

This set of minutes was approved at the February 3, 2020 Town Council meeting

**DURHAM TOWN COUNCIL
MONDAY, JANUARY 13, 2020
DURHAM TOWN HALL - COUNCIL CHAMBERS
7:00PM
MINUTES**

MEMBERS PRESENT: Council Chair Kitty Marple; Councilor Jim Lawson; Councilor Carden Welsh; Councilor Andrew Corrow; Councilor Al Howland; Councilor Wayne Burton

MEMBERS ABSENT: Council Chair Pro tem Ken Rotner; Councilor Sally Tobias; Councilor Dinny Waters

OTHERS PRESENT: Town Administrator Todd Selig; Police Chief Dave Kurz; Town Planner Michael Behrendt

I. Call to Order

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

II. Approval of Agenda

Councilor Howland MOVED to approve the Agenda as submitted. Councilor Corrow SECONDED the motion and it PASSED unanimously 6-0.

III. Special Announcements

There were no special announcements.

IV. Public Comments (*)

Bill Hall, Smith Park Lane, said the Council didn't deal with bad information well, and said people made decisions based on that bad information. He noted the water supply issue concerning the Holiday Inn project some years back as an example of this. He said the Council needed to come down hard on this. He also spoke about how the new water plant wasn't online yet, compared to what he said people had been told. He spoke about the Beech Hill water tower situation, which he said the Town had just spent half a million dollars on to refurbish for the University. He spoke about the Depot Road parking lot prices several years ago, and also spoke about other issues.

Administrator Selig and Councilor Lawson spoke about the fact that the Holiday Inn project was done in the early 2000's, when there were a host of issues to deal with concerning water supplies in Town, including the NHDES 401 certificate and the water quantity restrictions involved with it. Councilor Lawson noted that this was before he moved to Durham.

Nell Neal, Riverview Road, said for the last few months, when she'd come before the Council concerning the Pay as You Throw proposal, the Council had listened carefully and respectfully. She said she was impressed with their work to further research the issue and ask excellent questions that were guiding the IWMAC. She said she appreciated this as a resident, and was comfortable with their decision making regarding this proposal. Chair Marple noted the recent article about Newfields, which was discouraging. Ms. Neal said the Committee was working through all of the issues, and would be back.

Kim Sweetman, Ambler Way, noted that she'd sent written documentation about her opposition to using the Gerrish Road right of way because of traffic and environmental impacts. She spoke in detail about the issues involved.

Kathy Brunet, Hampshire Ave, said she wanted to share information concerning the State and local approval needed for resettling refugees in the US. She said the good news was that Durham didn't need to do anything concerning this. She said the Executive Order signed by President Trump set a quota of 18,000 people for 2020, which was the lowest number since 1980 when the refugee resettlement program was created. She spoke in detail on how the program was currently operating, including in NH. She noted that 3100 refugees had been settled in NH since 2011. She said articles in the news had been debating the Order, as to whether to opt in to accept refugees. She said her understanding was that this wasn't necessary for places other than Nashua, Manchester and Concord in NH.

Councilor Lawson asked Ms. Brunet to provide this information to Councilors.

Michael White, Ambler Way, said he was there to speak against the use of the right of way at Gerrish Drive. He provided a video of the current flooding situation in the area, noting that a stream drained into the right of way, and that 3 separate culverts drained into it. He showed where the proposed road would go, and said it would cross many streams and would require the filling of wetlands.

He said what was proposed was inconsistent with the Durham Master Plan, and he spoke in detail on this. He said he'd spoken with NHDES, which he said hadn't seen the application yet, and noted a DES manual on best management practices. He spoke in detail about how even if this road was meant to be a developed street back in the 1970's, the Town was now free to do what it wanted. He also noted that the Conservation Commission meeting for December was cancelled, which meant they hadn't had a chance to weigh in on the right of way.

Molly White, Ambler Way, referred to the video, and said the road was proposed to the left of their house and would run parallel to their driveway. She said water currently backed up into their property and said they were concerned that the situation would get worse with the right of way developed. She said where the Mulherns wanted to build the road was the lowest point on the Gerrish/Ambler loop. She asked that a site walk be done, so people could see what this area looked like. Councilor Welsh asked where water was flowing from, and it was noted that it was flowing in three directions.

Ms. White said they were also concerned about construction traffic, blasting, and said further consideration should go into this before the Council approved this request, which would greatly impact all of their lives.

Councilor Lawson said the Council wouldn't be approving this project in making a decision on the right of way tonight, and said it would still need to go through the Planning Board review process, which included review by the Conservation Commission and NHDES.

There was discussion on this with Mr. and Mrs. White. Councilor Lawson said the Council couldn't circumvent the review process that had to take place. Ms. White said they understood the process, and noted that they'd been to the Planning Board to voice their concerns about the project. She said they wanted their voices to be heard tonight, and would keep speaking out about their concerns. She said she hoped they were being taken seriously.

Councilor Lawson said he thought the most important place to focus that energy was at the Planning Board, NHDES, and the Conservation Commission. Mr. White said they were presenting evidence that this shouldn't be a road at all, and asked if the Council meeting was the appropriate place to do this. He said he thought that was what the discussion tonight was about.

Administrator Selig said if the Council was inclined to authorize the right of way as a road, they would likely do so with conditions, such as approvals from the Planning Board, permits from the State, etc. There was discussion, and he restated that the Council would defer the particulars of whether the road was a viable accessway to the appropriate regulatory authorities. He noted that he lived nearby and was very familiar with the area in question. He said the Town attorney had opined on the parameters the Council had to work within.

Councilor Burton noted that a previous speaker said she didn't mind the area being developed if the project didn't harm the neighborhood, and asked the Whites if they agreed with this.

Mr. White said what people did with their own land was not for them to dictate, but said he thought the development should be in line with the Master Plan concerning wetlands and water quality. He said the area involved was an old oak and pine forest, and said consideration should be given to what would happen in regard to the Great Bay estuarine system if those trees were lost. He also said the Town should consider use of the sewage easement there to avoid water impacts from the septic systems for the new homes.

Councilor Lawson said he thought the Whites' concerns about what could be done were valid, and thanked them for their time.

Diana Carroll, Canney Road, said she'd lived near the area in question since 1975, and she provided some history on the right of way that was given to the Town by Walter Cheney. She said he did some good things for the community, but said many of the

parcels of land he gave to the Town which were not buildable because they were too wet. She noted as an example the Father Lawless Recreation Land, comprised of what had been 4 houses lots that turned out to be unbuildable.

She spoke further, and noted that the regulations on wetlands had now changed. She referred back to the original Board of Selectmen decision concerning the right of way, and then said she wondered if this Council, seeing the photos of the land in question, would vote to make it a right of way for a road.

Ms. Carroll said she was at the last two Planning Board meetings, and learned that the Mulherns wanted the Council to weigh in at this point because it cost a lot of money to go through the review process. She noted the 2020 Council goals, which she said included “taking into account existing and predicted impacts of climate change”. She said she checked the EPA website on what was predicted for the northeast, and it said the area would experience increased precipitation. She noted that Durham had seen 500 year floods in recent years. She suggested continuing this discussion, and said she thought the Town counsel needed to weigh in on Town owned land.

Christine Conlon, Gerrish Drive, said she and her husband agreed with what other members of the public had said concerning use of the right of way for a road.

Gail Kelley, Gerrish Drive, said the area in question was wet year-round, and said it was doubtful that any member of the Planning Board or Conservation Commission had ever done a site walk to see this area for four seasons of the year. She said the right of way in question was not the only access to that land. She also said Walter Cheney deeded the right of way to the Town in February of 1972, and said it was quite certain that there was snow cover on the wetland at that time.

She said there had been other possibilities for access to the backland in the subdivision, but said they were on higher land, which was developable property. She said the other accesses were discussed at Planning Board meetings recently in regard to a proposed change of a boundary line on the Mulhern property. She said several neighbors contended that this was done to remove one of the possible accessways, and she spoke in some detail on this.

Ms. Kelley questioned the logic of the Town attorney’s letter, and said if running water wasn’t a rational basis for denying the building of a road, she didn’t know what was. She said the water table in the area had risen over the past 30 years, and said her septic system was now barely above what was allowable.

Chris Cairn, 17 Davis Ave, spoke about the proposed ordinance concerning off road vehicles. He noted that he and his son worked on, and rode snow runners, which were antique snow mobiles. He said there was no place to ride them in Durham, and also said they had to go to Epping to ride their dirt bikes. He asked the Town to offer an alternative so something like them could be ridden in the Town.

Councilor Lawson noted that the public hearing on this proposed ordinance would be held at a future meeting.

V. Approval of Minutes

December 9, 2019

Councilor Welsh noted that he'd sent in some minor corrections.

Councilor Welsh MOVED to approve the December 9, 2019 Minutes as amended. Councilor Howland SECONDED the motion and it PASSED 5-0-1, with Councilor Burton abstaining because of his absence from the meeting.

December 16, 2019

Councilor Welsh noted that he'd sent in some minor corrections.

Councilor MOVED to approve the December 16, 2019 Minutes as amended. Councilor Corrow SECONDED the motion and it PASSED unanimously 6-0

VI. Councilor and Town Administrator Roundtable

Councilor Corrow said the HDC/Heritage Commission met last Thursday, and reviewed and approved two proposals, one regarding signage on the building where the former Bikram Yoga business was located, and one concerning the Pines, an historic structure that had some fire code issues.

Councilor Welsh reviewed 3 items the Planning Board addressed at its recent meeting.

- Extensive proposed amendments to the Zoning Ordinance from the Agricultural Commission concerning agriculture. He noted the meeting at the Police Station this evening where the Commission would do a presentation on the proposed amendments. He said the hearing on the proposal would be held at the February 12th Planning Board meeting.
- Public hearing and discussion on the proposed subdivision on Gerrish Drive. He said there were many water issues to be addressed, and said the hearing was continued to February 12th.
- Preliminary review for a proposed parking lot off of Main St. The hearing was closed, and the Planning Board provided comments on the proposal.

Councilor Welsh noted that at the last Council meeting, Councilor Rotner asked about the Bagdad Roads dam, and the fact that there had been a lot of erosion above it. He said there was a subsequent meeting with some state environmental people, who said the project was doing what it was supposed to be doing. He said the pond vegetation was re-growing but there were no invasives so far, and said they thought the project was a real success. He said it was expected that there would be some erosion going on.

He said it was surprising to learn that this project wasn't just about replacing a culvert under a road, and was a big project to help with stormwater management. He said all of the water coming down Emerson and Bagdad now went into an area where there was a big concrete box, and said infiltration occurred before the water went into the stream. He said this was a real plus for the Town, and also said there was no worry about the dam at this point.

Councilor Lawson said he'd recently completed the parking status report for the downtown. He said a highlight was that although parking downtown was highly utilized, demand had remained consistent for the past 2 years. He said on any weekday at mid-day, when things were the busiest, there were likely to be 32 parking spaces available between Main St and Pettee Brook Lane. He said permit parking was highly utilized but less so as one moved away from the downtown core. He also said remote permit parking wasn't used a lot. He said parking in proximity to the campus had been decreasing, probably because pricing had moved in line with UNH parking prices.

He said he'd do a project to calculate how much infill development could be done based on the current parking situation, and how much could be accommodated if there were changes to parking policies that made parking downtown more conducive to downtown users and less conducive to the campus. He said there were tradeoffs involved with this. He also said data needed to be collected in May of this year to keep on top of things.

Councilor Lawson noted that Councilors had had the opportunity, as requested, to meet with Dr. Morse and ORCSD Business Manager Sue Caswell concerning financial information about the Middle School project they'd provided at a Council meeting in December. He said the net result was that Councilors understood that it was well thought out. He said it was nice to have the opportunity to collaborate and understand this information better, and thus to gain even more confidence in it. He thanked them for this opportunity.

Councilor Burton said on Tuesday, he attended the Durham Business Association breakfast. He said Sarah Wrightsman spoke there about the unavailability of housing in Durham, and said there was discussion among other things about the Town having a moral responsibility concerning providing housing. Councilor Burton also provided some details on the history of Woodridge field.

Councilor Howland updated the Council on the issues the Integrated Waste Management Advisory Committee was working on. He said while most municipalities wanted to do the right thing concerning recycling, NH didn't have the infrastructure to deal with glass and mixed paper. He noted that the Town had its own vehicles if there was some place to bring the glass and mixed paper, but said there was currently no place that was remotely close.

He said the biggest issue with Pay as You Throw was how to deal with the recycling component. He said this was a regional issue, for Strafford Regional Planning Commission, etc., and said communities really needed to work together, and needed a facility where they could all do the right thing. He spoke about how many communities were struggling with recycling, and were either pairing things down, doing away with it completely or increasing fees.

VII. Unanimous Consent Agenda

- A. Shall the Town Council approve the 1st Warrant for 2020 Water and Sewer totaling \$564,616.54 and authorize the Administrator to sign said warrant?
- B. FIRST READING ON ORDINANCE #2020-01 amending Chapter 153 Vehicles and Traffic, Section 153-34 Schedule II: Speed Limits" of the Durham Town Code by reducing the speed limits on a number of roads in the Woodridge neighborhood from 30 mph to 25 mph
- C. FIRST READING ON ORDINANCE #2020-02 amending Chapter 153 Vehicles & Traffic of the Durham Town Code by creating a new section, Section 153-20.1, "Patron Parking governing patron parking at the Durham Public Library parking lot
- D. FIRST READING ON ORDINANCE #2020-03, a Council-initiated ordinance amending certain sections of Chapter 175 Zoning of the Durham Town Code to address concerns related to short-term rental establishments

Chair Marple MOVED to approve the Unanimous Consent Agenda as submitted. Councilor Howland SECONDED the motion and it PASSED unanimously 6-0.

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

Michael Brideau, Chair of the External Affairs Council, said he was the EAC Rep to the Town Council. He said he was graduating in the spring in economics and hoped to go on to get a Master's degree. He provided additional information on himself, and said he looked forward to working with everyone. He noted that he lived at Main St apartments, and said on December 16th there was flooding in 10 basement rooms there. He said the students living there were removed for about 2 weeks. He said Chief Kurz said it was the worst flooding he'd seen in a new building in his time as Chief.

Councilor Burton asked if UNH students were interested in the Primary coming up. Mr. Brideau said generally yes, and spoke in some detail on this. He noted that the students had loved hearing from the candidates. Councilor Burton asked if the rules around residency and voting had been made clear to the students. Mr. Brideau said the process had been very helpful, and also noted that a lot of the students re-registered every year if needed. Councilor Burton said there was still some confusion about the residency requirements, and there was further discussion on this.

IX. Committee Appointments

Shall the Town Council appoint Michael Hoffman, 300 Durham Point Road, to the Historic District Commission/ Heritage Commission?

Councilor Corrow said he endorsed Mr. Hoffman, noting that Mr. Hoffman had served on many boards and commissions, was a retired Fire Captain, owned the Stone Church in Newmarket and was the Code Officer in Newmarket, so brought a variety of experience that would be helpful on the HDC.

Councilor Corrow MOVED that the Durham Town Council does hereby appoint Michael Hoffman, 300 Durham Point Road, to fill an unexpired regular member term on the Historic District Commission/Heritage Commission, with a term expiration of April 30, 2020. Councilor Lawson SECONDED the motion and it PASSED unanimously 6-0.

X. Presentation Items Oyster River Cooperative School District 2020 / 2021 budget update - Dr. James Morse, Superintendent (20 mins)

Dr. Morse said on Wednesday there would be a public hearing on the Middle School project, and another public hearing on the Proposed School Budget. He explained that the School Board goal was not to have the apportioned share of the budget exceed 3.5%, and said the ORCSD was proposing a 2.83% budget increase, inclusive of the operating budget, bond, and teacher contract warrants for the 2020-21 school year. He said this would be the lowest operating budget he'd proposed in the last six years, and said it was being done in order to live up to the Board's commitment to incorporate the bond for the new Middle School into the School Budget in a way that didn't crush the voters. He spoke in detail on this, noting among other things that there was now no State aid available to pay for the building, but it was desperately needed.

He noted that he'd provided the Council with the documentation that he'd be providing at the School Board meeting on Wednesday, including the PowerPoint presentation. He said this presentation would be put online on Thursday, right after the public hearing. He also noted the letter he'd sent to Administrator Selig on the School Budget, and said information in it was included in the most recent Friday Update.

Administrator Selig said the information provided in the PowerPoint presentation was very thorough and informative. Dr. Morse said Ms. Caswell had put this together, and noted that she'd been very helpful to him in so many ways. He also said he appreciated the interest shown by Councilors Lawson and Welsh on the details of the financial information on the Middle School. He said the Council and the two select boards had been very supportive about the project. He also spoke about the great work Councilor Rotner and Councilor Howland had done, in their dual roles as Councilors and School Board members.

Councilor Welsh asked if the Middle School would be expandable. Dr. Morse said yes, and explained that it was designed to be able to go up in the back where there could be 8

additional classrooms, for 160 kids. He said there were 2200 kids in the School District right now, and said this would settle in at about 2050 kids within 5 years, noting the cycles in the student population over time. He said Lee was growing, and also said Lee and Madbury had benefited from adequacy aid Durham didn't have this year, which had helped keep their tax impact down.

Councilor Burton spoke about the great work of Oyster River High School Principal Todd Allen, and School Board Chair Tom Newkirk, and noted that 100% of special needs kids graduated from high school. He said this was an indication of how everyone in the ORCSD was treated. Dr. Morse pointed out that the national average was 67%.

Administrator Selig said while they all heard regularly about school districts in the state losing enrollment, that was not the case with the ORCSD. He noted the numbers in the PowerPoint presentation on this. Dr. Morse said part of this was the tuition agreement with Barrington, and he spoke further on this.

XI. Unfinished Business

FIRST READING ON ORDINANCE #2020-04 creating a new chapter in the Durham Town Code, Chapter 55, Electronic Motorized Devices/Electric Scooters" governing the use of such motorized devices within the Town of Durham

Chief Kurz said this issue was brought to the Council for discussion and guidance a few months ago, and said that discussion resulted in the proposed ordinance. He said the proposed it had been vetted by legal counsel, etc. He noted that the University had planned an event to host companies interested in providing these scooters, but there wasn't a lot of response so the event was cancelled. He said this issue was being driven by the students, and said the Administration was waiting to see what the Town was going to do.

He said he wanted to address concerns that were unique to Durham, including where the scooters would be stored. He noted his vision of bar closing time downtown and scooters all over Main St., and said the ordinance would allow those kinds of things to be dealt with.

Chair Marple said she'd heard that Lime Electric Scooter Rental was pulling out of a few cities.

Councilor Howland said it was obvious that it would mainly be students who'd be using the scooters, and said if the ordinance was adopted, it would be important for the University to get information on it out to the students. He suggested putting information on this in freshman packets.

Chief Kurz said the University encouraged their use on sidewalks but the ordinance made it clear that they weren't allowed on Durham sidewalks, and said the University would make its own policy on this clear. He said there would be a learning curve on this. He said the University police department was very much involved in the process of

developing the ordinance, and said they were now waiting to see what the Town would do.

Councilor Welsh asked about gas powered scooters, which had more power and so were more dangerous. There was discussion about the definition: "For the purpose of this ordinance the term 'motorized devices' shall mean any device with a gas or electric engine and wheels joined to the bottom of a narrow platform with a vertical handle fixed to the platform, frame or wheels that is powered without the assistance of human peddling, pushing or gliding. It shall not include mobility devices used by the elderly or those with disabilities."

Councilor Welsh asked Chief Kurz if he thought the registration fees were stiff enough. Chief Kurz said they might not be, but said they would offset reasonable costs for Town staff. He also said adjustments to the fees would be left to the discretion of the Town Administrator rather than taking up the Council's time.

Councilor Corrow noted that there had been discussion about motorized skateboards at the previous Council meeting where the scooter issue was discussed. He said those skateboards were hazardous, especially when they were coming down Main St. in the wrong direction. Chief Kurz said in his opinion they could be regulated with this ordinance. Councilor Corrow noted that skateboards didn't have the vertical handle that was described in the definition in the ordinance. Chief Kurz said the definition could be adjusted to address skateboards.

Councilors agreed that this amendment should be made. They also agreed that the fee would be adjusted at the discretion of the Town Administrator. Councilors agreed that the proposed fine in the ordinance was reasonable.

Councilor Lawson noted that there were 6 public hearings scheduled for the February 3rd meeting. There was discussion, and it was agreed that all of them could be held at that meeting.

Chair Marple MOVED that the Durham Town Council does hereby move on First Reading Ordinance #2020-04 as amended creating a new chapter, Chapter 55 "Electronic · Motorized Devices/Scooters", in the Durham Town Code governing the use of such motorized devices within the Town of Durham and schedules a Public Hearing for Monday, February 3, 2020. Councilor Corrow SECONDED the motion and it PASSED unanimously 6-0.

XII. New Business

- A. Shall the Town Council consider a request from Marti and Michael Mulhern to use a town right of way situated at the end of Gerrish Drive for a new road to provide access to a proposed subdivision?

Councilor Lawson asked what the applicants should be presenting to the Council. He said he thought the design aspects of what was proposed conceptually seemed way outside the

scope of the Council. Administrator Selig said perhaps they would focus on the question before the Council, show generally where the right of way was located, outline legal perspectives, etc. He said they might have suggestions concerning stipulations the Council might want to include in a motion.

Councilor Lawson asked if this process precluded the same input from residents expressing concern, and asked if there should be a public hearing. Chair Marple asked Councilor Lawson if he would consider the fact that a fairly large portion of those people had spoken this evening, and Councilor Lawson said no. Administrator Selig advised that once they heard from Mr. Behrendt and the applicant, if the Council felt a public hearing should be scheduled, that could be considered although it was not required.

Councilor Burton said he thought part of the confusion was that the Town attorney's analysis said it was up to the Council as to whether to grant permission to build the road. He said he thought the issue was whether it was ok for the property to be used for this purpose.

Administrator Selig said the Council needed to take a position on whether it would allow the right of way to be used as a public road. Councilor Burton said if they were to make that decision, he needed to know particulars, who it affected, etc. Administrator Selig said if the Council deemed it to be in the public interest, it could approve a request to use the right of way on Town land, subject to conditions set forth by the Planning Board, etc. He noted that the Planning Board was reluctant to go further until it knew if the Council was open to allowing the access to be used as a road.

Councilor Lawson said the Council Communication noted that NHDES, the Planning Board, and the Conservation Commission would review the proposed road and drainage impacts carefully. He said it was important to understand who would be reviewing wetland and other issues, and to what standards, if the right of way was approved for this purpose.

Town Planner Michael Behrendt said the request was fairly straightforward, and was a simple request for approval from the Council to use a small piece of land owned by the Town that ran between the Ambler Way subdivision and the subject parcel, for a road to access the new subdivision. He said as noted in the Council Communication, the Council could approve the use of the road, could approve it with conditions, could continue the review if more information was needed, or could deny the request. He said if the request was denied, the Council should have clear reasons for doing so.

He provided some history on the Ambler Way subdivision including its layout. He said when it was approved in 1972, the Planning Board also approved the connector/right of way, and said it was labeled as a future street. He provided details on how/why this was done in this instance and with other subdivisions in Durham, in order to provide for future possible connectivity, emergency access. He also noted that it wasn't uncommon now that residents in one subdivision would oppose a connection for a future subdivision.

Mr. Behrendt about the review process the Planning Board needed to go through for this current conservation subdivision proposal. He said the conceptual consultation phase was almost done, and said the Mulherns didn't want to go further until/unless the right of way use was approved. He said there were two other potential accesses, but said they were quite challenging, and he provided details on both of them, including one that related to a lot line adjustment application the Mulherns had brought before the Planning Board fairly recently. He said they didn't own that access, and also said there would be some significant issues with the access itself, including its length, wetland issues, and an existing house. He summarized that it would be difficult to use one of these two other access ways.

He said if the Council was inclined to approve this request, he didn't think conditions were needed because it was understood that Planning Board approval would still be needed. But he said conditions could be included. He said there would be two wetland crossings involved for this project, and said NHDES approval would be needed for this, along with Planning Board approval for a project in the Wetland Conservation Overlay district.

Councilor Lawson said he assumed that NHDES made the decision based on standards for today, and that the Planning Board would make its decision based on current Town regulations, so if the Council approved this, it wasn't circumventing these other review processes. Mr. Behrendt said that was correct. Councilor Howland said the Council would be saying theoretically it could be a road, but said this didn't mean the road was actually viable, and said the applicant would have to go through these other review processes.

Councilor Burton said his concern was that if the Council approved this, this might signal that the Council wanted the road to be done. There was discussion, Administrator Selig said it was essential that any approval would include "subject to" language. Mr. Behrendt said if the Council approved the request, he didn't think it was making any statement beyond that to the Planning Board. Councilor Burton asked who did the change in language from "future street" to "unbuilt Town right of way", and Mr. Behrendt said he hadn't researched this. Councilor Burton said this seemed fairly important, and asked if there were Minutes of the 1997 meeting. There was further discussion.

Councilor Lawson said if all of the homes in the proposed new subdivision used Gerrish Lane, he saw 22 homes that would be served by a road. He said that seemed consistent with other subdivisions in the community, and provided details on this. He asked Mr. Behrendt for his opinion on this.

Mr. Behrendt said it was likely that a traffic study would be needed, which would look at everything. He said 8-12 new houses wasn't a huge number, and said the senior housing aspect of the project would be a little better in regard to peak commuting hours. He also said with the existing road layout, where there was a loop and two entrances, most traffic was probably coming from Bagdad Road to Town. He said a lot of the new traffic would

likely be distributed, and said traffic coming to the subdivision would likely take Ambler Way and traffic leaving it would likely take Gerrish Drive.

Councilor Lawson said it sounded like the Planning Board would consider if a traffic study was needed, and said if there was a safety problem the Board would address this. He asked if anyone had complained about the Sandy Brook, Deer Meadow, and Wedgewood subdivision traffic issues. Administrator Selig said no, and said this proposal was consistent with those other layouts. He said he and DPW Director Mike Lynch didn't see issues with using Gerrish and Ambler for the additional traffic, and also said due diligence with a traffic study would still be needed. He also said the Council could include a condition that applicant would be required to upgrade the roads, if needed.

Mr. Behrendt said the Planning Board would look at where the road came into the loop, and how this should be handled, and also said it was likely that the Board would try to find some mitigation for the 4 lots that would be most impacted by a new road.

Administrator Selig noted that the wetland aspects of all of this would be addressed elsewhere.

Attorney Sharon Somers represented the Mulherns. She said the proposed road was shown on an approved subdivision plan. She said there was a two-step process to create the road, which was showing it on the plan and the Town accepting it, which happened in 1972. She said the Town was then not allowed to do anything with it for 7 years. She said a long time had elapsed since 1972, which was leading to the confusion and complications.

She said the analysis to be done today was under 2020 standards. She said the Mulherns were seeking authorization for the applicants to seek review and approval by all Town and state regulatory boards to use the Town property as a road, in conjunction with the subdivision proposal before the Planning Board. She said she thought it was important to lay this out expressly, and said in doing this the Council wasn't endorsing this, and was allowing the applicants to go forward with the review process.

She said NHDES and the Planning Board would decide what studies, etc., needed to be done, as the appropriate jurisdictional entities. She said members of the public would have ample opportunity to be part of this review process. She said it didn't make sense for her clients to do an engineered plan, only to find out that the Town wouldn't grant authorization to go through the review process. She said it made sense for the Council to grant this authority, and said it was very clear that it was intended to be a Town road. She said a flat denial would be open to challenge, which wouldn't serve anyone.

Councilor Welsh asked about the re-designation on the plan question that Councilor Burton had asked. Attorney Somers said there was a note on the copy of the 1997 plan that said that per the instruction of the DPW, the plan should say unbuilt. She said she didn't know why that designation was refined, but said it didn't alter the classification of that land. She said perhaps it was just to indicate that it was still unbuilt at that time. She said she could look into the Minutes on this if needed. She said the deed hadn't changed.

Councilor Burton said if the Council passed this, the problem was that they didn't get to see this again to see if the concerns were addressed. Chair Marple said her sense was that NHDES was a professional organization, and said she couldn't believe they would allow a project to go forward that wouldn't allow for proper drainage. She said NHDES had a responsibility to maintain wetlands as sponges for floodwaters, and to look out for everyone's welfare.

Attorney Somers said the Council could take an active role in reviewing the information the Planning Board compiled, as could the Conservation Commission and NHDES. She said the Council could also provide its own commentary that the application was going in the direction they would like to see it going in.

Councilor Burton noted his experience with NHDES recently with the Seacoast Reliability Project, and said he was a bit jaded at this point. He said the Council couldn't compel NHDES to do anything. He asked about putting conditions on an approval tonight.

Councilor Lawson said his concern was about circumventing the review process, and said he had gotten assurances tonight that this wouldn't happen.

There was discussion about Mr. Behrendt's role in this process.

Councilor Howland said he didn't think this was supposed to come back to the Council. He said the only thing that would come back to the Council was if there was a Zoning change, but said they weren't supposed to manage the other safeguards of going to the Planning Board and NHDES. He said they should trust them.

Administrator Selig suggested approval language for a motion: "The Town Council approves the applicants' request to utilize the Town right of way at the end of Gerrish Drive for a new road, including drainage structures and any attendant utilities to access their property for a subdivision, subject to approval, conditions of the Planning Board, NHDES, the Conservation Commission, and other applicable government bodies in accord with Town regulations, local ordinances and state law."

Councilor Lawson said he didn't think the Conservation Commission should be included, because it would provide a recommendation to the Planning Board.

Councilor Welsh suggested starting the motion with "Without endorsing this project", and other Councilors agreed.

Councilor Welsh said there was evidence that this land was much wetter now, and asked whether if this was a lake now, the applicants would still say it was usable as a road and that the Council should provide permission to seek approvals. Attorney Somers said the question was whether the applicant would be allowed to determine if a road was viable there. She said if the land area was a lake, it wouldn't happen, and she spoke further on this.

Councilor Corrow said the Planning Board review process was extremely robust and thorough. He reviewed the variety of issues they would consider, and noted that a site walk would be done. He said he had a lot of faith in this process, having gone through it many times as a member of the Planning Board.

Administrator Selig re-read the motion: Without endorsing this project, the Town Council approves the applicants' request to utilize the Town right of way at the end of Gerrish Drive for a new road, including drainage structures and any attendant utilities to access their property for a subdivision, subject to approvals, conditions of the Planning Board, NHDES, and other applicable government bodies in accord with Town regulations, local ordinances and state law."

Councilor Welsh suggested that the motion should say "should seek approval".

Attorney Somers said Administrator Selig's motion was better, and spoke further on this.

Councilor Burton said the Planning Board was appointed, and the Council was elected. He said if they put conditions on this there should be a mechanism to be sure they were carried out. He said the approval created a certain amount of momentum.

Councilor Lawson said the motion clarified the process. Councilor Howland said it re-enforced what the process was.

Councilor Howland MOVED that without endorsing this project, the Town Council approves the applicants' request to utilize the Town right of way at the end of Gerrish Drive for a new road, including drainage structures and any attendant utilities to access their property for a subdivision, subject to approvals, conditions of the Planning Board, NHDES, and other applicable government bodies in accord with Town regulations, local ordinances and state law." Councilor Corrow SECONDED the motion and it PASSED 5-1, with Councilor Burton voting against it.

- B. FIRST READING ON ORDINANCE #2020-05** amending Chapter 153 Vehicles and Traffic, Section 153-34 Schedule II: Speed Limits" of the Durham Town Code by reducing the speed limit on the section of Packers Falls Road between Sullivan Falls Road and the Newmarket Town line from 35 mph to 30 mph

Chair Kurz said the proposed ordinance came out of the Traffic Safety Committee as a result of a petition to review this section of the road after a fatal motorcycle accident there. He said there was a presentation on it, and said some signage and tree trimming was then done. He said it was determined as an aside that the accident wasn't related to the curve. He said neighbors expressed concerns about coming out of their driveways onto Packers Falls Road.

He said Councilor Lawson got some speed data there, and said there were clearly speeding vehicles there. He also said because of construction on Route 108, many people used Packers Falls Road as an alternative road. He said the TSC decided to reduce the speed limit, and said letters were sent out in addition to scheduling the public hearing.

Councilor Lawson said a lot of data was collected, and noted that it was one of the more difficult places in Town to collect the data because of safety concerns. He said it didn't make sense to have a Newmarket 30 mph zone, and then a 35 mph zone at a sharp curve. He said he was confused that Falls Way was where the second set of data was collected. He asked if the speed limit needed to be adjusted all the way to Sullivan Falls Road. Chief Kurz said he recalled that they identified Sullivan Falls Road to cover the curve, and to go to the Newmarket town line. Councilor Lawson said it was a long stretch of road. Chief Kurz noted that letters from residents asked that the lower speed limit go the entire length of Packers Falls Road. Councilor Lawson said he thought that had great merit, noting the runners and bikers there with no shoulder. He noted data collected on Packers Falls Road on the other side of the Lamprey River some time back. He said as soon as the weather got warmer, data could be collected all along Packers Falls Road to address the speeds on the rest of the road. It was agreed not to change this for now.

Councilor Burton said he drove slower on that road today, and spoke further on this. There was discussion about whether the 30 mph speed limit would make a difference, and it was noted that reducing the speed limit resulted in a corresponding decrease in the speeds that vehicles went even if the actual speed limit wasn't met. Councilor Lawson said there were compelling reasons in looking at roads to consider what the road characteristics were, how it was used, and to set speed limits that were safe for the community and the uses. He said this ordinance was a good idea.

Councilor Lawson MOVED that The Durham Town Council does hereby move on First Reading as presented Ordinance #2020-05 amending Chapter 153 "Vehicles & Traffic", Section 153-34 of the Durham Town Code by reducing the speed limit on a section of Packers Falls Road between Sullivan Falls Road and the Newmarket Town line from 35MPH TO 30MPH and schedules a Public Hearing for Monday, February 3, 2020. Councilor Corrow SECONDED the motion and it PASSED unanimously 6-0.

- C. **FIRST READING ON ORDINANCE #2020-06** creating a new chapter in the Durham Town Code, Chapter 88, "Off Highway Recreational Vehicles (OHRV), prohibiting the use of these types of vehicles from traversing trails on town property designed for pedestrian activity

Councilor Lawson said this past fall, he encountered some young people on dirt bikes at Doe Farm, and said he thought they weren't allowed on Town land. He said he talked with them, and said these well-meaning kids told him they'd researched this and found they weren't prohibited from doing this. Councilor Lawson said they were correct, and said this was not what most residents believed. He said all of the planning for these Town lands wasn't meant to accommodate these type of vehicles. He noted that snowmobiles weren't included in the RSA definition, and said they were added to this ordinance. He said he supported it, and said perhaps over time they could identify places in Durham where OHRV would be appropriate.

Councilor Lawson MOVED that The Durham Town Council does hereby move on First Reading Ordinance #2020-06 as presented Creating a New Chapter, Chapter 88 "Off Highway Recreational Vehicles" in the Durham Town Code prohibiting Off Highway Recreational Vehicles (ORRV) from traversing trails on Town property designed for pedestrian activity and schedules a Public Hearing for Monday, February 3, 2020. Chair Marple SECONDED the motion.

Councilor Welsh asked if this ordinance meant people could go on the non-trail areas of Town land, like Wagon Hill. It was noted that there was signage there that the vehicles couldn't be used there. It was also noted that the Whereas language in the proposed ordinance prohibited these vehicles from operating on Town property that was intended for foot traffic. Administrator Selig said Chapter 88 of the Durham Town Code said these vehicles couldn't be operated on any property owned by the Town.

The motion PASSED unanimously 6-0.

D. Begin Administrator's 2019 annual performance evaluation process

Councilor Lawson questioned starting this process this evening, when 3 Councilors were missing.

Administrator Selig briefly outlined the evaluation process, and said it allowed for a formal check in to make sure that things were going well, and that any concerns were being addressed. He said he thought it had been an efficient, streamlined and flexible process over the past few years, and suggested using this particular process again this year. Councilor Lawson said there was the opportunity with this process to provide any narrative Councilors wanted to provide. Councilor Howland agreed that it covered all of the bases in terms of being able to provide feedback. Administrator Selig noted that this process wasn't about renewing his contract.

E. Other Business

XIII. Nonpublic Session (if required)

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

XV. Adjourn (NLT 10:30 PM)

Councilor Howland MOVED to adjourn the meeting. Councilor Corrow SECONDED the motion and it PASSED unanimously 6-0.

Adjournment at 10:15 pm

Victoria Parmele, Minutes taker