

1 **D-R-A-F-T**

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3 **DURHAM TOWN COUNCIL**
4 **MONDAY, JANUARY 9, 2023**
5 **DURHAM TOWN HALL - COUNCIL CHAMBERS**
6 **7:00 PM**
7

8 **MEMBERS PRESENT:** Councilor Sally Tobias; Councilor Jim Lawson, Councilor Eric
9 Lund (remotely), Chair Katherine (Kitty) Marple; Chair Pro Tem
10 Sally Needell, Councilor Charles (Chuck) Hotchkiss, Councilor
11 Eleanor (Ellie) Lonske (remotely); Councilor Carden Welsh,
12 Councilor Joe Friedman
13

14 **MEMBERS ABSENT:** None
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16 **OTHERS PRESENT:** Administrator Todd Selig; Town Planner Michael Behrendt;
17 Planning Board Chair Paul Rasmussen
18
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20 **I. Call to Order**
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22 Chair Marple called the meeting to order at 7:01 PM.
23

24 **II. Town Council grants permission for fewer than a majority of Councilors to**
25 **participate remotely**
26

27 Chair Marple called for a vote of Councilors present to grant permission for Councilor
28 Lund to participate remotely.
29

30 *Councilor Tobias--Yes; Councilor Lawson--Yes, Chair Pro Tem Needell--Yes, Chair*
31 *Marple—Yes; Councilor Hotchkiss--Yes, Councilor Welsh--Yes, Councilor Friedman--*
32 *Yes*
33

34 **III. Roll Call of Members.**
35

36 *Councilor Tobias--Yes; Councilor Lawson--Yes, Councilor Lund--Yes, Chair*
37 *Marple—Yes; Chair Pro Tem Needell--Yes, Councilor Hotchkiss--Yes, Councilor*
38 *Lonske—Yes; Councilor Welsh--Yes, Councilor Friedman--Yes*
39

40 **IV. Approval of Agenda**
41

42 Chair Marple said Councilor Friedman had asked that unanimous consent agenda item #
43 10A be removed from the agenda for further discussion.
44

45 *Chair Marple MOVED to APPROVE the agenda as amended, which was SECONDED*
46 *by Councilor Tobias and PASSED unanimously, 7-0.*

47 **V. Special Announcements**

48
49 There were no special announcements.

50
51 **VI. Public Comments**

52
53 **Wayne Burton, 106 Madbury Road**, spoke on the matter of the City of Portsmouth
54 using its easement on the Wagon Hill Farm property to install a new waterline next to the
55 existing one for its water supply.

56
57 Mr. Burton said he was concerned because he spoke to the Wetlands Scientist at the
58 property who indicated that existing plants are used to delineate wetlands, but because the
59 Town had recently mowed the fields, it was difficult for him to determine what the
60 wetlands impact would be. He felt the Town should do some type of environmental
61 impact study on the property before moving forward with the project.

62
63 Councilor Lawson asked Administrator Selig if the 14-foot graveled trail noted by Mr.
64 Burton was supposed to be restored by Portsmouth.

65
66 Administrator Selig replied that what Mr. Burton showed in his diagram was what had
67 originally been sent by Portsmouth. He said the Portsmouth wetlands permitting process
68 is moving a little ahead of the dialogue between Durham and Portsmouth over the
69 temporary access agreement that is in process. He said that in discussions with
70 Portsmouth regarding the draft temporary access language, Durham is being very clear
71 that this would be temporary and that Durham would have great influence over whatever
72 is left at the site when the project is completed. He said Durham has requested
73 photographic documentation of what is present at that site prior to construction to ensure
74 that things are restored to their original place and condition.

75
76 **William (Bill) Hall, Smith Park Lane**, said he was concerned about a number of trees
77 on Durham Point Road between the Sumner's house and part way up Katie Paine's
78 driveway that no longer have any bark on them, indicating that they are dead and are
79 coming down. He said there are two trees down now. If one of those trees were to come
80 down onto the road it would block access of any emergency vehicle trying to go past that
81 area if needed, as well as take out cable service.

82
83 Councilor Lawson noted that where the trees that Mr. Hall referred to came down did not
84 cause the loss of the spacer cable system which starts more in the vicinity of the Transfer
85 Station further down the road. He also indicated that two years ago in the area of 130
86 Durham Point Road, a large tree did come down and was suspended by the spacer cable
87 system and power was maintained for everyone for a period of four days even though the
88 road was closed.

89
90 Councilor Lawson asked the Administrator if there was any thing in state statutes
91 concerning scenic roads that would allow the Town to remove trees on private property.
92 Mr. Selig said that the statute concerns public ways, not private property.

VII. Approval of Minutes—December 5, 2022

Minor edits were submitted to Karen Edwards for inclusion prior to the meeting.

Councilor Welsh MOVED to APPROVE the January 9, 2023 Town Council minutes as amended, which was SECONDED by Councilor Hotchkiss and PASSED unanimously, 9-0, on a roll call vote as follows: Councilor Lund—Yes; Councilor Lonske—Yes; Councilor Tobias—Yes; Councilor Lawson—Yes; Chair Marple—Yes; Chair Pro Tem Needell—Yes; Councilor Hotchkiss—Yes; Councilor Welsh—Yes; Councilor Friedman—Yes

VIII. Councilor and Town Administrator Roundtable

Councilor Lonske—Parks & Recreation Meeting

- Councilor Lonske had nothing to report

Councilor Lund--Historic District/Heritage Commission

- The HDC/HC met on January 5, 2023 and 1) received a presentation relative to finding surveys on usage of Town conservation lands; 2) received a presentation on the GIS program; 3) held discussion regarding appointing a commission member to serve as a liaison on the Hetzel Hall renovation project. Mike Hoffman was appointed. 4) continued discussion on creating a seeding area around the Lafayette plaque; and 5) held discussion about what to do with the old sewer pump station at the Town Landing (either relocate it or raze it because of flooding concerns).

Councilor Tobias - Housing Task Force

- The Task Force met this morning. She said there were five people present to express their interest in joining the Task Force. She said the Council will be asked to expand the membership on the Task Force, and that Councilor Hotchkiss will be one of those seeking appointment to the Task Force as she will not be running for the office of Town Council in March 2023. She said she would like to remain active on the Task Force and suggested she could be appointed as a regular member and Council Hotchkiss as the Council representative.
- Received an update from Planner Michael Behrendt on the grants that the Task Force (through the Planning Board) will be applying for. One is for \$5,000 which will allow for a facilitator and to create a community forum. The second is a needs analysis grant to hire a consultant to gather factual data that may be needed moving forward.
- Held discussion about proposed House Bill 44 which at the state level would allow up to four units on a property to have municipal water and sewer by right.
- Next meeting is scheduled for February 13, 2023.

Councilor Lawson--Durham Energy Committee

- Durham has committed to GCOM to reduce its greenhouse gases by 68,000,000 pounds per year (approx. 30% reduction) by the year 2030. Through Durham's greenhouse gas inventory, the Town knows that most of those gases are associated with transportation and the built environment. He said a significant part of the Inflation Reduction Act focuses on clean energy and climate action, in both the built environment and transportation environment. The Environmental Defense Fund projects that the act could reduce greenhouse gases by 40% by 2030, calling it the most important climate law in US history. Part of the Inflation Reduction Act is managed at the federal level, primarily through tax credits. Another portion is administered at the state level through rebates and other sources. New Hampshire has been allocated \$7,000,000 for those different type of rebate programs.

Councilor Lawson said discussion at the Energy Committee focused on concerns by committee members and citizens that the state could forego a portion or portions of its allocations because of political reasons and would like to have the Town Council submit a resolution to the Department of Energy regarding the funding. He said what he didn't know is if it is too soon to submit a resolution, but it was something the Town should consider doing sooner than later. He will be crafting a statement for the Energy Committee to be sent to the Town's delegates and Executive Councilor about the importance of this funding.

- The bulk of the remainder of the Energy Committee meeting was focused on 2023 planning. Planning for Earth Day is at the top of the list. Councilor Lawson said after last year's successful Earth Day, the Energy Committee would like to collaborate with other Town committees and groups, UNH, and the ORCSD, to make it more of a collaborative event and not so much an Energy Committee event.

Chair Marple – Human Rights Commission

- The Commission met on January 6, 2023, and went over its annual scoring from the Human Rights Campaign. The Town scored 92 out of 100, the highest in the state. Members discussed ways to possibly raise the score, but it was noted that New Hampshire state laws hinder accomplishing some of the items on the list.
- Dr. Perkins-Howland has requested that the Commission membership be expanded to add two new citizen representatives and to obtain more diversity on the Commission.
- The Commission discussed meeting with other Town boards, commissions, and committees to collaborate on matters of interest to the Town as human rights issues are a part of some of the issues being discussed in the community (Example: housing in Durham).
- Councilor Marple said she will not be running for Town Council in March 2023 and will therefore not continue as the Chair on the Human Rights Commission.

Councilor Welsh cautioned continuing to add new membership on existing committees as it is difficult to fill vacancies that already exist on a number of Town committees and boards.

Chair Pro Tem Needell – Land Stewardship Subcommittee

- Chair Pro Tem Needell said she had nothing to report except to say that members of the IWMAC are likewise talking about Earth Day.

Councilor Hotchkiss--Planning Board

- Councilor Hotchkiss had nothing to report.

Councilor Welsh - IWMAC

- Councilor Welsh said he has been skating at the Churchill Rink and it is extremely well managed. The ice is good, despite the warm weather. He said the Town is lucky to have the rink as it is not supported by taxes, but is independently supported, and gives residents a place to skate.

Councilor Friedman – Parks & Recreation Committee

- Congratulated Director of Public Works Richard Reine and other members of the DPW for securing a \$100,000 grant for the West End sewer project.
- Parks & Recreation Committee will next meet on January 24, 2023. Committee members were glad to see their request was passed in the FY 2023 Budget. Members are looking forward to getting the needs study of Jackson's Landing and Woodridge Park up and going to determine what uses would be best for the Town at these public parks.
- The Seacoast Economic Development Stakeholders meeting will be held tomorrow, January 10th at 9AM.

Administrator Todd Selig

- Colonial Durham Associates is filing an appeal to the NH Supreme Court concerning the Planning Board's denial of their redevelopment application and the NH Housing Appeal Board's denial of Colonial Durham's original appeal.
- Damages that the Town incurred from the pre-Christmas storm totaled approximately \$25,000. The Town lost a large ornamental light post in the Pettee Brook lot and the middle docking system at the Old Landing was damaged due to high water.

Councilor Welsh asked about the electric charging station at Pettee Brook lot.

Administrator Selig said the station is intact but without power. There is no lighting in the lot either. DPW is working with Eversource to restore power in the lot as quickly as possible.

- UNH has set up a new committee called Alcohol and Other Drug Campus Community Coalition and is requesting membership from the Town. Administrator Selig has been asked to serve on the committee as well as a representative from the Fire Department, and a representative from the Durham Police Department.
- Regarding the Portsmouth waterline project, Mr. Selig said once a Temporary Access Agreement is in place between Durham and Portsmouth, it will be brought to the Council so members can have a chance to comment on it.

Councilor Welsh asked if there was an easement by Portsmouth with the neighbor.

Administrator Selig replied that Portsmouth does have an easement, but he believed that some of the actual installation of that waterline dating back to the Army Corps of Engineers era is not entirely within the confines of the easement. He believed that Portsmouth would like some additional space beyond the confines of the easement to do the project. However, he said the Town of Durham has not been part of those conversations.

Councilor Lawson asked what the timeline was for the project to begin. Administrator Selig said that assuming everything moves forward as Portsmouth plans, they would like to begin in the winter of 2023/24. It would likely be a two-year process.

- Last year during the winter, Durham received a complaint from an attorney representing a family whose young daughter was allegedly injured on Durham's "rope tow" at Wagon Hill Farm, to which the Town replied "what rope tow?" because there is no rope tow at Wagon Hill Farm. The Town's liability insurer, Primex, has investigated the matter and believes the Town is not liable and is planning to deny the claim. Mr. Selig said it is possible that the family may proceed through a legal process, but that waits to be seen at this time.
- The Town of Epping has a Wastewater Treatment Plant that is having very significant operational problems. The Town of Epping was using a particular type of treatment for its solid waste affluent that was failing. It was replaced with a new type of treatment that was apparently tested during warm weather conditions where it worked, but under cold weather conditions it stopped working. This issue first surfaced last winter when Epping was unable to process its flow and ultimately had to surcharge into the Lamprey River upstream from Durham's water intake above the Wiswall Dam. This required Durham and UNH to make alternative plans to provide water. At that time, the New Hampshire Department of Environmental Services (NHDES) allowed Durham to draw more heavily from the Spruce Hole well than it is permitted to do, and the NHDES is open to allowing Durham to continue to draw from the well as these problems persist. A delegation from Durham and UNH visited the Epping Wastewater Treatment Plant. It appears that when they surcharge it has gone through primary treatment and has gone through a disinfectant process. However, it still creates a potential health concern, and while the UNH water treatment plant is state of the art and has the capability of removing hazardous material like raw sewage from the water, it is not ideal, therefore, the state asked Durham to not use the Lamprey River during these surcharge conditions. When the heavy rains came prior to Christmas this year, that again overwhelmed the Epping plant which caused another surcharge and Durham moved to an evasive position. Mr. Selig said the NHDES and Environmental Protection Agency (EPA) are in the process of creating a Corrective Action Plan to temporarily mitigate some of the impact of this deficiency over the next two to three years and within a five plus year period there will be an expectation that a new plant will be created in Epping. He said the Durham/UNH team met with representatives from the state to discuss the situation

and the representatives outlined what the regulators are doing with the Town of Epping.

Councilor Hotchkiss asked if Epping would be allowed to add new units or buildings to the system. Mr. Selig said his understanding is that Epping is no longer allowing new construction during this period because it does not have the capability of supporting additional buildings.

Councilor Welsh asked if the problems began this winter. Mr. Selig replied that the problems began last winter.

Councilor Welsh asked why it has taken a year to begin addressing the issue. Mr. Selig said he believed this was an instance where the community did not make the kind of investments necessary in terms of manpower or infrastructure to manage their load properly and sustainably. He said Epping has three treatment trains/channels where the affluent comes through. They ran their warm water test with a new technology and it worked. They were planning to run the test during the winter with that technology while keeping the other two channels with the old system, but deferred maintenance caught up with them and they had a total failure of the other two channels. They apparently moved ahead with the new technology, only to find that it stopped working as it got colder. Mr. Selig said these are screens designed to pull out amounts of sludge and separate it from the liquids and they get gummed up in the cold weather conditions.

Councilor Welsh asked if Durham must pay more for its water because it now has to take more water from the Lamprey River. Administrator Selig said Town staff is in the process of evaluating that and one of the areas of future conversation with the Town of Epping could very well be around cost of impact to Durham. He said the Durham/UNH group will be meeting again to discuss next steps.

- Durham's Community Power Coalition of New Hampshire (CPCNH) group has been working with CPCNH to evaluate whether Durham can be a part of Wave 1. If so, something will be brought to the Council at one of its February 2023 meetings for approval. If not, then they may bring something forward in the spring of 2024 to be a part of Wave 2.
- UNH is moving forward with expansions and renovations to Hetzel Hall. UNH was open to having a Durham Heritage Commission liaison to the project and Mike Hoffman stepped forward.
- Collective Bargaining Unit negotiations are ongoing between the Town of Durham and the AFSCME unit representing DPW employees and the Middle Managers unit representing the Town's mid-management employees.
- Mr. Selig is in the process of completing his annual evaluations for department heads.
- The Town will be moving forward in the near future with cable franchise re-negotiations with Xfinity (formerly Comcast). Mr. Selig has reached out to attorney Kate Miller at Donahue, Tucker & Ciandella who is checking to ensure there is no conflict of interest with her representing the Town that may cause a problem.

- The Town's land and mobile radio project is slowly moving forward.
- Noted the passing of Lawrence O'Connell, a longtime Durham resident and Durham Selectperson for many years. Mr. Selig also noted that Mr. O'Connell was a Professor and was his advisor during his MPA program.
- The filing period for local Town elected offices opens on Wednesday, January 25, 2023, and closes on Friday at 5PM on February 3, 2023.
- Longtime employee Jennie Berry will be retiring the end of January 2023 after 32 years of service. Her last day at work will be Friday, January 27th.

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

There was no designee present to provide a report.

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

- A. Shall the Town Council, upon recommendation of the Administrator, approve a 5-year utility contract to provide engineering consulting, revaluation and updates of all taxable utilities in the Town of Durham for a period of five (5) years from 2023 thru 2027, and authorize the Administrator to sign a contract with Mr. Sansoucy in an amount of \$17,200 per year for said services as part of the approved FY 2023 Budget and subsequent Budgets?
- B. Shall the Town Council approve the 1st 2023 Warrant billing computed from the 4th Quarter Water and Sewer readings of 2022 totaling \$ 621,268.94, commit the bills for charges to the Tax Collector for collection, and authorize the Administrator to sign said Warrant?
- C. Administrator's Progress Report (as of December 31, 2022) on the list of approved 2022/23 Town Council Goals adopted on May 16, 2022.
- D. Shall the Durham Town Council adopt Resolution #2023-01 to Approve the Submission of an Application to the New Hampshire Clean Water State Revolving Fund Program in the Amount of \$1,175,000 for the Madbury Road Complete Streets Sewer Main Replacement Project and Authorizing the Town Administrator to Sign Said Loan Documents?

Council Chair Marple MOVED approval of Unanimous Consent Agenda Items A-D above. The motion was SECONDED by Councilor Hotchkiss and PASSED unanimously on a roll call vote of 9-0: Councilor Lonske—Yes; Councilor Lund—Yes; Councilor Tobias—Yes; Councilor Lawson—Yes; Chair Marple—Yes; Chair Pro Tem Needell—Yes; Councilor Hotchkiss—Yes; Councilor Welsh—Yes; Councilor Friedman—Yes

XI. Committee Appointments - None

XII. Presentation Items – None

XIII. Unfinished Business

Continued Discussion and First Reading on Ordinance #2023-01 amending Section 175-7 “Definitions” adding a new section for Solar Energy Systems and adding a definition for Carport, amending the uses in the Table of Uses in Section 175-53 adding Solar Energy Systems, and amending Article XX “Standards for Specific Uses” Section 175-109 adding a section for Solar Energy Systems and re-lettering N “Temporary Sawmill.”

Councilor Lawson said that on November 21, 2022, the Council reviewed the Planning Board’s recommendations, which were very good and helpful. The First Reading of the Ordinance incorporates all but two of the Planning Board’s recommendations.

One item in the First Reading of the ordinance does not follow the Planning Board’s recommendation. Councilor said the Planning Board proposed a Solar Ordinance to the Town Council in 2019. That ordinance allowed large, utility-type solar in both the Rural and Rural Coastal zones, which created community-wide angst and concern; one of the reasons the initial ordinance was not moved to First Reading. Councilor Lawson said he felt that he had provided some good information about what the large utility scaled solar systems looked like and what their impact would be. He also noted the irony that there is no large utility in New Hampshire, but that is political, and those political winds could change quickly.

The Town Council recognized in its proposal that solar is an intense land use and the Town Council proposed allowing those large utility and _____proof metering systems as a Conditional Use only in the ORLI and MUDOR zones. So, these are the only two zones where the Town allows intensive land uses.

Councilor Lawson said the Planning Board has recommended that large utility solar not be allowed in the above mentioned zones, not so much because of the use itself, but because of frustration with the Conditional Use criteria and applying it. He said that the Council received a letter from the Durham Energy Committee stating that it should be a Conditional Use in the ORLI and MUDOR zones. The letter made a point that only 11% of New Hampshire’s electricity is from renewable sources. He said the concept is that all communities need to identify areas where large scale solar is appropriate. If all communities zoned it out, then an important renewable energy source would really have a limited future in New Hampshire.

Councilor Lawson said that tonight’s draft ordinance includes large scale solar as a Conditional Use in the ORLI and MUDOR zones. The Town Council has the option to move forward with it as a Conditional Use or without it. The Council could also decide that there are two types of systems: utility and group net metering. For the large systems, the Council could allow one and not the other.

Another area Councilor Lawson indicated was allowing building mounted small utility scale solar in the residential zones. He said he understood why the Planning Board wanted to allow this and that he was in sync with the idea that if it is on someone’s roof,

he doesn't care how someone is using it. However, it is very unlikely to occur and was causing too much angst for something that had limited benefits, so he did not include it.

Councilor Lawson said one of the proposals the Council made, that the Planning Board did not recommend any change to, is the 100kw upsizing on commercial farms. Nonresidential systems, the way the Town's zoning is written/proposed should be of an appropriate size for the use on that property when it's nonresidential. However, the proposed zoning allows for a 100kw upsizing on commercial farms to be used for either group net metering or to sell the energy. Councilor Lawson said that a free-standing system that's 100kw will be about one-fifteenth of an acre. Secondly, the Master Plan has repeated themes throughout supporting the value of agriculture and supporting access to locally grown foods. He said that local farming needs as much reasonable help and support as possible.

Councilor Lawson believed that if farms can't even have a reasonable upside to this then they will be precluded from experimenting with _____ and other things that the upsizing lacks. Councilor Lawson said if the Council does not want commercial farm upsizing, then it should decide now and then introduce another proposed solar ordinance or talk to the Planning Board about using the current proposed ordinance as a template, but, he said all things are on the table.

Lastly, Councilor Lawson said there are some residents who do not like certain aspects of the proposed ordinance such as the farm upsizing, so they are making a point that parcels cannot have two principal uses because of the zoning's definition of principal use which reads: *"The primary or predominant use to which the property is or may be devoted and to which all other uses on the premises are accessory."* But then there is Section 175.34.b "Lots with multiple uses" which states exactly what is done in cases where there are two principal uses. Councilor Lawson said there are hundreds of lots and parcels with two principal uses in Durham, citing a number of them.

Administrator Selig said in terms of a 100kw array, those who would like to see what a 100kw array looks like, can go to the Churchill skating rink and the array on the roof is a 99kw.

Administrator Selig asked Councilor Lawson what protections are in place with the proposed ordinance to ensure that if a major solar retailer wants to do utility scale solar in the ORLI or MUDOR zones, Durham would be able to manage that type of application constructively.

Councilor Lawson replied that first, in those zones it would be a Conditional Use and there is a set of criteria that is applied to Conditional Use. Second, Durham's Zoning Ordinance is in the process of going through review and improvements and he expected that Conditional Use will be an aspect of that review. Also, he said that the regulatory environment in New Hampshire is such that it was unlikely that someone would purchase expensive property in either the ORLI or MUDOR zones to do a solar array.

Councilor Welsh said that looking at the zoning map and the MUDOR zone, a lot of the land is owned by UNH. He asked Councilor Lawson what the restrictions would be for letting UNH place a large scale solar array on the land where the dairy farm is located.

Councilor Lawson responded that UNH would not be required to go through the Conditional Use process. However, he said since he has been on the Council, UNH has demonstrated that it can take a close look at the Town's zoning and what the community has desired in order to make a decision about what to do on its land.

Councilor Lonske said she believed and strongly recommended that before adding projects with Conditional Use that the Planning Board and Council make changes to the Zoning definition of Conditional Use the highest priority because there is so much subjectivity and ambiguity.

Planner Michael Behrendt asked for clarification to Councilor Lawson's recommendation to remove the building mounted allowance for small group net metering as a principal use, which Councilor Lawson provided.

Councilor Needell referred to Section 175-60 "Permitted Uses in the WCOD" and 175-71 "Permitted Uses in the SPOD" where added in as paragraph #10/#11 is Building-mounted solar energy system. She asked that Councilor Lawson and Mr. Behrendt change the wording so there is no misunderstanding that someone could think if I am going to put a solar energy system on a building then I could build a building in the WCOD.

Councilor Lawson made a MOTION that the Durham Town Council does hereby move on First Reading, as amended, Ordinance #2023-01 and schedules a public hearing on the proposed ordinance for Monday February 6, 2023.

XIV. New Business

- A. Begin the Administrator's Annual Performance Evaluation Process for 2022 in accordance with the Employment Agreement between the Administrator and the Town of Durham
- B. Other Business

XV. Nonpublic Session (if required)

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

XVII. Adjourn (NLT 10:30 PM)

Councilor Tobias MOVED to adjourn the meeting. The motion was SECONDED by Councilor Welsh and PASSED unanimously, 7-0.

The meeting ADJOURNED at 7:43 PM.

504

505 Jennie Berry, Administrative Assistant