suits, proceedings, actions, and cost of actions, sanctions asserted by or on behalf of any person or government authority, and other liabilities (whether legal or equitable in nature and including, without limitation, court costs, and reasonable attorneys' fees on appeal) to which the United States may be subject or incur relating to the easement area, which may arise from, but is not limited to, Landowner's negligent acts or omissions or Grantor's breach of any representation, warranty, covenant, agreements contained in this easement deed, or violations of any Federal, State, or local laws, including all Environmental Laws.

**TO HAVE AND TO HOLD**, this Warranty Easement Deed is granted to the United States of America and its assigns forever. The Landowner covenants that he, she, or they are vested with good title to the easement area and will warrant and defend the same on behalf of the United States against all claims and demands. The Landowner covenants to comply with the terms and conditions enumerated in this document for the use of the easement area and adjacent lands for access, and to refrain from any activity not specifically allowed or that is inconsistent with the purposes of this easement deed.

Dated this \_\_\_\_\_\_ day of \_\_\_\_\_\_, 2\_\_\_\_.

Landowner(s):

### ACKNOWLEDGMENT

STATE OF \_\_\_\_\_

COUNTY OF \_\_\_\_\_

On this \_\_\_\_\_ day of \_\_\_\_\_\_, 2\_\_\_\_, before me, the undersigned, a Notary Public in and for said State personally appeared \_\_\_\_\_\_\_, know or proved to me to be the person{s) described in and who executed the foregoing instrument, and acknowledged that \_\_\_\_\_\_ executed the same as \_\_\_\_\_\_ free act and deed.

IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal the day and year first above written.

Notary Public for the State of	
Residing at	
My Commission	
Expires	

### **ACCEPTANCE BY GRANTEE:**

I(name),	_(title), being
the duly authorized representative of the United States Department of Agric	ulture,
Natural Resources Conservation Service, do hereby accept this Conservatio	n Easement
Deed with respect to the rights and duties of the United States of America,	Grantee.

Dated this \_\_\_\_\_\_, 2\_\_\_\_.

Signature

Title

This instrument was drafted by the Office of the General Counsel, U.S. Department of Agriculture, Washington, D.C. 20250-1400.

### NONDISCRIMINATION STATEMENT

The U.S. Department of Agriculture (USDA) prohibits discrimination in all its program and activities on the basis of race, color, national origin, age, disability, and where applicable, sex, marital status, familial status, parental status, religion, sexual orientation, genetic information, political beliefs, reprisal, or because all or a part of an individual's income is derived from any public assistance program. (Not all prohibited bases apply to all programs.) Persons with disabilities who require alternative means for communication of program information (Braille, large print, audiotape, etc.) should contact USDA's TARGET Center at (1202) 720-2600 (voice and TDD). To file a complaint of discrimination write to USDA, Director, Office of Civil Rights, 1400 Independence Avenue, S.W., Washington, D.C. 20250-9410 or call (800) 705-3272 (voice) or (202) 720-6382 (TDD). USDA is an equal opportunity provider and employer.

### PRIVACY ACT STATEMENT

The above statements are made in accordance with the Privacy Act of 1974 (U.S.C. 522a). Furnishing this information is voluntary; however, failure to furnish correct, complete information will result in the withholding or withdrawal of such technical or financial assistance. The information may be furnished to other USDA agencies, the Internal Revenue Service, the Department of Justice, or other State or Federal Law enforcement agencies, or in response to orders of a court, magistrate, or administrative tribunal.

### <u>EXHIBIT D</u> WATER USES AND WATER RIGHTS

### I. <u>Water Uses and Water Rights Reserved to the Grantor ("Landowner")</u> (Warranty Easement Deed Part II.F.)

- A. The following specifies each water use<sup>1</sup> that the NRCS determines the Landowner may continue on, across, or under the easement area without harming the purposes of the easement:
  - 1. Impound surface water in Oyster River upstream of a dam near the current or former location of the Arthur Rollins Water Treatment Plant and within the easement area for water storage and withdrawal for use by The Chet Tecce, Jr. Revocable Living Trust, as well as future owners of these properties .
  - 2. Transfer water from the Lamprey River or a groundwater source to the Oyster River or to a subsurface aquifer within the easement area for use by The Chet Tecce, Jr. Revocable Living Trust, as well as future owners of these properties.
  - 3. Withdraw groundwater from available groundwater sources near or within the drainage area contributing to the Oyster River including groundwater from the aquifer under the easement area for use by The Chet Tecce, Jr. Revocable Living Trust, as well as future owners of these properties.
- B. For each water use described above, the following water rights<sup>2</sup>, or portion of water rights, are associated with these uses. These are the only water rights, or portions of water rights, that the Landowner reserves for continuing agricultural, domestic, or other uses. All details of each reserved water right, or reserved portion of a water right, must be specified, including the water right number, priority date or date of appropriation, date of permit or adjudication, source, flow, volume, point of diversion, place of use, period of use, means of conveyance and purpose of use.
  - 1. The Chet Tecce, Jr. Revocable Living Trust, as well as future owners of these properties reserve the right to continue to use the surface water impoundment in Oyster River behind a dam near the current or former Arthur Rollins Water Treatment Plant and within the easement area for water storage and withdrawal for use for current, as well as future owners of these properties .
  - 2. The Chet Tecce, Jr. Revocable Living Trust, as well as future owners of these properties reserve the right to transfer water from the Lamprey River or a groundwater source to the Oyster River or to a subsurface aquifer within the easement area for use by the current, as well as future owners, of these properties.

- 3. The Chet Tecce, Jr. Revocable Living Trust, as well as future owners of these properties reserve the right to withdraw groundwater from available groundwater sources near or within the drainage area contributing to the Oyster River including groundwater from the aquifer under the easement area for use by current, as well as future owners, of these properties .
- C. For each water right identified above, the Landowner retains the right to maintain, repair and reconstruct any existing water facilities associated with the right unless that activity would adversely impact the conservation values of the easement, as determined by NRCS in its sole judgment. The Landowner must obtain approval from the United States prior to commencing any substantial maintenance, repair, or reconstruction of existing facilities. "Substantial maintenance, repair, or reconstruction" means all activities that may adversely affect the purposes of the easement and includes, but is not limited to, the lining of irrigation works and the piping of water.
- D. Any use other than stated above for water rights the Landowner reserves requires the consent of NRCS following its determination that the action will not be inconsistent with the purposes of the easement or the protection of the conservation values. This includes, but is not limited to, changing a water right to any new use (including municipal, industrial or commercial use); selling, leasing, transferring, or encumbering the water right; and changing the point of diversion or type or place use.
- E. The Landowner reserves no other water rights or uses of water on, across, or under the easement area.
- II. <u>Encumbered Water Uses and Water Rights for Easement Purposes</u> (Warranty Easement Deed, Part III.D.)
  - A. The following specifies the water uses that the NRCS determines are necessary to accomplish the purposes of the easement.
    - 1. Impound surface water in Oyster River upstream of a dam near the current or former location of the Arthur Rollins Water Treatment Plant and within the easement area for water storage and withdrawal for use by The Chet Tecce, Jr. Revocable Living Trust, as well as future owners of these properties.
    - 2. Transfer water from the Lamprey River or a groundwater source to the Oyster River or to a subsurface aquifer within the easement area for use by The Chet Tecce, Jr. Revocable Living Trust, as well as future owners of these properties.
    - 3. Withdraw groundwater from available groundwater sources near or within the drainage

area contributing to the Oyster River including groundwater from the aquifer under the easement area for use by The Chet Tecce, Jr. Revocable Living Trust, as well as future owners of these properties.

- B. For each water use described in II.A. above, identify any associated existing water right or portion of a water right. These water rights are encumbered by the Warranty Easement Deed<sup>3</sup> for easement purposes, together with any associated rights-of-way, water conveyance and diversion structures, and water use equipment. Specify below details of each encumbered water right, or portion of a water right, including the water right number, priority date or date of appropriation, date of permit or adjudication, source, flow, volume, point of diversion, place of use, period of use, means of conveyance and purpose of use.
  - 1. The Chet Tecce, Jr. Revocable Living Trust, as well as future owners of these properties reserve the right to continue to use the surface water impoundment in Oyster River behind a dam near the current or former Arthur Rollins Water Treatment Plant and within the easement area for water storage and withdrawal for use for the current, as well as future owners, of these properties.
  - 2. The Chet Tecce, Jr. Revocable Living Trust, as well as future owners of these properties reserve the right to transfer water from the Lamprey River or a groundwater source to the Oyster River or to a subsurface aquifer within the easement area for use by the current, as well as future owners, of these properties
  - 3. The Chet Tecce, Jr. Revocable Living Trust, as well as future owners of these properties reserve the right to withdraw groundwater from available groundwater sources near or within the drainage area contributing to the Oyster River including groundwater from the aquifer under the easement area for use by current, as well as future owners, of these properties .
  - III. <u>PROTECTION OF ENCUMBERED WATER RIGHTS</u> (Warranty Easement Deed Part III.E.)

The Landowner shall protect the encumbered water uses and rights identified in II.A. and II.B. above by:

- A. Continuing to use the water for easement purposes so as to not abandon or forfeit any water rights by action or inaction.
- B. Providing NRCS with any reports provided by or to state water officials, of water diversions and evidence of use, such as records of dates of impoundment.

- C. Providing NRCS with all notices concerning water rights, including notices of abandonment or forfeiture, from state water officials.
- D. Allowing NRCS to enter property to continue use of the water right to prevent abandonment or forfeiture.
- E. Attempting to administratively prevent abandonment or forfeiture.
- F. Never changing the water right(s) to another use, including sale or transfer of such water right, or conversion to another conservation use.

### Footnotes:

<sup>1</sup> For purposes of this exhibit, the term "water use" means activities that control water or the use of water instream or in situ. The term includes, but is not limited to: diverting water from its natural source; conveying water in canals, ditches, laterals, flumes, or pipelines; storing water in reservoirs, impoundments, or ponds; pumping or otherwise controlling groundwater; developing springs; and intentionally leaving a quantity of water instream or in situ for a particular purpose. These activities also include installation, operation and maintenance of vehicle access for service, power lines, pumps, equipment shelters for related water treatment and other appurtenances associated with the described water uses whether owned by the property owner, water system operator or other third parties.

<sup>2</sup> For purposes of this exhibit, the term "water right" means an instrument, filing, or document that is associated with a particular water use. The term "water right" may include, but is not limited to water permits, water shares or stock certificates, water reservations, water allotments, or water contracts.

<sup>3</sup> By its terms, the Warranty Easement Deed also encumbers any water right appurtenant to the easement area that, for whatever reason, is not identified in this Exhibit D.

### <u>EXHIBIT D</u> WATER USES AND WATER RIGHTS

### I. <u>Water Uses and Water Rights Reserved to the Grantor ("Landowner")</u> (Warranty Easement Deed Part II.F.)

- A. The following specifies each water use<sup>1</sup> that the NRCS determines the Landowner may continue on, across, or under the easement area without harming the purposes of the easement:
  - 1. Impound surface water in Oyster River upstream of a dam near the current or former location of the Arthur Rollins Water Treatment Plant and within the easement area for water storage and withdrawal for use by the Sprucewoods Retirement Trust and The Chet Tecce, Jr. Revocable Living Trust, as well as future owners of these properties .
  - 2. Transfer water from the Lamprey River or a groundwater source to the Oyster River or to a subsurface aquifer within the easement area for use by the Sprucewoods Retirement Trust and The Chet Tecce, Jr. Revocable Living Trust, as well as future owners of these properties.
  - 3. Withdraw groundwater from available groundwater sources near or within the drainage area contributing to the Oyster River including groundwater from the aquifer under the easement area for use by the Sprucewoods Retirement Trust and The Chet Tecce, Jr. Revocable Living Trust, as well as future owners of these properties.
- B. For each water use described above, the following water rights<sup>2</sup>, or portion of water rights, are associated with these uses. These are the only water rights, or portions of water rights, that the Landowner reserves for continuing agricultural, domestic, or other uses. All details of each reserved water right, or reserved portion of a water right, must be specified, including the water right number, priority date or date of appropriation, date of permit or adjudication, source, flow, volume, point of diversion, place of use, period of use, means of conveyance and purpose of use.
  - The Sprucewoods Retirement Trust and The Chet Tecce, Jr. Revocable Living Trust, as well as future owners of these properties reserve the right to continue to use the surface water impoundment in Oyster River behind a dam near the current or former Arthur Rollins Water Treatment Plant and within the easement area for water storage and withdrawal for use for current, as well as future owners of these properties .
  - 2. Sprucewoods Retirement Trust and The Chet Tecce, Jr. Revocable

Living Trust, as well as future owners of these properties reserve the right to transfer water from the Lamprey River or a groundwater source to the Oyster River or to a subsurface aquifer within the easement area for use by the current, as well as future owners, of these properties.

- 3. Sprucewoods Retirement Trust and The Chet Tecce, Jr. Revocable Living Trust, as well as future owners of these properties reserve the right to withdraw groundwater from available groundwater sources near or within the drainage area contributing to the Oyster River including groundwater from the aquifer under the easement area for use by current, as well as future owners, of these properties .
- C. For each water right identified above, the Landowner retains the right to maintain, repair and reconstruct any existing water facilities associated with the right unless that activity would adversely impact the conservation values of the easement, as determined by NRCS in its sole judgment. The Landowner must obtain approval from the United States prior to commencing any substantial maintenance, repair, or reconstruction of existing facilities. "Substantial maintenance, repair, or reconstruction" means all activities that may adversely affect the purposes of the easement and includes, but is not limited to, the lining of irrigation works and the piping of water.
- D. Any use other than stated above for water rights the Landowner reserves requires the consent of NRCS following its determination that the action will not be inconsistent with the purposes of the easement or the protection of the conservation values. This includes, but is not limited to, changing a water right to any new use (including municipal, industrial or commercial use); selling, leasing, transferring, or encumbering the water right; and changing the point of diversion or type or place use.
- E. The Landowner reserves no other water rights or uses of water on, across, or under the easement area.
- II. <u>Encumbered Water Uses and Water Rights for Easement Purposes</u> (Warranty Easement Deed, Part III.D.)
  - A. The following specifies the water uses that the NRCS determines are necessary to accomplish the purposes of the easement.
    - Impound surface water in Oyster River upstream of a dam near the current or former location of the Arthur Rollins Water Treatment Plant and within the easement area for water storage and withdrawal for use by the Sprucewoods Retirement Trust and The Chet Tecce, Jr. Revocable Living Trust, as well as future owners of these properties.

- 2. Transfer water from the Lamprey River or a groundwater source to the Oyster River or to a subsurface aquifer within the easement area for use by Sprucewoods Retirement Trust and The Chet Tecce, Jr. Revocable Living Trust, as well as future owners of these properties.
- 3. Withdraw groundwater from available groundwater sources near or within the drainage area contributing to the Oyster River including groundwater from the aquifer under the easement area for use by Sprucewoods Retirement Trust and The Chet Tecce, Jr. Revocable Living Trust, as well as future owners of these properties.
- B. For each water use described in II.A. above, identify any associated existing water right or portion of a water right. These water rights are encumbered by the Warranty Easement Deed<sup>3</sup> for easement purposes, together with any associated rights-of-way, water conveyance and diversion structures, and water use equipment. Specify below details of each encumbered water right, or portion of a water right, including the water right number, priority date or date of appropriation, date of permit or adjudication, source, flow, volume, point of diversion, place of use, period of use, means of conveyance and purpose of use.
  - 1. Sprucewoods Retirement Trust and The Chet Tecce, Jr. Revocable Living Trust, as well as future owners of these properties reserve the right to continue to use the surface water impoundment in Oyster River behind a dam near the current or former Arthur Rollins Water Treatment Plant and within the easement area for water storage and withdrawal for use for the current, as well as future owners, of these properties .
  - 2. Sprucewoods Retirement Trust and The Chet Tecce, Jr. Revocable Living Trust, as well as future owners of these properties reserve the right to transfer water from the Lamprey River or a groundwater source to the Oyster River or to a subsurface aquifer within the easement area for use by the current, as well as future owners, of these properties
  - 3. Sprucewoods Retirement Trust and The Chet Tecce, Jr. Revocable Living Trust, as well as future owners of these properties reserve the right to withdraw groundwater from available groundwater sources near or within the drainage area contributing to the Oyster River including groundwater from the aquifer under the easement area for use by current, as well as future owners, of these properties .

### III. <u>PROTECTION OF ENCUMBERED WATER RIGHTS</u> (Warranty Easement Deed Part III.E.)

The Landowner shall protect the encumbered water uses and rights identified in II.A. and II.B. above by:

- A. Continuing to use the water for easement purposes so as to not abandon or forfeit any water rights by action or inaction.
- B. Providing NRCS with any reports provided by or to state water officials, of water diversions and evidence of use, such as records of dates of impoundment.
- C. Providing NRCS with all notices concerning water rights, including notices of abandonment or forfeiture, from state water officials.
- D. Allowing NRCS to enter property to continue use of the water right to prevent abandonment or forfeiture.
- E. Attempting to administratively prevent abandonment or forfeiture.
- F. Never changing the water right(s) to another use, including sale or transfer of such water right, or conversion to another conservation use.

### Footnotes:

<sup>1</sup> For purposes of this exhibit, the term "water use" means activities that control water or the use of water instream or in situ. The term includes, but is not limited to: diverting water from its natural source; conveying water in canals, ditches, laterals, flumes, or pipelines; storing water in reservoirs, impoundments, or ponds; pumping or otherwise controlling groundwater; developing springs; and intentionally leaving a quantity of water instream or in situ for a particular purpose. These activities also include installation, operation and maintenance of vehicle access for service, power lines, pumps, equipment shelters for related water treatment and other appurtenances associated with the described water uses whether owned by the property owner, water system operator or other third parties.

<sup>2</sup> For purposes of this exhibit, the term "water right" means an instrument, filing, or document that is associated with a particular water use. The term "water right" may include, but is not limited to water permits, water shares or stock certificates, water reservations, water allotments, or water contracts.

<sup>3</sup> By its terms, the Warranty Easement Deed also encumbers any water right appurtenant to the easement area that, for whatever reason, is not identified in this Exhibit D.

# NH-NRCS

# Wetland Reserve Program

# **Preliminary Restoration Plan**

Practices Identified for: SPRUCEWOODS

May 1, 2012

Prepared by: JEREMY LOUGEE

#### ✤ <u>RESTORATION SITE #1:</u>

- Wetland Enhancement 659 Vegetative Community Enhancement Scenarios Using feller/buncher, remove low value timber and/or stack into shelter piles to increase horizontal diversity and preferred habitat for New England Cottontail.
  - 7 Acres @ \$1,125/Acre = \$7,875 (#1)

#### ✤ <u>RESTORATION SITE #2:</u>

- Wetland Enhancement 659 Vegetative Community Enhancement Scenarios Add 1000 live stakes/acre to increase shelter component in old field (~10 acres).
  - 10,000 @ \$3.45/each = \$34,500 (#2)
- Wetland Enhancement 659 Vegetative Community Enhancement Scenarios Add 1000 blackberries/acre to complement shelter component in old field (~10 acres).
  - 10,000 @ \$2.50/each = \$25,000 (#3)
- Wetland Enhancement 659 Vegetative Community Enhancement Scenarios Add 1,000 container plants to complement shelter component in old field (~10 acres).
  - 1,000 @ \$20/each = \$20,000 (#4)
- Wetland Enhancement 659 Woody Invasive Plant Control Scenarios Moderate Density across 25 acre old field.
  - 25 acres @ \$550/acre = \$13,750 + \$6,850 follow-up = \$20,625 (#5)

#### ✤ <u>RESTORATION SITE #3:</u>

- Wetland Restoration 657 Stream Restoration Scenarios
   Stream wood additions to increase habitat complexity and re-engage floodplain.
  - 1,500 linear feet @ \$4/foot = \$6,000 (#6)
- Wetland Enhancement 659 Stream Crossing Scenarios Install stone ford across 30x15 section of stream bed.
  - 30 feet at \$49.24/Foot = \$1,477.20 (#7)

### **TOTAL ESTIMATED COSTS = \$115,477.20**

# NH-NRCS

## Wetland Reserve Program

## **Preliminary Restoration Plan**

Practices Identified for: TECCE TRUST

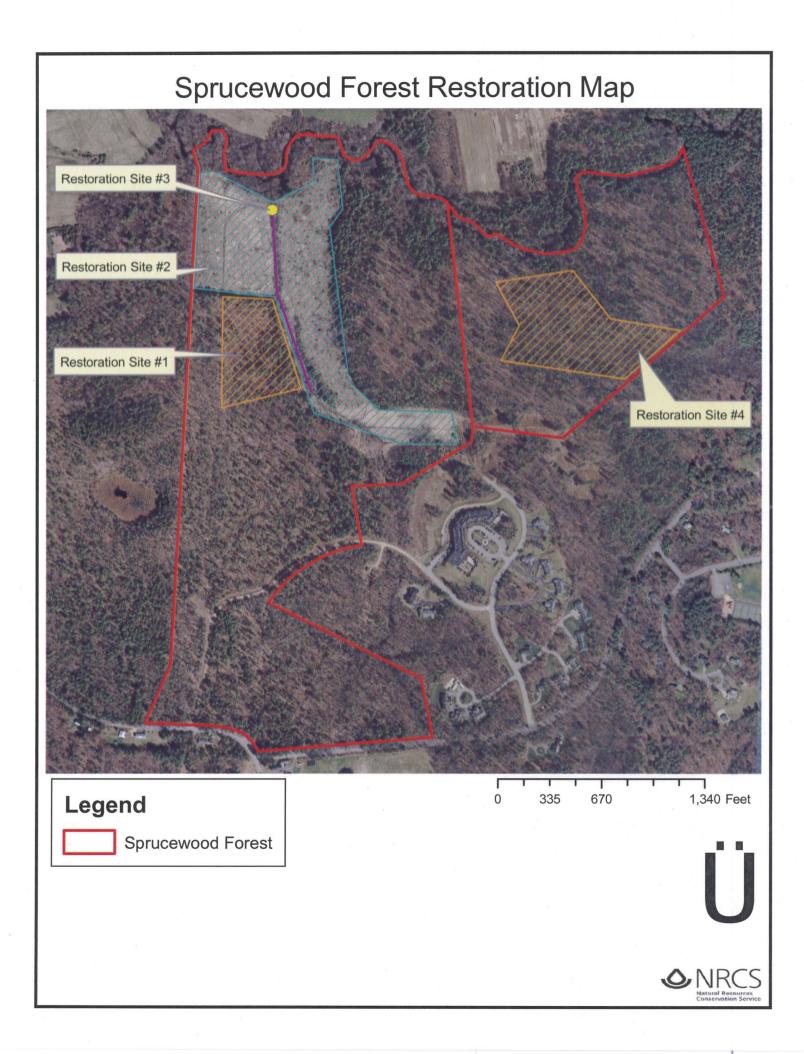
May 1, 2012

Prepared by: JEREMY LOUGEE

#### ✤ <u>RESTORATION SITE #1:</u>

- Wetland Enhancement 659 Vegetative Community Enhancement Scenarios Using lighter touch hand work, girdle lower value trees and add course woody debris to increase horizontal complexity and shelter habitat for New England Cottontail.
  - 10 Acres @ \$600/Acre = \$6,000 (#1)
- Wetland Enhancement 659 Vegetative Community Enhancement Scenarios Plant 250 bare roots/acre to increase shelter component in riparian areas (~10 acres).
  - 2500 @ \$2.50/Each = \$6,250 (#2)
- Wetland Enhancement 659 Woody Invasive Plant Cotrol Scenarios Remove moderate density invasives across 10 acre restoration site.
  - 10 Acres @ \$550/Acre = \$5,500 (#3)

### **TOTAL ESTIMATED COSTS = \$17,750**



# For Immediate Release October 2, 2012

### Contact:

Rodger Krussman New Hampshire State Director The Trust for Public Land 802-371-9286



Brian Hart Executive Director Southeast Land Trust of New Hampshire 603-778-6088

### The Trust for Public Land and Southeast Land Trust of New Hampshire Launch the Oyster River Initiative to Permanently Protect Sprucewood Forest and Amber Acres Farm

Combined acquisitions will protect drinking water quality, endangered wildlife habitats, shoreline on the Oyster River, working farmlands, and provide conservation connectivity

### DURHAM, NEW HAMPSHIRE, October 2, 2012 —

The Trust for Public Land (TPL) and the Southeast Land Trust of New Hampshire (Land Trust) announced today the launching of the Oyster River Initiative, cooperative private fundraising campaigns to permanently protect the 176-acre Sprucewood Forest and the 39-acre Amber Acres Farm. Although separate projects, Amber Acres and Sprucewood Forest – parcels located on opposite banks of the Oyster River – are complementary to each other. The combined properties cost a total of \$5.3 million, 83% of which has been either secured or pledged to date. The remaining \$900,000 must be raised by December 31, 2012 for both properties to be conserved.

With more than one mile of combined shoreline along the Oyster River, protecting both Sprucewood Forest and Amber Acres is critical to maintaining drinking water quality in the Oyster River. Currently, the Oyster River serves as one of the sources of drinking water for Durham and UNH, serving a population of 16,000 and providing as much as a million gallons of water a day. In addition, Sprucewood Forest sits atop the Spruce hole Aquifer, which has been identified as a future water source for Durham and UNH. If conservation efforts are successful, both properties would become part of a fabric of 2,200 acres of existing conservation land – linking some of the community's most cherished natural resources like College Woods and Spruce hole Bog.

The Oyster River Initiative is important not only for Durham but for the Great Bay region. Sprucewood Forest and Amber Acres Farm both lie within the Oyster River Core Focus Area, identified by the Land Conservation Plan for New Hampshire's Coastal Watershed as a top priority due to its ecological functioning and water quality protection.

### **Sprucewood Forest**

The Trust for Public Land is working in partnership with the Town of Durham, NH Fish and Game and the Natural Resource Conservation Service (NRCS) to acquire Sprucewood Forest. Identified as a Conservation Focus Area, and featuring over 4,600 feet of shoreline on the Oyster River, the Sprucewood Forest project creates a unique opportunity to protect drinking water, protect critical wildlife habitat and create new recreational opportunities. Not only will this project help maintain water quality in the Oyster River, the property is also located on top of Spruce hole aquifer – a future source of water for the Town of Durham and University of New Hampshire. In addition to protecting water quality, approximately 97% of the property is designated as the "highest ranked habitat" in the State, according to the NH Wildlife Action Plan (2010). Of critical importance, the property contains suitable habitat for New England Cottontail, a state listed Endangered Species.

To date, \$2.964 million has been raised towards the total goal of \$4.082 million to purchase the Sprucewood Forest property and cover project related expenses. Funding secured to date includes \$2,464,000 from the Wetland Reserve Program (WRP) and \$500,000 from the NH Aquatic Resource Mitigation Program. Additional funds are also being sought from LCHIP and the NH Mooseplate program. The Durham Conservation Commission will be holding a public hearing on October 3 to consider expending \$370,000 from its Conservation Fund towards the project. The remaining \$749,000 will need to be raised privately by the end of 2012. Should fundraising efforts prove successful, the proposed project structure is for the Town of Durham to own the property with a conservation easement held by NRCS.

### **Amber Acres**

The Land Trust has been working with the Town of Durham and NRCS to acquire a conservation easement on Amber Acres Farm, located directly across the Oyster River from Sprucewood Forest. In addition to its 4,000 feet of shoreline on the Oyster River, Amber Acres Farm serves as part of the scenic gateway to Durham and Lee along Route 155A's agricultural landscape. One of the project's primary goals is the conservation of local "working farmlands." With two-thirds of the property at work as open fields, Amber Acres is well suited for agriculture and the project's goal is to ensure Amber Acres' continued use for local food production.

The Land Trust's private fundraising campaign seeks to raise the final \$175,000 needed by year end to permanently conserve Amber Acres Farm. To date, 85% (\$1,015,000) of the funding required to save Amber Acres Farm has already been committed, with \$765,000 from the Farm and Ranchland Protection Program, \$250,000 from the Durham

Conservation Fund. Additional funds are also being sought from LCHIP and the NH Mooseplate program.

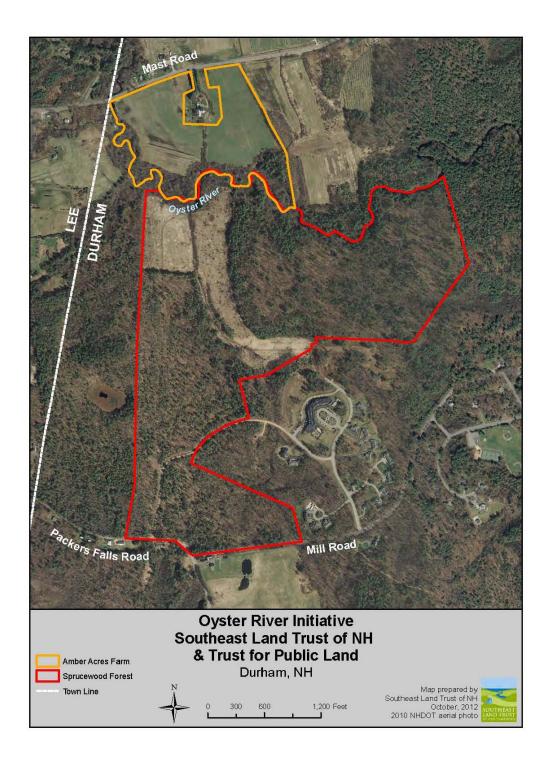
#### ###

### About TPL

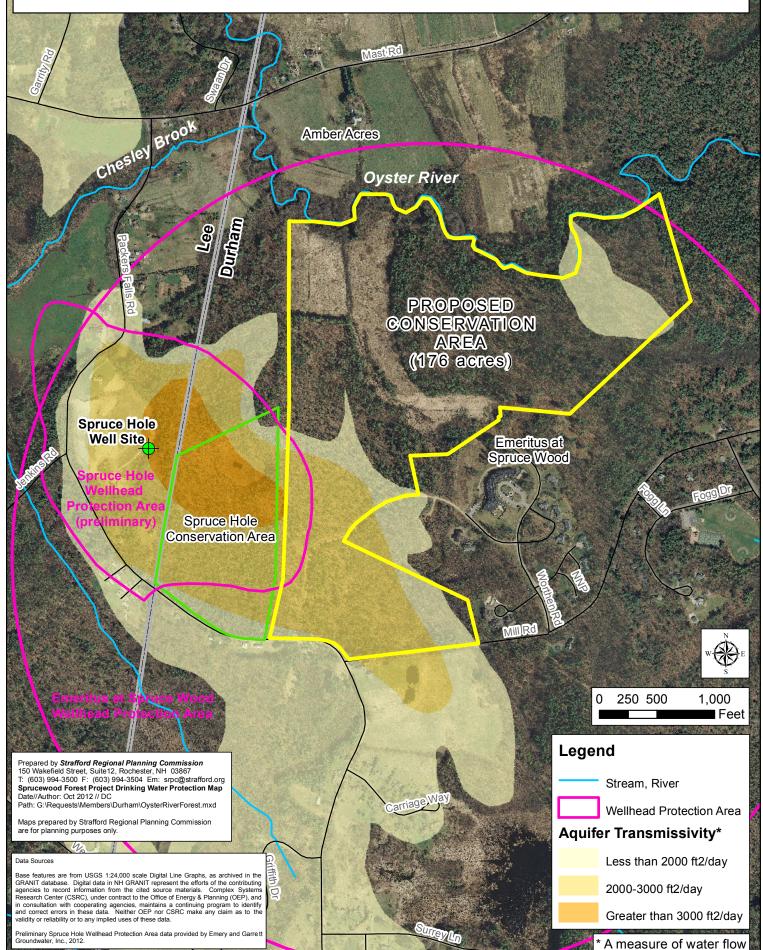
The Trust for Public Land (TPL) is a national nonprofit land conservation organization that conserves land for people to enjoy as parks, gardens, and natural areas, ensuring livable communities for generations to come. Since 1972, The Trust for Public Land has helped protect 3 million acres nationwide, including more than 225,000 acres in New Hampshire. The Trust for Public Land depends on the support of individuals, corporations, and foundations. Visit The Trust for Public Land online: www.tpl.org/newhampshire.

### About the Southeast Land Trust of New Hampshire

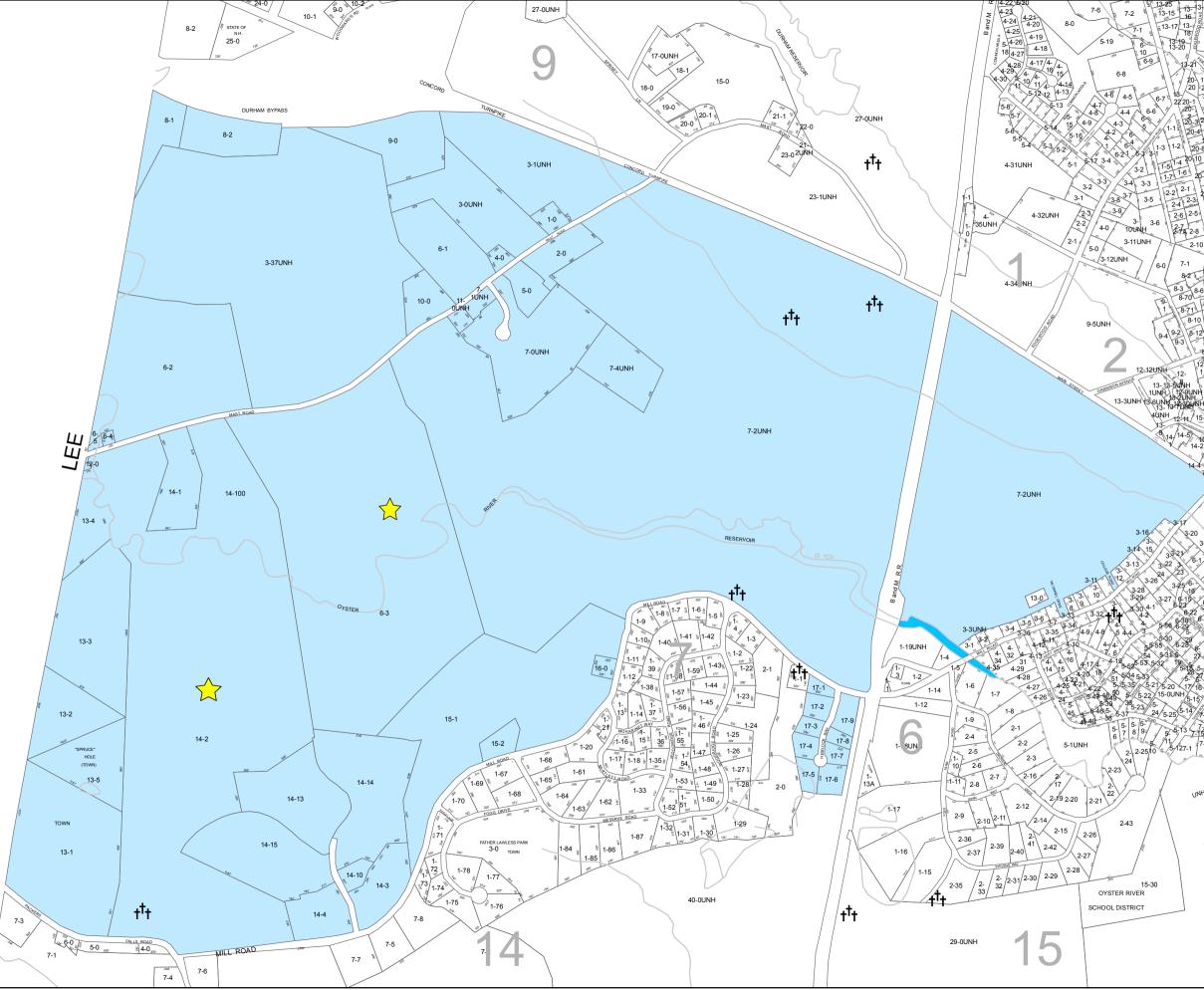
Since 1980, the Southeast Land Trust of New Hampshire has been conserving the significant land and natural resources of southeastern New Hampshire (Rockingham County), including farmland, working forests, water, wildlife habitat and natural areas, and community landscapes. The Land Trust has permanently protected 146 properties totaling more than 8,500 acres. For more information please visit: <u>www.seltnh.org</u>.



### **Sprucewood Forest Project Drinking Water Protection Map**



HILL





# Map 13





### Legend



Adjacent Map Sheets

Current Map Sheet

t<sup>†</sup>t

Cemetery

### 1 inch equals 935 feet

This map was originally produced by Strafford Regional Planning Commission in October 2004 and updated by the Town of Durham in June 2009.

THIS MAP IS FOR ASSESSMENT PURPOSES ONLY. IT IS NOT INTENDED FOR LEGAL DESCRIPTION OR CONVEYANCE.

### **Opinion of Thomas P. Ballestero in the Matter of the Spruce Hole Formation.**

1 February 2010

The Town of Durham shares water supply and service with the University of New Hampshire. In the early 1900's Town and university populations were less than 1/10<sup>th</sup> of what they are today. and the water supply that served this system for decades was the Old Town Reservoir, located behind the UNH equestrian complexes on Main Street. The Old Town Reservoir was created by a small dam, and the impoundment was fed by a one square mile area watershed. From 1920 to 1940, the Town and university populations increased rapidly, and the Old Town Reservoir was no longer capable of supplying the increased demand. So the water supply source switched to the Oyster River, who's 12 square miles of watershed seemed more than abundant for the needs of the people. However after World War II, population continued to skyrocket to a level over five times of what it was at the beginning of the century. So within 2 decades of moving to the new, abundant water supply, it became clear that in the drier years, the Oyster River supply was inadequate to meet the needs of the water customers. The old Wiswall Dam and reservoir on the Lamprey River seemed to be a nearby source that would be more than adequate to make up the deficiency of the Oyster River flows. The Lamprey River has over 170 square miles of watershed upstream of Wiswall Dam plus upstream there are some larger impoundments that assist with flood control, recreation, and low flow control. To secure the Lamprey River water supply, a pipeline was constructed from the Lamprey River, through the Spruce Hole Formation, and to the Oyster River. (More recently, this pipeline was plumbed right into the water treatment plant). As growth continued to the end of the 1900's, which included land developments west of Town, wells were installed in the sand and gravel deposits next to the Oyster River, and this water served the western portion of the water distribution network.

So by the end of the last century, Town and university populations grew by 10-fold, the old water supply was abandoned, and three new water supplies were developed and added. As the century came to an end however, the reality proved that in roughly one third of the years, during the August-September low flow period, the wells and the Oyster River were insufficient to meet system demand. The Lamprey River is necessary to make up this difference. But guess what, independent of any other demands, these sources will not suffice long into the future. Although the rate of population growth has decreased since the start of this millennium, Town and university populations continue to increase.

Now some stark realities: neither the Oyster River nor the Lamprey River is entirely in Durham. In fact, Durham is downstream from most Towns in the watershed. The populations of the upstream towns are also increasing (some of the fastest growing in the state at the moment), and they will soon start to place their own demands on these same rivers. Given our current water law, Durham has no senior right to the water in these rivers. In addition, topography is not a barrier: just as Durham uses transbasin diversion to move water from the Lamprey to the Oyster, other Towns can certainly follow suit. Also, downstream towns can divert water from locations upstream of Durham.

Another demand that will soon occur on these rivers is for instream flows: the minimum flows necessary to preserve instream, water-dependent resources. When the instream flows are established, water will be all the more critical at low flow times necessitating towns to add storage capacity, new water supplies, and conservation plans for their drinking water infrastructure.

There should be no false sense of security in the water supply. The Town and university need to be thinking in terms of securing water supplies for the next century or longer. Water is not like energy: there are no alternatives. Water is not like money, you can't print more. You either have it or you do not. The more insidious aspect is that you can have the water, but if it is contaminated it could be rendered unpotable. Or the treatment costs could be prohibitive.

One existing water supply that can be a short term supplementary supply consideration is the Spruce Hole Formation. I say short term, because with just a production well and pumping groundwater, this formation can supply about 20% more water to the existing system supply. At the present rate of population growth, this will suffice for another 2 to 3 decades. Unless controls are placed on population, density, or growth, an additional water supply will then be necessary by mid-century.

Having taught and consulted on development of water supplies and designs of water transmission systems for 3 decades, I can identify that there are some simple ways to deal with water supply issues. As we have seen in the past 10 years, there is phenomenal potential for flooding in our rivers. So one way out of the water supply problem is to build enough storage to save some of the flood waters in order to then have water when the rivers are at very low stages. Conventionally this is either done with dams or with storage tanks. But the magnitude of storage that we are talking about is in the millions of gallons. This alternative is not cheap. Plus, there really are no strong possibilities for dams to meet these needs. Even if there were, there is no guarantee that a new dam would make it through the review and permitting process. Interestingly, the Spruce Hole Formation already possesses a fantastic amount of storage, and most of the infrastructure necessary to get the water to the formation already exists. This is almost a no cost option. If operated as a reservoir (what is known as aquifer storage and recovery), the Spruce Hole Formation could help the Durham/UNH water system suffice for at least another century.

What is the value of the Spruce Hole Formation? At least 2 to 3 decades of new water supply if the water quality is maintained and it is used solely to pump groundwater. If the formation is operated as artificial storage and recovery, this is could provide additional water supply for well

over a century. If you want to place a dollar value on this formation, ask yourself what it would cost to replace the Oyster River supply.

What is critical is that once this formation is lost, it is lost forever. Don't kid yourself. If you do think that you can bring back developed areas, turn them into natural areas, and use them for natural resources, imagine a very productive aquifer being right under the center of Town, with the best site for a well at Young's Restaurant. To develop this site, all buildings within 400 feet of the well would need to be removed. Let's be honest, this just would not happen.

The slippery slope that you find yourselves on now is the slow but steady erosion of the protection that you once afforded the Spruce Hole Formation. At some point your decisions will become irreversible and the formation, its water supply, or its storage ability will be untenable. Any development proposal on the heart of the Spruce Hole Formation has the potential to render the formation unusable. Maybe not today or in the next decade, but it will happen. We cannot be so careless as to think that just because we employ prudent stormwater and land use management strategies that this insures us against the loss of this formation. This simply is not true. The best way to secure the integrity of this formation and the water it contains is to protect it from any development. Anything less erodes its integrity and sanctuary. Employing modern stormwater management strategies may remove 99% of some pollutants from stormwater, but not all. In addition, the 1% that is not removed, in this case, goes to the Spruce Hole Formation. And this 1% is relentless: it occurs day after day after day. Ultimately you would surpass the ability for the formation to accept these contaminants without consequence. If the Superfund program has taught us anything, it is that prevention is much more cost-effective than the cure. If you do not believe this, ask Dover when the groundwater in the sand and gravel formation at the Tolend Road landfill will again be potable, and at what cost?

Be fully aware that your actions on this matter will not go unnoticed. A good portion of the Spruce Hole Formation is in the neighboring Town of Lee. How do you expect to convince Lee to protect this same formation from development if you do not do so yourself? Similarly, if you do not create the protective buffers at the rivers which serve as your water supplies, what will persuade the upstream towns to do so? If your own actions do not display the importance of this formation when the decisions are in your own hands, how do you expect to convince others that the resource is worth protecting?

100 years from this day, your successors will consider you either people with great vision and foresight, or foolish enough to let this opportunity slip through your hands and go to waste. The opportunity now is before you, and once it is lost there is really no going back without a lot of cost, difficulty, and pain.



TOWN OF DURHAM 15 NEWMARKET ROAD DURHAM, NH 03824-2898 Tel: 603/868-5571 Fax: 603/868-5572



DATE: October 15, 2012

### **COUNCIL COMMUNICATION**

INITIATED BY:	Mary Downes, 43A Bagdad Road
AGENDA ITEM:	SHALL THE TOWN COUNCIL APPOINT MARY DOWNES, 43A BAGDAD ROAD, TO THE DURHAM ENERGY COMMITTEE?
CC PREPARED BY:	Jennie Berry, Administrative Assistant
PRESENTED BY:	Todd I. Selig, Administrator

### AGENDA DESCRIPTION:

There are currently two citizen vacancies on the Durham Energy Committee (DEC) created by the resignations of Dork Sahagain in August of this year and Peter Ejarque on October 9<sup>th</sup>. There are no term expirations established for this Committee.

Attached for the Council's consideration is an application for board appointment from Mary Downes, 43A Bagdad Road requesting appointment to one of the existing vacancies. Also attached is correspondence submitted by DEC Chair Kevin Gardner which supports the appointment of Ms. Downes to the Committee.

### LEGAL AUTHORITY:

Durham Town Charter, Section 11.5 "Vacancies in Elected or Appointed Office".

### LEGAL OPINION:

N/A

### FINANCIAL DETAILS:

N/A

### SUGGESTED ACTION OR RECOMMENDATIONS:

### MOTION:

The Durham Town Council does hereby APPOINT Mary Downes, 43A Bagdad Road, to the Durham Energy Committee.



#### Jen Berry

Subject:

FW: letter Re Mary

From: "Gardner, Kevin" <<u>Kevin.Gardner@unh.edu</u>> Date: October 9, 2012, 8:36:18 PM MST To: "Selig, Todd" <<u>tselig@ci.durham.nh.us</u>> Cc: Robin Mower <<u>rmowertc@gmail.com</u>> Subject: letter Re Mary

> Todd Selig Administrator Town of Durham

Dear Mr. Selig,

I am writing to inform you of the suitability of Mary Downes for service on the Durham Energy Committee. Mary is a (very) recent arrival to the town, and comes to us with a long history of work on energy issues throughout the state and New England. She attended the meeting of the Durham Energy Committee on October 9, 2012, and made significant contributions to our work.

I support Mary's application to the Durham Energy Committee, and am writing this down since she has a standing commitment on Town Council meeting dates and it was uncertain whether she could appear before the Council. We need Mary's experience, intellect and energy on our committee and engaged in our Town's business.

Sincerely,

Kevin Gardner Chair, Durham Energy Committee



Town of Durham 15 Newmarket Road Durham, NH 03824-2898 Tel: 603/868-5571 Fax 603/868-5572

### Application for Board Appointment

Position Desired (	(specify one only):	
New XXX	Reappointment Regular	Alternate
Name:	Mary Downes	Date: <u>September 23, 2012</u>
Address:	43A Bagdad Road, Durham, NH 03824	
E-Mail Address:	mary.downes@unh.edu	
Home Telephone:	603-397-5547	

Board/Commission/Committee you are interested in being appointed to. (Please list in order of preference, if interested in more than one appointment).

1.	Durham Energy Committee
2.	

3.

Please provide a brief explanation for your interest in appointment to a particular board, commission or committee:

For four years, I worked at the NH Office of Energy and Planning overseeing energy-related policy and programs, many of which related to the ARRA funding from the federal Department of Energy. The State's local energy committees are a vibrant and integral force in the furtherance of energy conservation, efficiency, and better policy, and as a new resident in town, I am very interested in serving on Durham's committee.

Please provide brief background information about yourself:

My husband and I just sold our house in Goffstown in mid-September 2012 and moved to Durham with our two school-aged kids. Having earned my master's degree at UNH in Resource Administration and Management in 2010 I am somewhat familiar with the town, the university, and the surrounding area. Our move was precipitated by a career change from Director of Energy Programs at the State's Office of Energy and Planning, to Manager of Program Administration and Compliance for Unitil's energy efficiency programs in New Hampshire and Massachusetts.

I am particularly interested in how behavioral change initiatives can reduce inefficient energy use and promote sustainable energy generation. While working for the State, I had the opportunity to interface regularly with local energy committees, support the annual Local Energy Solutions Conference, serve as co-chair of the Outreach and Education sub-committee of the Energy Efficiency and Sustainable Energy Board (a role I still maintain), as well as support the efforts of state agencies to improve their own energy efficiency. Chris Skoglund and I were Town of Durham - Application for Board Appointment Page 2

particularly close colleagues in many of these efforts. Finally, I served on the board of the NH Sustainable Energy Association for several years, but have recently stepped down due to the fact that a Unitil colleague is also on that board. Having served peripherally on the Goffstown Energy Committee, I would be pleased to continue my local involvement on the Durham Energy Committee.

Please provide below the names and telephone numbers of up to three personal references:

Name:	Chris Skoglund (DES, Durham Energy Committee)
Telephone:	603-918-8853
Name:	Julia Dundorf (New England Grassroots Environmental Fund)
Telephone:	603-978-2482
Name:	Christina Martin (Office of Consumer Advocate, Goffstown Energy Committee)
Telephone:	603-660-2708

#### \*\*\*\*\*\*\*\*\*\*

Thank you for your interest in serving the Town. Please return this application, along with a resume, if available, to: Town Administrator, 15 Newmarket Road, Durham, NH 03824

#### Mary Downes 12 Spring Street, Goffstown, NH 03045 (603) 497-2302 (h) / (603) 340-5428 (c) mary.downes@unh.edu

#### **Summary of Qualifications**

Extensive professional background in public and nonprofit administration and management, with a focus on energy efficiency, renewable energy, and affordable housing. Diverse skill set includes program development and management, grant writing, budget development, behavioral change strategies, group and individual training.

#### **Education and Training**

**University of New Hampshire**: MS in Resource Administration and Management, 2010. Thesis focused on residential attitudes and behavior relating to renewable energy and efficiency. Received teaching assistant fellowship with former Dean of the Whittemore School of Business and helped coordinate undergraduate economics and marketing classes.

Antioch New England Graduate School: graduate-level coursework in environmental science, with focus on public policy (credits transferred to UNH).

University of Pennsylvania: BA in United States History, cum laude, 1988.

#### **Professional Training:**

- o The Grantsmanship Training Program, 5-day grant writing training, May, 2007.
- Certificate Program in Home Ownership and Community Lending, from NeighborWorks America, 2002-2006.

#### **Relevant Professional Experience**

- State of New Hampshire Office of Energy and Planning August 2008 to present (Concord, NH) Administrator of Energy Programs
  - Supervise staff of six program managers at NH State Energy Office, collectively implementing more than \$70 million in ARRA and formula-funded energy programs from the federal Departments of Energy, and Health and Human Services.
  - Direct program management of \$26 million ARRA State Energy Program, as well as annual formula grant. Extensive experience with application writing, reporting, issuing of requests for proposals, negotiating and managing contracts and memoranda of understanding, public speaking, and annual conferences and other training for state employees.
  - Co-chair of the Outreach and Education sub-committee of the Energy Efficiency and Sustainable Energy Board, a statewide energy policy body overseeing the State's participation in the Regional Greenhouse Gas Initiative and Renewable Portfolio Standard. Committee focused on behavioral change opportunities in residential and commercial markets.
  - Successfully applied for \$375,000+ competitive grant from DOE for office to oversee establishment of a statewide energy efficiency resource standard.

#### Independent Consulting and Fundraising January 2007 to December 2008

- Successfully managed all aspects of NH Sustainable Energy Association's statewide Home Energy Conferences in 2007 and 2008, including fundraising, recruitment of speakers, exhibitors, advertising guide, and workshops.
- Provided foreclosure prevention counseling to New Hampshire Housing Finance Authority customers and those who self-referred.
- Supported Granite State Independent Living in its first ever housing counseling grant from the Department of Housing and Urban Development.
- Developed annual fundraising plan for NH Minority Health Coalition during time of internal transition, and successfully secured more than \$100,000 in grants from several different charitable foundations.

#### CATCH Neighborhood Housing March 2000 to November 2006 (Concord, NH)

- Managed all aspects of Home Buyer Education Center, including supervision of three staff and over a dozen professional volunteers.
- Coordinated all programming and led classes in homebuyer education and personal financial management on weekly basis for groups of 5-20 participants.
- Developed popular curriculums and handouts for a variety of courses and workshops related to financial management and homeownership, as well as organized and led monthly trainings.
- Developed and launched an urban land-lease homeownership model, in coordination with local Community Action Agencies, to help stabilize low-income neighborhoods.

#### Children's Alliance of NH - Director of Development & Communications Concord, NH 1999-2000

## Sustainable Harvest International – Development Director

Newington, NH 1998-1999

**Coleman Advocates for Children and Youth – Director of Communications** San Francisco, CA 1994-1998

# Relevant Community InvolvementNH Sustainable Energy AssociationBoard member, consultantMay 2006 to the presentGoffstown Local Energy CommitteeMarch 2010 to the presentMemberZoncord Board of RealtorsActive member of the affiliate committee2001-2006Leadership Greater ConcordZour-2001



TOWN OF DURHAM 15 NEWMARKET ROAD DURHAM, NH 03824-2898 Tel: 603/868-5571 Fax: 603/868-5572



DATE: October 15, 2012

## **COUNCIL COMMUNICATION**

<b>INITIATED BY:</b>	Janice Aviza, 2 Garden Lane
	Harry Mueller, 52 Edgewood Road

AGENDA ITEM: WHOM SHALL THE TOWN COUNCIL APPOINT TO FILL THE NEIGHBORHOOD REPRESENTATIVE VACANCY ON THE RENTAL HOUSING COMMISSION?

<u>CC PREPARED BY:</u> Jennie Berry, Administrative Assistant

#### PRESENTED BY: Todd I. Selig, Administrator

#### AGENDA DESCRIPTION:

The Rental Housing Commission (RHC) currently has a Neighborhood Representative vacancy created by the resignation of Sam Flanders in August of 2011. Attached for the Council's consideration are two completed applications for board appointment to this vacancy: Janice Aviza, 2 Garden Lane, and Harry Mueller, 52 Edgewood Road. There are no term expirations established for this Commission.

#### **LEGAL AUTHORITY:**

Section 11.5 " Vacancies in Elected or Appointed Office" of the Durham Town Charter.

#### LEGAL OPINION: N/A

FINANCIAL DETAILS: N/A

#### SUGGESTED ACTION OR RECOMMENDATIONS:

#### MOTION:

The Durham Town Council does appoint \_\_\_\_\_\_\_ to fill the Neighborhood Representative vacancy on the Rental Housing Commission.





Town of Durham 15 Newmarket Road Durham, NH 03824-2898 Tel: 603/868-5571 Fax 603/868-5572

## Application for Board Appointment

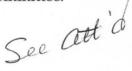
Type of Appointment and Position Desired (Please select only one):

New appointment/regular member  $\square$  New appointment/alternate member  $\square$ 9-24-2012 Janice Aviza Date: Name: Address: 2 Ganden Lane E-Mail Address: tacomq 19 @ Comcast.net Home Telephone: 603 868 - 3332

Board/Commission/Committee you are interested in being appointed to. (Please list in order

of preference, if interested in more than one appointment). 1. Rental Housing Commission - Neighborhood Rep. 2. -

Please provide a brief explanation for your interest in appointment to a particular board, commission or committee:



Please provide brief background information about yourself:



Please provide below the names and telephone numbers of up to three personal references:

Name: Gerald Collins M.D. Name: Melissa Ford Name: Diane Tregea

Telephone:603862 = 3844Telephone:508439 = 1/27Telephone:603868 = 5539

#### \*\*\*\*\*\*\*\*\*\*

Thank you for your interest in serving the Town. Please return this application, along with a resume, if available, to: Town Administrator, 15 Newmarket Road, Durham, NH 03824.

#### BACKGROUND INFORMATION

My husband and I purchased our home in the Faculty neighborhood in 1994. I retired from the university in September 2011, after working ten years at Health Services.

We have been volunteers at the Durham Swap Shop since its inception, and do a shift at least once a month. We love it, and enjoy the people with whom we interact. (Sometimes we wonder if the Swap Shop is the basis of our entire social life.)

Shortly after I retired last year, I responded to Chief Kurz' call for citizens to volunteer at the Police Department, and I do a weekly data entry stint at the station.

#### EXPLANATION OF INTEREST

I have attended the Rental Housing Commission meetings for several years as an interested participant. My neighbor, Diane Woods, was a neighborhood rep, but she resigned from the board a few years ago, and the position has not been filled since then, despite calls for service made at a few Town Council meetings.

I have a great interest in being a neighborhood representative on the RHC because I love my neighborhood and I would work to my best ability to be sure that things are harmonious among residents.

At the recent DHC meeting, when I verbally offered my services as a neighborhood rep, it was commented that there might be a "conflict of interest" because of the fact that I rent to students in the neighborhood.

I don't understand this viewpoint. I can only see this as a positive, not a negative. I care about my neighborhood, and I want my neighbors to be happy. And I certainly want to be happy myself in my home environment.

I feel I would bring a balance of experience and perspective to the table, without any conflict. If there is anyone who would have an interest in proper and positive behavior of student renters, it is I. Negative behavior by student renters reflects indirectly, albeit unfairly, on me as a landlord, and on my student tenants, . . . and on other good tenants, as well. I put a good deal of effort into being sure that I sign the right tenants and that they honor their commitment to being good neighbors. Other landlords should be expected to do the same.

Given the "conflict" suggestion, I took it upon myself to go to my neighbors. I asked those who know me well – and know that I am a landlord –if they would be in favor of my having a seat on the board.

Attached you will find the names of those who are in favor of my being named. Again, every one of them knows that I am a landlord. In the process, I had some interesting conversations with my neighbors, and gathered insights into their views. I also received many comments of thanks for my willingness to serve, a few pats on the back, and even a hug.

Janice Aviza

Faculty Neighborhood Keisdents

### I am in favor of Janice Aviza's being named as Neighborhood Representative to the Durham Housing Commission (9/2012)

		= PRINT =
NAME	ADDRESS (Durham)	Robert Lingn Kemper
Sbut anghanger	42 Min Pond Rel	= PRINT Bobert Linen Kemper
Mutiman menhin		Nuchum Linginia
Betton.	52 Mill Pond Rd.	Durham Beth Pothier
BRENT BELL	11 11 11 11	Dubber Brant Bell
a. Jinn Bogle	3 Croghan Lane	Durham. A. Linn Bogle
Margard Bogle	3 Croghon Jone	Durham Margaret Bog!
Peter Andersen	& Chesley Drive	Durham NH
Tui Jun	14 Foculty Rd	Dornsm NIP
marthe S. anderon	8 Chesley Dr.	Durhan NOH Martha
Eleano Suffeelauch	25 Faculty Act	Eleanor Sutherland
Donul Sult	25 Faculty Rel	Donald Sutherland
Michelle Fleetwood	8 Thompson Ln	Mhell Varton
Dione P. Tregea	14 Faculty Rd	Diane P. Tregea
Deboral Hirsch Mayes	19 Garden Lane	Diane P. Tregeo Deborah Hirsch-Mayer Ducham
Jim Faylor	10 Garden Lany	Tim TAYLOO JIOPBJHU
and m	27 Garden Lane	Dy to star
Jane Kaukuann	19 Ogster Riter Rd.	JANE KAUEWAWN
Jancy Lambert	17 Faculty Rd.	Nancy Lambert
Martin See	17 FACULTY RD.	MARTIN A.LEE
KATHERINE HORRIGAN	7 FACULTY ROAD	KATHERINE HORREAN
Patrica Messlu	2 Thompson lan	Patricia Messler
Mr all	5 HOITT	RUSSELL MILES
Rinette Miles	5 HOITT	LINETTE MILET
Caltann	NS mill Rol	PAT MAARR

faculty Neighborhood Kesidents

## I am in favor of Janice Aviza's being named as Neighborhood Representative to the Durham Housing Commission (9/2012)

NAME	ADDRESS (Durham)	= Printed =
Northe us their	11 Garder Lana	Noelle Khlief
	11 garden Lane	Bud Khlief
Jane prode	21 Hardenpn,	Diane Woods
ading Linden	6 Hoit Drive	Adina Linden
Allen B. Linda	6 HOITT DRIVE	Allen Linden
Kasen Haxlerul	& Garden Lane	Karen Haslerud
(INDREW Colly	11 Thompson	ANDREW Colly
Thuy Nguyen	11. Thompson Lu	Thuy Noveyou
alig Campbell	9 faculty Rd.	alix Campbell
he and	9 faculty BD	Todd Campbell
Coane. Freel	2 Croghan Lave	Iban E. Friel
Alon fod	4 Va. Mutshe Hill Rd	Tom Voder
Collanythen	4 Valentrethil Rd	Colleen Yoder
Elamon augu	14 Operdenland	ELAINE MANGAR
and the second s		Mite MANGAR
A 126E WANG		YIGE WANG
panni Cryddil	30 Junden (N	Janne Coudele
After Marin	W/ U h	Peter M. Lariner
Kathenne Mulbern	? Valentino Hellkel,	Katherine Mulhern
Jifge, Julie	11 Magrath Rd	Inge Judge
Imut Doupon	19 Freacy Roli	VINCENT DAVIGNON
gennen Leel	18 Faculty ll	JENNIFER LEE
- Pary alu - Mis	23 Faculty Rd	Rost Ahrens-Mince
John Mr	23 Paraty Road	Jaha Mince
V		

Outside Faculty Neighborhook

# I am in favor of Janice Aviza's being named as the neighborhood representative to the Durham Housing Commission (Sept. 2012)

NAME	Street (Durham)	Name Printed
Lisa Brady Fry Brad	8 Constable Rd.	Lisc Brady
Michael Breedy Muller	8 Constable Rd.	Michael Brady
Joan Thompson	8 RYAN WAY	JOAN THOMPSON
Don CThompson	8 Repair Way	DON THOMPSON
June Lunhaft	55 newmarket Rd	Jane Lenharth
23 John D	80 DOUER Rd	Clifford E. ZEIJERSKOM
Bonnes Medermet	t 80 DOVER Rd	BONNIE MaDERMOTT
Breen Ho lignal	9 Old Landing Rd	SALLY Hochgraf
Malcolm Smith	45 Wood Man R	Malcom Smith
Ro Postlar	23 Church Hill Rd	Ro Postler
Mon Don R	50 mill Rd	MONEY BOROVICK
have Monniel	3 Tall PinesRd	LAURA D'CONNELL
-		



#### Town of Durham

15 Newmarket Road Durham, NH 03824-2898 Tel: 603/868-5571 Fax 603/868-5572

#### Application for Board Appointment

Type of Appointment and Position Desired (Please select only one):

New appointment/regular member Alternate member Reappointment/regular member Reappointment/alternate member

Name: Harry Mueller

Date: 9-30-12

Address: 52 Edgewood Rd.

E-Mail Address: hmuelles Omac. com

Home Telephone: (203 - 868-1306

Board/Commission/Committee you are interested in being appointed to. (Please list in order of preference, if interested in more than one appointment).

1. Rental Housing Commission 2. 3.

Please provide a brief explanation for your interest in appointment to a particular board, commission or committee:

see attached

Please provide brief background information about yourself:

see attached

Please provide below the names and telephone numbers of up to three personal references:

Name: Jin Lauson Name: Pale Rasmussen Name: Astrid Wielens Telephone: (403-868-1540 Telephone: (403-969-8070 Telephone: (403-498-6028

#### \*\*\*\*\*\*\*\*\*

Thank you for your interest in serving the Town. Please return this application, along with a resume, if available, to: Town Administrator, 15 Newmarket Road, Durham, NH 03824.

Please provide a brief explanation for your interest in appointment to a particular board, commission, or committee:

As a resident in a neighborhood that includes owner occupied and rental housing I am interested in helping to improve the relationship between the community, landlords, and renters. My family and I have developed wonderful relationships with some of the tenants on our neighborhood, some of which continue now, years later, and have also had very poor interaction with other tenants. Many of the poorer interactions have been due to unclear or unreasonable expectations on all sides. The presence of rental property can be a tremendous asset or a tremendous liability to a community. I believe that it takes input from all parties involved to strike a reasonable balance between the needs of the tenants, the residents, and the property owners to encourage rental property to be viewed as an asset and an enhancement to a neighborhood and a community at large. As a neighborhood representative I believe that I could assist in "striking a balance" that might allow rental property to be seen as something that contributes to the diversity of a neighborhood and the community at large.

Please provide brief background information about yourself:

I have been a resident of Durham since December of 2005, moving here from Connecticut with my wife and three daughters when my wife took a job at Frisbie Hospital as an obstetrician. I work at McGregor EMS where I serve as a Paramedic Captain and the Operations Coordinator since June of 2008. Prior to accepting full time employment with McGregor in had been a volunteer there since moving to Durham as a way of giving back to the community. I have been involved in EMS for 32 years. During that time I have worked and lived in several "college towns" as well as being a college student myself and earning a Bachelors Degree in Fire Protection Engineering from the University of New Haven in 1998. Harry M. Mueller III 52 Edgewood Rd. Durham NH 03824 603-868-1306 hmueller@mac.com

#### Education

University of New Haven, West Haven, Connecticut Major: Fire Protection Engineering Attending: January 1993 to May 1998 Member: Alpha Lambda Delta Honor Society Awarded: Outstanding Student in Fire Protection Engineering 1997 B.S. in Fire Protection Engineering Cum Laude

Waterbury State Technical College, Waterbury, Connecticut Major: Fire Technology Attended: September 1991 to December 1992

Combined Hospitals Paramedic Training Program Mount Sinai, Saint Francis, Hartford Hospitals, Hartford, Connecticut Received: Paramedic Certificate Attended: May 1985 to March 1986

University of Connecticut, Torrington, Connecticut Major: Liberal Arts Attended: September 1984 to December 1984

Mattatuck Community College, Waterbury, Connecticut Major: Undeclared Named to Deans List: Spring Semester 1984 Attended: January 1984 to May 1984

University of Connecticut, Torrington and Storrs, Connecticut Major: Nursing Attended: September 1982 to December 1983

Lewis S. Mills Regional High School, Burlington, Connecticut Course of Study: College Preparatory Diploma Awarded: June 1982

#### Professional Experience

McGregor Memorial EMS, Durham, NH

-Paramedic Captain/Operations Coordinator

June 2008 to present

Oversee day to day operations of a volunteer ambulance and paramedic intercept service including fleet maintenance, scheduling, operations budgeting, and operational oversight. Interfaces with other agencies regularly. Acts as shift supervisor overseeing on duty personnel, mentoring, resolving conflicts, and progressive discipline as necessary.

-EMT-Paramedic (volunteer and per diem)

December 2005 to present

Provide paramedic and transport services to the communities of Durham, Lee, Madbury and the University of New Hampshire answering emergency requests for service. Provides ambulance staffing as well as non-transport paramedic staffing as needed. Adjunct faculty for McGregor Institute of EMS courses as well as McGregor EMS internal education classes.

#### Exeter Hospital, Dept. of Paramedicine

-EMT-Paramedic (Expanded Scope)

January 2006 to present

Provides paramedic level care for multiple communities in Rockingham County (NH) as an intercept based paramedic. Provides clinical support for Emergency Department as Expanded Scope Paramedic allowing additional skills to be performed in the ED setting. Functions as a member of in hospital wide Rapid Response Team responding to calls for assistance with patients in distress.

#### Middlesex Hospital, Middletown, Connecticut

-EMT-Paramedic

March 1989 to January 1993

July 1997 to December 2005

Provided primary paramedic level care for twenty-five communities in Middlesex, New London, Hartford, and New Haven Counties. Provided additional clinical support for Emergency Department staff. Preceptor for Paramedic Students from multiple Paramedic Training Programs and for EMT-Intermediate and Paramedic personnel attached to Connecticut State Police Emergency Services Unit. Affiliate instructor for system wide EMT-Defibrillation program. Acted as liaison between EMS Department and local EMS, fire, and law enforcement agencies in Primary Service Area providing continuing education, public relations, and maintenance of a dialogue between BLS personnel and ALS and Hospital personnel. MaxSolutions, LLC, Higganum, Connecticut

-President

October 1995 to June 2003

President of an independent consulting firm specializing in EMS and Macintosh based technology. Provides technical support on demand for all Macintosh based technology. Provided Macintosh and Windows integration services. Developed and implemented proposal to establish first ALS ambulance service in Honduras to meet U.S. standards. Established and maintained Internet based mailing lists for Connecticut based EMS providers, Connecticut EMS Coordinators, and Connecticut Prehospital Trauma Life Support Instructors. Still maintain mailings lists as a service to the EMS community even though business has closed.

Regional School District #17, Haddam-Killingworth, CT

-Network/Macintosh System Engineer

August 2000-February 2001 (part-time)

Provided technical support to 5 schools in Regional School District #17. Responsible for technical support in Macintosh Systems, application and limited system support for Win 98 & Win NT systems. Deployment and administration of servers for classroom and laboratory settings.

New Haven Sponsor Hospital Program, New Haven, Connecticut

-Paramedic Field Instructor

July 1995 to July 2000

Provide instruction and precepting to paramedics currently enrolled in paramedic training programs. Precept graduate paramedics who are candidates for authorization or re-authorization through the New Haven Sponsor Hospital Program. Provide written evaluation of students/candidates and actively assist the MIC Medical Directors and EMS Coordinators in the granting of medical authorization for MIC field personnel. Serve as faculty and instructor for New Haven Sponsor Hospital educational programs.

American Medical Response of Connecticut, New Haven, Connecticut -EMT-Paramedic Field Instructor

September 1994 to July 2000

Provide basic and advanced life support for emergency and non-emergency requests for ambulance service in the greater New Haven area. Work closely with law enforcement, fire/rescue agencies, and other ALS and BLS agencies to provide continuity of efficient and high quality care. Comply with EMS Medical Protocols, policies, and CME attendance requirements. As needed work in training division to support and provide training in Critical Care Transport, PreHospital Trauma Life Support, Driver Training, New Employee Orientation. Serve on committees with the purpose of Quality Improvement/Quality Assurance, New Technologies, computer integration, and Training. Watertown Fire Department, Watertown, Connecticut

-Firefighter/EMT-D

January 1991 to November 1992 (volunteer)

Provide primary Fire and Rescue services and EMT-D level First Responder service to the Town of Watertown. Assisted in the implementation of the EMT-D service and in house training and quality improvement. Designed and assisted in the implementation of new Patient Contact Records.

Harwinton Ambulance, Harwinton, Connecticut

**EMT-Ambulance** 

September 1980 to January 1992 (volunteer)

Provided BLS level car and public education for the Town of Harwinton. Assisted in EMT and MRT training for certification and recertification. Author of training programs for documentation and EMS communication.

Valley Emergency Medical Services, Derby, Connecticut

-Acting Program Director

August 1987 to November 1987 (full time)

Responsible for operational, administrative, and financial operation of a volunteer staffed non-transport paramedic service.

-Assistant Program Director

January 1987 to August 1987 (full time)

October 1986 to January 1987 (part time)

Responsible for the day to day operations of a volunteer staffed non-transport paramedic service including scheduling, maintenance, inventory, purchasing, training, and quality improvement. Primary EMT-Paramedic and EMT-Intermediate preceptor for VEMS and Griffin Hospital sponsored personnel. Acted as primary paramedic to fill scheduling vacancies left by volunteer personnel, usually 30-60 hours per week. Coauthor of a proposal to provide BLS ambulance service to Lower Naugatuck Valley towns during daytime hours with VEMS operated ambulances and paid personnel with financial justification which would allowed Ambulance and Paramedic service to be self supporting. Assisted in the specification and bid process for replacement of paramedic response vehicle and associated equipment.

-EMT-Paramedic

August 1986 to October 1986 (volunteer)

Act as primary and only paramedic responder in a five town area in the Lower Naugatuck Valley. Comply with EMS protocols and policies, and CME attendance requirements as specified by Griffin Hospital and South Central CT EMS Region. Required to obtain and maintain special privileges from Griffin Hospital to provide care to the paramedic level as ancillary hospital staff. Provide clinical support to Emergency Department staff at Griffin Hospital as required.

-EMT-Intermediate

February 1986 to August 1986 (volunteer)

Assist volunteer paramedic in providing BLS and ALS patient care. Responsible for safe response, positioning, and return of paramedic vehicle.

L&M Ambulance Corp., West Hartford, Connecticut

-EMT-Paramedic

May 1986 to January 1987 (full time)

Provide paramedic level service in the north EMS Districts of the Hartford and all districts of the West Hartford EMS systems. Provided paramedic level intercept services for three surrounding communities as requested.

-EMT-Intermediate

October 1985 to May 1986 (full time)

Provided EMT-Intermediate level care in the north EMS districts of the Hartford and all districts of the West Hartford EMS systems. Provided EMT-I intercept services to the Town of Bloomfield as requested.

Professional Ambulance Service of Greater Hartford, Wethersfield, Connecticut -EMT-Ambulance

July 1985 to October 1985 (part time)

Provided BLS level care in the south EMS Districts of the Hartford EMS System as well as backup BLS service to eleven Greater Hartford communities.

#### Hunters Meriden Ambulance, Meriden, Connecticut

-EMT-Ambulance

May 1984 to July 1985

Provided BLS level care for the City of Meriden. Acted as backup dispatcher on an as needed basis.

#### Certifications

Connecticut EMT-Paramedic #000743 New Hampshire EMT-Paramedic #21277P Nationally Registered EMT-Paramedic P0991698 Pre-Hospital Trauma Life Support-Provider **Basic Cardiac Life Support-Provider** Advanced Cardiac Life Support-Provider Pediatric Advanced Life Support-Provider Neonatal Resuscitation-Provider Advanced Burn Life Support-Provider Triage and Mass Casualty Scene Management Connecticut Firefighter I Connecticut State Fire School-Hazardous Materials Awareness Connecticut State Fire School-Hazardous Materials First Responder Operational Connecticut State Fire School-Aerial Apparatus Operations National Fire Academy-Incident Command System Southern Connecticut State University-Emergency Vehicle Operations Professional Association of Dive Instructors-Advanced Open Water SCUBA Diver



TOWN OF DURHAM 15 NEWMARKET ROAD DURHAM, NH 03824-2898 Tel: 603/868-5571 Fax: 603/868-5572 DATE: October 15, 2011

## **COUNCIL COMMUNICATION**

INITIATED BY:	Douglas Bencks, Chair, Library Board of Trustees
AGENDA ITEM:	UPDATE ON DURHAM PUBLIC LIBRARY CONSTRUCTION PROJECT
CC PREPARED BY:	Jennie Berry, Administrative Assistant
PRESENTED BY:	Douglas Bencks, Chair, Library Board of Trustees

#### AGENDA DESCRIPTION:

Doug Bencks, Chair of the Durham Public Library Board of Trustees, will be present at Monday night's Council meeting to provide an update to Councilors relative to the library's current building project.

LEGAL AUTHORITY: N/A

LEGAL OPINION: N/A

FINANCIAL DETAILS: N/A

#### SUGGESTED ACTION OR RECOMMENDATIONS:

No formal action is required. Receive presentation from Doug Bencks relative to the Durham Public Library's ongoing building project and hold question and answer session if desired.





TOWN OF DURHAM 15 NEWMARKET ROAD DURHAM, NH 03824-2898 Tel: 603/868-5571 Fax: 603/868-5572



DATE: October 15, 2012

## **COUNCIL COMMUNICATION**

INITIATED BY:	Durham Town Charter
AGENDA ITEM:	RECEIVE ANNUAL REPORT OF THE RENTAL HOUSING COMMISSION (RHC) – KITTY MARPLE, COUNCILOR AND RHC CHAIR
CC PREPARED BY:	Jennie Berry, Administrative Assistant
PRESENTED BY:	Kitty Marple, Councilor and Rental Housing Commission Chair

#### **AGENDA DESCRIPTION:**

Section 11.1 (I) of the Durham Town Charter requires that the Town Council meet annually with all Chairpersons of standing Town committees to review significant actions taken by the committees, projects currently under discussion, and anticipated activities for the coming year.

Attached for the Council's information is a written report submitted by Kitty Marple, Chair of the Rental Housing Commission. At Monday night's Council meeting, Councilor Marple will provide a brief update regarding current activities of the Commission.

#### LEGAL AUTHORITY:

Section 11.1 (I) of the Durham Town Charter.

#### **LEGAL OPINION:**

N/A

#### FINANCIAL DETAILS: N/A

#### SUGGESTED ACTION OR RECOMMENDATIONS:

Hear presentation by Councilor Kitty Marple regarding the Rental Housing Commission and hold question and answer session if desired.



The Rental Housing Commission was formed in 1995. It was the result of a court decision to address the needs of Durham citizens who were troubled by student tenants, particularly in rented single family homes.

In the early years the commission made attempts to reach out to troublesome landlords, encouraging them to join the Durham Landlords Association and providing detailed lease information. Some of those private landlords summarily refused this outreach. At this time, persons who were cited for over occupancy asked for variances to the three unrelated occupancy rule. These requests were often denied with a few exceptions.

Over the last five years, single family home rentals proliferated due to increasing tuition costs at UNH and a favorable real estate market. Landlords of many single family rentals stopped requesting variances and often over crowded these homes. When neighbors noticed changes in the occupancy of rentals in their neighborhood it was incumbent upon them to report this to the Town Code Enforcement Officer. Due to the increase in these rentals and to a recent uptick in new construction, the Code Enforcement officer was unable to deal with every probable over occupancy rental (unless there was a specific complaint). Also, laws in New Hampshire favor tenants to a degree that invading their lodgings to check for overcrowding is difficult at best.

The results of the increase in students living in and disrupting neighborhoods resulted in a predictable backlash of town ordinances to modify student behavior. In 2010 the Town Council passed two ordinances:

Disorderly House: Focuses on landlord responsibility to maintain order in the rental household. If a student house is found to be problematic, the landlord is asked to meet with town officials with plans to remedy the problem. If troubles with that property continue the landlord may be fined.

Noise Ordinance: The existing noise ordinance was modified to add one hour of quiet in town (10PM to 7 AM).

The town also installed signs in downtown neighborhoods to ask that people moving through those areas be respectful of those who live there.

There is some anecdotal evidence that these measures have made some difference in town. UNH has provided valuable assistance in dealing with student renters. The Dean of Students often meets with these renters to help sort out the problems. Thanks to the efforts of both the town and UNH most rental housing issues are resolved early on in each school year.

There are however, rental homes that turn over year after year and while not egregiously annoying, are enough of a problem that neighbors have quietly given up trying to complain and just live with the inconvenience. I am concerned about these folks. Living with even small amounts of disruption can be very stressful.

Annual Report of Rental Housing Commission Prepared by Kitty Marple, Chair – Page 2

Presently the Town Council is pursuing, at the request of the Fire Department, an ordinance which will require fire and safety inspections of all rental properties. The Rental Housing Commission has conducted a few working meetings to examine and refine the proposed ordinance. Members of the Durham Landlords Association and other landlords have been involved in this process and they have provided valuable contributions to the draft of the document. I anticipate that this proposed ordinance will be coming before the council shortly for first reading and public hearing.

Thank you.



TOWN OF DURHAM 15 NEWMARKET RO**AGENDA ITEM: #9C** DURHAM, NH 03824-2898 Tel: 603/868-5571 **DATE:** <u>October 15, 2012</u> Fax: 603/868-5572

## COUNCIL COMMUNICATION

INITIATED BY:	Corey Landry, Fire Chief
AGENDA ITEM:	UPDATE ON PRELIMINARY DESIGN AND NEXT STEPS FOR THE DURHAM FIRE DEPARTMENT BUILDING – LYNN REDA, ARCHITECT; COREY LANDRY, FIRE CHIEF
CC PREPARED BY:	Jennie Berry, Administrative Assistant
PRESENTED BY:	Corey Landry, Fire Chief

#### AGENDA DESCRIPTION:

On December 7, 2009, the Council received a presentation by Fire Chief Corey Landry and Architect Lynn Reda relative to potential sites for a new fire station. At that meeting Ms. Reda reviewed the reasons why a new fire station was needed. She discussed the needs assessment that was completed, including consideration of future growth of the department. Attached is an excerpt of the Council minutes for that portion of the meeting for the Council's information.

At the November 14, 2011 Council meeting, while continuing the 2011 budget deliberations, discussion occurred regarding the proposed fire station. Attached is an excerpt of the Council minutes for that portion of the meeting for the Council's information.

Ms. Reda has continued to work with Fire Chief Landry on a preliminary design and location for a new fire station. At Monday night's meeting, Ms. Reda and Chief Landry will provide the Council with an update on the current status of this effort.

#### **LEGAL AUTHORITY:**

Section 11.1 (I) of the Durham Town Charter.

#### **LEGAL OPINION:**

N/A

#### FINANCIAL DETAILS:

N/A

#### SUGGESTED ACTION OR RECOMMENDATIONS:

No formal action is required. Hear update by Architect Lynn Reda and Fire Chief Corey Landry relative to the preliminary design and next steps for the Durham Fire Department building.



## Durham's representative to the Southeast Watershed Alliance. Councilor Clark SECONDED the motion.

Councilor Mower said her understanding was that this was an important alliance, and said she was happy the Council had voted to join it. She said the Town Engineer would attend some of these meetings, and said the Council should be getting some reports on these meetings. She also said she was happy that a resident had stepped forward to be on the committee.

Councilor Carroll said it would be good to have Mr. Rief bring back reports on committee meetings to the Council, and she suggested these reports could be included in Council packets.

Administrator Selig said they were trying to be respectful of staff time, and noted that Mr. Cedarholm was already a member of several committees. He said it was therefore important to have a citizen representative on the committee. He noted that Mr. Rief was an engineer and had served on the Town Council for several years. He said he had also been a representative to the Strafford Regional Planning Commission, so was very familiar with regional processes.

Councilor Mower said she was not committing the citizen representative to report personally to the Council, and said they might be hearing about the committee via the Town Engineer, although she was not sure about this.

#### The motion PASSED unanimously 6-0.

Councilor Smith returned to the table.

#### IX. Presentation Items

A. Update on potential sites for new Fire Department - Corey Landry, Fire Chief 8:06 - 9:09 pm

Chief Landry introduced Lynn Reda, the lead architect on this effort, and noted that she was currently working on ten fire stations.

Ms. Reda reviewed the reasons why a new fire station was needed. She said she had been working on a needs assessment over the past few months, and said it was determined that to operate as a current modern facility, they needed 3 times what they currently had. She noted that the current facility was slated for other uses by UNH.

Ms. Reda discussed the needs assessment that was done, including consideration of future growth of the department. She spoke in detail on the need for proper housing of fire vehicles and equipment, and also spoke about the need for operations administration. In addition she spoke about the idea of a possible community hall that could accommodate up to 75 people. She noted as well the residential space needed for employees, and the



space needed for building services. She said the total building area required was just short of 29,000 sf.

Ms. Reda said the candidate sites she had looked at were:

- B Lot at UNH
- Intersection of Stone Quarry Drive and Dover Road
- Adjoining parcels 17 and 21 Madbury Road

She noted a property for sale near B Lot, and spoke about the idea of minimizing the impact on B lot by focusing on some residential parcels nearby that could perhaps be acquired and used for siting much of the facility. She said two parcels in the area could be considered for this, and showed a plan for a 29,000 sf fire station that included them.

Ms. Reda spoke about a possible entry museum space that could serve as the entrance to the fire department as well as a community hall. She said there would be seven apparatus bays that would exit onto McDaniel Drive, and also described training facilities that would exist on the site. She showed several flyover views of the facility.

She said the proposed building faced on McDaniel Drive rather than on Mill Road because there would be a safer response onto McDaniel since there was better sight distance, and also because there weren't residences across from it. She said the Mill Road side had been left screened and as quiet as possible.

She said the advantages of B Lot were that it was central to the majority of calls received; there would be little or no change to the current response times; it would have high visibility; there would be a community presence; there would be the opportunity for a community room; and there could be cooperation between UNH and the Town for land.

Ms. Reda said negative aspects were impacts on response time because of the Main Street/Mill Road intersection as well as the McDaniel Road/Mill Road intersection; no offset income to be gained with this property; the costs for purchasing the property; relocating overhead power lines and construction; and the loss of parking for UNH staff.

Councilor Smith asked if trucks would be allowed to turn right onto McDaniel Drive and go over to College Road, and Ms. Reda said yes.

Chief Landry said such a route would take longer but could be used, but he said the larger percentage of calls would send fire trucks through the Main Street/Mill Road intersection. He said that was a negative aspect of this site.

Councilor Clark asked how many parking spaces would be used up with this design.

Ms. Reda said there would have to be a fairly long building because of the apparatus bays, and said with the orientation proposed because of several factors, there would be an impact on the B lot parking lot, with about 140 spaces taken up.

Chief Landry said if the other residential property in the area had been available, they could have reoriented the building, but he said the owner wasn't interested in selling.

Councilor Clark asked if it would be possible to do a two-story building and therefore not lose as many parking spaces.

Ms. Reda said it was possible, but said from a fire and rescue design standpoint, a single story was the ideal way to go. She said there was the potential for injury when there were poles and stairs and they had to be used in the middle of the night.

She next reviewed the Stone Quarry site, noting first that there was currently no development there. She said they had looked at putting the same building on this site as for the B-lot site. She said the site was 3 plus acres because more parking would need to be put in there for the fire department as well as the community hall.

She said positive aspects of this site were the cost of the land purchase; the economic impact if some businesses moved in with it; ease of access to the station and adequate parking; high visibility; and the opportunity for a community room.

Ms. Reda said negative aspects were that response time would be dramatically slowed to the Packers Falls/Mill Road area; the site would become a destination with no community presence or walk in use; the building would be built in what was now an open field, which was not a sustainable design oriented practice; there was a high speed road that trucks would need to enter when responding; and there was a high traffic volume at the intersection of Route 108 and Route 4.

Councilor Stanhope asked Ms. Reda if she anticipated that a traffic light would be needed at the intersection, and she said not right now.

Councilor Mower asked if there was discussion about traffic on Route 108 going to Newmarket, which often got backed up.

Chief Landry said yes and provided details on this. He said with this site, it seemed like the location would allow a faster response time for the majority of the Town, but he provided details on how this wasn't necessarily the case.

Councilor Mower asked what 2 minutes in response time meant.

Chief Landry said the optimum response time was 4 minutes, and said to increase that by 50% right off the bat was a dramatic difference. He said the average response time in Durham was 4-5 minutes. He said it took longer to get to some areas, and said he would hate to add 2 minutes to those responses.

Councilor Smith said he assumed it had been plotted where in Town fires and medical calls tended to be located. He asked where the greatest concentration of calls was.

Chief Landry said downtown was the main location because of the UNH campus, housing off Madbury Road, etc. He said Spruce Woods was another key location, for medical reasons.

Ms. Reda said the third potential site they looked at was the two Madbury Road parcels located downtown. She showed a somewhat different building that was proposed there, and said the design included a road going from Madbury Road and connecting down into the Town parking lot across the lot to Pettee Brook Road. She noted that this design tied in with some design ideas that had been discussed at the recent planning charrette.

She said securing this property would be expensive, and said ideally, it would be important to address some of the other needs the Town currently had, which were parking and residential uses. She said her firm had recently completed another fire department building in Alexandria Virginia, which had 4 floors of low income and affordable housing above the fire station, and two floors of below grade parking, containing about 145 spaces. She said there had been discussion as to whether such a building could work in Durham.

Ms. Reda said the entry on Madbury Road would be at grade at the Fire Department, and on Pettee Brook Road would enter at grade into a residential lobby and a single story parking garage. She described how vehicles would enter and leave the site, and provided details on the parking, noting among other things that it didn't follow the same footprint as the building. She spoke in detail about how the various uses on the site were laid out. Among other things, she said there was a proposed mezzanine area, which could be expanded to become a full story, if a public space was desired there. She also showed how there could be one to three residential uses on the upper floors.

She said the positive aspects of this location were its location in the middle of downtown, which would allow an improved response time to town and campus; the opportunity to develop a multi-use property that had residential uses and parking; potential for additional civic use, including a new Town Hall and/or a public Library; potential income generation for the Town; neighborhood stabilization; and a highly visible community presence.

Ms. Reda said the negatives were the cost of the property; the cost of construction; the need for a multi-stakeholder process; a constricted lot that required back-in bays and allowed limited on site training for the fire department; limited parking for fire station visitors; and elimination of a community room.

She then said a comparison of the 3 sites had determined that the Madbury Road was the preferred site for the following reasons:

- Decrease in response time
- No significant traffic concerns
- Community presence
- Mixed use potential
- Additional civic use
- Income generation

Ms. Reda said the next step would be to establish a team to investigate possible funding options associated with developing the Madbury Road parcel, through a HUD loan, tax exempt bonding, or private development. She said the team would analyze the income generation potential and operating expenses for the property; develop a preliminary construction estimate; analyze pros and cons of potential occupants, such as Town Hall, Library, appropriate type(s) of residential housing; and a detailed financial analysis of the viable funding sources based on the other findings.

Chair Niman asked if the architectural firm would continue on with this process.

Chief Landry said the current contracted ended here, but said there was the option to retain the firm for the entire project.

Chair Niman asked if there was a ballpark figure for the building on Madbury Road.

Ms. Reda said they were in the process of finalizing estimates for the sites, and said a building built to last, that was low maintenance and durable, and had sustainable design qualities would cost \$200-250/sf. She said this didn't include acquisition of property.

Councilor Mower asked about the higher construction cost for Madbury Road, and Ms. Reda said this was because a significantly larger building was proposed, as well as below grade parking.

Councilor Mower asked about opportunities for passive energy production on the site, and Ms. Reda explained that with fire stations, things like sight lines and vehicle circulation took precedence, but she said once the building was sited, there could be some tweaking concerning possible energy gains on the site.

Councilor Mower said perhaps some community space could be obtained at the Madbury Road site by using some of the residential space above. She also said if there were evening get-togethers, there might perhaps be ways to provide parking for civic uses.

Ms. Reda agreed this might be an option, and she provided some other ideas concerning parking.

Councilor Clark asked if there was any way to weigh the impact of a fire station in the downtown. There was discussion on this with Ms. Reda and Chief Landry.

Councilor Clark asked if much thinking had been done on how a Town Hall/Library might work on the site, and if this would take up some of the residential space.

Ms. Reda said this was one of the things that would have to be investigated further in terms of what the residential need would be; what the revenue generation would be and what the long term financial impact would be on the Town; and then looking at bringing in a non-revenue producer like a Town Hall and Library.

Chief Landry noted that the mezzanine space could be adjusted without losing anything already there, and Ms. Reda said that would be less expensive than adding another floor. She provided details on this.

Councilor Sievert asked if putting the Town Hall and Library on the site, or putting the residences on the site would be a better combination of uses with the Fire department, in terms of peak traffic flow.

Ms. Reda said it would be about the same, and said both a Town Hall and Library could work well there. She said the main issue was the different financial impact these uses would have in terms of revenue generation. She noted that there was also the possible option of putting the Town Hall and Library in and putting two residence floors above that.

Councilor Sievert asked if there could be pull through bays if there was a Town Hall and Library up top rather than residences.

Ms. Reda said the site was fairly constricted in width, and said there wasn't really enough room to do the pull through bays well. She said she had designed a solution that included them, but said it didn't work well.

Chief Landry also noted the change in grade on the site.

Councilor Stanhope asked what the gross usable building area was on the upper story, and Ms. Reda said it was 18,000-20,000 sf. She provided details on why this was less than the 29,000 sf building footprint.

Councilor Stanhope asked if the area designated as terrace space on the upper level could perhaps be finished as a community room.

Ms. Reda said some of it could be done this way, but said it became a challenge from a design standpoint at a certain point.

Councilor Stanhope asked if perhaps there could be a terrace area in the interior, and Ms. Reda said it could be done, but probably not from a residential perspective. Councilor Carroll thanked Ms. Reda for bringing some of these possible combinations forward. She said right next to this property was the Pettee Brook lot, which the Town owned, and noted there had been talk about closing Pettee Brook Road or at least just having the ends open. She said the Town had quite a bit of flexibility now in thinking about where things might go.

Administrator Selig said the Library Trustees were interested in having a library that had a real presence in Town. He asked if it would be possible to create a shared entryway so both the Fire Department and the Library could have a grand entryway on the first floor. Ms. Reda said there had been discussion about sharing the lobby space, and said she envisioned that this could happen.

Chief Landry said it was exciting to consider the idea of possible interaction between the Fire Department and the Library.

Chair Niman said he thought the B lot solution would involve a land acquisition cost of something over \$4 million, given the loss of 140 parking spaces and the replacement cost of \$25,000 per space if a parking structure was built, and the cost of the two houses.

He said that supposing the Town couldn't obtain the preferred site, he understood the Stone Quarry Drive site was less desirable because of the additional two minute plus response time to certain neighborhoods. He asked what the value of that two minutes was, if the B lot site and the Stone Quarry Drive site were their only two options, and the difference in land acquisition costs was about \$3.5 million.

Councilor Smith asked if it was written in stone that the University couldn't lose any parking spaces.

Chair Niman said his sense was that if the Town said it wanted to use the B lot, this was how the University would figure this.

Councilor Smith said he thought a forwarding looking University would say it wanted a Fire department that was convenient to campus, wanted to do the right thing for the community, and could educate 150 people not to bring their cars to campus.

Chair Niman said he simply wanted that number in case they needed to go down that road.

Councilor Stanhope said his concern was the volume of traffic during commuter hours on Route 108, and that it added more than 4 minutes at rush hour.

Chief Landry agreed that this was a legitimate concern, and provided details on this.

Councilor Mower said there were significant drawbacks to two of the three sites, and the third site had its own unique challenges. She asked Ms. Reda if she had seen any other sites in the area that perhaps the Town should be considering.

Ms. Reda said the only other site she had looked at was a site further up Mill Road, and said there were some significant topographical challenges with it. She said it was heavily wooded, with a 30 ft difference from the highest to the lowest point, which would require a lot of cut and fill. She also said there was some water on the site, some historical foundations, and some dreadful sight lines. She said financially it would take a lot to develop the site, and said the cost would be in the \$250-300/sf range. She also said it in no way would be a good location for the Fire Department from a response time perspective.

Chair Niman thanked Ms. Reda for her hard work, and said they would move forward to see if they could make progress in resolving this issue.

Break from 9:09-9:19 pm

#### B. 2008 Audit Report - Greg Colby, Plotzik & Sanderson

Mr. Colby said the financial statements presented were "fairly stated" with one exception that was not unusual, which was that the capital assets of the Town had not been inventoried at historical cost prior to 2004. He noted that the Town's assets had been tracked since 2004, and said that information was included in the appropriated schedules his company had provided.

He said page 8 of the Audit Report showed the assets, liabilities and fund balances for the Town as of Dec 31 2008, and he reviewed this information. He spoke in detail about the decrease in the fund balance because of the following:

- \$114,000 in funds used to reduce the 2008 tax rate
- \$116,727 in revenue shortfall for 2008 (interest in investments, decrease in motor vehicle permits, and budgeting error when tax rate was set)
- \$225,643 overdraft of appropriations (as a result of costs associated with the December 2008 ice storm, increased wages and benefits associated with the three unforeseen retirements at the Fire Department, costs related to the transition to the Strafford Co dispatch center, increased costs for heating fuel and gasoline and about \$80,000 applied to the closing out of capital related projects.)

Mr. Colby said this had resulted in a net budget deficit of \$342,370, which took the fund balance down to \$952,075.

He reviewed other aspect of the audit, and then noted the letter the firm had written regarding whether there were any deficiencies seen that needed to be brought to the Council's attention. He said none had been observed, and said some improvements had been made in some areas noted the previous year. He then thanked Ms. Jablonski and other Business Office staff for their assistance with the audit process.

Administrator Selig noted the time frame within which the audit was received, and asked Mr. Colby to comment on the reason for the lag time. He also asked Mr. Colby to comment on the implication of tracking American Reinvestment and Recovery Act stimulus funds in regard to the 2009 audit. In addition, he asked Mr. Colby to comment on the fund balance decrease, and whether it was a cause for concern.

Mr. Colby said over the past few years, because of a turnover in personnel at his office, there had been a delay in getting the audits done. He said this year, it had taken some time to get the records needed to do a full accounting of one of the funds looked at in the audit. He said the firm hoped to get back on track for the 2009 audit.

12 – Durham Town Council Meeting Minutes Monday, November 14, 2011

Councilor Gooze said a number of things were put in the CIP that weren't done because the money wasn't available.

Administrator Selig said the goal with the CIP was to do long term capital planning. He said it wasn't a perfect document, but said they were trying to understand what was in their collective future.

Chair Carroll noted that of the \$857,000 for predesign work planned for 2013, half of this would be paid for by the University.



Councilor Mower said she imagined that others were questioning whether a \$7.5 million fire station was needed. She noted the charrette process the Town had gone through concerning a possible new fire station, and said she wondered if there could be an independent evaluation as to whether that was the most appropriate station for Durham. She said it was a significant amount of money, and said few of the members of the Council were in a position to evaluate it, and asked whether there was another option that was less expensive but would be functionally adequate.

Councilor Lawson said the Town would have to go through that process. He said at some point the Town would need a new fire station. But he said only 15% of Durham's tax base was commercial. He said he didn't think they would find examples anywhere where 2,000 families were investing almost \$4 million in a fire station. He said they owed it to the community to make sure this was something that had to be done at this level. He said it was this proposed expenditure in the CIP, which had gone from \$4 million up to almost \$8 million, which concerned him the most, along with the proposed wastewater treatment expenditure.

Councilor Smith noted that the planning cost also had to be factored in.

Councilor Marple asked if people had a sense of what the cost had been for Madbury's fire station.

Councilor Cote said it cost under \$1million. It was noted that it was a volunteer fire department, so a number of things, including staff offices, weren't needed.

Administrator Selig explained that Madbury benefited by being close to Durham, which provided strong mutual aid. He said the Fire Department had expressed its perspective about the fire station, but said he didn't feel they needed to get into more detail concerning the project until it was known what the site was. He said planning something hypothetically wasn't always the best use of time.

He said he envisioned that the design engineering phase would involve architect Lynn Reda speaking with the Council and residents about the floor plan, and having people challenging it. He said so far, they had just been fitting a generic floor plan, based on the stated needs of the department to various sites.

#### 13 – Durham Town Council Meeting Minutes Monday, November 14, 2011

Councilor Mower suggested getting another set of professional eyes, stating there was a vested interest in the design they were starting out with.

Administrator Selig said this wasn't typically done, but said that was not to say that it couldn't be done.

Councilor Smith asked Administrator Selig if he'd considered challenging the University by saying Durham couldn't afford to pay for a new fire station, and would prefer to plan to make modest improvements to the existing site and fire station and stay there.

Administrator Selig noted that the Town had previously been paying 60% of the costs associated with the existing fire station, and had negotiated a 50/50 arrangement a few years ago. He said he thought the University should actually support more than 50% of these costs, but said 50/50 was as far as he'd gotten in that negotiation cycle.

He said he didn't think the University was desirous of moving the fire station to a new location, and said if the Town could continue to utilize the site and the University didn't have other plans for the site, they were fine with keeping things as they were. But he noted that right now, the Town was spending \$170,000 per year leasing a building that was insufficient for its needs. He said he would rather put that money toward a bond item for a building that met Durham's needs.

Councilor Smith noted that the Town would have to pay interest if the fire station project was bonded.

On another issue concerning the Fire Department, Administrator Selig said there were questions every year about overtime costs.

Councilor Mower said she understood that there was a policy in some fire departments that linked sick days with overtime eligibility.

Chief Landry said a standard rule was that if an employee was sick during a week, overtime wasn't allowed, unless a particular contract allowed this. He said Durham's contract did allow this. He said this issue had been looked at, and said there was no sick leave abuse by the Fire Department.

Councilor Lawson said he'd been very interested in understanding the Fire Department's overtime situation over time, and said he saw no evidence of abuse of sick time and overtime. He said having really taken a look at this issue, he'd found that there was a culture in the Fire Department that discouraged this abuse.

Councilors agreed it was important for the community to hear this.

Councilor Cote said he'd taken a great interest in this issue as well, and shared Councilor Lawson's perspective. He spoke about some abuses of overtime in some other towns.

#### 14 – Durham Town Council Meeting Minutes Monday, November 14, 2011

Councilor Lawson said from a budgeting standpoint, department heads needed to factor contingencies into their overtime, in terms of injuries, maternity leave, etc. He said it would be worthwhile to create a centralized pool for these contingencies, and to get some efficiencies out of the pool as opposed to within the individual budgets. He provided details on this.

Councilor Cote asked Chief Landry how callbacks were managed, and Chief Landry spoke in detail on this. He said the numbers last year indicated that there were 87 callbacks, which indicated that they had been busier.

Chair Carroll next opened up the discussion to Councilors who would like to bring up particular issues.

Councilor Gooze said that regarding the library project, he was looking toward the goal of doing the bond, which was in the CIP. He asked Library Trustee Chair Doug Bencks to tell the Council where things stood with fundraising.

Mr. Bencks said the fundraising was progressing well, and said they were presently at \$770,000, with a goal of \$900,000. He said there had been a steady increase throughout the fall, and said the Trustees expected to reach the goal.

Councilor Gooze asked what happened if they hit the goal and went over it.

There was discussion that the wording for the bond could say it could be for up to \$2.7 million, to reflect the fact that if more than \$900,000 came in from fundraising, it could be put toward decreasing the amount that the Town would need to bond.

Councilor Gooze asked Mr. Bencks to speak about the energy aspects of the project. He noted that it was on the Library web page that a LEED type of certification would be achieved. He also said the ability to use solar panels would depend on the funding that was available for this.

Mr. Bencks said from the beginning, the Trustees had said they wanted to do all they could to make the project as energy efficient as possible. He said the building design was capable of including solar panels, but said the budget for the new library currently didn't include them. He said there had been discussions about fundraising for this, noting that one donor had offered to contribute \$5,000 toward the cost. He said there had also been discussion with Revolution Energy to see if there was a way to finance the solar panels. He said all of this was still being looked at, and said it would be a great example for others in the community if the panels were installed.

Councilor Mower noted again that the building design was capable of including solar panels, and said her understanding was that there would need to be a connection under the shingles as part of the structure of the roof in order to allow the solar panels to be installed. She asked if the capability would go that far.

Mr. Bencks said it would, and noted that those details concerning the design process were still down the road.



TOWN OF DURHAM 15 NEWMARKET ROAD DURHAM, NH 03824-2898 Tel: 603/868-5 Fax: 603/868-5572



DATE: October 15, 2012

## **COUNCIL COMMUNICATION**

**INITIATED BY:** 

Todd I. Selig, Administrator

AGENDA ITEM:

PUBLIC HEARING AND ACTION ON RESOLUTION 2012-17 AMENDING RESOLUTION #2012-11 TO: 1) CHANGE THE \$745,000 FUNDING DESIGNATION WITHIN THE 2012 CAPITAL FUND BUDGET TO COME FROM SHORT-TERM BORROWING RATHER THAN THE UNDESIGNATED (UNASSIGNED) FUND BALANCE; AND 2) AUTHORIZING THE SHORT-TERM BORROWING OF SAID \$745,000 FOR UP TO ONE YEAR TO PURCHASE THE PEOPLE'S UNITED BANK BUILDING LOCATED AT 8 NEWMARKET ROAD FOR USE AS THE FUTURE TOWN HALL

#### **CC PREPARED BY:** Jennie Berry, Administrative Assistant

PRESENTED BY: Todd I. Selig, Administrator

#### AGENDA DESCRIPTION:

On May 21, 2012 the Town Council held a public hearing on both the possible acquisition of the People's United Bank building located at 8 Newmarket Road and on Resolution #2012-11 to raise, appropriate, and expend an additional \$745,000 within the 2012 Capital Fund Budget (with funds to come from the Undesignated Fund Balance) to purchase the 8 Newmarket Road site for use as the future Town Hall. The Council also adopted the resolution by a two-thirds majority vote required by Section 5.5 of the Durham Town Charter.

Since the adoption of Resolution 2012-11, Town staff has spoken with Moody's Investors Service who advises that it would be best to obtain funding for the \$745,000 through short-term borrowing in order for the Town to retain its Undesignated (Unassigned) Fund Balance reserve amount should the economy worsen and cause a substantial decrease in property tax payments that could adversely affect the Town's bond rating. Durham's current Moody rating is Aa2 which means that the Town has a very strong capacity to meet its financial commitments. It differs from the highest rated obligors only in small degree.



Council Communication, 10/15/12 Re: Resolution #2012-17 Amending Resolution #2012-11 Page 2

Section 5.5 of the Durham Town Charter states that no appropriation shall be made for any purpose not included in the annual budget as adopted unless approved by a twothirds majority of the Council after a public hearing. The Council shall, by resolution, designate the source of any money so appropriated.

Section 5.12 of the Durham Town Charter enables the Town Council to approve the issuance of bonds or notes for less than \$1,000,000 after holding a duly advertised public hearing, and further stipulates that for the purposes of borrowing, the Town of Durham shall have all the powers and duties vested with a city.

New Hampshire Revised Statutes Annotated (RSA) 33:9 authorizes the issuance of bonds by a city, by resolution of the Council, passed by at least two-thirds of all Council members.

Attached for the Council's information and consideration is a resolution that will amend Resolution 2012-11 to change the \$745,000 funding designation within the 2012 Capital Fund Budget to come from short-term borrowing for up to one year instead of the Undesignated (Unassigned) Fund Budget. The resolution will also authorize the borrowing of these funds in accordance with Sections 5.5 and 5.12 of the Durham Town Charter and RSA 33:9 for the purchase of the former People's Bank building at 8 Newmarket Road for use as the future Town Hall.

On October 1, 2012, the Town Council scheduled a public hearing on this resolution for October 15, 2012. A public hearing notice was published in the *Foster's Daily Democrat* on Thursday, October 4, 2012. The notice was also posted on the public bulletin board located outside of the Town Hall, as well as at the Durham Public Library and the Department of Public Works.

Attached for the Council's consideration is Resolution #2012-17 amending Resolution #2012-11 To: 1) Change the \$745,000 Funding Designation Within the 2012 Capital Fund Budget to Come From Short-Term Borrowing Rather Than the Undesignated (Unassigned) Fund Balance; and 2) Authorizing the Short-Term Borrowing of Said \$745,000 for up to One Year to Purchase the People's United Bank Building Located at 8 Newmarket Road for Use as the Future Town Hall.

#### **LEGAL AUTHORITY:**

New Hampshire Revised Statutes Annotated (RSA) 33:9 Sections 5.5 and 5.12 of the Durham Town Charter

LEGAL OPINION: N/A

FINANCIAL DETAILS: N/A Council Communication, 10/15/12 Re: Resolution #2012-17 Amending Resolution #2012-11 Page 3

#### SUGGESTED ACTION OR RECOMMENDATIONS:

#### **MOTION 1**:

The Durham Town Council does hereby OPEN the public hearing on Resolution #2012-17 amending Resolution #2012-11 to:

- 1. Change the \$745,000 funding designation within the 2012 Capital Fund Budget to come from short-term borrowing rather than the Undesignated (Unassigned) Fund Balance; and
- 2. Authorizing the short-term borrowing of said \$745,000 for up to one year to purchase the People's United Bank building located at 8 Newmarket Road for use as the future Town Hall.

#### MOTION 2:

The Durham Town Council does hereby CLOSE the public hearing on Resolution #2012-17 amending Resolution #2012-11 to:

- 1. Change the \$745,000 funding designation within the 2012 Capital Fund Budget to come from short-term borrowing rather than the Undesignated (Unassigned) Fund Balance; and
- 2. Authorizing the short-term borrowing of said \$745,000 for up to one year to purchase the People's United Bank building located at 8 Newmarket Road for use as the future Town Hall.

#### **MOTION 3:**

The Durham Town Council does hereby ADOPT (as presented) (as amended) Resolution #2012-17 amending Resolution #2012-11 to:

- 1. Change the \$745,000 funding designation within the 2012 Capital Fund Budget to come from short-term borrowing rather than the Undesignated (Unassigned) Fund Balance; and
- 2. Authorizing the short-term borrowing of said \$745,000 for up to one year to purchase the People's United Bank building located at 8 Newmarket Road for use as the future Town Hall.

#### **RESOLUTION #2012-17 OF DURHAM, NEW HAMPSHIRE**

AMENDING RESOLUTION #2012-11 TO CHANGE THE \$745,000 FUND DESIGNATION WITHIN THE 2012 CAPITAL FUND BUDGET TO COME FROM SHORT-TERM BONDING RATHER THAN THE UNDESIGNATED (UNASSIGNED) FUND BALANCE AND AUTHORIZING THE SHORT-TERM BORROWING OF SAID \$745,000 FOR UP TO ONE YEAR TO PURCHASE THE PEOPLE'S UNITED BANK BUILDING LOCATED AT 8 NEWMARKET ROAD FOR USE AS THE FUTURE TOWN HALL

WHEREAS, on May 21, 2012 the Town Council held a public hearing on both the possible acquisition of the People's United Bank building located at 8 Newmarket Road and on Resolution #2012-11 to raise, appropriate, and expend an additional \$745,000 within the 2012 Capital Fund Budget (with funds to come from the Undesignated Fund Balance) to purchase the 8 Newmarket Road site for use as the future Town Hall; and

WHEREAS, On May 21, 2012 the Town Council approved, by a two-thirds majority vote, Resolution #2012-11 to raise, appropriate, and expend an additional \$745,000 within the 2012 Capital Fund Budget (with funds to come from the Undesignated Fund Balance) to purchase the People's United Bank building located at 8 Newmarket Road for use as the future Town Hall; and

WHEREAS, since the adoption of Resolution 2012-11, Town staff has spoken with Moody's Investors Service who advises that it would be best to obtain funding for the \$745,000 through short-term borrowing in order for the Town to retain its Undesignated (Unassigned) Fund Balance reserve amount should the economy worsen and cause a substantial decrease in property tax payments that could adversely affect the Town's bond rating; and

WHEREAS, the Town desires to follow Moody's advice to finance the \$745,000 through short-term borrowing; and

WHEREAS, Section 5.5 of the Durham Town Charter states that: "No appropriation shall be made for any purpose not included in the annual budget as adopted unless approved by a two-thirds majority of the Council after a public hearing. The Council shall, by resolution, designate the source of any money so appropriated. This provision shall not apply, however, to emergency appropriations adopted pursuant to 3.10 of this Charter"; and

Resolution #2012-17 - Amending Resolution #2012-11 Relative to Funding the Purchase of the Former People's United Bank for use as the Future Town Hall Page 2

WHEREAS, Section 5.12 of the Durham Town Charter enables the Town Council to approve the issuance of bonds or notes for less than \$1,000,000 after holding a duly advertised public hearing, and further stipulates that for the purposes of borrowing, the Town of Durham shall have all the powers and duties vested with a city; and

WHEREAS, NH RSA 33:9 authorizes the issuance of bonds by a city, by resolution of the Council, passed by at least two-thirds of all Council members; and

WHEREAS, a duly noticed public hearing was held by the Durham Town Council on Monday, October 15, 2012 on the short-term borrowing issue;

**NOW, THEREFORE BE IT RESOLVED** that the Durham Town Council, the governing body of the Town of Durham, New Hampshire, does hereby approve Resolution #2012-17 amending Resolution #2012-11 to change the \$745,000 funding designation within the 2012 Capital Fund Budget to come from short-term borrowing rather than the Undesignated (Unassigned) Fund Balance to purchase the People's United Bank building located at 8 Newmarket Road for use as the future Town Hall.

**BE IT FURTHER RESOLVED** that the Durham Town Council, the governing body of the Town of Durham, New Hampshire, does hereby authorize the shortterm borrowing of \$745,000 for up to one year for the purpose of purchasing the People's United Bank building located at 8 Newmarket Road for use as the future Town Hall.

PASSED AND ADOPTED this \_\_\_\_ day of \_\_\_\_\_ by a twothirds majority vote of the Durham Town Council with \_\_\_\_\_ voting in favor, \_\_\_\_\_ voting against, and \_\_\_\_\_ abstaining.

> Jay B. Gooze, Chair Durham Town Council

**ATTEST:** 

Lorrie Pitt, Town Clerk



TOWN OF DURHAM 15 NEWMARKET ROAD DURHAM, NH 03824-2898 Tel: 603/868-557/ Fax: 603/868-5572 DATE: October 15, 2012

## **COUNCIL COMMUNICATION**

**INITIATED BY:** Public Works Department

AGENDA ITEM: PUBLIC HEARING AND ACTION ON RESOLUTION #2012-18 AUTHORIZING THE ACCEPTANCE AND EXPENDITURE OF \$5,000.00 IN UNANTICIPATED REVENUE IN THE FORM OF A DONATION FROM LIBERTY MUTUAL INSURANCE COMPANY IN CELEBRATION OF ITS 100<sup>TH</sup> ANNIVERSARY

CC PREPARED BY:	Michael Lynch, Public Works Director
DDESENTED BV.	Todd I Solig Administrator

# PRESENTED BY: Todd I. Selig, Administrator Michael Lynch, Public Works Director

## AGENDA DESCRIPTION:

In celebration of its 100<sup>th</sup> anniversary, tens of thousands of Liberty Mutual employees across the globe participated in two days of service to help the communities they call home. On June 21<sup>st</sup> and 22<sup>nd</sup>, 192 Liberty Mutual employees from the Dover NH headquarters completed the following tasks for the Town of Durham.

- 90 volunteers raked leaves, cleaned/straightened headstones, trimmed brush and painted rod iron rails in 18 Trusted Graveyards
- 15 volunteers weeded and pruned all the common garden areas throughout Town
- 8 volunteers completed some exterior painting at the Police Station
- 12 volunteers scraped and painted all the snow plows at DPW
- 10 volunteers recoated the surface and painted all the elements at the skate board park at Woodridge Recreational area
- 57 volunteers raked leaves, cleaned/straightened headstones, trimmed brush and painted rod iron rails in the Schoolhouse Cemetery

On September 24, 2012, the Town Council scheduled a public hearing on this resolution for October 15, 2012. A public hearing notice was published in the *Foster's Daily Democrat* on Thursday, October 4, 2012. The notice was also posted on the public bulletin board located outside of the Town Hall, as well as at the Durham Public Library and the Department of Public Works.



Council Communication, 10/15/12 – Page 2 Re: Public Hearing and Action on Resolution #2012-18

Attached for the Council's consideration is Resolution #2012-18 authorizing the acceptance and expenditure of \$5,000 in unanticipated revenue in the form of a donation from the Liberty Mutual Insurance Company's 100<sup>th</sup> year anniversary.

## LEGAL AUTHORITY:

RSA 31:95-b III (a) states that for unanticipated moneys in the amount of \$5,000 or more, the selectmen or board of commissioners shall hold a prior public hearing on the action to be taken.

New Hampshire Revised Statutes Annotated (RSA) 31:95-b authorizes the Town Council to apply for, accept and expend, without further action by the town or village district meeting, unanticipated money from the state, federal or other governmental unit or a private source which becomes available during the fiscal year if they first adopt an article authorizing this authority indefinitely until specific rescission of such authority. On July 12, 1999, the Town Council adopted Resolution #99-19 granting this authority to the Town Council.

## **LEGAL OPINION:**

N/A

## FINANCIAL DETAILS:

Liberty Mutual's \$5,000 donation was intended to cover any costs incurred by the Public Works Department. DPW expended \$2,668.87 on materials and supplies.

## SUGGESTED ACTION OR RECOMMENDATIONS:

## MOTION 1:

The Durham Town Council does hereby OPEN the public hearing on Resolution #2012-18 authorizing the acceptance and expenditure of \$5,000 in unanticipated revenue in the form of a donation from the Liberty Mutual Insurance Company's 100<sup>th</sup> year anniversary.

## MOTION 2:

The Durham Town Council does hereby CLOSE the public hearing on Resolution #2012-18 authorizing the acceptance and expenditure of \$5,000 in unanticipated revenue in the form of a donation from the Liberty Mutual Insurance Company's 100<sup>th</sup> year anniversary.

## MOTION 3:

The Durham Town Council does hereby ADOPT (as presented) (as amended) Resolution #2012-18 authorizing the acceptance and expenditure of \$5,000 in unanticipated revenue in the form of a donation from the Liberty Mutual Insurance Company's 100<sup>th</sup> year anniversary.

## **RESOLUTION #2012-18 OF DURHAM, NEW HAMPSHIRE**

AUTHORIZING THE ACCEPTANCE AND EXPENDITURE OF \$5,000 IN UNANTICIPATED REVENUES IN THE FORM OF A DONATION FROM LIBERTY MUTUAL INSURANCE COMPANY OF DOVER, NEW HAMPSHIRE IN CELEBRATION OF ITS 100<sup>TH</sup> ANNIVERSARY

WHEREAS, The Town of Durham was contacted by Liberty Mutual and asked if it would participate in community service projects in celebrating Liberty's 100<sup>th</sup> anniversary; and

WHEREAS, Liberty Mutual offered the Town of Durham its Liberty employees and cash to complete community service projects in Durham on June 21<sup>st</sup> and 22<sup>nd</sup>; and

WHEREAS, on July 12, 1999, the Durham Town Council approved Resolution #99-19 adopting the provisions of RSA 31:95-b authorizing the Town Council to apply for, accept, and expend unanticipated funds from a Federal, state, or other governmental unit or a private source which becomes available during the fiscal year; and

WHEREAS, RSA 31:95-b III (a) states that for unanticipated moneys in the amount of \$5,000 or more, the selectmen or board of commissioners shall hold a public hearing on the action to be taken;

WHEREAS, a public hearing will be held on October 15, 2012 on the matter of acceptance and expenditure of this donation; and

**WHEREAS**, The Durham Town Council recognizes the importance to the community in participating in events such as this; and

WHEREAS, Town Council approval is required for the acceptance of these funds;

Resolution #2012-18 Page 2

**NOW, THEREFORE BE IT RESOLVED** that the Durham Town Council, the governing body of the Town of Durham, New Hampshire, after holding a public hearing on the matter on October 15, 2012, does hereby approve Resolution #2012-18 authorizing the acceptance of \$5,000 from the Liberty Mutual Insurance Company in celebration of its 100<sup>th</sup> anniversary.

PASSED AND ADOPTED this \_\_\_\_\_day of \_\_\_\_\_, 2012 by a two-thirds majority vote of the Durham Town Council with \_\_\_\_\_ voting in favor, \_\_\_\_\_abstaining and \_\_\_\_\_ voting against.

Jay B. Gooze, Chairman Durham Town Council

ATTEST:

Lorrie Pitt, Town Clerk-Tax Collector



TOWN OF DURHAM 15 NEWMARKET ROAD DURHAM, NH 03824-2898 Tel: 603/868-5571 Fax: 603/868-5572



DATE: October 15, 2012

## **COUNCIL COMMUNICATION**

**INITIATED BY:** Xemed Holdings, LLC Michael Behrendt, Director of Planning and Community Development

AGENDA ITEM: PUBLIC HEARING AND POSSIBLE ACTION ON AN APPLICATION FOR THE COMMUNITY REVITALIZATION TAX RELIEF INCENTIVE (RSA 79-E) SUBMITTEDBY XEMED HOLDINGS, LLC, C/O BILL HERSMAN, FOR PROPERTY LOCATED AT 16 STRAFFORD AVENUE, MAP 2, LOT 8-3

**CC PREPARED BY**: Michael Behrendt

**PRESENTED BY:** Todd Selig, Administrator Michael Behrendt, Director of Planning and Community Development

## AGENDA DESCRIPTION:

\*Please note. This Council Communication is an update from the one sent for the September 24 meeting. New or modified items, below, are shown in this typeface.

RSA 79E may apply to either <u>substantial rehabilitation</u> of existing buildings or the <u>replacement</u> of an existing building with a new building. This project is for a replacement.

If the Town Council approves the application then the property tax for the total site (land and building) would be frozen at the current level for a period of time determined by the Town Council, not to exceed five years.

Site	
Address:	16 Strafford Avenue
Lot:	Map 2, Lot 8-3
Zoning:	Professional Office
Owner:	F. William Hersman, 66 Bucks Hill Road, Durham
Proposal:	Complete redevelopment of site, estimated total project costs of \$1,307,000
Assessment:	\$194,600 for the building, \$310,800 total for land and building



Council Communication, 9/24/12 – Page 2 Re: Discussion on 79-E Application for Xemed Holdings, LLC

## The project

The site will be completely redeveloped with a new building and a new site. This plan was approved by the Planning Board on February 10, 2010. It is likely that some relatively minor changes to both the building and site design will be made requiring the applicant to return to the Planning Board for an amendment. Xemed LLC will be the principal tenant, with first floor space for a possible additional smaller tenant.

## Attachments

The following items are attached:

- The application completed by Mr. Hersman
- RSA 79E
- Town Council resolution #2011-11
- Tax card
- Tax map
- Only a few excerpts from the New Hampshire Division of Historical Resources inventory form. This was prepared by Lynne Monroe, of The Preservation Company for Mr. Hersman. We sent the entire document in the September 24 packet. If you would like to see the full document again, please contact Jen or Michael.
- A draft covenant prepared by the applicant
- The existing site
- \* Statement of Public Benefit, submitted by Bill Hersman. This is the only new document attached here since the September 24 packet.

## **Other 79E projects**

The Town has approved two other 79E projects: a <u>replacement</u> project for 9-11 Madbury Road (at the corner of Pettee Brook Lane) and a <u>substantial rehabilitation</u> for the Sigma Beta Epsilon Fraternity at 26 Madbury Road.

## Process

This is the process that I would envision/propose:

- 1) This came to the Town Council on September 24, 2012 for discussion. The Council set the public hearing for October 15.
- 2) The application was reviewed by the Historic District Commission on October 4, 2012. The HDC unanimously voted to find that the existing structure held no significant historical, cultural or architectural value.
- 3) A public hearing will be held before the Town Council on October 15, 2012.
- 4) The Town Council will vote to approve the 79E project, if appropriate. The Council must take action within 45 days of the public hearing. I do not believe that the covenant must be prepared prior to the Council vote but if desired we could have the covenant prepared prior to that vote.

Council Communication, 9/24/12 - Page 3

Re: Discussion on 79-E Application for Xemed Holdings, LLC

- 5) The covenant will be written, approved, and recorded at the Strafford County Registry of Deeds. The applicant may not start work until the covenant is recorded. Tax relief is effective after the applicant grants to the town a covenant ensuring that the structure will be maintained and used in a manner that furthers the public benefits for which the relief was granted.
- 6) The applicant will return to the Planning Board for amendments to the site plan. These are minor. If desired the applicant could brief the Town Council on what is proposed in advance. I believe that the applicant wishes to wait to return to the Planning Board until the 79E issue is concluded.
- 7) The applicant should not start any work prior to: a) the completion of the 79E review; b) the Planning Board approval of any necessary amendments; and c) April 1, 2013. If any work were commenced prior to April 1, 2013 then the applicant would be assessed on that additional work for the 2013 tax year.
- 8) The applicant would commence work after April 1, 2013 and complete it prior to April 1, 2014. Then the tax relief would commence with tax year 2014 (April 1, 2014 to March 31, 2015), and continue for the allotted number of tax years.

## Significance of existing property

The property was evaluated by Lynne Monroe, a respected historic preservation professional. According to the report, the Henderson House was built in 1949 and is a "small mid-twentieth century cape. Originally a single-family dwelling, it was converted to two student apartments in the 1970's and then into office space for a small company...The surrounding buildings are privately owned, fraternities, sororities, and student apartments. Toward the northern end of Strafford Avenue is the University's New England Center...It does not have sufficient architectural distinction or integrity to be individually eligible for the National Register of Historic Places." *The HDC voted to find this NOT significant.* 

## **Public Benefit**

RSA 79-E:1 states:

"I. It is declared to be a public benefit to enhance downtowns and town centers with respect to economic activity, cultural and historic character, sense of community, and in-town residential uses that contribute to economic and social vitality...

"II-a. In instances where a qualifying structure is determined to possess no significant historical, cultural, or architectural value and for which the governing body makes a specific finding that rehabilitation would not achieve one or more of the public benefits established in RSA 79-E:7 to the same degree as the replacement of the underutilized structure with a new structure, the tax relief incentives provided under this chapter may be extended to the replacement of an underutilized structure in accordance with the provisions of this chapter." In order to qualify for the program the project must meet one or more benefits as specified under 79-E:7. For a replacement project, it must provide at least one of the

Council Communication, 9/24/12 – Page 4 Re: Discussion on 79-E Application for Xemed Holdings, LLC

stated public benefits to a greater degree than would substantial rehabilitation of the existing structure. I believe that this project meets I. and III.

*I. "It enhances the economic vitality of the downtown" Mr. Hersman says that Xemed employs 11 people full time and uses seven student interns.* 

*III. "It promotes development of municipal centers, providing for efficiency, safety, and a greater sense of community, consistent with RSA 9-B."* 

RSA 9-B is the state's Smart Growth statute. RSA 9-B:3 Definition states:

"... 'smart growth' means the control of haphazard and unplanned development and the use of land which results over time, in the inflation of the amount of land used per unit of human development, and of the degree of dispersal between such land areas. "Smart growth' also means the development and use of land in such a manner that its physical, visual, or audible consequences are appropriate to the traditional and historic New Hampshire landscape. Smart growth may include denser development of existing communities, encouragement of mixed uses in such communities, the protection of villages, and planning so as to create ease of movement within and among communities. Smart growth preserves the integrity of open space in agricultural, forested, and undeveloped areas. The results of smart growth may include, but shall not be limited to:

I. Vibrant commercial activity within cities and towns.

II. Strong sense of community identity.

III. Adherence to traditional settlement patterns when siting municipal and public buildings and services...

V. Uncongested roads...

X. Preservation of historic village centers."

The Town Council adopted resolution #2011-11 on June 6, 2011 for use by the Council in weighing applications under 79E. A project must meet one or more additional local objectives. Of the eight listed, I believe that the proposal meets the first six.

The Enhanced Guidelines state that "...the duration of the tax assessment relief program...shall only provide that level of tax relief necessary in the discretion of the Council to effectuate the specific targeted public benefit(s) outlined as determine by the Town Council. In addition, the Town Council in its discretion shall endeavor to ensure that but for the tax relief provided, the proposed ... replacement would not be economically viable." Mr. Hersman has stated that he considered relocating his project outside of Durham and was concerned about the high cost of his project, perhaps exceeding the value of the project. He stated that approval for 79E would make the project more viable in Durham.

Council Communication, 9/24/12 – Page 5 Re: Discussion on 79-E Application for Xemed Holdings, LLC

## Downtown area

In order to be a "qualifying structure" the property must be located in the "downtown", 'town center", or "central business district". The Town of Durham has formally identified the Core Commercial area as a qualifying downtown area, which includes the Professional Office zone. The subject lot is zoned Professional Office.

Note that this property is not located in the Durham Historic District or in Durham's National Register District.

#### Tax relief period

This may be from one to five years (tax years). It is determined by the Town Council. The total property tax (for land and building) remains the same. (Additional potential time is permitted beyond five years for new residential units or rehabilitation of a historic structure, but neither is applicable here.) Upon expiration of the tax relief period the property shall be taxed at its market value.

RSA 79E states "The municipal tax assessment of the replacement structure and the property on which it is located shall not increase or decrease in the period between the approval by the governing body of tax relief for the replacement structure and the time the owner completes construction of the replacement structure and grants to the municipality the covenant to protect the public benefit as required by this chapter."

## **LEGAL AUTHORITY:**

Revised Statutes Annotated (RSA 79-E).

#### **LEGAL OPINION:**

If appropriate we will send the covenants to the Town Attorney for his review. This may not be necessary since we will probably follow the same format as the other approved 79E projects.

#### FINANCIAL DETAILS:

A \$50.00 application fee will be collected from Xemed Holdings.

#### SUGGESTED ACTION OR RECOMMENDATIONS:

#### **MOTION 1**:

The Durham Town Council does hereby OPEN the public hearing on an application for the Community Revitalization Tax Relief Incentive (RSA 79-E) submitted by Xemed Holdings, LLC, c/o Bill Hersman, for property located at 16 Strafford Avenue, Map 2, Lot 8-3.

## MOTION 2:

The Durham Town Council does hereby CLOSE the public hearing on an application for the Community Revitalization Tax Relief Incentive (RSA 79-E) submitted by

Council Communication, 9/24/12 – Page 6 Re: Discussion on 79-E Application for Xemed Holdings, LLC

Xemed Holdings, LLC, c/o Bill Hersman, for property located at 16 Strafford Avenue, Map 2, Lot 8-3.

Based upon the information provided, I believe that this application qualifies for treatment under 79E and that the full allowable five years for the exemption should be provided. I believe that: a) the application meets the requirements of both the state law and the Town resolution; b) the project would be of significant benefit to the community; c) the financial requirements are adequately addressed in the new attachment provided by the applicant; d) and the application should be approved for the full five years.

I recommend the Town Council approve the motion shown below.

### MOTION:

The Durham Town Council finds that the application from the owner of 16 Strafford Avenue to receive property tax relief under the RSA 79E Downtown Revitalization program does meet the requirements of the state statute and the Town resolution and hereby approves the application for the full allowable five years, in accordance with the provisions of the staff's Council Communication for October 15, 2012.

#### Five Year RSA-79E Request - Xemed Commercial Park Public Benefit

Xemed Holdings requests the five year maximum tax abatement under RSA-79E for its community revitalization project: Xemed Commercial Park

#### Introduction:

The Durham Town Council adopted guidelines for evaluating Public Benefic for consideration of Tax Relief pursuant to RSA-79E Community Revitalization. We highlight three:

3. Promotes increased office, retail, and research space...

4. Enhances cooperation of the Town and the University of New Hampshire for the benefit of the overall community.

6. Promotes the redevelopment or replacement of outdated, substandard, or blighted structures in a way that is fiscally and socially beneficial to the community.

The Town of Durham has undertaken several strategic planning exercises. All of the reports highlight the development opportunities for high-paying jobs and increased tax base that could one day emerge from University spin-out technologies. Several large-scale and well established examples include the research parks surrounding MIT in east Cambridge, around Stanford in Silicon Valley, around Duke and UNC in the Research Triangle of North Carolina.

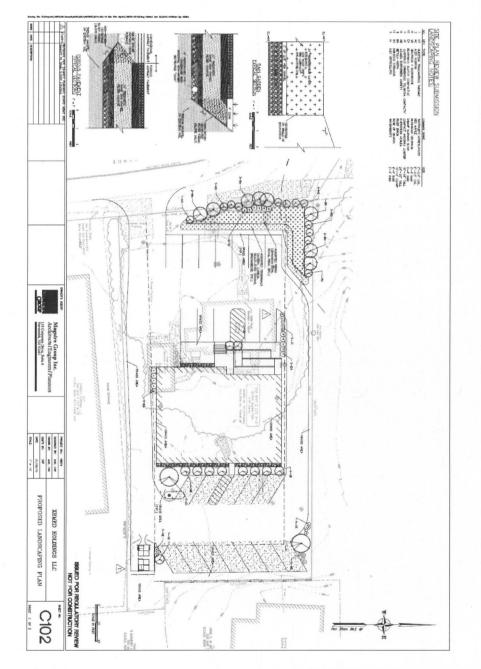
Establishing even a small scale technology spin out presence in Durham New Hampshire will prove challenging, however. Spin out companies are often fragile and time-limited, they must be agile to move to the opportunity, capital, or manpower resources that will drive their growth. Many more fail than succeed. A case in point: Prof. Kevin Short invented computer algorithms based on chaos theory that could compress the data and transfer songs to cell phones (back before this was possible). He started a company, Chaoticom, to commercialize the technology. As they struggled to grow, they were acquired and infused with cash from Massachusetts, precipitating a move to Massachusetts. When the investment was exhausted, they folded.

Xemed is a growing technology company spun out from University of New Hampshire academic research in 2004. It was the second autonomous technology spin-out from UNH. In 2006 Xemed acquired a property on Strafford Avenue that had been used for many years as a commercial facility. Rather than accept investments, Xemed has continued to pursue federal grant funding through high-technology Small Business Innovative Research (SBIR) program. Although Xemed is a for-profit company, Xemed's SBIR revenue source limits profit to a level that barely provides subsistence. Nevertheless, this model is serving Xemed well.

At the time Xemed acquired the Strafford Avenue property, it was clear that it was in disrepair and not readily usable for activities requiring quality space. The basement was perennially wet and mildewed. Many of the rooms could not (and still cannot) be occupied by employees due to low ceiling height. It is not handicap accessible, and therefore cannot be significantly altered or expanded. In short, the facility is not suitable as a commercial facility going forward.

The Town has recently confirmed its intent to utilize the Strafford Avenue area as a commercial R&D area by broadening its use through rezoning. For this rezoned use to benefit the Town, the property must be revitalized in accordance with that Plan.

#### The Project:



The Xemed Holdings project is seeking to create a unique building for Xemed, which is also suitable for future high-technology startup companies, allowing them to transition seamlessly from academia to the commercial market without leaving Durham, and leveraging UNH as a key driver for expansion of high-paying jobs for the town, region, and state. Furthermore, the opportunity for UNH faculty entrepreneurs to remain in the area and to continue mentoring larger numbers of UNH student interns close to campus will increase the likelihood that the best UNH students will remain in the region, contribute to regional high-tech startups, and perhaps initiate new technology businesses themselves.

#### The Financial Shortfall

The property must achieve a certain scale to be viable, both for Xemed and as an ongoing asset to the Durham community. Because the existing building cannot be preserved, the loss of value sustained by its demolition is approximately \$200,000. Site development, general conditions, parking and drainage adds \$140,000. The required elevator (for handicap accessibility) and fire protection systems adds \$75,000. Construction of a building with 10,000 sq ft or more, capable of providing workspace for 25 or more employees, is necessary to justify and amortize those ~\$415,000 unrecoverable costs. Furthermore, Xemed would likely outgrow a smaller building.

In 2009, Xemed Holdings (Xemed's real estate holding company) initiated development of a building with two full stories above ground, a third floor mezzanine nestled under the peak of the roof, and a full level of laboratory spaces below grade. The first floor was elevated above ground level to accommodate a loading dock at the shipping and receiving area. Two banks had given lending approval, pending an appraisal. Durham Planning and Zoning had signed off. Initial site preparations were performed.

Activity was halted in March of 2010 when the appraisal came in below expectations. Because this initiative to place a commercial office/engineering building close to UNH campus (i.e. in an area dominated by student housing) was unprecedented, the appraised value of this unique property upon completion was only \$1,050,000 considerably devalued below the \$295,000 cost of the original property plus the \$1,307,000 cost of construction, a total project cost of \$1,602,000. The appraiser questioned whether value in the building could be recovered upon resale if Xemed were to falter financially. He highlighted two factors, first, he believed that the facility would not retain anywhere near its value if it had to be resold as a commercial facility; instead its highest and best use would likely become student housing. Second, whether it was commercial or residential, the investment in finished space below grade level would have no resale value whatsoever. The combination of the Small Business Association and the bank offered a loan of 90% of finished valaue: \$945,000

Xemed's federal SBIR grants allow for cost recovery of ongoing expenses but typically not capital construction. Xemed Holdings is not a "Development Company" in the traditional sense. Constructing this building is not intended to bring profits either to Xemed or to Xemed Holdings. Rather, the expenses associated with upgrading the facility must be justified by resulting in a better capability to deliver research and development in partnership with the University. These goals can also be met elsewhere. Furthermore, there is no possible justification for extracting \$660,000 in cash and assets to privately fund the shortfall in construction costs, and abandon \$550,000 in lost value. Those monies would be better spent by Xemed growing its business and/or providing for financial shelter in case of a downturn.

After the collapse of this project in 2010 Xemed turned attention to alternatives. Two spaces at Pease have been under consideration. Unit 3 at 75 Rochester Avenue consists of 14,422 square feet. It was offered to Xemed at \$6.50 per square foot triple net plus \$0.89/sf tax and insurance, a total of \$91,800 for the first year, with increases in subsequent years. Also the University of New Hampshire founded the Innovation Commercialization Center, leased a building at Pease, and asked whether Xemed would consider anchoring the facility and occupy half the space, 6,645 sq. ft. at \$1500 per month for six months followed by a lease of \$59,805/yr. Since UNH has already committed to pay for the space and the space was been underutilized, the opportunity was intended to be attractive. In that space, Xemed could be mentoring other UNH spinouts as well.

At present, Xemed has interrupted its pursuit of alternatives at Pease and elsewhere while reevaluating whether the Durham project can be viable going forward.

#### Reconsideration of a new Durham project

On April 28 2011 Todd Selig informed me of the possibility that the Town would welcome a request to take advantage of tax relief from RSA-79E:

Dear Bill,

I have been thinking about your project over the course of the last day or so and would suggest that you consider taking advantage of RSA 79-E for your property which is located in the Professional Office zoning district. This statute, which Durham as adopted, would allow the Town to grant tax relief from local property taxes for value of the improvements for your property for a period of up to 5 years. The delta in taxes for that five year period would be substantial and may help change the conversation with the bank. In addition, I would be happy to meet with your bankers to make the case for our downtown location for the intended use and viability of it. I'm sure some of the folks from the EDC would also be open to assisting with this process.

To learn more about RSA 79-E, go to <u>http://www.gencourt.state.nh.us/rsa/html/V/79-E/79-E-mrg.htm</u>.

Todd

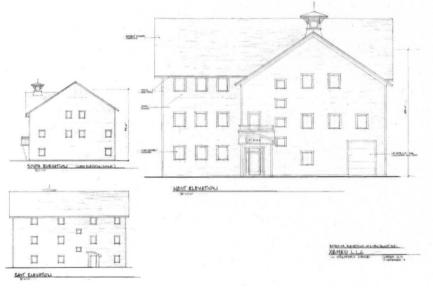
Todd pointed out that the change in taxes could be substantial. I did not pursue this option at the time, however, since the shortfall between the development cost and the final value of the property far exceeded the amount of this tax advantage.

Today, three factors combine to incline Xemed towards reconsidering, and moving ahead with this project:

1. RSA-79E tax consideration for the full five years is the primary motivating factor, and a necessary condition for moving forward with this project.

2. Interest in commercial development in Durham may be gaining momentum, as exemplified in the Commercial Core Strategic Plan. This may raise the appraiser's estimate of the value of the finished building.

3. Altering the building design to provide three finished floors above grade (rather than one below grade, two full finished floors, and a mezzanine) should further alleviate the appraiser's concerns.



Approval of five years of tax abatement will provide the strongest possible signal that the Durham Town Council is doing what it can to strategically leverage technology companies spun out from the University of New Hampshire.

## TOWN OF DURHAM, NH COVENANT TO PROTECT PUBLIC BENEFIT Per RSA 79-E:8 (Community Revitalization Tax Relief Incentive)

Xemed Holdings of 16 Strafford Road, Durham, NH 03824 (hereinafter referred to, collectively, if appropriate, as "GRANTOR") owner of property situate at 16 Strafford Road, Durham, NH (hereinafter referred to as the "PROPERTY"), for itself and for its successors and assigns, for consideration of tax relief granted to GRANTOR by GRANTEE pursuant to the provisions of RSA 79-E, agree to the following Covenants imposed by the Town of Durham, (hereinafter referred to as "GRANTEE"), 15 Newmarket Road, Durham, County of Strafford, State of New Hampshire.

These covenants are made in exchange for property tax relief granted with respect to the PROPERTY as a result of the substantial rehabilitation of the PROPERTY to be accomplished by the GRANTORS in accordance with GRANTOR'S proposal (specific approved scope of work is attached as "CHAPTER 79-E COMMUNITY REVITALIZATION TAX RELIEF INCENTIVE ADDENDUM") approved by GRANTEE on [date of council approval].

This Covenant is to protect the public benefit in accordance with the provisions of RSA 79-E for a term of five years, beginning on April first of the first tax year commencing immediately after the completion of the rehabilitation work. Notwithstanding the foregoing, the contemplated tax relief shall be null and void if the proposed rehabilitation work is not completed by March 31 2014.

The PROPERTY is designated GRANTEE'S Tax Map 2 Lot 8-3 in the Town of Durham. For further reference to GRANTOR'S title see deed recorded at Book [reference], Page [reference], Strafford County Registry of Deeds.

The GRANTEE agrees that the PROPERTY, if substantially rehabilitated in accordance with GRANTOR'S proposal approved by GRANTEE on [date of council approval] provides a demonstrated public benefit in accordance with the provisions of RSA 79-E:7 insomuch as the substantial rehabilitation of said property:

- I. Enhances the economic vitality of downtown;
- II. Enhances or improves a structure that is culturally or historically important on a local, regional, state, or national level, either independently or within the context of an historic district, town center, or village center in which the building is located; and
- III. Promotes development of municipal centers, providing for efficiency, safety and a greater sense of community consistent with RSA 9-B.

The terms of the Covenant which is hereby granted by the GRANTOR to the GRANTEE with respect to the above described PROPERTY are to be co-extensive with the tax relief period and are as follows:

**GRANTOR'S COVENANTS:** 

Covenant - RSA 79E

REHABILITATION OF PROPERTY. The Grantor agrees to substantially rehabilitate the PROPERTY during the term of this Agreement in accordance with GRANTOR'S proposal approved by GRANTEE on [date of council approval]. The substantial rehabilitation contemplated by GRANTOR'S proposal approved by GRANTEE on [date of council approval] shall be completed by the GRANTOR on or before March 31, 2014. All of the work on the attached scope of work must be completed in order for the tax relief to take effect. If only some of the work on the attached scope of work is completed prior to March 31, [upcoming year] or March 31, [following year], then the PROPERTY shall be fully assessed for the value of that work during the tax year(s) commencing [upcoming year] and/or [following year].

MAINTENANCE OF THE PROPERTY. The GRANTOR agrees to maintain, use and keep the structure in a condition that furthers the public benefits for which the tax relief was granted and accepted during the term of the tax relief under RSA 79-E.

<u>REQUIRED INSURANCE, USE OF INSURANCE PROCEEDS, AND TIMEFRAME TO</u> <u>REPLACE OR REMOVE DAMAGED PROPERTY</u>. The GRANTOR agrees and is required to obtain and maintain casualty insurance, as well as flood insurance, if appropriate. The GRANTEE requires a lien against proceeds for any insurance claims to ensure proper restoration or demolition of any damaged structures and property. The GRANTEE further requires that the restoration or demolition commence within one year following any insurance claim incident; otherwise the GRANTOR shall be subject to the termination provisions set forth in RSA 79-E:9, I.

<u>RECORDING</u>. The GRANTEE agrees to and shall provide for the recording of this covenant with the Strafford County Registry of Deeds. It shall be a burden upon the PROPERTY and bind all transferees and assignees of such PROPERTY. The GRANTOR will be solely responsible for payment of the recording fees.

<u>ASSESSMENT OF THE PROPERTY</u>. The GRANTEE agrees that the PROPERTY shall be assessed, during the term of the Tax Relief Granted based on the pre-rehabilitation value or such other value utilized by the Assessor to address improvements not covered by RSA 79-E. If the terms of these covenants are not met, the Property Tax Relief will be discontinued. Furthermore, the GRANTEE will assess all taxes to the owner as though no tax relief was granted, with interest in accordance with RSA 79-E:9, II.

## RELEASE, EXPIRATION, CONSIDERATION.

I. RELEASE. The GRANTOR may apply to the local governing body of the Town of Durham for a release from the foregoing discretionary tax relief and associated covenant within the duration of the tax relief period of the RSA 79-E upon a demonstration of extreme personal hardship. Upon release from such covenants, the GRANTOR shall thereafter pay the full value assessment of such structure(s) and land to the Tax Collector of the Town of Durham.

II.EXPIRATION. Upon final expiration of the terms of the tax relief and associated covenantsCovenant - RSA 79E2

the tax assessment will convert to the then full fair market value and these covenants will be concluded.

- III. CONSIDERATION. The Tax Collector shall issue a summary receipt to the owner of such PROPERTY and a copy of the governing body of the Town of Durham for the sums of tax relief accorded during the term of this Agreement. The local governing body shall, upon receiving a copy of the above-mentioned consideration, execute a release of the Covenant to the GRANTOR who shall record such a release with the Strafford County Registry of Deeds. A copy of such release or renewal shall also be sent to the local assessing official.
- IV. MAINTENANCE OF STRUCTURE. If, during the term of the tax relief, the GRANTOR shall fail to maintain the structure in conformity with the foregoing agreement, or shall cause the structure(s) to significantly deteriorate or be demolished or removed, the covenants shall be terminated and a penalty shall be assessed in accordance with Paragraph I(a) above.

<u>ENFORCEMENT</u>. If a breach of this Covenant is brought to the attention of the GRANTEE, the GRANTEE shall notify the GRANTOR, in writing of such breach, which notification shall be delivered in hand or by certified mail, return receipt requested to the GRANTOR.

The GRANTOR shall have 30 days after receipt of such notice to undertake those actions, including restorations, which are reasonably calculated to cure the said breach and to notify the GRANTEE thereof.

If the GRANTOR fails to take such curative action, the GRANTEE may undertake any actions that are reasonably necessary to cure such breach, and the cost thereof, including GRANTEE'S expenses, court costs and legal fees, shall be paid by the GRANTOR, provided the said GRANTOR is determined to be directly or indirectly responsible for the breach.

The GRANTOR, by accepting and recording this Covenant to the GRANTOR agrees to be bound by and to observe and enforce the provisions hereof and assumes the rights and responsibilities herein provided for and incumbent upon the GRANTEE, all in furtherance of the purposes for which this Tax Relief and associated Covenant is delivered.

WITNESS MY/OUR/ITS HAND this _	day of, 20
Witness	Grantor
	Print Name
Witness	Grantor
	Print Name
STATE OF NEW HAMPSHIRE COUNTY OF STRAFFORD	
and	, 20, personally appeared the above, known to me, or satisfactori
and	, known to me, or satisfactori
and	, known to me, or satisfactori
and	, known to me, or satisfactori dged that he/she/they executed the same for the purpose
and proven, to be the same, and acknowled contained therein.	, known to me, or satisfactori dged that he/she/they executed the same for the purpos
and proven, to be the same, and acknowled contained therein.	, known to me, or satisfactori dged that he/she/they executed the same for the purpose Notary Public/Justice of the Peace My commission expires:
and proven, to be the same, and acknowled contained therein.	, known to me, or satisfactori dged that he/she/they executed the same for the purpose Notary Public/Justice of the Peace My commission expires: , 20 by the Town of Durham TOWN OF DURHAM By:
and proven, to be the same, and acknowled contained therein.	, known to me, or satisfactori dged that he/she/they executed the same for the purpose Notary Public/Justice of the Peace My commission expires: , 20 by the Town of Durham TOWN OF DURHAM

4

Project:

## Xemed Commercial Park

## Community Revitalization Tax Relief Application (per RSA 79E)

Late: July 11, 2011

## Property Information

Address:	16 Strafford Avenue			
Tax map:	2	Lot:	8-3	

Year built: c.a. 1940

## **Property Owner**

Name:F. William Hersman, 66 Bucks Hill Rd, DurhamTelephone:(603) 868-6362Email: Hersman@Xemed.com

#### Developer

Name: Xemed Holdings, LLC, 16 Strafford Avenue, Durham Telephone: (603) 868-1888 x110

## **Proposed project**

The proposed project replaces an existing 70 year old 1-1/2 story cape with low ceilings and lacking handicap access with an attractive, modern 11,000 sq.ft handicapped-accessible commercial office with associated spaces for engineering laboratories. Upon completion, the principal tenant will become Xemed LLC, with first-floor space for a possible additional, smaller tenant.

Building uses: Nonresidential square ft.	0	Commercial office 1000+1500 unsuitable		Commercial office 11,000 sq.ft
esidential dwelling units	Existing:	0	Proposed:	0
	Start:	March 2012	Finish:	November 2012

#### **Project costs**

Structural	Two stories above ground + opt. basement & opt. mezzanine	\$ 976,000
Electrical	Extensive 208V and 110V capability for engineering	\$ 114,000
Plumbing	Includes bathroom/kitchen, plus fire protection	\$ 44,000
Mechanical	Individual zones for HVAC	\$ 160,000
Other	Changes to date	\$ 13,000
Total project costs		\$1,307,000

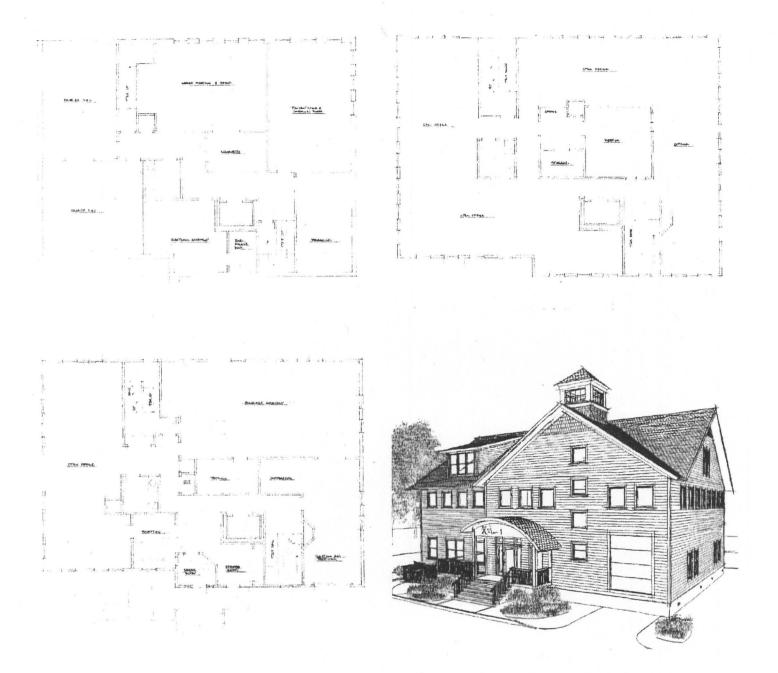
## Other information

Contractor:John DeStefano, DeStefano and Assoc. (construction manager)Will the project include any affordable housing units?NoWill any state or federal funds be used in this project?No

## Public Benefit

This project creates a unique building suitable for high-technology startup companies, allowing them to transition seamlessly from academia to the commercial market without leaving Durham, and leveraging UNH as a key driver for expansion of high-paying jobs for the town, region, and state. Furthermore, the opportunity for UNH faculty entrepreneurs to remain in the area and to continue mentoring larger numbers of UNH student interns close to campus will increase the likelihood that the best UNH students will remain in the region, contribute to regional high-tech startups, and perhaps initiate new technology businesses themselves.

Cause this initiative to place a commercial office/engineering building close to UNH campus (i.e. in an area minated by student housing) is unprecedented, the appraised value of this unique property upon completion is only \$1,050,000 considerably devalued below the \$295,000 cost of the original property and \$1,307,000 cost of construction, increasing private risk and limiting bank funding. Tax relief would partially offset this difference.



I hereby submit this application under the Community Revitalization Tax Relief Incentive Statute (NH RSA 79-E) and attest that to the best of my knowledge all of the information herein and in the accompanying materials is true and accurate. I have reviewed the statute and understand that: a) there will be a public hearing to evaluate the merits of this application; b) I will need to enter into a covenant with the Town; and c) I may be required to pay reasonable expenses associated with the creation of the covenant.

Signature of property owner:

WX Insman Sept 12, 2012 Date:

DIVISION	DESCRIPTION OF WORK	BASIS	Salary - UNS - TAN	BUDGET
		hoging where the second		Ser Transfer
01000	GENERAL CONDITIONS		\$	83,714.00
02000	DEMOLITION		\$	-
02200	SITEWORK		\$	133,814.00
02500	LANDSCAPING		\$	13,240.00
03000	CONCRETE		\$	42,472.00
04000	MASONRY		\$	-
05000	METALS		\$	15,470.00
06000	FRAME & EXT. CARPENTRY		\$	199,625.00
06200	INTERIOR CARPENTRY/CASEWORK		\$	10,625.00
07000	THERMAL AND MOISTURE PROTECTION		\$	37,395.00
08000	DOORS AND WINDOWS		\$	44,420.00
09250	DRYWALL		\$	40,650.00
09500	CEILINGS		\$	6,600.00
09200	FLOORING		\$	32,890.00
09900	PAINTING		\$	26,500.00
10000	SPECIALTIES		\$	7,300.00
11000	EQUIPMENT		\$	7,500.00
12000	FURNISHINGS		\$	2 100 00
13000	SPECIAL CONSTRUCTION		э \$	2,100.00
				-
14000	CONVEYING SYSTEMS		\$	58,900.00
15300	FIRE PROTECTION SPRINKLER SYSTEMS		\$	18,750.00
15400	PLUMBING SYSTEMS		\$	25,700.00
15500	HEATING, VENTILATION, AND AC		\$	160,000.00
16000	ELECTRICAL SYSTEMS		\$	114,055.00
SUBTOTAL			\$	1,074,220.00
ALLOWANCES	WINTER CONDITIONS		\$	-
	LEDGE/UNSUITABLES		\$	26,000.00
SUBTOTAL			\$	1,100,220.00
	BUILDER CONTINGENCY	3.00%	\$	30,000.00
	CONSTRUCTION MANAGEMENT FEE	5.0070	\$	65,000.00
SUBTOTAL			\$	1,195,220.00
SUBIUIAL	DECONSTRUCTION/DECION			99,000.00
	PRECONSTRUCTION/DESIGN		\$	NAMES AND ADDRESS OF A DESCRIPTION OF A
TOTAL	TOTAL		\$	1,294,220.00
CHANGES			\$	13,292.00
OWNER				
12000	FURNITURE AND FURNISHINGS		\$	20,000.00
16500	COMMUNICATION SYSTEMS			
	LAND			
	FINANCING			
	CONTINGENCY	5%		
	TOTAL OWNER ITEMS		\$	20,000.00
	TOTAL PROJECT		\$	1,327,512.00

New Hampshire Division of Historical Resources last update 13.01.2011

Page 1 of 18

## INDIVIDUAL INVENTORY FORM

## Name, Location, Ownership

- 1. Historic name: <u>Henderson House</u>
- 2. District or area: <u>N/A</u>
- 3. Street and number: <u>16 Strafford Avenue</u>
- 4. City or town: Durham
- 5. County: Strafford
- 6. Current owner: Xemed Holdings, LLC

## Function or Use

- 7. Current use(s): Offices
- 8. Historic use(s): Domestic single family

## Architectural Information

- 9. Style: Colonial Revival cape
- 10. Architect/builder: unknown
- 11. Source: research
- 12. Construction date: ca. 1949
- 13. Source: Research, Inspection
- 14. Alterations, with dates: <u>office conversion</u> <u>1980s</u>
- 15. Moved? no 🛛 yes 🗌 date: <u>N/A</u>

## Exterior Features

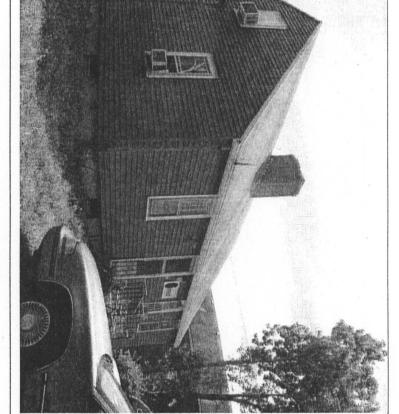
- 16. Foundation: concrete
- 17. Cladding: aluminum
- 18. Roof material: asphalt
- 19. Chimney material: brick
- 20. Type of roof: gable
- 21. Chimney location: center
- 22. Number of stories:  $1\frac{1}{2}$
- 23. Entry location: façade off-center
- 24. Windows: <u>12/12, 8/8</u> Replacement? no ⊠ yes □ date:<u>N/A</u>

## Site Features

- 25. Setting: <u>University campus, mixed</u> residential street
- 26. Outbuildings: none
- 27. Landscape features: gravel parking in yard, flat lawn
- 28. Acreage: 0.5 acre
- 29. Tax map/parcel: 02/8-3
- 30 UTM reference: 19.292555.4790900



**NHDHR INVENTORY** DUR0024



35. Photo #1 Northwest elevation and façade Direction: SE

36. Date: July 2012

- 37. Image file name: DUR0024\_01
- 31. USGS quadrangle and scale: Dover West, 1:24000

#### Form prepared by

- 32. Name: Kari Laprey, Lynne Monroe
- 33. Organization: Preservation Company, Kensington, NH
- 34. Date of survey: July 31, 2012

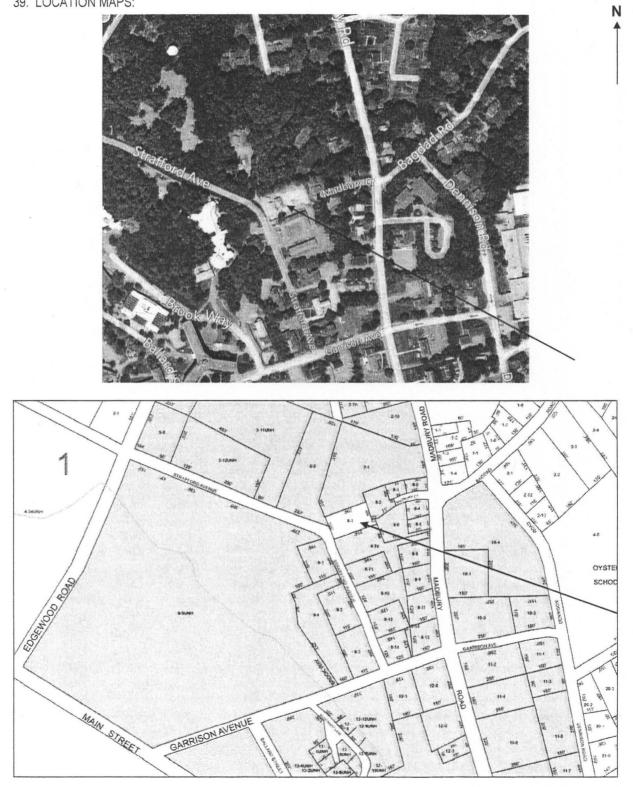
New Hampshire Division of Historical Resources last update 13.01.2011

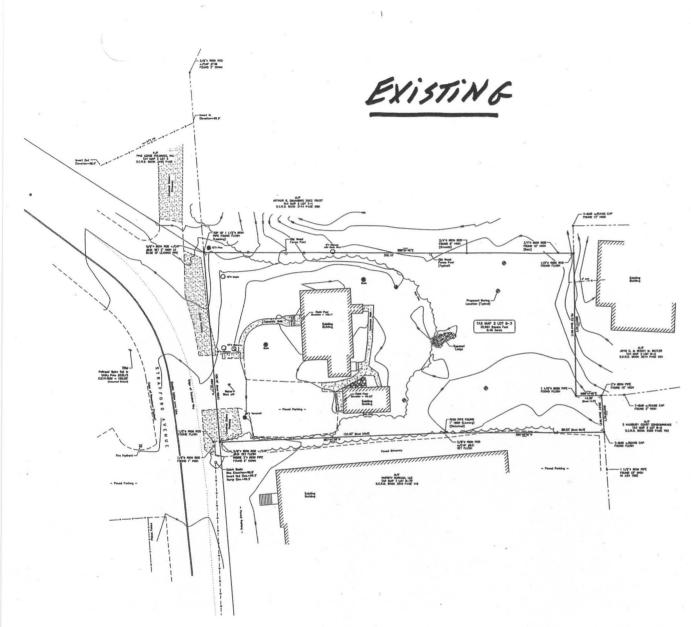
Page 2 of 18

## INDIVIDUAL INVENTORY FORM

NHDHR INVENTORY DUR0024

39. LOCATION MAPS:





RECEIVED TownofDurharr JAN 2.1 2010 Planning, Assessing, Zoning & CodeEnforcement

1 "TRAFTORD PLACE, A CO-DOMINAN PROVINED FOR YANKE BENELOWICH, GURHAM, ME'R HAMPSHE" PROVINED BY BROAKS F. HORM, MC, PARD JAN 24, 1988 AND RECORDED AT DE SLACE, AS PLAY JALLEY

T

The ston mat

 A Tust of C. (11 FITTENIN, RUBIN, KE HINFTON, Markell B.F.L. Hart & AddCalts Lint J.K. (18) A RUGNER J. 19 F. L.A. 91 A. AND FITTENING T. (18) Markell B. (19) A. (19)

ZDAE DATE SUBJECT OF A DATE OF A DAT

L, OWERT OF RECORD NO THE ADDA THE ADDA

STANDARD PROPERTY SURVEY & TOPOGRAPHIC SITE PLAN 16 Strifted Arous Runnan, Strifted County, New Hampshire Xenne Holdings, LLC 10 Strifted Arous LCC 10 Strifted Arous Strifted Arous New For Arous Strifted Arous New For Arous Strifted Arous Strifted SURVEYING, Inc. SURVEYING, Inc.



TOWN OF DURHAM 15 NEWMARKET ROAD DURHAM, NH 03824-2898 Tel: 603/868-5571 Fax: 603/868-5572

DATE: October 15, 2012

## **COUNCIL COMMUNICATION**

**INITIATED BY:** Strafford Regional Planning Commission

AGENDA ITEM: SHALL THE TOWN COUNCIL ENDORSE A LETTER OF SUPPORT FOR THE STRAFFORD REGIONAL PLANNING COMMISSION (SRPC) TO APPLY FOR LOCAL SOURCE WATER PROTECTION GRANTS THROUGH THE NHDES DRINKING WATER SOURCE PROTECTION PROGRAM AND FOR THE PREPARATION AND SUBMITTAL OF ASSOCIATED APPLICATION MATERIALS TO DEVELOP A RIVER MANAGEMENT PLAN FOR THE OYSTER RIVER?

## **<u>CC PREPARED BY:</u>** Jennie Berry, Administrative Assistant

PRESENTED BY: Todd I. Selig, Administrator

## AGENDA DESCRIPTION:

In 2011, legislation was enacted by the State Legislature to designate segments of the Oyster River as a protected river under New Hampshire Revised Statutes Annotated (RSA) 483, New Hampshire Rivers Management and Protection Program (RMPP). When the designation became effective on June 2, 2011, the Oyster River joined a select group of rivers already designated under the RMPP. Designation calls for protection and management of New Hampshire's outstanding rivers through a two-tiered approach: state protection of instream values, and local management of riparian lands. The RMPP is administered by the Department of Environmental Services (DES) under RSA 483.

In October 2011, the Town of Durham nominated four individuals for appointment by the DES Commissioner to the newly-formed Oyster River Local Advisory Committee (ORLAC).

The Strafford Regional Planning Commission (SRPC) proposes to work with the ORLAC and other municipal stakeholders to assist in the development of a River Management Plan. The River Management Plan will identify short-term, intermediate, and long-term goals for the river and watershed protection along with



Council Communication, 10/15/12 – Page 2

Re: Approve Letter of Support for SRPC to Apply for NHDES Grant Funds to Develop a Management Plan for the Oyster River

strategies to address them. An Action Plan will organize the goals and strategies in a timeframe that allows for effective and timely implementation.

During the development of the Plan, ORLAC and Strafford Regional Planning Commission will engage public participation, work to improve the protection and management of the river, and complete ongoing efforts at the local level that are needed to address the use and conservation of the river corridor and watershed; tasks include:

- Collecting input through a river corridor survey sent to property owners and elected officials;
- Interviews with Conservation Commissions in the Towns of Barrington, Lee, Madbury, and Durham;
- Key person interviews with representatives from local government and agencies and nonprofit groups active in the watershed; and
- Public informational meetings for review and comment on the draft and final river management plans

The SRPC believes there is a unique opportunity for both the regional planning commission and the local advisory committee to work with the Town of Durham and their two consulting firms to work together, as Durham is already focusing on a watershed-wide management plan. Being able to share resources and working together will not only strengthen the grant application but will serve to create a more comprehensive corridor management plan for the river and its resources.

The SRPC is in the process of applying for Local Source Water Protection Grants through the NHDES Drinking Water Source Protection Program. Those eligible to apply include: water suppliers, municipalities, regional planning commissions, nonprofit organizations, county conservation districts, watershed associations, state agencies, and education institutions. Since 1997, NHDES has made small grants available to these entities for the purpose of protecting drinking water sources. The purpose of the funding is to provide expertise and assistance during the development and adoption of a local river corridor management plan pursuant to RSA 483:10; thus fulfilling the local advisory committee's legal responsibility for creating a management plan for the Oyster River as it pertains to the NH Rivers Management and Protection Program. To date, the SRPC has received letters of support from the Towns of Barrington and Lee. A copy of the letter Administrator Selig would send upon endorsement by the Town Council is attached.

More information regarding the application process can be viewed on the Source Water Protection Grant website through NHDES at: http://des.nh.gov/organization/divisions/water/dwgb/dwspp/lswp\_grants.htm Council Communication, 10/15/12 – Page 3

Re: Approve Letter of Support for SRPC to Apply for NHDES Grant Funds to Develop a Management Plan for the Oyster River

This item was placed on the October 1, 2012 Town Council agenda; however, due to the lateness of the hour, was postponed to the October 15<sup>th</sup> meeting.

## **LEGAL AUTHORITY:**

New Hampshire Revised Statutes Annotated (RSA) 483, New Hampshire Rivers Management and Protection Program (RMPP).

## LEGAL OPINION:

N/A

## FINANCIAL DETAILS:

N/A

## SUGGESTED ACTION OR RECOMMENDATIONS:

Take action concerning the Town's interest in SRPC moving forward with applying for grant funds to develop a River Management Plan for the Oyster River and submitting a letter of support for this effort. After discussion, consider making the following motion:

#### **MOTION:**

The Durham Town Council does hereby endorse the draft Letter of Support for the Strafford Regional Planning Commission to apply for Local Source Water Protection Grants through the NHDES Drinking Water Source Protection Program and in the preparation and submittal of associated application materials to initiate a River Management Plan for the Oyster River. October 16, 2012

Ms. Johnna McKenna NHDES Drinking Water and Groundwater Bureau 29 Hazen Drive Concord, NH 03302-0095

#### Dear Ms. McKenna:

On October 1, 2012, the Durham Town Council voted to support the efforts of the Oyster River Local Advisory Committee (ORLAC) to complete a Corridor Management Plan for the Oyster River, with the assistance from the Strafford Regional Planning Commission, and endorses the Regional Planning Commission's application for funding through the New Hampshire Department of Environmental Services, Drinking Water Source Protection Program. The purpose of this funding is to provide expertise and assistance during the development and adoption of a local river corridor management plan pursuant to RSA 483:10; thus fulfilling the local advisory committee's legal responsibility for creating a management plan for the Oyster River as it pertains to the New Hampshire Rivers Management and Protection Program.

The Oyster River is a vital natural resource for the Town of Durham, as well as other communities in the watershed. It serves as a municipal drinking source for Durham and the University of New Hampshire and supports vital functional value for wildlife and aquatic species. The Town of Durham recognizes the importance of protecting riparian lands along the Oyster River; yet, threats to the integrity of the river remain and can be dealt with effectively though a coordinated system of planning and management.

The Town of Durham understands the importance of developing a comprehensive management plan, which will include future goals and objectives in the protection of the river and its watershed for years to come. The Town of Durham is also committed in making a good-faith effort to implement recommended source water protection measures, when appropriate, as an outcome of this project.

Yours truly,

Todd I. Selig Administrator