

This set of minutes was approved at the October 3, 2022 Town Council meeting

**DURHAM TOWN COUNCIL
MONDAY, JULY 11, 2022
DURHAM TOWN HALL - COUNCIL CHAMBERS
7:00 pm**

MEMBERS PRESENT: Councilor Eleanor Lonske, Councilor Sally Tobias, Councilor Eric Lund, Council Chair Kitty Marple, Councilor Chuck Hotchkiss, Councilor James Lawson, Councilor Carden Welsh, Councilor Joe Friedman

MEMBERS ABSENT: Chair Pro Tem Sally Needell

OTHERS PRESENT: Administrator Todd Selig

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 – Not applicable

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 Eleanor Lonske – Yes; Councilor Sally Tobias – Yes; Councilor Eric Lund – Yes; Chair Kitty Marple – Yes; Councilor Chuck Hotchkiss – Yes; Councilor James Lawson – Yes; Councilor Carden Welsh – Yes; Councilor Joe Friedman - Yes*

IV. Approval of Agenda

No amendments to the agenda were motioned for.

Councilor Marple MOVED to APPROVE the agenda as presented, which was SECONDED by Councilor Tobias and PASSED unanimously 8-0.

V. Special Announcements – None

VI. Public Comments (*)

Gail Kelley, 11 Gerrish, noted her recent successful lawsuit against the Planning Board regarding the Gerrish wetland, reiterating her motivation behind the lawsuit being her

concern over missing elements to the proposal, particularly a soil sample study and incomplete site walk.

John Carroll, 54 Canney Road, also spoke of concern for missing elements to the Gerrish wetland proposal like the soil sample study and incomplete site walk. He asked for the process to be restarted in both the Conservation Commission and Planning Board.

Malcolm Sandberg, Langley Road, asked the Council to review the procedure and practices of the Planning Board in the wake of the Kelley lawsuit and the Mill Plaza project proposal.

Dennis Meadows, 34 Laurel Lane, asked for the Council to reincorporate a sentence previously included in the zoning code, which required the Council to participate in applications that allow applicant to violate normal provisions of the zoning code. Mr. Meadows noted that this provision balanced the Board members being appointed rather than elected.

Councilor Lawson thanked Mr. Meadows for his specific suggestion and asked a clarifying question as to whether the participation of the Council would be required in Conditional Use Permits, or any proposal that might violate zoning code. Mr. Meadows responded that the previous wording in the zoning code only required Conditional Use Permits.

Councilor Lonske noted that previous town boards she had served on did not have Conditional Use Permits, suggesting that the conditional use system might need to be reviewed.

John Lewis, 9 Gerrish Drive, also spoke on the Gerrish Drive court case and asked for the Council to reevaluate Planning Board procedure.

Joshua Meyrowitz, 7 Chesley Drive, continued his presentation on the Churchill Drive parking lot proposal, focusing on the correspondence between the ZBA and the Planning Board.

William Hall, Smith Park Lane, spoke on water use and the Durham water infrastructure.

Emily Friedrichs, 18 Garden Lane, asked if the information session on the Mill Pond Dam removal would include a platform to share ideas about moving forward. Administrator Selig answered that it was more of a presentation that would update the public, with a specific focus on the historical mitigation process taking place. Ms. Friedrichs noted that there had been some community concern about invasives around the Mill Pond Dam and asked if the Council had considered a slower timeline that lowered the amount of water retained by the dam and allowed for invasive removal.

Administrator Selig responded that those plans would be developed by VHB and would require extensive permitting by the NHDES to ensure environmental integrity.

VII. Approval of Minutes

There were no minutes submitted for approval.

VIII. Councilor and Town Administrator Roundtable

Councilor Friedman--Parks and Rec

- Parks and Rec has shown interest in participating in Wagon Hill planning in the future.
- Future of other Town properties like Woodridge Park, Jackson's Landing, and Churchill rink were also discussed.
- The committee chair will be presenting to the Council on September 12th.
- Parks and Rec summer camps continue to run well.

Councilor Welsh--IWMAC

- IWMAC has met twice since the Council's last meeting, although Councilor Welsh noted that he wasn't able to attend either of them. Most of the meeting was spent continuing discussion on the Recycle Right campaign and the Friday Updates "Did You Know".

Councilor Lawson—Energy Committee

- The Energy Committee skipped its July meeting and will meet again on the 19th.
- Councilor Lawson noted that he found the "Did You Know" piece in the weekly Friday Updates to be interesting and hoped IWMAC didn't mind if the Energy Committee looked into something similar.
- Current Planning Board schedule has August 29th as the deadline for recommendations for the solar ordinance. Councilor Lawson asked that the Council deny any request to extend that deadline, due to the extensive outreach and input gathering efforts taken over the last year and a half in the development of the ordinance.

Councilor Hotchkiss

- Councilor Hotchkiss had nothing to report.

Councilor Lund--Historic District/Heritage Commission

- The Commission last met on July 7th with a busy agenda
- St. George Episcopal Church applied for the removal of a damaged and deemed dangerous maple tree. The church is also in preliminary discussion of installing solar panels and are considering a few locations that might be suitable.
- HDHC approved the application for the Tideline Public House, and voted to support their ZBA variance request application, which will take place tomorrow.
- The Mill Pond Section 106 meeting was discussed.

- There was also discussion on the Newmarket Road historical marker on the Oyster River Massacre. The marker text has been deemed problematic on several accounts, and the Heritage Commission is looking to be included in its rewrite.
- The UNH Abenaki Trail project was discussed, which is a project to name College Brook trails and bridges with Abenaki names.
- Planning continued for the HD/HC-hosted workshop, as the Committee's first choice speaker is no longer available.

Councilor Tobias--Housing Taskforce

- The Taskforce met earlier in the day, where they continued their review of Town language.
- Councilor Tobias noted that the recent median cost of a home in New Hampshire is now around \$460,000.

Councilor Tobias--Planning Board

- The Planning Board met on June 22nd and will meet again this coming Wednesday.
- Site Plan and Conditional Use application for Great Bay Animal Hospital was reviewed and approved.
- 74 Main Street still has some issues to iron out in their proposal before they return to the Planning Board.
- Discussion on 19/21 Main Street will continue on July 13th.

Councilor Tobias

- Councilor Tobias updated the Council that the refugee couple from Ukraine have successfully made it to Durham and were able to bring their dog with them.

Councilor Lonske—Agricultural Commission

- Councilor Lonske was not able to attend the Agricultural Committee meeting due to a Town Council conflict. She did thank the Council for considering this issue in the calendar for next year's meeting to ensure the conflict could not happen again.

Administrator Selig

- Administrator Selig reiterated that there will be an information session this coming Thursday on historical mitigation in the Mill Pond Dam removal process.
- The Town has been reaching out to various Durham businesses and asking for biographical information, with the aim to showcase local business in upcoming Friday Updates.
- Fiscal Year 202 budget developmental process is underway. Mr. Selig and staff have reached out to departments to set parameters and solicit formal proposals. The Business Office then aggregates those proposals into a formal proposal for the Council to view in late October.
- Business Manager Gail Jablonski will be giving the quarterly financial report later in the meeting, but the overall tagline is that the finances look good.
- Mr. Selig has acquired the additional legal counsel of Attorney Russell Hilliard in the Colonial Durham Associates vs. Town of Durham appeal at the NH Board of Housing Appeals. Proceedings will begin in August.

- This evening the Council heard from Attorney Walter Mitchell and Town Assessor Jim Rice regarding the Xemed Holdings abatement appeal, applying to 2019, 2020, and 2021. Strafford County Superior Court arrived at an evaluation number between the Town and appellate's number close enough to the appellate's for the Town to opt to not pursue an appeal of that decision.
- The state of New Hampshire is currently experiencing a moderate drought, which has affected Durham as well. A 16 cfs on the Lamprey River triggers withdrawal restrictions, which the Town will continue to carefully monitor. The prediction of upcoming rain suggested a relaxing of those restrictions.
- The Town swore in three new Officers, who will now be heading to the State Police Academy. This leaves the department with one vacancy remaining.
- Administrator Selig reminded the public not to leave animals or children in cars during the hot summer months.
- The Town is working with the City of Portsmouth in the City's efforts to work on their water main, which crosses under Wagon Hill Farm. Durham and Portsmouth are working together to find an alternative access for the water line. One possibility is that Portsmouth could install infrastructure needed to get Durham equipment down to undertake the bridge replacement project.
- Collective bargaining negotiations have kicked off for employees that are members of American Federation of State County and Municipal Employees (AFSCME) Public Works employees, and Durham Professional Mid Managers Association (DPMMA). Longtime Contracted Labor Attorney Joseph McKittrick will be running the process.
- UNH Sustainability Institute will host its mid-term presentations on July 14th.

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

- A. Shall the Durham Town Council, upon recommendation of the Administrator, authorize the Administrator to sign a contract in the amount of \$207,600.00 with Environmental Partners Group of Quincy, MA for the Wastewater Treatment Plan Major Components Rehabilitation, subject to available funding?
- B. Shall the Durham Town Council, upon recommendation of the Administrator and Durham's Alternate Representative to CPC-NH, authorize the Administrator to sign the amendment to the Joint Powers Agreement originally approved by the Durham Town Council on September 21, 2021, as presented?
- C. Shall the Town Council schedule a Public Hearing for Monday, August 15, 2022, on a resolution authorizing the acceptance and expenditure of \$10,000 in unanticipated revenue from the NH Charitable Foundation to provide Diversity, Equity, and Inclusion (DEI) training for Durham municipal employees and volunteers?
- D. Shall the Town Council, upon recommendation of the Administrator, Business Manager, and Treasurer, award auditing services to the firm of Plodzik & Sanderson, P.A. for Fiscal Years ending 2022, 2023, 2024, 2025 and 2026 in accordance with Section 4.10 D. of the Durham Town Charter?
- E. Shall the Town Council, upon recommendation of the Administrator, approve a Permit Application submitted by UNH Memorial Union and Student Activities to close a portion of Main Street between Garrison Avenue and Edgewood Road on Wednesday, September

7, 2022 (Rain Date: Thursday, September 8, 2022) From 10:00 AM to 8:00 PM for the Annual University Day event?

- F. Shall the Town Council approve the 3rd 2022 Warrant for Water and Sewer totaling \$591,500.81 and authorize the Administrator to sign said Warrant?

Chair Marple noted that items D and F were removed for separate deliberation.

Councilor Marple MOVED to APPROVE the Unanimous Consent Agenda Items A-C and E as presented, which was SECONDED by Councilor Tobias and PASSED 8-0.

Councilor Friedman explained his motivation to pull Item D, noting his concern over a five-year contract with the only proposal respondent. Councilor Welsh noted that he had similar concerns and had contacted Gail Jablonski for further information. Ms. Jablonski had responded that the rate lined up with estimates from similar sized towns like Salem and Merrimack. Councilor Welsh also noted that even a lucrative market like Portsmouth only received one proposal, and that the contract locks in maximum price rather than noting the amount the Town intended to pay.

Councilor Friedman noted that there were two option years in the contract and asked if those options were both ways or just for the Town. Administrator Selig responded that the options were just the Town's.

Councilor Marple MOVED to APPROVE Unanimous Consent Agenda Item D, which was SECONDED by Councilor Friedman and PASSED 8-0.

Councilor Friedman asked for clarification on what the interest for items not paid would be, which was both 8 and 12 percent in different sections of the Council packet. Administrator Selig noted that he couldn't recall off the top of his head which was the correct percentage and asked if this item could be tabled until the Council was able to get in contact with the Town Clerk to clarify.

Later in the meeting, Chair Marple clarified that the percentage on the warrant was the accurate percentage, 8%.

Councilor Marple MOVED to APPROVE Unanimous Consent Agenda Item F, which was SECONDED by Councilor Lund and PASSED 8-0.

X. Committee Appointments

- A. Shall the Town Council reappoint Wayne Burton, 106 Madbury Road, as a Durham representative to the Strafford Regional Planning Commission (MPO Policy Committee) to fill his earlier unexpired vacancy with a term ending April 2024?

Councilor Lawson highlighted how lucky the Town was to have a public servant like Mr. Burton, noting the energy he brings to his roles.

Councilor Lawson MOVED to APPOINT Wayne Burton to the Strafford Regional Planning Commission, which was SECONDED by Councilor Tobias and PASSED 8-0.

- B. Shall the Town Council appoint Michael Klein, 28 Sumac Lane, to the Durham Energy Committee?

Councilor Lawson noted that Mr. Klein was not able to be present at the meeting but gave some background on the candidate. Councilor Lawson said he had met Mr. Klein at Durham Day, who later showed interest in joining the Committee and its goals of community power and solar.

Councilor Lawson MOVED to APPOINT Michael Klein to the Energy Committee, which was SECONDED by Councilor Lund and PASSED 8-0.

- C. Shall the Town Council recommend to the NHDES Rivers Management Advisory Committee the reappointment of Richard (Dick) Lord to the Lamprey River Advisory Committee for a three-year term?

Chair Marple noted Mr. Lord's long tenure on the Committee and thanked him for his service.

Councilor Marple MOVED to recommend to the NHDES Rivers Management Advisory Committee the REAPPOINTMENT of Richard Lord to the Lamprey River Advisory Committee, which was SECONDED by Councilor Tobias and PASSED 8-0.

XI. Presentation Items

- A. Quarterly Financial Report for Period Ending June 30, 2022 – Gail Jablonski, Business Manager

Business Manager Gail Jablonski greeted the Council and reiterated Administrator Selig's earlier statement that there were no anomalies in the financial report. The Town is at the same level of spending as last year, 51.1%, with no line or departments predicted to go over budget.

In terms of the Contingency Fund, approximately \$25,000 had to be transferred to the Public Works Department in order to replace the Police Department's roof.

Administrator Selig noted that IT Manager Luke Vincent has expressed concern over servers that need replacing. Mr. Vincent is currently looking into if some unused funds budgeted for training could be used to cover that cost.

Councilor Friedman asked if the spike in energy costs around the country would affect this year's budget. Ms. Jablonski replied that it would not affect this year's budget but could be a factor in next year's budget. Administrator Selig noted that the Town did have some buffer room in terms of electricity costs, due to their solar infrastructure.

Administrator Selig asked a question asked to him by a resident, which was whether Durham Police would be patrolling less to save energy costs due to high fuel prices. Mr. Selig noted that there would be no changes to police patrols.

Mr. Selig mentioned a yearly conversation that happens with the Town Clerk to evaluate the speeds of tax receipts and what that might suggest about the Town's economy. Taxes were 80-83% collected as of the due date, which is slightly lower than the usual 90-93%. This was slightly concerning, but the Town reached 93% collected the following week.

B. Receive report/update on current activities of the Planning Board – Paul Rasmussen, Chair

Paul Rasmussen greeted the chair and noted some of the challenges and frustrations facing the current Planning Board.

The biggest challenge facing the Planning Board in Mr. Rasmussen's opinion is the way the zoning is currently written. Specifically, many terms, like excessive and extensive, are used frequently without a clear definition and left up to interpretation. Secondly, Mr. Rasmussen also noted that the Board had some frustration about the frequent use of Conditional Use in applications. The last major concern was definitions that were contradictory to industry standard definitions.

Chair Marple asked about the solar ordinance, noting her opinion that the added amendment was weak, and asked Mr. Rasmussen to elaborate. Mr. Rasmussen responded that solar energy use should be permitted as much as possible and added that amendment to help further that goal.

Councilor Lawson responded that differing opinions are important but expressed concern that the Board chair had injected an opinion before public hearing was held. Mr. Rasmussen clarified that he encouraged the Board to be comfortable making people uncomfortable with the ordinance, as he had felt the last ordinance played it too safe.

Councilor Lawson expressed concern that the chair stating his position would discourage public and Board participation. Mr. Rasmussen disagreed that that would be the case. Councilor Tobias noted that the Board members are all very individually opinionated, which they bring to the meeting.

Councilor Welsh made a few clarifying points. He asked what the role of the Chair was, whether it was to facilitate other's opinions before stating their own or to herd the Board or Committee towards a certain position. He also noted a conflict he had faced on the Planning Board and the Council was encouraging solar with minimal push back, as he had seen rural-focused industrial solar causing conflict in nearby states.

Councilor Lawson responded that he disagreed with the philosophy that pushes comfort zones. He also noted that if the Council received a solar ordinance with laxer rural requirements, he would argue against it, but he would still vote in favor of the ordinance.

Chair Marple asked Councilor Welsh what motivated those against large-scale solar.

Councilor Welsh responded that it was mainly due to the clear-cutting of trees and other environmental destruction needed to create utility-level solar. He also noted that the issue does tend to divide those who would normally strive for environmentalism.

Councilor Tobias responded that a large challenge the Planning Board faced in the original solar ordinance project was the public uproar caused by the placing of a solar array in a resident's front lawn. This caused a larger debate over allowing arrays in the front yard.

Councilor Tobias also voiced concern over limiting or denying extensions, in order to leave as much room possible for public input. Councilor Lawson and Chair Marple disagreed, noting the lengthy process that has already taken place.

Councilor Lund noted that there was a widespread belief among residents, seen in the Public Comments at this meeting, that the Planning Board does not listen to public input.

Mr. Rasmussen responded that the Board does listen to input, even though it is often repetitive, and the Board isn't able to do much when the comment isn't relevant to the ordinance.

Councilor Lawson asked when was the last time the Zoning Ordinance was rewritten. Rasmussen replied that it was before the Master Plan's most recent update. Administrator Selig that there were some target edits, but no wholesale rewrite.

Councilor Lawson asked his fellow Councilors if they also agreed that conditional use was overused and were interested in remedying it. Mr. Rasmussen noted that it was incredibly difficult to implement changes during pending cases. He also noted that a review of the current zones could also bring out positive change.

Councilor Tobias noted the quasi-judicial rather than political nature of the Board, which she believed to be a point of confusion for members of the public. Councilor Lawson agreed with Councilor Tobias' statement. Administrator Selig added that this often leads to members of the public coming to voice concerns about the Planning Board at the Council. This isn't inappropriate but it does create a sense of awkwardness.

Councilor Hotchkiss noted that it was important for members of the public to walk away from their comments feeling heard, whether their comments are accurate/relevant or not.

Rasmussen suggested that if the Council was interested in looking at definitions, he would recommend using other local municipalities' definitions as a starting point.

Councilor Tobias noted that the Council should be supportive of all Town Boards and Committees, as a lot of time and energy goes into the decisions made.

XII. Unfinished Business

- A. **PUBLIC HEARING AND ACTION ON RESOLUTION #2022-12** to authorize the acceptance and expenditure of an American Rescue Plan Act (ARPA) grant from the New Hampshire Department of Environmental Services in the amount of up to \$100,000 for the West End Sewer Planning Study Project and authorizing the Administrator to sign and submit grant documents on behalf of the Town of Durham?

Councilor Marple MOVED to OPEN the Public Hearing on Resolution #2022-12, which was SECONDED by Councilor Tobias and PASSED 8-0.

No members of the public were present to comment.

Councilor Lund MOVED to CLOSE the Public Hearing on Resolution #2022-12, which was SECONDED by Councilor Tobias and PASSED 8-0.

Councilor Lund MOVED to APPROVE Resolution #2022-12, which was SECONDED by Councilor Hotchkiss and PASSED 8-0.

- B. **PUBLIC HEARING AND ACTION ON RESOLUTION #2022-13** to authorize the acceptance and expenditure of an American Rescue Plan Act (ARPA) grant from the New Hampshire Environmental Services for partial funding up to \$284,226 for restoration of the Oyster River through removal of the Mill Pond Dam and authorize the Administrator to sign a grant agreement and associated documents?

Councilor Marple MOVED to OPEN the Public Hearing on Resolution #2022-13, which was SECONDED by Councilor Lund and PASSED 8-0.

No members of the public were present to comment.

Councilor Lund MOVED to CLOSE the Public Hearing on Resolution #2022-13, which was SECONDED by Councilor Tobias and PASSED 8-0.

Councilor Lund MOVED to APPROVE Resolution #2022-13, which was SECONDED by Councilor Tobias and PASSED 8-0.

XIII. New Business

Other Business

Councilor Welsh asked to clarify some of his earlier statements about the public and the Planning Board. He noted that he didn't mean to place blame solely on the public, as certain residents have made legitimate comments about certain projects.

XIV. Nonpublic Session (if required)

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

XVI. Adjourn (NLT 10:30 PM)

Councilor Hotchkiss MOVED to ADJOURN the meeting, which was SECONDED by Councilor Lawson and PASSED 8-0.

The meeting was ADJOURNED at 9:44 p.m.

Evie Wiechert, Minute Taker