

This set of minutes was approved at the April 4, 2022 Town Council meeting

**DURHAM TOWN COUNCIL  
MONDAY, MARCH 7, 2022  
DURHAM TOWN HALL - COUNCIL CHAMBERS  
7:00 pm**

**MEMBERS PRESENT:** Council Chair Kitty Marple; Councilor Andrew Corrow; Councilor Chuck Hotchkiss; Councilor Sally Needell; Councilor Sally Tobias; Councilor Al Howland; Councilor James Lawson; Councilor Dinny Waters (arrived at 7:01 PM); Councilor Carden Welsh.

**MEMBERS ABSENT:** None

**OTHERS PRESENT:** Todd I. Selig, Administrator

**I. Call to Order**

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

**II. Town Council grants permission for fewer than a majority of Councilors to participate remotely**

**III. Roll Call of Members.** Those members participating remotely state why it is not reasonably practical for them to attend the meeting in person

Roll call was taken: *Councilor Corrow--Yes; Councilor Tobias--Yes; Councilor Howland--Yes; Councilor Hotchkiss--Yes; Councilor Marple--Yes; Councilor Lawson--Yes; Councilor Needell--Yes; Councilor Welsh--Yes; Councilor Waters--Absent.*

**IV. Approval of Agenda**

*Councilor Welsh MOVED to move the Councilor and Administrator Roundtable to directly follow Public Comments in the event Councilors may want to respond to any comments made during Public Comments regarding the Town Election vote on Tuesday, March 8<sup>th</sup>, relative to the Mill Pond Dam. The motion was SECONDED by Councilor Corrow and PASSED 8-0.*

*Councilor Marple MOVED to APPROVE the agenda as amended, which was SECONDED by Councilor Needell and PASSED 8-0.*

*Councilor Waters joined the meeting at this time (7:01 PM).*

## **V. Special Announcements**

Chair Marple asked for a moment of silence in honor of those affected by the current conflict in Ukraine, as well as Roberg Cushing who passed away this week and worked for human justice in New Hampshire for decades.

Chair Marple also read a brief statement that acknowledged and appreciated the ideals on both sides of the Mill Pond Dam issue and asked that the Town come together no matter the decision made on the issue at tomorrow's election.

Chair Marple then noted that this was the last meeting in the terms of three Councilors not running for re-election. She thanked each of them and noted their achievements: Dinny Waters for his role in the dedication of the Kenny Rotner Bridge, Andrew Corrow for his accomplishments on the Planning Board and Council, and Al Howland for his service on many committees in both the Town and the School District. She then presented each Councilor with a Certificate of Appreciation.

## **VI. Public Comments**

**William Hall, Smith Park Lane**, spoke on the UNH Moore Fields presentation at the last meeting.

**Luci Gardner, Durham Point Road**, spoke on what would happen to the muck/sediment behind the dam if it is removed, stating that there is no evidence that dam removal will eliminate the contaminated muck/sediment or restore the river.

Ms. Gardner said that the Town's dam removal and channel shaping price of \$1.460 million has little to do with sediment and nothing to do with the stated price. She referenced the (\*) item under #6 in the FAQ dated January 26, 2022 prepared by the Department of Public Works that states cost estimates would be further refined in Final Design and would need to include recent inflation in construction costs, which have been substantial in 2021 with an expectation of continued inflation in 2022.

Ms. Gardner referenced FAQ #23 regarding the question of what the river will look like if the dam is removed. It states that following the project completion and for years after, the river will naturally reestablish itself with different wetland plant growth for areas of fresh water, brackish water, and tidal waters.

Ms. Gardner concluded by saying that the Town has no final plan, and even the \$1.460 million yet to be refined plan is not ready for prime time because it is incomplete.

Councilor Lawson said he would like to clarify a couple of issues noted by Ms. Gardner. He said first, the hydrological studies clearly showed that 155,000 cubic feet (cf) would move past/below the dam once it is removed. He noted that modeling was done before channel restoration and that the modeling did not include channel restoration. That 155,000 cf became a big part of the justification for needing channel restoration and

dredging 3,000 cubic yards (cy) as part of that channel restoration. Therefore, he said that when talking about 155,000 cf moving down in five years that would be if the Durham community made a decision to take out the dam, nothing more would be done. However, what the Council decided, at least in September, is that it wanted a plan that considered river restoration to mitigate the sediment transfer going down into the tidal Piscataqua.

Councilor Lawson said he also found it interesting that scientists that deal with the ecology of Great Bay have been educating us that the sediment transport out of rivers is critical to an estuary. It's what makes estuaries what they are. He said one can see it here in Durham and in the Chesapeake Bay with the Potomac River and the Susquehanna River, and others. He said, let's stop talking about 155,000 sf of sediment movement. He said when the Council asked for a plan in September, that included things to mitigate it. He said they are talking channel restoration versus dredging the Mill Pond so it would not be eutrophic. The pond would still be eutrophic if 3,000 cy were dredged.

Relative to the cost, Councilor Lawson said that the costs for dam stabilization repair are subject to the same things that were noted in Ms. Gardner's list such as inflation and other factors.

Lastly, regarding College Brook, Councilor Lawson said the Town did the supplemental analysis searching for ways that maybe the dam could be left in and have a more healthier Mill Pond. Part of that supplemental analysis was looking at College Brook. The conclusion was even if the Town implemented the best management practices in Town, the place it would affect is College Brook. He said it would only lower the phosphorus level by 10%, and that the phosphorus level is 90% over what is required/identified by the State of New Hampshire for a eutrophic pond.

**Derek Sowers, 32 Oyster River Road**, spoke in support of dam removal, citing environmental and sustainability.

**Wilfred Wollheim, 8 Strout Lane**, spoke on his studies of the Mill Pond as an associate professor at UNH, and spoke in support of dam removal.

**Clifford Zetterstrom, 82 Dover Road**, spoke on sediment and asked how it would be affected by dam removal.

**Jeffrey Hiller, 6 Laurel Lane**, spoke on the hypothetical environmental and monetary costs of mercury build-up in the Mill Pond sediment.

Councilor Welsh said he would like to clarify some misconceptions/mistakes that came out on a Vote "Yes" on question 2 mailer that was sent out by the Save the Mill Pond Dam.com group, which he believed Mr. Hiller was associated with. He said he would not state any opinions, only facts. He said that two weeks ago, someone that he trusts stood up at a Council meeting and said that she would give a public service announcement because she was concerned that there was some incorrect data being circulated around. Councilor Welsh said he listened to what she said and that it was good information she

provided, and he agreed with her, and asked that some of that information be stopped, in particular with regard to the \$5 million dollar cost for dam preservation. He said no one on the Council has ever discussed having a \$5 million dollar expense for keeping the dam. He said if someone were to look back at all of the discussions the Council had prior to September the question was let's just forget about taking out and dredging and either support the dam or refute it, and that has been what all of the discussion has been about. He addressed what he believed were the misconceptions in the postcard.

1. The postcard states that the UNH dam was a mile upstream.  
Fact. The UNH dam is 1.8 miles upstream.
2. The postcard states that dam repair is less costly than dam removal.  
Fact. The total cost, determined by the VHB consultants, net average level cost of those grants received for similar dam removals shows removal is less expensive. Councilor Welsh also mentioned a letter received from the NHDES stating that there may very well be grant funding available to use toward removing the dam. Furthermore, all of the costs on the FAQ assumed the Town received a waiver by the abutter. The town has now been informed that the abutter will not give a waiver, which may well increase the cost of keeping the dam.
3. The postcard states that dam retention is better for the environment.  
Fact. This is contradicted by twelve Durham scientists, experts in environmental science and related disciplines. All of them favor dam removal. Furthermore, three major science-based environmental groups: The Nature Conservancy, Conservation Law Foundation, and the Piscataqua Region Estuaries Partnership, have been studying Great Bay and its estuaries for decades, and they all favor removal of the dam.
4. The postcard states that saving the dam would save the habitat of the impoundment.  
Fact. That is true. The environment will change, but scientists say that loss of this freshwater habitat would be offset by a thriving tidal ecosystem where freshwater and saltwater connect that is far rarer and more critical to the estuary.
5. The postcard correctly states that there is no guarantee that the cost of removing or keeping the dam will be offset by grants.  
Fact. Recent history of dam removal shows that approximately 60% of removal costs have been covered by grants, and the Town has the recent letter from NHDES that said they estimate that 75% or maybe even 100% of the costs associated with removal of the dam could be covered by grants.
6. The postcard correctly states that removal of the dam would not create a free-flowing river since there is a dam upstream.  
Fact. That is true. A fully free-flowing river, including its entire upstream watershed from the beginning, is an aspiration, but scientists say that removing the Mill Pond Dam is an important first step for improving the ecology of the Oyster River watershed. Removing the head of tide dam is an essential starting point, which is why

the twelve Durham resident scientists will be voting “No” on question 2 to remove the dam and begin river restoration.

7. The postcard states that little water goes over the UNH dam at low flow periods.  
Fact. It does not say that whenever water is taken from the reservoir, it has been a general practice for the system operators to release water to the Oyster River from a low-level outlet on the upper dam. Further, even when it is not going over the dam, some water often flows through the flashboards that sit atop the dam.
8. The postcard states that the dam performs critical environmental functions.  
Fact. There is no environmental group that has suggested that the dam be retained. All of the environmental groups that wrote to the Town recommend that the dam be removed, as have twelve learned scientists who live in Durham and have expertise in environmental science and related disciplines.
9. The postcard states that the way to stop pollution is to stop polluting.  
Fact. Councilor Welsh agrees with that. But he said that many do not understand or recognize how much the Town has already done.

Fact. The Town spent \$375,000 to help purchase, and now owns, the Oyster River Forest, preserving land along 4,640 feet of frontage on the Oyster River. That land is preserved and acts as a buffer to the water. The Town has adopted Stormwater Regulations, improved its winter snow management, uses less salt and sand during the winter months than it did in years past, has enhanced its street sweeping and catch basin cleaning standards. The Town also provided \$250,000 to help purchase an easement on Amber Acres, with 3,000 feet of river frontage. The Town has also educated the community on the proper use and impact of fertilizers on public and private properties, and the Town meets and strives to achieve all of the DES MS-4 Comprehensive Stormwater Management Program’s standards. Further down the Oyster River, below the dam, the Town operates and maintains one of the most effective Wastewater Treatment Facilities in the state. While most of the Oyster River watershed lies outside of Durham, and there is not much Durham can do about it, the Town of Durham did contribute \$120,000 to help purchase the Powder Major property, which is primarily in Lee and Madbury, but which shelters three-quarters of a mile of the Oyster River.

10. The postcard states that experts say Durham needs to follow the science. Councilor Welsh said that he totally agrees with that statement.

**John Parsons, 16 Stevens Way**, spoke in favor of dam removal and noted other recreational opportunities in Durham and the importance of Indigenous history.

**Robin Mower, 6 Britton Lane**, noted her sadness when the Council voted to remove the dam, referencing Councilor Burton’s analogy calling the dam “his friend”. Nevertheless, she spoke in favor of dam removal as the best environmental decision.

**Ekaterina Sowers, 32 Oyster River Road**, read from an Exeter Historical Society letter from their similar situation and noted that old maps, photos, and memories will be preserved regardless of the dam's removal.

**Joanna Wicklein, 240 Packers Falls Road**, thanked the Council for the countless hours spent researching, debating, and listening to public input on the Mill Pond Dam issue.

**Bonnie McDermott, 82 Dover Road**, spoke in favor of dam stabilization.

**Jonathan Bromley, 31 Frost Drive**, noted his position as a science teacher at ORHS and how this issue has been a wonderful teaching tool for both ecological and civic studies. At the end of their studies on the Mill Pond Dam Issue, every student in both of his Environmental Science classes indicated that if they were of age, they would vote for dam removal. He then read a reflection written by one of the students.

**Larry Harris, 56 Oyster River Road**, spoke in favor of dam stabilization, questioning the Council's decision as biased towards removal.

Councilor Howland noted that he had been part of the Mill Pond issue since 2017, in which the Council has gone to great lengths to receive public input and expert study that examined both options, and therefore disagreed with the implication of bias.

Councilor Lawson echoed Howland's statements, speaking on his time on a Mill Pond working group.

**Denise & Paul Pouliot**, noted their status as head speakers of the Pennacook/Abenaki people and their previous consults to the Council. They went on to speak on the systematic dismissal of Indigenous history in both the larger culture and during the course of debate over the Mill Pond issue. Indigenous presence and cultural practice in the area known as Durham have been dominant for 99 percent of history, compared to the 3/10 of a percent of the colonizer's domination. They also spoke against the statement made by the Historic District Commission, stating that preserving history should not come before the health of future generations

**Daniel Day, Bagdad Road**, spoke in favor of dam stabilization, and also played a video from retired UNH professor Larry Harris.

**Katie Paine, 51 Durham Point Road**, asked how the Council and those in favor of dam stabilization plan to pay for the long-term costs of dam maintenance.

**Melissa Paly**, noted her status as a Great Bay/Piscataqua Waterkeeper with the Conservation Law Foundation. She read an Op-Ed written by her and the CLF Board Chair and Durham resident Deb Albert-Eisenberg, which was published in Seacoast Online. This statement supported dam removal, focusing on environmental factors and noted that removal would be only one step forward for estuary health.

**Diane Freedman, Laurel Lane**, raised concern about how dam removal might affect spawning location for some target species of fish. She also expressed confusion about the needed waiver which she believed to have been previously offered.

Responding to Ms. Freedman's question concerning why the Town did not look for a waiver that was offered by the abutter, Councilor Welsh responded that the Council only wanted to take up the abutter's time and the town's legal expense if, in fact, the Town was going to keep the dam. The waiver was offered before the Council voted to take down the dam, so once the Council voted to take down the dam, there was no need to bother the abutter for a waiver. Then, when signatures were raised and the question then became apparent that the Town might take the dam down or it might keep the dam, there was still no reason for a waiver, so no one wanted to bother the abutters and have them spend their time and legal expense on a waiver if there was possibly no reason to take down the dam. Councilor Welsh said he was never told that the waiver was unavailable. It had to find that information deep within a website put up by the Save the Dam people. Therefore, despite the fact that all of the FAQ financials are based on a waiver, at the end of the day, the Council found if it needed a waiver, it cannot get it.

Councilor Lawson said that the Council has heard reference from the public about rocks in the channel. He said in September, the Council was approving a contract to do a design, and the design had a specification with respect to river restoration, which he read: *"Stabilization techniques may include soil bindage engineering measures, such as stakes, dormant cuttings, coir rolls with rooted plugs, brush mattresses as deemed appropriate. Species selection will be based upon establishing a native plant community while achieving project objectives for maintenance and ecosystem establishment."* Councilor Lawson said there was no specification to use stone or rip rap.

Addressing Ms. Freedman, Councilor Welsh said he looked at the problem with water depth after the dam would be removed and he went back to DES where he had asked the question, "Given the expected decline in depth, would dam removal/channel reconstruction help or hurt the number and survival of catadromous fish? Also, would the river likely regain a rainbow smelt run if the dam is removed?" NH Fish and Game Marine Biologist, Robert Atwood, responded that *"I think smelt would respond well to dam removal. They likely will have access to additional habitat with dam removal. Also, increased water quality will likely be beneficial to egg survival during incubation. After the dam was removed at Winnicut River, smelt numbers increased drastically from less than a few dozen to a thousand. The catch at Squamscott River was also time series high after the dam removal."* Mr. Atwood then said *"I think my response above covers river herring. Bluebacks are more riverine so should benefit. The small number of alewives that run here should still be able to find stretches of slack water to spawn in. YOY eels and rainbow smelt would benefit from improved water quality."*

Councilor Lawson noted that the Council added an anticipated amount into the budget, based on the report, of \$150,000 for invasive plant management over a number of years with dam removal. The engineers did indicate that the numbers they provided were conservative.

**Roanne Robbins, 343 Dame Road,** noted the decorations in the new Middle School that prioritized Indigenous history, and prioritized sustainability and inclusivity. She noted that both options will lead to educational opportunities for students, but nonetheless spoke in support of dam removal.

**Rachel Rouillard, 23 Bucks Hill Road,** noted her recent previous experience with the Piscataqua Region Estuary Partnership as director. She also noted that Durham is by far not the first town in the local and national area to consider removing a dam, which has been pulled off without negative ecological consequences.

**Nancy Lambert, 17 Faculty Road,** noted her education and teaching experience at UNH in natural resources and thanked the Council for all of the work that went into its decision for dam removal. She also noted how more general attitudes of questioning government and science caused by the pandemic have bled into the dam issue. While she admired residents for asking questions, she also expressed frustration at some residents not listening to the answers to those questions. She acknowledged that the Mill Pond and the Laurel Lane backwater that will be lost are beloved by the community, and that dam removal would not affect all residents equally, which is a conversation that needs to be had.

**Sean Moriarty, 8 Durham Point Road,** spoke in support of dam removal and acknowledged the loss of the Pond and echoed Lambert's thoughts on the discussions that will need to happen after the vote.

**Scott Calitri, Longmarsh Road,** noted how the decision made tomorrow will affect the entire estuary, and appreciated how the Town has taken the discussion seriously, although he expressed disappointment at the negativity in the debate. He then read an expert from a NOAA statement on the issue in support of dam removal.

**Andrea Bodo, 20 Newmarket Road,** addressed her comments to Councilor Welsh, noting that she had emailed Administrator Selig saying that she and her husband were willing to offer a waiver and Administrator Selig responded in March of 2021 that he wanted to see how the Council would vote and would get back to them, which he never did. She said she and her husband offered at a Town Council meeting and none of the Council responded to them, and that she and her husband were highly insulted by the Town. She said there is no waiver now. Their property is up for sale and that the Town has now lost its opportunity. She felt they deserved an apology.

Councilor Lawson apologized that the Bodos felt hurt and ignored. He said that at the time the Council was proceeding with some design work and had done some supplemental hydrologic studies, which were based on the waiver. He said the waiver never would have been considered without her and her husband's offer. He echoed Councilor Welsh's statement from earlier that the Town did not want to tie up resident and town time and money in the case that the vote in March was for dam removal.



**Steven Burns, 20 Newmarket Road**, echoed his wife's statements. Councilor Welsh apologized to the Bodos for the lack of communication. Councilor Hotchkiss also noted that as a newer Council member, he had never experienced anything but transparent communication.

## **VIII. Councilor and Administrator Roundtable**

### Councilor Corrow--Historic District Commission

- Councilor Corrow noted that he was not able to attend the last meeting, though he encouraged the public to watch it on DCAT for its discussion with Indigenous leaders.
- The next HDC meeting is April 7th.

### Councilor Welsh--Conservation Commission

- Most of the last meeting was taken up with a presentation by Doug Tallamy on bird and insect decline and how one can replace a regular lawn with local plants to help reverse this trend, along with governmental actions.
- An Eagle Scout candidate proposed a project to repair the Wagon Hill bridge, which the Commission agreed to fund.

### Councilor Lawson--Energy Committee

- Councilor Lawson noted that he was not able to attend the last meeting and instead watched it on DCAT. Highlights from the meeting include:
  - Continued work on the Community Power Aggregation, which included a clarification that Durham Community Power is reserved and controlled by the Town of Durham by State Statute, and establishment of reserves are required for entity into the state Collation. This requirement sparked further discussion on how those reserves would be handled long-term.
  - The committee is planning an event for the Saturday after Earth Day. Ideas include a solar tour using electric vehicles, Community Power Coalition presentation, and interactive displays.

### Councilor Hotchkiss

- Councilor Hotchkiss had nothing to report.

### Councilor Needell--IWMAC

- Conversation continued on educating the public on ways to reduce waste and increase recycling.
- This meeting included a presentation from now DPW director for Gilford on that topic.
- The Swap Shop is slated to open on April 2nd, barring any weather concerns.

### Councilor Needell--Land Stewardship Committee

- The Committee will meet this Thursday
- The working group met and are moving forward with a survey for Stevens Woods.

### Councilor Marple

- Councilor Marple thanked the Durham Business Association for Sponsoring the Candidate Forum, and the candidates running for office.

Councilor Howland

- Councilor Howland noted that he had submitted an application to be a citizen representative on IWMAC.
- He also noted that this meeting was possibly the longest public comments section he had sat through. He commented on some of the effects COVID has had on public discourse, including limiting access and normalization of bad behavior. Despite that, most of tonight's comments were productive and well thought-out. He hopes this energy can continue with other Town issues.

Councilor Waters

- Councilor Waters had nothing to report.

Councilor Tobias

- Planning Board met on February 23rd
- Approved conditional use for expansion of more units on Old Landing Road.
- Eversource tree cutting was approved.
- Pike Property adjustment was approved.
- 19/21 Main Street brought in new information, which prompted more public comments and discussion. This will be continued on March 23rd.
- This coming Wednesday will begin deliberation on Mill Plaza.

Administrator Selig

- Durham's polling place is Oyster River High School, which opens at 7 am and closes at 7 pm.
- A Durham Resident Delivered a Trespassing on Constitutional Rights, Unconstitutional Use of Electronic Voting Machines. Legal counsel advises this is without merit and the Secretary of State's office advised for the election to proceed as usual.

**VII. Approval of Minutes--February 7th, 2022**

Councilor Marple noted that she and Councilor Lawson had submitted minor changes to the minutes prior to the meeting.

***Councilor Marple MOVED to APPROVE the minutes as amended, which was SECONDED by Councilor Waters and PASSED 9-0.***

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

**Derek Cotter**, followed up on his report at the last meeting that there is currently an election running to fill some of the seats that currently run unfilled, including three senator seats in Cotter's hall and the Student Body President and Vice President. Cotter's fraternity [Pi Kappa Alpha] put on a community clean-up event last Sunday, which picked up ten bags of trash from parts of Campus and other Durham spots. There are plans for a follow-up event in the works, which will take place after snow has completely melted.

- X. Unanimous Consent Agenda** (Requires unanimous approval. Individual items may be removed by any councilor for separate discussion and vote)
- A. **RESOLUTION #2022-03** recognizing outgoing elected officials for their dedicated services to the Town of Durham. *(The Council changed the first meeting in May from May 2 to May 9 since May 2<sup>nd</sup> is Ramadan).*
- B. Shall the Town Council, upon recommendation of the Administrator, award the 2022 Road and Sidewalk Program to Continental Paving Inc. of Londonderry, NH in the amount of \$695,148 and authorize the Administrator to sign the associated contract?

**Councilor Marple MOVED to APPROVE the Unanimous Consent Agenda items as amended, which was SECONDED by Councilor Corrow and PASSED 9-0.**

**XI. Committee Appointments**

Shall the Town Council, upon recommendation of the Administrator and Durham Energy Committee, appoint Durham Resident Amanda (Mandy) Merrill to replace DEC Chair Nat Balch as Durham's primary representative to the Community Power Coalition of New Hampshire (CPC-NH) and appoint Mr. Balch to replace Administrator Selig as Durham's alternate representative to the Coalition?

Merrill greeted the Council and thanked them for the opportunity to serve the Town.

Chair Marple noted Merrill's wealth of experience and expertise in this particular field and thanked her for taking on this role. Councilor Lawson noted that Merrill was the best and most qualified resident for this role.

**Councilor Lawson MOVED to APPOINT Amanda (Mandy) Merrill to replace DEC Chair Nat Balch as Durham's primary representative to the Community Power Coalition of New Hampshire (CPC-NH) and appoint Mr. Balch to replace Administrator Selig as Durham's alternate representative to the Coalition. This was SECONDED by Councilor Corrow and PASSED 9-0.**

**XII. Presentation Items - None**

**XIII. Unfinished Business**

**XIV. New Business**

Other Business

**XV. Nonpublic Session (if required)**

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

**XVII. Adjourn (*NLT 10:30 PM*)**

*Councilor Howland MOVED to ADJOURN the meeting, which was SECONDED by Councilor Needell and PASSED 9-0.*

The meeting was ADJOURNED at 10:08 p.m

Evie Wiechert, Minute Taker