

D-R-A-F-T

**DURHAM TOWN COUNCIL
MONDAY, OCTOBER 21, 2019
DURHAM TOWN HALL - COUNCIL CHAMBERS
7:00 PM
MINUTES**

MEMBERS PRESENT: Council Chair Kitty Marple; Council Chair Pro tem Ken Rotner; Councilor Jim Lawson; Councilor Sally Tobias; Councilor Carden Welsh; Councilor Andrew Corrow; Councilor Al Howland; Councilor Wayne Burton; Councilor Dinny Waters

MEMBERS ABSENT: None

OTHERS PRESENT: Business Manager Gail Jablonski; DPW Director Mike Lynch; Parks and Recreation Director Rachel Gasowski

I. Call to Order

Chair Marple called the meeting to order at 7:00 pm.

II. Approval of Agenda

Chair Marple said item XI C would be removed from the agenda.

*Chair Marple Moved to approve the Agenda as amended. Councilor Welsh
SECONDED the motion and it PASSED unanimously 9-0.*

III. Special Announcements

Chair Marple said she'd like to offer a public apology to Councilor Waters, concerning the discussion on Pay as you Throw at the last meeting, when she said she was somewhat dismissive of his concerns about this issue. She said she'd be happy to address his concerns and comments.

Councilor Rotner noted that Administrator Selig was at a conference in Nashville, and that Business Manager Gail Jablonski was in his place at the Council table this evening.

IV. Public Comments (*)

Bill Hall, Smith Park Lane spoke on several issues.

- He noted that Councilor Lawson had asked for a report on the water system, and then there was a presentation on the system at a Council meeting. Mr. Hall said at three Council meetings, he discussed his disagreement with the information that was presented, but said Town staff hadn't responded to this yet.

- He said the job on Bagdad Road, which started in July, was out of control, and said it should have been finished two weeks later.
- He noted the mowing that the Council had decided should be done by DPW, which he had said should be contracted out. He said it was now October and the work hadn't gotten done. He said there was a spending problem, not a revenue problem.
- He asked why there wasn't a right hand turn lane at the end of Madbury Road, which would help the situation a lot when school got out.

Andrew Kun, Faculty Road, thanked the Council for taking up the curbing issue. He also thanked the DPW and the Town in general for doing this, and said he realized that they all were on the same team. He said aesthetics mattered and were part of daily life, and also said they affected property values. He said it was cheaper to do asphalt curbing but said it probably wouldn't last. He noted that there was granite curbing at the Town Hall, which meant that tax dollars had been spent wisely because this curbing would last.

He noted the design guidelines throughout the state and the northeast that his wife had found, and asked the Council to take them into account. He said there had been a reasonable expectation that the granite curbing on Faculty Road would continue, and said the residents there should have been consulted. He said if this had happened, the Town hopefully wouldn't have made the decision to use asphalt curbing. He asked the Council to vote to establish standards that included using granite curbing, and to use it on Faculty Road at the Town's earliest convenience.

Jessica Stuart, Faculty Road, noted that Administrator Selig had provided information from Mr. Lynch that repudiated the assertions of her and others. She spoke about how she and her father had almost had an accident because of the dark sidewalk, curbing and road, which affected the optics. She also said the way the road was striped, the rear view mirrors of cars were being pushed near the sidewalk. She noted that Dover and Portsmouth were working to maintain and improve the aesthetics of their communities by using granite curbing. She said she and her neighbors were taxpayers and were trying to take an active role in their community. She said it would have been nice for them to have the opportunity to voice their opinions about the curbing before it was installed.

Diane Tregay, Faculty Road, thanked Councilors for their service to the community, which united residents and kept them safe. She thanked the Police Dept. for its regular patrolling of Faculty Road, and also thanked the DPW, even though there was disagreement about the curbing. She noted the information she and others had provided to Councilors, including a video she and Jessica had taken as they walked to the Town Hall this evening. She also noted the significant property tax increase recently because Faculty Road was a desirable neighborhood, yet they had been gifted with asphalt.

She said Dover, Portsmouth, and Exeter had granite curbing. She said the petition wasn't asking that the asphalt curbing on Faculty Road be ripped up, but was asking that when roadwork needed to be done, the Town would consider putting the straight granite curbing back. She said Durham was the granite state, and the home of UNH. She spoke

about the need to tackle climate change, and said as part of this, the Town shouldn't use asphalt curbing and should install granite curbing instead.

V. Approval of Minutes - October 7, 2019

Page 3, 5th paragraph, should read "...Chair Nell Neal read a prepared statement on Pay as You Throw..."

Page 16, 3rd paragraph from bottom, should read "...including John Nachilly..."

***Councilor Welsh MOVED to approve the October 7, 2019 Minutes as amended.
Councilor Lawson SECONDED the motion and it PASSED unanimously 9-0.***

VI. Councilor and Town Administrator Roundtable

Councilor Welsh said a bear had recently taken down his bird feeder, and his neighbor's feeder. He also said there were still a lot of ticks around, and said he'd picked up four when he went to Doe Farm recently. Chair Marple said tick nymphs were coming out right now, and said people needed to watch for them until the snow came. Councilor Burton said the bear came to his house and his neighbor's house, tore apart a chicken house and ate a chicken.

Councilor Welsh said at the most recent Planning Board meeting, there was a public hearing and discussion on the proposed Bed and Breakfast ordinance. He said the discussion would continue at the workshop on Oct 30th. He said the Board also reviewed proposed amendments to the Parking ordinance, and sent them on to the Town Council. He said the Council would review the proposal at its next meeting if they could fit it in.

Councilor Rotner spoke on a number of items:

- He said the Halloween Monster Bash would be held downtown on Saturday, and said the rain date was Sunday.
- He spoke about the recent site walk by the Land Stewardship Committee at Wagon Hill Farm, and said it was a wonderful project.
- He noted that at the crosswalk where Pettee Brook Lane connected with Main St, there was car parking right up to the crosswalk on the UNH side. He said he had to slam on his brakes on two occasions at that location, and suggested that a flashing light was needed there.
- He said when the Council discussed ORYA at its last meeting, he asked to see their fee schedule and what they were charging Lee and Madbury for different sports, but said he hadn't seen this yet.

Councilor Howland said at the Land Stewardship Committee meeting, Brian Keegan of the Oyster River Bike Shop and other spoke about trail work that needed to be done. He provided details on this. He also noted the social innovation challenge at UNH, and spoke about a two page proposal he, Councilor Tobias, Sarah Wrightsman and some others were developing about doing a "Durham Creative Cooperative", to do public art in Durham.

Councilor Waters said there was a short ZBA meeting, with one variance application that was approved.

Councilor Tobias said she was attending the Fall Main St Academy, and as part of this had visited South Berwick and Rochester. She said it was really enlightening and inspiring to see what was being done to make these communities more vibrant. She spoke in some detail on efforts in Rochester, including the work of Matt Wyatt, who ran the Rochester Museum of Fine Art. She described how art was being put everywhere in Rochester, including in empty storefronts in the downtown.

She said they were going to Wolfeboro next week where there was a focus on trails leading to the downtown, which was a solid approach from both an economic and conservation perspective. She said there would be another Main St Academy next spring and she encouraged others to attend it. Councilor Waters asked where the art in Rochester came from, and Councilor Tobias said it came from a variety of places, including museums, and other artists.

VII. Report from the UNH Student Senate External Affairs Chair or Designee

Megan MacLaine, a member of the UNH Student Senate spoke in place of Julianna Phillips. She said the Resolution on “Exploring Micro-Mobility at the University of New Hampshire through E-Scooters” recently passed, and she read the language of the Resolution.

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

Chair Marple said she had been asked that item D under the Unanimous Consent Agenda be removed for discussion with regard to Ordinance #2019-02 addressing the purchase, use, and sale of tobacco/vaping products.

Chair Marple MOVED that the Durham Town Council does hereby approve Unanimous Consent Agenda Items 8A through 8C as follows:

VIII A: The Durham Town Council does hereby schedule a special meeting date for Monday, December 9, 2019, in addition to its regular legislative meeting dates, to deliberate, discuss, and take action on the proposed FY 2020 Operating, Capital, and Special Fund Budgets and 2020-2029 Capital Improvement Plan; and The Durham Town Council does hereby schedule a Public Hearing for the proposed FY 2020 Operating, Capital, and Special Fund Budgets for Monday, November 18, 2019, in accordance with Section 5.3 “Budget Hearings” of the Durham Town Charter.

VIII B: The Durham Town Council does hereby approve the 4th 2019 Warrant for Water and Sewer totaling \$519,358.91, commits the bills for charges to the Tax Collector for collection, and authorizes the Administrator to sign said warrant on its behalf.

VIII C: *The Durham Town Council, by majority vote, does hereby accept the terms of the Emergency Management Performance Grant as presented in the amount of \$10,500.00 from the NH Department of Safety Division of Homeland Security and Emergency Management to update the Town's 2013 Local Emergency Operations Plan (LEOP) and Continuity of Operations Plan (COOP) for the Town and authorizes the Administrator to sign all related grant documents on behalf of the Town of Durham. Furthermore, the Town Council acknowledges that the total cost of this project will be \$21,000.00, in which the town will be responsible for a 50% match (\$10,500.00).*

Councilor Welsh SECONDED the motion and it PASSED unanimously, 9-0.

VIII D. FIRST READING ON ORDINANCE #2019-02 creating a new chapter within the Durham Town Code, Chapter 145 "Tobacco Products", to increase the age for the purchase, use, and possession of tobacco products, e-cigarettes, vaping products or liquid nicotine from 18 to 21 in the Town of Durham

Councilor Tobias said she had requested this item be pulled from Unanimous Consent to make sure it was verbalized and that any interested parties are hearing it now if they may not have read the meeting agenda of they did not know what this particular Unanimous Consent agenda item entailed.

She said it was important to make sure that business owners are aware of this ordinance as it could have a strong effect on local businesses that sell these types of products and that they have fair warning that this is going to be happening. She reminded business owners that the Town Council will be moving the proposed ordinance to a Public Hearing which will be held on November 4, 2019, and if they have interests, concerns, or opinions regarding this matter they should show up at that time and voice their opinions. She said it was important that they are aware that this is happening, as well as anyone else who has an opinion, and they should bring forth their concerns.

Councilor Rotner felt it would be a best practice measure to send out some type formal notification to vendors in town informing them that this ordinance will be coming to a Public Hearing. After some discussion regarding Councilor Rotner's suggestion, Council consensus was to not go outside its normal practice for public hearing notifications and thereby not provide formal notification to businesses. Councilor Lawson instead suggested asking Administrator Selig to cover this item very carefully and highlight it in the weekly "Friday Updates". Councilor Rotner felt this would be a nice compromise and said he was in favor of moving forward in the fashion stated by Councilor Lawson.

Chair Marple MOVED that the Durham Town Council does hereby move on First Reading, as presented, Ordinance #2019-02 creating a new chapter within the Durham Town Code, Chapter 145 "Tobacco Products" which establishes the age of 21 to be the minimum required age of any individual in the Town of Durham to purchase, use or possess tobacco products, e-cigarettes, vaping products or liquid nicotine and requires Durham merchants to ensure this act by verifying legitimate identification at the time

of purchase. Furthermore, the Durham Town Council does hereby schedule a Public Hearing for this ordinance to be held on Monday, November 4, 2019.

Councilor Tobias SECONDED the motion and it PASSED unanimously 9-0.

IX. Committee Appointments

Shall the Town Council appoint Sally Needell, 36 Bagdad Road, to the Integrated Waste Management Advisory Committee?

Chair Marple said it seemed like Ms. Needell would be a good asset for the Committee, and noted that she'd been working at the Swap Shop. Councilor Howland said Ms. Needell would be a great addition to the Committee, and spoke about her recent involvement and comments concerning possible improvements to the Swap Shop.

Councilor Howland MOVED that the Durham Town Council does hereby appoint Sally Needell, 36 Bagdad Road, to fill a regular member vacancy on the Integrated Waste Management Advisory Committee with no term expiration. and Councilor Rotner SECONDED the motion and it PASSED unanimously 9-0.

X. Presentation Items

A. Quarterly Financial Report through 09/30/19-Gail Jablonski, Business Manager

Ms. Jablonski said everything was currently on target. She noted that a few concerns had been raised by the Fire Department about spending because of overtime use due to injuries, and said some purchases had been put on hold. She also said funds could be transferred from the Building department if needed.

Councilor Welsh noted that he'd had some questions, and sent them to Ms. Jablonski. He said one was concerning the request to take \$25,000 from fund balance, which didn't tie into a fall-off in valuations, or the fact that revenues were stronger than anticipated.

There was discussion that there were a number of areas where revenues had been higher than anticipated, and also some other areas where revenues were lower than expected, including interest on delinquent taxes, and recycling revenues. It was noted that Fire Department expenses were a risk factor.

Councilor Welsh suggested that Ms. Jablonski should indicate specifically in her report that they would meet the 2019 Budget.

B. Receive annual report from the Planning Board in accordance with Section 11.1(1) of the Town Charter - Paul Rasmussen, Chair

Mr. Rasmussen noted the report he'd sent out to Councilors on the Planning Board's work over the past year.. He said there had been a constant pipeline of proposed ordinance changes this year, and said he didn't see that this would be slowing down. He

said a big challenge was that there were always contrary opinions, for example concerning the ordinance proposals on short term rentals, parking, and solar arrays.

He noted in regard to the proposed tobacco/vaping ordinance that with the exception of tobacco, everything else in that ordinance could be shipped to someone's doorstep. There was discussion. Councilor Rotner said perhaps the ordinance would be a bit of deterrence for high school kids, noting that the High School was having some trouble with this.

Councilor Lawson asked Mr. Rasmussen if he felt the Planning Board would have enough resources and elasticity to address ordinance proposals, if a project like Riverwoods came along. Mr. Rasmussen said the Board couldn't work on more than two ordinances at the same time, so they sort of had a policy on that. He said if a big project came up, they might only be able to work on one ordinance proposal. Councilor Lawson said if there was another big project, the Council would work with the Planning Board to provide extensions if needed.

Councilor Lawson asked Mr. Rasmussen if he preferred starting an ordinance proposal with the Planning Board, or if he preferred that it come to the Town Council first. Mr. Rasmussen said most committees sponsoring ordinances had worked with staff and a member of the Planning Board, so the drafts were well written. He said the issue was what happened to the ordinance proposals at the public hearing, and he noted specifically the big public backlash to the solar energy ordinance draft. He said there were competing values, and said trying to decide who had to bend eventually became the Planning Board's decision.

Councilor Lawson asked if the ordinance proposals should perhaps start with the Council, so when they came to the Planning Board there would be a sense of what would be acceptable to the Council. There was discussion, as well as discussion about whether the committees proposing ordinances could hold a public hearing on them.

Councilor Rotner asked if the time frame in the Town Charter for providing extensions for reviewing proposals was reasonable. Mr. Rasmussen said the time frame was controlled by an RSA.

Councilor Welsh said having been on a lot of committees in Durham, he realized that being the Chair of the Planning Board was one of the most difficult positions. He said there were competing objectives, and a huge body of law and procedures to deal with, particularly in Durham, and said he gave Mr. Rasmussen a lot of credit and thanks for taking this on.

C. Churchill Rink project - Rachel Gasowski, Parks & Recreation Director; Bill Page, Rink Director

Ms. Gasowski said the Parks and Recreation Committee had been looking at various ideas for the rink property over the past few years, including making it into more of a

community center. She said they had come to realize that this wouldn't be feasible because of financial constraints. She said the rink was a great recreational resource, but sat idle for much of the year. She said it was felt that the facility needed to be improved, and said Mr. Page had put a lot of time and energy into figuring out what would work best and how this would be supported. Ms. Jablonski agreed and noted that \$250,000 was the amount needed to cover the net shortfall.

Mr. Page said he grew up in Hanover, played hockey, went to UNH, and was first rink manager Rochester ever hired. He said he was also the first operations manager at the Whittemore Center, and after that worked at the Exeter rink. He said the rink in Durham had presented the most challenges out of all the rinks he'd worked at.

He provided some history and perspective on the rink, using a slide presentation. He then spoke about various activities at the rink, and revenues that came in from some of these activities. He noted especially the large amount of youth hockey at the rink, as well as use by the UNH men's hockey team. He said off season use of the facility was currently minimal, and provided details on this. He spoke about the plan to renovate/expand the rink facility that was developed before he came to work there, and said after studying it, it was realized that it didn't fit on the property. He provided details on this, and also said the Town wouldn't be able to afford to pay the debt service on a project that was that big.

Mr. Page said he and others had decided instead to look for realistic solutions, which included funding improvements to the rink that eliminated deficiencies, maintained the asset and eliminated barriers to off season use, and generated revenues in various ways. He reviewed in detail phase I of the proposed project, which would include closing in the rink, and addressing a number of deficiencies. He used slides to show what was proposed. He then reviewed phases II and III of the project.

He spoke about the ability of an upgraded rink to support the debt service that was being requested. He explained that if the project was bonded for \$875,000, the payment on this wouldn't begin until 2022, and said the first year the payment would be \$76,000. He said he believed that revenues from the rink could support that, and said the budget that had been submitted showed this. He reviewed the financial information that had been provided. He said many minor improvements had been made to the rink in recent years, and said making major improvements would create a lot of additional uses, and protect the asset for the future. He said he hoped he could get the Council's support to take the rink to the next level.

Councilor Lawson asked how the cost estimates had been developed. Mr. Page said he'd contacted people at other rink facilities, including Rochester, which did a project with the exact same rink size. He said he also got information from businesspeople about the costs involved for the different phases.

Councilor Lawson said phases II and III were optional, and asked if there was anything in them that had to be done in order to make sure that phase I worked. Mr. Page said if fire suppression wasn't done, there would be limitations on how the facility could be used in

the off season. He explained that if phase I was done, the facility would be enclosed so would be warmer, but said with new indoor space, there would need to be sprinklers if seating was added.

Councilor Lawson said he assumed that the work would be done in a way that minimized the disruption in 2020 revenue, and asked by what date bids and contracts needed to be done. Mr. Page said the rink closed on March 15th, and said in an ideal world, the project would be rolling by then, and the dashboards from the Whittemore Center could be removed and installed at the rink. He said there weren't plans for off season revenue until 2021.

Chair Marple asked who would do the design for the projects, and Mr. Page said it would be done by an outside contractor.

Councilor Welsh said the majority of people who used the rink weren't Durham taxpayers. He also said there were restricted hours when townspeople could use it, and said the public took second place to the hockey teams. He said the Town hadn't had to put a dime into the rink, as compared to ORYA, the ORCSD, and UNH, but said now, the Town would be on the hook for paying off the loan, so they had to be very careful.

He asked if perhaps he, Ms. Jablonski and Councilor Lawson could meet with Mr. Page to discuss the financial details of the project. He said he thought the project was a good idea, if he could be sure that it wouldn't cost the Town anything. Chair Marple said her only concern was the need to do this in a timely fashion given the 2020 Budget process.

Councilor Lawson said it would be challenging to nail all of these things down within the Budget time frame, and suggested using an approach like that what the Council did with Spruce Hole. He said the project would be in the Budget/CIP approved for next year, but authority to actually go forward with it would first have to come back to the Council and Administrator Selig. He said the project concept that was proposed made sense, and said there could be agreement that in January-February extra work might need to be done to do due diligence concerning the loan. He said he agreed with Councilor Welsh about the need to do this, but said he'd hate to be five years out, saying he wished the Council had done something concerning the rink.

Councilor Burton noted that he was involved with the development of the original rink. He also said Dover and Rochester each had municipal rinks, but were larger communities than Durham. He said he got concerned about the Town being in the rink business, and asked Mr. Page if he could name a town of Durham's size that had taken on a project of this scale. He noted that in Massachusetts, rinks were usually run by groups of municipalities.

Mr. Page said he hadn't done research on that, but said he knew a lot about the rink business. He said rinks didn't just cater to their own communities, and said people came from all over to skate at the Rochester rink. Councilor Burton asked what size market area Durham needed to have, and Mr. Page said they were in it right now. He said the

demand for ice was good enough to continue to support this rink, and said he was convinced that the model he was speaking about would work.

Councilor Lawson said a question was what other towns had this much of an asset that was already in place. Councilor Rotner said Durham had the rink, and for whatever reason the facility had now landed in their laps. He said it had been a very self-sufficient facility, but said unless some investment was made in it, it would deteriorate. He said for some reason the rink was under Parks and Rec, but said the Parks and Recreation Committee couldn't run programs at the facility because of the off season issues. He said he agreed with Councilor Welsh and Councilor Lawson that the numbers should be vetted, and said he'd like to be part of this. He said this was an incredibly unique situation, and said the rink was part of an economic model for Durham.

Councilor Howland said the illusion of deferred maintenance was that it didn't cost the Town anything, but said when a facility wasn't maintained, things got really expensive down the road. He said either the rink would be closed, or a commitment would be made to maintain it and money would be invested in this. He noted recent discussion with ORYA about the Council's commitment to maintain Town facilities, and that money from the Town should go toward that. He also said right now, Parks and Rec couldn't expand programs in order to be more equitable to the community. He said it didn't make sense to waste the facility, and said it made sense to invest in it if the numbers worked.

Councilor Tobias said perhaps not everyone who used the rink was from Durham, but said people came from the surrounding area. She said the shape the rink was in now was embarrassing. She said she could only imagine what additional programming there could be as a result of this project, and the benefits that could come to the Town from this. She said she agreed that they needed to be sure the numbers worked, and said she liked Councilor Lawson's suggestion.

Councilor Waters asked Mr. Page about Rochester's experience with its new rink. Mr. Page said they loved it, and also noted that it had always been financially self-sufficient.

Councilor Welsh said he was skeptical about positive impacts on Durham's economy as a result of upgrading the rink, noting that because of its location near Route 4, there was no reason for people going there to also come into Town. He also noted that Dover was having trouble with the economics of having two arenas. Mr. Page said they were near paying off the debt service on the town funded arena, and said after that it would be a cash cow.

Councilor Corrow said he agreed with what others had said. He said he grew up playing hockey at the rink, which was an incredible community resource, and said they couldn't let it go down the tubes.

Councilor Burton said back in the day, the Town didn't decide to build the rink. He said the Council should make sure that the rink served Durham people. He said he was all for

the project, but said the Town might have to pay off the bond if the revenues didn't come in.

Mr. Page said it was a longstanding situation that rinks needed to make enough money and be self-sufficient, which meant that they needed to rent the ice to people who would pay for it. He said he didn't see why the proposed schedule change that had been suggested couldn't be accommodated, and he spoke further on this. He said there was a wonderful public skate last weekend, and he invited people to stop by.

Councilor Lawson said he appreciated the work that had been done to present this project, and said it had clearly outlined at a high level the issues and a path forward. He said he hoped the group that would be getting together to discuss the financial details would have an opportunity to understand what aspects of phase II and III were needed to make the asset more valuable to Durham and its residents.

Councilor Burton said as part of the analyses that were done, they needed to look at other possible space in Town for general recreation use. Councilor Rotner said Parks and Rec had been looking for places to hold activities, but hadn't been able to find anything. He noted the discussion over the past year about possibly using a portion of the old Middle School for recreation activities, but said that hadn't happened.

There was discussion that the meeting on financial details should happen as soon as possible. Ms. Jablonski said she'd take care of organizing this, and also noted that the project was in the proposed CIP.

D. Receive annual report from Parks & Recreation in accordance with Section 11.1(1) of the Town Charter - Rachel Gasowski, P&R Director

Ms. Gasowski said it had been a busy year. She said planning for the rink had consumed many Parks and Recreation Committee's meetings. She said they'd also been working on a survey to be sent out to residents, and said they hoped to get it out before 2020. She said there were currently 13 community events scheduled throughout the year, and said the committee supported 10 of them, including on site during the events. She provided details on the current membership of the committee, and noted the recent stepping down of Chair Casey Morneau and Sam Lewis, who she said had done an amazing job while they were on the committee.

Councilor Rotner spoke about the expansion of adult programming this year, which included using the van that had been purchased. He spoke about Town events like the Memorial Day parade, and the first Frost Fest planned for this year. There was discussion about the great work Parks and Rec was doing with Town events. Councilor Tobias said these activities brought out Durham's families.

Ms. Gasowski noted that there had been 113 program activities this year.

XI. Unfinished Business

- A. Shall the Town Council approve/ endorse the draft letter addressed to the NH Fish & Game with respect to the three proposed Marine Aquaculture License applications to be placed at the mouth of the Oyster River located off of Wagon Hill Farm?

Chair Marple noted the letter Councilor Lawson had developed, and the wording she'd be added to it.

Councilor Lawson asked that the wording in the first two sentences of the third paragraph be made into a new paragraph.

Councilor Waters said he wasn't sure it was accurate to say that shellfish aquaculture would have a positive impact on water quality. Councilor Welsh said he believed that the comment from NH Fish and Game was that it wouldn't significantly change the cleanliness of the estuary. Councilor Lawson said the "Great Bay Estuary Compendium" done by the Nature Conservancy, although somewhat dated, provided very conclusive evidence that oysters were part of improving the water quality in the estuary. He said based on that work, he had no problem with how the letter was written. Councilor Welsh said he thought that Fish and Game seemed to say that because of the amount of oysters involved relative to the volume of the estuary, the oysters wouldn't make a difference.

Councilor Waters said people living near the point had significant objections to the location of the oyster farms. Chair Marple said Councilor Lawson's letter tried to encourage Mr. Normandeau to consider that in the decision. Councilor Lawson said public input the Council received paralleled what Fish and Game received, and he noted that he was at both meetings. He spoke further on this.

Councilor Waters asked if it was accurate to say that two of the three companies agreed to do bottom seeding, and that the one that didn't agree to this would have racks for the oysters. There was discussion. Councilor Lawson said that third applicant indicated that he wouldn't be interested in any type of oyster farming other than floating apparatus, and spoke further on this. He said that didn't mean that Fish and Game had to approve what that applicant wanted.

Councilor Rotner said the letter summarized things well, but said he'd weighed in later to try to change the tenor of the letter because nowhere did it say the Council supported aquaculture if it was done correctly. He said he was very much in favor of going ahead with the aquaculture as long as it fit with the parameters identified as important. He read some possible language to add to the letter:

"Given our support for shellfish aquaculture in the lower Oyster River, but with our concerns as stated, we encourage New Hampshire Fish & Game to derive specifications that will allow aquaculture to proceed, but in a manner that does not jeopardize the Town of Durham's unique relationship with the lower Oyster River." He said this demonstrated that there was support for projects that weren't going to be cages/floats.

Councilor Lawson said there might very well be some small cages, in deeper waters. He also said there was a lot of evidence that Durham supported oyster aquaculture, noting the mapping on this. But he said the Oyster River was a challenging area to do oyster aquaculture, and he spoke further on this.

Councilor Rotner said as written the letter implied that the Council didn't want shellfish aquaculture, but he said he did want it if it was done in the way reflected in Councilor Lawson's proposed wording.

Councilor Tobias said she liked Councilor Rotner's words. Councilor Waters said he liked Councilor Lawson's words.

Councilor Rotner MOVED that the Durham Town Council does hereby add the following language as an amendment to the letter Councilor Lawson had presented: "Given our support for shellfish aquaculture in the lower Oyster River, but with our concerns as stated, we encourage New Hampshire Fish & Game to derive specifications that will allow aquaculture to proceed, but in a manner that does not jeopardize the Town of Durham's unique relationship with the lower Oyster River".

Councilor Welsh said he thought they should address Councilor Waters concerns first.

Councilor Carden MOVED that the Durham Town Council does hereby change the word "will" in the first line of the third paragraph to "may", which was consistent with what the Council was told, which was that there may be a positive impact on water quality. Councilor Waters SECONDED the motion.

Councilor Lawson questioned why the wording should be changed, when it was contrary to all the science and studies.

The motion FAILED 2-7, with Councilor Waters and Councilor Welsh voting against it.

Councilor Rotner MOVED that the Durham Town Council does hereby amend the letter to add: "Given our support for shellfish aquaculture in the lower Oyster River, but with our concerns as stated, we encourage New Hampshire Fish & Game to derive specifications that will allow aquaculture to proceed, but in a manner that does not jeopardize the Town of Durham's unique relationship with the lower Oyster River". Councilor Burton SECONDED the motion.

Councilor Burton said the people who'd said oyster farming would deter people from walking on Wagon Hill Farm lived on the other side of the river. He noted that he'd asked people walking the trails there about the oyster farming nearby and they said it was great, and gave them something to look at. He spoke further on the aesthetics of oyster farming, and also said it was part of the history of Durham. He said some people wanted to see maritime activity on the Oyster River, and didn't find it to be ugly, as some people

had stated. He said he spoke to some real estate agents who said it wouldn't affect property values.

Councilor Lawson said the words in the letter were his own, and said as someone who lives on the Oyster River, he knew that the most pristine time there was at low tide. He said some people appreciated that, and noted that he'd gone down there today at low tide to watch the birds. He said he was proud that NH had set up guidelines that were different from those in Maryland and Maine, where this kind of aquaculture was decimating views and property values. He said he valued the Oyster River at low tide.

Councilor Burton said he wasn't questioning Councilor Lawson's values.

Councilor Tobias said when she walked at Wagon Hill, seeing oyster farms, or docks or boats didn't make any difference to her.

The motion PASSED 6-3 with Councilor Lawson, Councilor Welsh and Councilor Waters voting against it.

Councilor Burton said he wasn't disrespecting Councilor Lawson's position, and was reacting to the assertion made in testimony that a lot of people felt the oyster farms proposed would be a detriment. He said he and some other people didn't think that as proposed, it would be. He said the Oyster River had stopped being a recreational area for him when the docks came in. He said this impacted water skiing, and also noted the signs about not creating a wake with boats, which impacted some people being able to get out to the bay given the tides.

Councilor Howland MOVED that the Durham Town Council does hereby approve, as amended, the draft letter that will be submitted to NH Fish and Game for consideration prior to its continued public comment period on November 2, 2019, with respect to the three proposed Marin Aquaculture License applications to be placed at the mouth of the Oyster River located off of Wagon Hill Farm. Councilor Tobias SECONDED the motion, and it PASSED 8-1, with Councilor Lawson voting against it.

B. Discussion regarding asphalt curbing on Faculty Road and Council direction on use of granite versus asphalt for Faculty Road and future projects

Mr. Lynch noted the information he'd provided. Chair Marple said the information was very helpful, and said she thought the Council understood the situation.

Councilor Lawson asked Mr. Lynch what the cost would be for the sidewalk project planned on Madbury Road for 2022 if there was granite curbing instead of asphalt curbing. Mr. Lynch said a cost of \$72,000 for asphalt curbing would cost 4 times as much if it were done with granite curbing. Mr. Lynch provided details on sidewalk projects that would be coming up over the next few years.

Councilor Burton said the asphalt curbing on Madbury Road had saved his life because it was lower than granite curbing so was easier to get up on with a bike. But he said he realized granite curbing was a big deal in some neighborhoods. He asked about asking neighborhoods what they wanted. Mr. Lynch said the DPW relied on people going to the public hearing during the Budget process concerning the proposed Roads Program, but said the DPW didn't notify neighborhoods in an organized way about proposed road work. He said perhaps it was time to change this process.

Councilor Rotner said a key point made was that this was a significant change on Faculty Road, so it was important to give people a heads up on it and get feedback. He said for the Council, the question was what it should do in the future, such as adopt the model of having asphalt curbing, or preserve the granite curbs. He said in doing the Budget, the Council was looking at allocating scarce resources in a way that had the most impact in a positive way on the community, and said the sidewalk issue had to be put on that scale.

There was discussion. Councilor Welsh said there should be an opportunity for residents to say what they wanted, especially when taxes were going up. Councilor Waters said he'd heard nothing but complaints about the asphalt curbing. He said his preference was that regardless of cost, it was a slippery slope to give up granite curbing. Councilor Howland said when there was going to be a potentially major change, it was good to tell residents about this, including how much a project would cost. Councilor Tobias said people needed to understand the cost differential. She also said neighborhoods that didn't have granite curbing or none at all would have to pay for the granite curbing that some neighborhoods would want.

There was discussion about safety issues with asphalt curbing as compared to safety issues with granite curbing. Councilor Rotner said there was asphalt curbing on Bagdad Road, where there was a lot of traffic and a mixed neighborhood age wise, and said the sidewalk hadn't been a safety issue there. He said he didn't mean to contradict what the Council had heard from residents living on Faculty Road.

Chair Marple noted that she'd fallen off a granite curb. She also said she was a big picture person, so curbs weren't important to her. She said the Council needed to have a policy going forward, but said the question was what policy they would be making. She said she didn't think that encumbering future Councils to pay for granite curbing when it wasn't necessary was a good thing. Councilor Howland said the Council hadn't committed to doing granite curbing. Councilor Corrow said this wasn't a one size fits all issue. There was further detailed discussion.

Councilor Lawson said if a sidewalk was more than a few years old, it didn't look good because they didn't give the DPW enough money to maintain it. He said they needed to commit to being sure there was enough money in the Budget to maintain the Town's sidewalks. Councilor Tobias agreed, and noted the weeds that had been popping up. She said she didn't know what the Council could say concerning the future, and said she thought residents would have to petition a future Council if they wanted the granite curbing back.

Councilor Rotner MOVED that the Durham Town Council does hereby state that if there will be a substantial change to the work being done by DPW that impacts the neighborhood, the residents will be informed and allowed to comment on it; there is no guarantee that their wishes will be enacted, but there will be consideration.

Councilor Waters suggested that the motion might be amended to say that if a road was to be repaved, residents would be told about this. Councilor Rotner said he thought the “substantial change” wording covered that.

There was discussion that the work that was done wasn’t exactly what was in the sidewalk program. Councilor Lawson said an important policy might be that when a project was different than what was presented in the CIP, even if it would cost less, the Council needed to be advised about this.

Councilor Rotner said he thought it was unrealistic to expect that residents would be following the Budget and CIP review process and in that way would hear about proposed sidewalk/road projects. Councilor Lawson said that was another issue, but noted another issue that was manageable was that when Chief Kurz considered an ordinance change, a letter on this was sent to everyone who lived on the road involved.

Councilor Howland SECONDED the motion, and it PASSED unanimously 9-0.

Chair Marple said it was realized that this wasn’t exactly what those present concerning the asphalt curbing on Faculty Road had wanted.

Diane Tregay said she would probably be dead before there was granite curbing on Faculty Road, since the life of asphalt curbing was 25 years. She said what she and others were pointing out was that the Budget showed that the granite curbing would be replaced, and they assumed that would happen, but were then blind-sided. She recommended that Councilors watch the video she and her neighbors had put together, which showed them walking in the dark down Faculty Road. She said it was a hazard at night because of the asphalt curbing and sidewalk. She said the granite curbing was never a problem.

There was discussion about whether the lighting there was sufficient. It was also noted that the granite curbing was a different color so people could see it. Councilor Lawson said because of the shape of the previous granite curbing on Faculty Road, it was almost like it wasn’t there. He asked if the method to do the curbing on Faculty Road was the same as what was done on Madbury Road. Mr. Lynch said yes.

- C. Discussion regarding how Durham can continue to remain environmentally and economically strong and vibrant

XII. New Business

- A. Shall the Town Council authorize the use of Unassigned Fund Balance in the amount of \$25,000.00 to meet the 2019 Town Tax Rate projection of \$7.60?

Councilor Welsh said he recommend approving this, and said \$25,000 wasn't a big deal. Chair Marple said it worked for her. Councilor Lawson noted that this set a precedent to use fund balance at the end of the year, after doing a so-so budget. There was further discussion on this.

Councilor Waters asked about the fund balance, and there was discussion that it was like a rainy day fund for the Town. Councilor Waters asked how much money was currently in the fund balance, and was told there was \$3.4 million. Councilor Waters said he agreed with Councilor Welsh.

Councilor Rotner MOVED that the Durham Town Council does hereby to authorize the use of 25,000. Councilor Welsh SECONDED and PASSED 9-0.

B. Other Business

XIII. Nonpublic Session (if required)

XIV. Extended Councilor and Town Administrator Roundtable (if required)

XV. Adjourn (NLT 10:30 PM)

Councilor Waters made a MOTION to adjourn. The motion was SECONDED by Councilor Tobias and PASSED unanimously.

Victoria Parmele, Minutes Taker