

DRAFT
DURHAM TOWN COUNCIL
MONDAY, MARCH 6, 2023
DURHAM TOWN HALL - COUNCIL CHAMBERS
7:00 PM

MEMBERS PRESENT: Council Chair Katherine (Kitty) Marple, Councilor Sally Tobias, Councilor Jim Lawson, Councilor Eleanor (Ellie) Lonske, Chair Pro Tem Sally Needell, Councilor Charles (Chuck) Hotchkiss, Councilor Joe Friedman; Councilor Eric Lund attended via Zoom

MEMBERS ABSENT:

OTHERS PRESENT: Tom Selig, Administrator

I. Call to Order

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

II. Town Council grants permission for fewer than a majority of Councilors to participate remotely – On approval by the Council during Roll Call of Members, Councilor Lund attended tonight's meeting via Zoom due to the isolation period for positive covid test.

III. Roll Call of Members. Councilor Friedman–Yes, Councilor Lonske–Yes, Councilor Hotchkiss–Yes, Chair Pro Tem Needell–Yes, Chair Marple–Yes, Councilor Lawson–Yes, Councilor Tobias–Yes, Councilor Lund - attended remotely due to the isolation period for positive covid test.

IV. Approval of Agenda

Chair Marple MOVED to APPROVE the agenda as presented. SECONDED by Councilor Hotchkiss and PASSED unanimously 8 - 0 through roll call vote: Councilor Lund–Yes, Councilor Tobias–Yes, Councilor Lawson–Yes, Chair Marple–Yes, Chair Pro Tem Needell–Yes, Councilor Hotchkiss–Yes, Councilor Lonske–Yes, Councilor Friedman–Yes.

V. Special Announcements - Adoption of Resolution #2023-03 and Recognizing Outgoing Elected Officials for their Services to the Town of Durham.

Chair Marple read Resolution 2023-03 of Durham, New Hampshire Recognizing Outgoing Elected Officials for their Dedicated Services to the Town of Durham, Whereas the Town of Durham is fortunate to have a number of highly dedicated and civic minded citizens who have served as elected officials and whose terms will shortly expire, and Whereas each of these public servants devoted many countless hours toward enacting

1 changes for the betterment and enrichment of the Durham community, and Whereas the
2 Durham Town Council wishes to recognize these citizens for their contributions while
3 serving in these various capacities, Now therefore be it resolved that the Durham Town
4 Council, the governing and legislative body of the Town of Durham, New Hampshire,
5 does hereby adopt Resolution 2023-03 expressing its appreciation to and recognizing the
6 following Durham elected officials for their dedication, hard work, and commitment on
7 behalf of the Town of Durham.

8
9 Chair Marple read the general statement on the awards presented and called up the
10 individuals being recognized:

11
12 In recognition of your commitment and the contributions you made serving as a Durham
13 Library Trustee, your deduction to the betterment of Durham and its citizens is
14 commendable and reflects favorably upon you and the entire community: Robin Glasser,
15 Martha Gooze, and Nancy Lambert.

16
17 In recognition of your commitment and the contributions you made serving as Durham
18 Treasurer, your deduction to the betterment of Durham and as citizens is commendable
19 and reflects favorably upon you and the entire community: Karl VanAsselt.

20
21 Chair Marple read the following prepared statement in recognition of Councilor Tobias’
22 contributions to the Durham Town Council. “Every March since I have chaired the
23 council, I have tried to remember all of the accomplishments of those councilors who are
24 leaving. Sally Tobias’ are varied and appreciated. She and Al Howland worked doggedly
25 with members of our business community to promote Durham as a destination with
26 Celebrate Durham. Sally’s membership on the Land Stewardship Committee preceded
27 her time on the Council. Her time on the Planning Board as the Council Representative
28 was arduous at times, but she stuck with it through several long projects and late
29 meetings. Sally’s latest efforts on the Housing Task Force complete her Council resume.
30 In my opinion, Sally has focused on making Durham a well-rounded town with an
31 emphasis on doing good works. Sally, thank you for your service.”

32
33 Chair Marple read the following in recognition of Sally Needell, who will be continuing
34 her work as Durham Town Councilor: in recognition of your commitment and the
35 contributions you made while serving as Durham Town Councilor, your deduction to the
36 betterment of Durham and as citizens is commendable and reflects favorably upon you
37 and the entire community: Sally Needell.

38
39 Chair Marple read the following in recognition of Bill Cody: “In recognition of your
40 commitment and immeasurable contributions and service to the citizens of the Town of
41 Durham spanning twelve years in the following capacities: 1996-2000 Planning Board,
42 2010-2013 Durham Town Council, 2010-2012 Planning Board, 2011-2012 Cemetery
43 Committee, 2014-2023 Trustees of the Trust Funds, 2015-2023 Cemetery Committee. On
44 behalf of myself and the other Council members, we sincerely hope that you will
45 remember with fondness those fellow citizens and employees whom you met and worked
46 with along the way and will take with you the gratitude and appreciation of the Durham

1 community for the many years of dedicated public service and the efforts you provided
2 for its betterment. Thank you, Bill.”

3
4 Certificate of Appreciation Lorrie L. Pitt, Town Clerk/Tax Collector 31 Years of Service
5 Presented this 6th day of March 2023 in recognition of your 31 years of service to the
6 Town of Durham beginning with your employment as the Deputy Town Clerk/Tax
7 Collector on July 12, 1992 and later with your successful election to the office of Town
8 Clerk/Tax Collector on March 9, 2004, your dedication and commitment to the citizens
9 of Durham is exemplary and always above reproach. The knowledge, wisdom, and sound
10 judgment with which you execute your duties are admirable. It is therefore with great
11 pleasure that the Town of Durham conveys its sincerest appreciation to you for 31 years
12 of service. The professional, caring, and devoted service you have provided to the
13 citizens of Durham is commendable and has earned you a high degree of respect within
14 the community. On behalf of the Town of Durham, thank you for your valuable service.
15

16 Chair Pro Tem Needell read the following statement of recognition of Kitty Marple.
17 “Tonight we are recognizing Kitty Marple for her twelve years of active service on behalf
18 of the Town of Durham. She joined the Town Council in 2011 and is completing her
19 fourth consecutive term. She has served as Chair of the Council for her last two terms.
20 She has worn many hats during her tenure. She has served as Town Council
21 Representative to the Integrated Waste Management Committee, the Historic District
22 Commission, the Planning Board, the Cemetery Committee, and the Durham Human
23 Rights Commission, of which she has been chair for the last six years. Her work with
24 these town groups has provided her with a breadth of experience with which she has
25 supported the Town of Durham. She has modeled the value of Councilors taking part in
26 Town committees, commissions, and boards. Kitty, thank you for your years of consistent
27 leadership you have given to the Town Council. Thank you for your commitment and
28 dedication, the generous contribution of your time, your respectful interactions with the
29 members of the Council and the people of Durham, and your sense of humor. As Sally
30 Tobias shared with me, we appreciate your balanced and calm demeanor. You have
31 walked a line of giving us the space to share and/or vent our thoughts and concerns and
32 kept our discussions positive and productive. In March, 2020, I was elected to Town
33 Council along with Kitty Marple and Sally Tobias. We were two Sallys and a Kitty. It has
34 been my great pleasure to work with both of these Councilors. And I will miss you.”
35

36 Mr. Selig said it is a tradition of the Council that when a Chair leaves, the Town gives
37 that person a chair to take with them. He said Public Works will deliver a chair to Chair
38 Marple’s house.
39

40 Chair Marple shared the following prepared statement: “I have enjoyed my four terms on
41 our Council. I have met many interesting people, learned much about Town operations,
42 local laws, and how to yell politely at some of you (looking at you, Cardon and Jim). Our
43 town is fortunate that people with a wealth of knowledge and experience choose to be on
44 the Council. It has been a privilege to serve with each of you and with those who have
45 retired before me. I thank Todd Selig and our excellent town staff for answering my
46 questions and for doing your jobs above and beyond what is necessary to make Durham

1 chug along. Even though I know that I will still see some of you out in Town, I will miss
2 our regular contact. Be well, everyone. Your friend, Kitty Marple.”

3
4 Councilor Lawson read a letter from Cardon in his absence. “Hi Kitty. Very sorry to miss
5 your final meeting, but Jim has agreed to read you my thoughts. So many years ago I met
6 you for the first time and you made a big impression. The Council was discussing the
7 Change of Use tax and Jim, of course, and others wanted to use it for the general fund
8 instead of for its designated purpose, which was to help preserve land in Durham. I came
9 to speak in favor of preserving land, and I remember seeing this little woman on the
10 Council, her chin barely reaching the top of the table. I wondered about her vote. Then
11 you said something that was quiet but very powerful and land preservation won the day.
12 Later, I joined the Council and found you to be a wonderful colleague and, for the last
13 few years, a wonderful Chair. You have always been thoughtful, diligent, and almost
14 always careful to listen to the rest of us. You were able to guide us and on admittedly rare
15 occasions, some of us were able to guide you since you always remained open-minded.
16 Durham will certainly miss you, but you are young enough to come back some day.
17 Enjoy your time off, Cardon.”

18
19 Councilor Lawson shared comments of recognition for Chair Marple’s service. He shared
20 an old photograph of the Library Board of Trustees Candidates’ Forum where they first
21 met. He said there are a number of adjectives that come to mind when thinking of Chair
22 Marple: thoughtful, engaged, honest, receptive, approachable, and at times, humorous.
23 He hopes she enjoys her time off and said the Council is likely to see her sitting at the
24 table some March in the future.

25
26 **VI. Public Comments**

27 William Hall, Durham - Mr. Hall stated Mr. Lawson said last week that the latest report
28 was based on aquatic life in the Lamprey River. Mr. Hall stated the Lamprey is a very
29 healthy river. He asked if the Council has an evaluation of the dissolved oxygen at that
30 time. He stated the Oyster River has had two fish kills as a result of inappropriate actions
31 by the State: one because Durham wasn’t pumping water from the Lamprey and the other
32 when the State opened the dam and there was no water left downstream. He said he was
33 given reports about this by Gail and found no linkage between the aquatic problems and
34 the study. He suggested there was something strange going on between Administrator
35 Selig and Robert Scott, and that the people are not getting the whole story. Mr. Hall also
36 addressed the number of sewer employees, five, versus the number of employees in the
37 water department, one, listed in the Town Report this year. He suggested that money is
38 being inappropriately allocated to fund UNH’s portion of the tank on Moss Farm.

39
40 Robyn Muller, Britton Lane - Ms. Muller rose to acknowledge the contributions of Chair
41 Marple to the Town Council and the Town of Durham. She stated there have been some
42 comparisons over the years of Chair Marple to Queen Elizabeth and acknowledged some
43 parallels in that comparison do ring true. Both women presided over many transitions in
44 their governing bodies and changes in their societies and constituencies, both held
45 themselves apart from the fray, both knew when to hold their tongues, both suffered
46 through many difficult years, both took seriously the obligations of duty, and both earned

1 the respect and admiration of their peers and the people. She thanked Chair Marple for
2 her service.

3
4 Terry Finnegan, Fellows Lane - Mr. Finnegan stated he served many years in the armed
5 services and noted many of the issues the Town has dealt with over the years of Chair
6 Marple's service were global. As a sibling of Kitty, he takes great pride in the strong
7 leadership Durham had during her tenure. He thanked Kitty and said she is the best.

8
9 Emily Friedrichs had her hand up on Zoom and was called on to speak; however, there
10 was no response at that time.

11
12 **VII. Approval of Minutes - February 20, 2023**

13
14 *Chair Marple MOVED to APPROVE the Town Council meeting minutes for February*
15 *20th, 2023 as amended with changes sent to Karen, which was SECONDED by*
16 *Councilor Tobias and PASSED 8-0 via roll call vote: Councilor Lund–Yes, Councilor*
17 *Tobias–Yes, Councilor Lawson–Yes, Chair Marple–Yes, Chair Pro Tem Needell–Yes,*
18 *Councilor Hotchkiss–Yes, Councilor Lonske–Yes, Councilor Friedman–Yes.*

19
20
21 **VIII. Councilor and Town Administrator Roundtable**

22
23 Councilor Lund--Historic District/Heritage Commission

- 24 - Councilor Lund reported the Commission met March 2nd. They had a short discussion
25 about the renovations about the farmhouse at Wagon Hill Farm. They have hired a
26 preservation contractor to do the renovations. The current status on the Oyster River
27 Rate Historical Marker is that there has been some language proposed by the
28 Abenaki, and the Durham Historical Association, which is not affiliated with the
29 town, has not yet approved their version of the language. There was a suggestion to
30 bring in Colin Calloway, a Durham professor and expert on the subject, to have a
31 public forum on this topic. The Commission has a pretty well-thought out design for
32 the Lafayette Plaque seating area. There would be a bench (a potential donation
33 opportunity in memory of John Smith), along with two or three boulders surrounding
34 the plaque in front of the Town Hall. On the old sewer pump station, the Commission
35 has identified a potential user for this; Rachel Gasowski indicated Parks and Rec
36 would like to use it as storage. Chair Marple asked if the pump station would be
37 moved to be outside of the tidal zone. Councilor Lund said it wouldn't be moved at
38 this point as there isn't a place to move it to. They may want to consider raising it as
39 sea level rises. One of the HDC members stated he believes this was originally built
40 at grade and then filled in.

41
42 Councilor Tobias – Planning Board

- 43 - The Planning Board met on Wednesday, January [sic] 25th. An Eversource utility pole
44 was approved in the WCOD. The Board continued its review of definitions and made
45 it through C. Many of the Board members over the years have found issues with some
46 of the definitions and other definitions need clarity. The goal of the definitions review

1 is to make the definitions clear and concise. There is a meeting coming up on
2 Wednesday where they will continue reviewing definitions.

3
4 Councilor Lawson--Durham Energy Committee

- 5 - Councilor Lawson had nothing to report.
6

7 Chair Pro Tem Needell--Land Stewardship Subcommittee

- 8 - Pro Tem Needell reported the Subcommittee, at their last meeting, had a presentation
9 on the Portsmouth Water Line given by the Assistant Director of Portsmouth's DPW
10 and the Project Manager. Along with that, the Subcommittee described new plans for
11 the access road, which will follow the Eastern edge of Wagon Hill Farm and will
12 require a new entrance. The Land Stewardship Coordinator, Sara Callahan, gave an
13 update on her activities. Gale Carey shared the results of the Oyster River Forest and
14 Spruce Hole Bog Conservation Area questionnaire that residents completed for the
15 subcommittee. The Subcommittee also worked on prioritizing a list of the town
16 properties that need to be surveyed. A number of town properties are not surveyed, so
17 they want to begin that work.
18

19 Councilor Hotchkiss--Planning Board

- 20 - Councilor Hotchkiss had nothing to report.
21

22 Councilor Lonske --Agricultural Commission

- 23 - Councilor Lonske had nothing to report.
24 .

25 Councilor Friedman—Parks & Recreation Meeting

- 26 - Councilor Friedman reported that Durham Parks & Rec met on the 28th of February.
27 Summer Camp registration is starting on March 17th. Camps will be at the middle
28 school. They are looking for summer staff aged 16 to college age. Durham Day may
29 be turning into a weekend event starting on Friday, June 2nd, with the main event on
30 Saturday, June 3rd from 12:30 - 3:30 pm in the Downtown area. The Committee had a
31 further question and answer session with the UNH consultants regarding the plans for
32 Woodridge Park and Jackson Landing. A revised proposal will be coming, at which
33 time the Committee will make a recommendation to the Administrator based on the
34 revised proposal. The next meeting is March 28th. The Seacoast Economic
35 Development Group is supporting Strafford Regional Housing Needs Assessment,
36 which is in the public comment period and which started Feb 13th and continues to
37 March 14th. There will be a public hearing Friday, March 17th at 9:00 am in person or
38 by Zoom. The next call for that group is tomorrow morning. Councilor Friedman
39 shared he appreciates Councilor Joe Kenney coming to the Durham Town Council to
40 speak with us and his follow up letter to the New Hampshire Finance Committee in
41 support of Durham's Coast Transportation System and other transportation systems
42 offered in NH. Councilor Friedman also thanked NH Congressman Pappas for his
43 letter of support in funding apparatus for Durham's fire department. Additionally,
44 Councilor Friedman thanked Todd and Rich for their letter of support for
45 transportation dollars from the State of NH under Senate Bill 270 for Durham's roads.
46

Todd Selig – Administrator

- Mr. Selig shared that the Annual Town Election will be Tuesday, March 14th at Oyster River High School from 7 am - 7 pm. That is also the polling place for Durham residents for the school elections. Madbury and Lee residents will vote in Madbury and Lee respectively. There is a meeting of the Northern Passenger Rail Authority tomorrow in Dover to discuss the Downeaster. This groups meets once a month and Mr. Selig regularly attends. John Carroll also attends for Durham as does Steve Pesci for UNH. Durham is approaching its one millionth rider at the UNH Durham Depot, which may happen around April depending on ridership. UNH sustainability fellow candidates are being interviewed for the coming summer and year. Councilor Lawson and Jennifer Andrews from the UNH Sustainability Institute are also participating in those interviews. There are some excellent candidates. Town Clerk/Tax Collector's office staff have been hard at work finding a new deputy to take over for Rachel Deane. They have found an individual who has accepted the position, so stay tuned for news about that. Administrator Selig noted the Portsmouth Water Line presentation mentioned by Councilor Needell was a good presentation. They're planning to bring the assistant public works director of Portsmouth in to give the Council an update on that plan in the beginning of April. There has been a good deal of activity with the Community Power Coalition of NH. Durham has made a decision not be part of the first wave, but they may be part of the 1.5 or second wave. Finally, the Town has been busy managing the many grants that Durham has received, is in the process of administering, or is in the process of obtaining.

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

Student Senate External Affairs Chair Kania reported that there is another candidate running for Student Body President. Applications for this election close on Friday. This past Sunday, the Senate passed three resolutions: one regarding the UNH Discovery Program, one about hand dryers in dorm bathrooms, and the last one about the recent antisemitic acts in Portsmouth. The Senate is hoping the university will acknowledge those acts and reach out to students, especially as there are students who commute from Portsmouth. Lastly, the Chair's Council has been working on updating the commuter student lounge. They found the necessary \$70k in funds and are hoping to get the asbestos removed over spring break and the new furniture (couches, table) installed over the summer. Mr. Selig asked if people run for Vice President. Chair Kania said yes, they do run on a ticket together. The presidential candidates choose their vice president. Once elected, they choose all their chairs. Councilor Tobias asked Chair Kania to encourage whoever is in the Senate next year to continue their involvement with the Durham Town Council. The Council thanked Chair Kania for his work with them this year.

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

Chair Marple pulled item B at the request of Councilor Friedman.

A. Shall the Town Council, upon recommendation of the Administrator, Ratify the Collective Bargaining Agreement Between the Town of Durham and the American

- 1 Federation of State, County and Municipal Employees Council 93, Local 863
2 (AFSCME - DPW) for the Period January 1, 2023 through December 31, 2025?
3 C. Shall the Town Council, upon recommendation of the Administrator, Award the 2023
4 Road and Sidewalk Program to Continental Paving Inc. of Londonderry, NH in the
5 Amount of \$780,792.12 and Authorize the Administrator to Sign the Associated
6 Contract?

7
8 ***Chair Marple MOVED that the Durham Town Council does hereby approve***
9 ***Unanimous Consent Agenda items A and C above as presented. The motion was***
10 ***SECONDED by Chair Pro Tem Needell and PASSED 8-0 via roll call vote: Councilor***
11 ***Lund–Yes, Councilor Tobias–Yes, Councilor Lawson–Yes, Chair Marple–Yes, Chair***
12 ***Pro Tem Needell–Yes, Councilor Hotchkiss–Yes, Councilor Lonske–Yes, Councilor***
13 ***Friedman–Yes.***
14

- 15 B. Shall the Durham Town Council, upon the recommendation of the Administrator,
16 Waive the Deeding for the property located at 236 Mast Road, Map 210, Lot 9, with
17 the terms of the attached Agreement?
18

19 Councilor Friedman had a few questions about the process and the deal that was made.
20 He asked if the property has been in lien status for many years, back to 2011. Lorrie Pitt
21 stated that sounds correct. Councilor Friedman asked what the process is for liening a
22 property in Durham in terms of timing and taxes. Ms. Pitt stated that if the 2011 taxes
23 were not paid in 2011, any lienable item would go to tax lien. If not paid, they send out a
24 30-day certified notice. The property owner has a two-year window where the process of
25 deeding could start. For the most part, agreements are kept and regular payments are
26 made. During COVID, it became a bigger problem. Since Ms. Pitt is retiring, the Town
27 wants to clean up as many outstanding items as possible. Administrator Selig said in the
28 2019-2020 time frame, Lorrie brought this issue to his attention and they made the
29 decision to work with the property owners to make them current, but the owners have
30 fallen further behind. It made sense to clean up the outstanding items. This is one of two
31 parcels left in town that's eligible for deeding. The second parcel is located on Packers
32 Falls Road; it used to be owned by NE Telephone and was transferred to a trust that has
33 stopped making payments on it. It's a small 100' by 100' parcel. In fact, the current
34 owner has written to the Town of Durham stating he is giving the property to the Town.
35 As it's not a parcel Durham is interested in taking, The Town has reached out to the
36 abutter to see if they are interested in trying to acquire the parcel and pay off the taxes.
37 Regarding the outstanding issue on the table tonight, the Town worked with their attorney
38 at the Mitchell Group to work out an agreement to bring the owner current. The owners
39 of the parcel have agreed to this. Mr. Selig stated it was made clear to the owner that this
40 deal was subject to Council approval. Councilor Friedman asked if the owners have
41 defaulted on any previous agreements made with the Town prior to the agreement in
42 question. Ms. Pitt said during COVID, they were not able to keep up with their regular
43 payments based on an agreement made prior to COVID. The owner added her two
44 daughters to the property as owners. One of the daughters is now living there and she is
45 now the one paying and has signed the agreement. She will be the primary person paying
46 every month. Mr. Selig stated there hasn't been a formal agreement in the past. This is

1 the first formal agreement. Councilor Friedman asked if the property were to be taken in
2 tax lien and sold by the town at best price, would the landowner receive the net profits
3 and the town would only receive the taxes owed. Mr. Selig said he would need to review
4 the specifics of the process, but what Councilor Friedman described is exactly what
5 would happen. Councilor Friedman stated this agreement would fund the owners tax
6 payments over the next four years at 8%. Ms. Pitt said up until 2019 they were paying
7 18%; it's now 14% for tax lien, 8% on property tax. So they are paying the town 14%
8 interest. That's part of the reason it's been hard for them to catch up. Councilor Friedman
9 asked about the agreement itself; #2 talks about the amount shown in Exhibit A. He asked
10 for clarification about what in the packet is Exhibit A. Administrator Selig said it is the
11 document showing taxes due. Councilor Friedman asked that if the Council does approve
12 this Unanimous Consent Agenda item, the correct page is labeled Exhibit A as part of the
13 agreement. Councilor Friedman asked if the agreement is made and the owner doesn't
14 make the payments, does the process start again and if the Town has to wait two years.
15 Ms. Pitt says no. The Town needs to send out a 30 day letter to the owners, but it doesn't
16 have to meet a two-year mark. Councilor Friedman stated he is reluctant to have the town
17 continue to finance residents' obligations for taxes, but he understands there is a process
18 and perhaps this is a way they could not go through the legal problems with this situation.
19 Chair Marple said that, as this item has been taken off the unanimous consent, Councilor
20 Friedman does not need to vote to approve. It is within his right to abstain or vote no.
21 Councilor Lawson stated that the interest rates charged are allowed in the State of NH to
22 make it difficult for owners to use municipalities to float property taxes, as the rates are
23 much higher than market rates. He stated one of his concerns is what happens if the
24 agreement is put in place and then the property goes under mortgage; is the town then
25 subordinate to the mortgage? The answer is no, the town is always in the first place in the
26 mortgage. Lastly, Councilor Lawson didn't see anything in the agreement to make him
27 concerned that Durham is subordinating their status in the issue. It seemed to be a
28 positive in not having to go through a foreclosure process. He stated the history of the
29 case seems to indicate good faith on the part of the property owners. Chair Pro Tem
30 Needell clarified if the agreement is asking the property owners to make the payment
31 once a month for twenty four months. Mr. Selig said that is correct.
32

33 ***Chair Marple MOVED that the Durham Town Council upon the recommendation of***
34 ***the Administrator, Waive the Deeding for the property located at 236 Mast Road, Map***
35 ***210, Lot 9, with the terms of the attached amended Agreement. The motion was***
36 ***SECONDED by Councilor Hotchkiss and PASSED 8-0 via roll call vote: Councilor***
37 ***Lund–Yes, Councilor Tobias–Yes, Councilor Lawson–Yes, Chair Marple–Yes, Chair***
38 ***Pro Tem Needell–Yes, Councilor Hotchkiss–Yes, Councilor Lonske–Yes, Councilor***
39 ***Friedman–Yes.***
40

41 **XI. Committee Appointments**

- 42 A. Shall the Town Council nominate resident David Steinberg for a three-year
43 appointment by the NHDES Commissioner as a Durham Representative to the
44 Lamprey River Local Advisory Committee?
45

1 Mr. Steinberg introduced himself as a resident of Packers Fall Road. He is currently a
2 lecturer at the University of New Hampshire in the Department of Biological Sciences
3 and teaches ecology and reptilian and amphibian biology. He moved here three years ago
4 and is relatively close to the river. He felt this would be a good opportunity to give back
5 to the community.
6

7 ***Councilor Hotchkiss MOVED that the Durham Town Council does hereby nominate***
8 ***resident David Steinberg for a three-year appointment by the NHDES Commissioner***
9 ***as a Durham Representative to the Lamprey River Local Advisory Committee.***
10 ***SECONDED by Chair Pro Tem Needell and PASSED 8-0 via roll call vote: Councilor***
11 ***Lund–Yes, Councilor Tobias–Yes, Councilor Lawson–Yes, Chair Marple–Yes, Chair***
12 ***Pro Tem Needell–Yes, Councilor Hotchkiss–Yes, Councilor Lonske–Yes, Councilor***
13 ***Friedman–Yes.***
14

15 **XII. Presentation Items**

16 A. Presentation by Attorney Katherine Miller of Donahue, Tucker & Ciandlla, PLLC, on
17 Cable Franchise Renewal Proceedings Between the Town of Durham and
18 Comcast/Xfinity, the Town's Current Cable Operator.
19

20 Ms. Miller spoke about the renewal of the Comcast franchise. She stated many of the
21 things that are most irritating to the customer are not within the Council's jurisdiction to
22 control: prices, channel selection, and purchase of programming in tiers. The Council
23 does have control over the length of term. As many people in the area still look to
24 purchase cable, DTC are recommending Durham go with a relatively long term, perhaps
25 a ten-year term, which would mean Comcast would be obligated to provide service in the
26 Town of Durham in the same format that it's in now, recognizable as cable tv and lineup.
27 She's not sure when the transition from this model to only internet will happen, but Ms.
28 Miller says it may be some time after ten years, and in that time, Durham may see some
29 of its franchise fee revenue of the cable tv system slightly reduced over time, as there
30 may be fewer subscribers. The other item the firm can negotiate has to do with the local
31 access channels. Durham has a vibrant system in place currently. One hope is to move the
32 local access channel to a high definition system. Comcast is bringing in the possibility of
33 an HD channel. The other item they can discuss is the amount of the franchise fee.
34 Currently the town is at 4%. The max is 5% of Comcast's revenue in the town. With the
35 decline in the number of subscribers, and with part of the DCAT system financed by the
36 franchise fees, the Town may want to think about if now is a good time to increase the
37 franchise fees up to the 5%. In 2019, there was a change in the FCC rules in regard to the
38 total amount a cable company can be obligated to support a town with. The 5% franchise
39 fee now includes any free or in-kind services the company provides. So far, no companies
40 in NH have opted to implement that rule. The first step in the process is to open the
41 beginning of the renewal negotiations, including soliciting input from the community
42 about future cable related needs and interests. That doesn't include internet service, as the
43 Council doesn't have jurisdiction over that portion of services. If the Council would be
44 willing to mark that initiation this evening and let the public know if they have ideas
45 about future cable related needs or interests of the community, they can contact the
46 Administrator to share their thoughts and ideas. Ms. Miller will be working with the town

1 staff who are experienced in putting together some audit questions to make sure Comcast
2 is doing all the things it should be doing under the current franchise. This is the time to
3 make sure they are complying with all of the requirements. Councilor Friedman asked
4 how other towns similar to Durham are doing with franchise fees and if they are at the
5 5% or 4% rate. Ms. Miller said it varies. For towns with cable access channels, they tend
6 to have fees in the 3, 4, or 5% range. Other communities who don't have local access
7 tend to have lower or no franchise fees at all. One way to think about it is the franchise
8 fees are similar to rent to use the public rights of way to get access to all of the customers
9 in town. It's a way for the town to recoup the use of the public property in a way that
10 benefits a private company. Without the public rights of way, the company couldn't get
11 out to all the customers. It's like renting a public building to a private company.
12 Councilor Friedman asked if there is any reason Durham wouldn't ask for 5% at this
13 time. Ms. Miller stated it shows up on the subscribers bill and is billed back to the
14 subscriber. The residents would pay the additional 1%. Councilor Lawson asked if cable
15 users on campus also pay the fee and will continue to pay the fee. Mr. Selig said his
16 understanding is the subscription on campus does get bundled into the Town's franchise
17 fee. Councilor Lawson asked if any of the staff indicated if they have a preference for HD
18 or two town channels. Mr. Selig said the preference is for HD, as the Town already has
19 two channels: one for town and one for school. There is the ability to activate a third
20 channel if Durham wanted to, but they have to reach a certain broadcast threshold, and a
21 third channel doesn't seem needed at this point.

22
23 Mr. Selig stated he will put information in the Friday Update. To the extent the public
24 would like to provide feedback, they can write to Karen Edwards, our administrative
25 assistant at kedwards@ci.durham.nh.us or they can write to the Durham Town Hall at 8
26 Newmarket Road, Durham, NH 03824.

27
28 Mr. Selig informed the Council that atop the Foss Farm water tank built on UNH land,
29 there is a cellular node from Verizon, which has been there since 2004. There is a lease
30 agreement that extends to 2029. Verizon has the ability to extricate itself from that
31 agreement at any time. Verizon's representatives have contacted the town to let Durham
32 know the lease, in the range of \$30 - 40 a year, is beyond their market parameters. The
33 market is changing, and they'd like to reduce the amount they pay Durham. They'd like to
34 negotiate a new lease at a substantially reduced rate, approximately \$3k/month. It is
35 currently close to twice that. They are interested in longer term 5G, which uses
36 attachments to telephone poles. Mr. Selig asked Ms. Miller how she envisions 5G
37 technology changing the telecommunications marketplace. Ms. Miller said it is likely to
38 eventually make a big change. One of the items they've worked on is a right of way
39 ordinance to address wireless use of the public rights of way. Permitting for 5G antennas
40 is very different. The table is set for there to be rollouts of 5G networks in communities.
41 She's not sure how quickly that will be coming, but it seems to be the wave of the future
42 opposed to the more hardware based cables and wires model we have today. She said
43 eventually companies will be sending their signals into homes' smart devices. Mr. Selig
44 clarified Verizon currently pays \$3,400/month and they're interested in \$2,850/month.
45 Councilor Friedman asked when that contract ends. Mr. Selig said 2029. Councilor
46 Friedman asked if Verizon is asking Durham to unilaterally reduce the cost. Mr. Selig

1 said yes, otherwise they would potentially terminate their agreement and move their
2 apparatus elsewhere.

3
4 **XIII. Unfinished Business**

5 No unfinished business.

6
7 **XIV. New Business**

8 No new business.

9
10 **XV. Nonpublic Session (if required)**

11 Not required.

12
13 **XVI. Extended Councilor and Town Administrator Roundtable (if required)**

14 Not required.

15
16 **XVII. Adjourn (NLT 10:30 PM)**

17
18 Before adjourning, Chair Marple thanked videographer Richard Belshaw for all his good
19 work getting the Town Council on the television.

20
21 *Councilor Tobias MOVED to adjourn the meeting. The motion was SECONDED by*
22 *Councilor Lonske and PASSED 7-1 via roll call vote: Councilor Lund–Yes, Councilor*
23 *Tobias–Yes, Councilor Lawson–No (he doesn’t want it to end), Chair Marple–Yes,*
24 *Chair Pro Tem Needell–Yes, Councilor Hotchkiss–Yes, Councilor Lonske–Yes,*
25 *Councilor Friedman–Yes.*

26
27 The meeting ADJOURNED at 8:24 PM.

28
29
30 Respectfully submitted by Daphne Chevalier