

*These minutes were approved at the February 3, 2025 meeting.*

**DURHAM TOWN COUNCIL  
MONDAY, JANUARY 6, 2025  
DURHAM TOWN HALL - COUNCIL CHAMBERS  
7:00 PM**

**MEMBERS PRESENT:** Chair Sally Needell, Chair Pro Tem Joseph Friedman, Councilor Wayne Burton, Councilor Eric Lund, Councilor Darrell Ford, Councilor Curtis Register, Councilor Heather Grant and Councilor James Bubar.

**MEMBERS ABSENT:** Councilor Emily Friedrichs (who uses the pronouns ze/zir/zirs/zirself and the title Mx. Friedrichs) is not able to attend tonight's meeting.

**OTHERS PRESENT:** Administrator Todd Selig, Town Planner Michael Behrendt

**I. Call to Order**

Chair Needell called the meeting to order at 7 PM.

**II. Town Council grants permission for fewer than a majority of Councilors to participate remotely - Not necessary**

**III. Roll Call of Members**

Councilor Heather Grant, Councilor James Bubar, Chair Sally Needell, Chair Pro Tem Joseph Friedman, Councilor Wayne Burton, Councilor Eric Lund, Councilor Darrell Ford and Councilor Curtis Register.

**IV. Approval of Agenda**

*Chair Needell **MOVED** to adopt the agenda. Councilor Ford **SECONDED** the motion. The motion **PASSED** on a unanimous 8-0 vote by a show of hands.*

**V. Special Announcements - None**

**VI. Public Comments - None**

**VII. Report from the UNH Student Senate External Affairs Chair or Designee - None as UNH is still on holiday break.**

**VIII. Unanimous Consent Agenda - None**

**IX. Committee Appointments - None**

**X. Presentation Items**

- A. **Presentation and Public Hearing** on the cable television franchise renewal agreement between the Town of Durham and Comcast for a period of ten (10) years, and authorizing the Administrator to sign said agreement on behalf of the Town.

*Chair Needell MOVED to open the Public Hearing; Councilor Lund SECONDED the motion. The motion PASSED on a unanimous 8-0 vote by a show of hands.*

No one was present in Council Chambers or on Zoom to speak at the Public Hearing.

*Councilor Bubar MOVED to close the Public Hearing; Councilor Lund SECONDED the motion. The motion passed on a unanimous 8-0 vote by a show of hands.*

*Chair Needell MOVED that the Durham Town Council approve the cable television franchise renewal agreement as amended between the Town of Durham and Comcast for a period of ten (10) years, and authorize the Administrator to sign said agreement on behalf of the Town. Councilor Ford SECONDED the motion.*

Briana Matuszko of the law firm Donahue, Tucker and Ciandella updated the Town Council on the proposed franchise renewal agreement. She said the process included determining if Comcast has complied with the current agreement and what the town's future needs will be before negotiating with Comcast. It was decided it was advisable for the town to enter into the renewal agreement for 10 years to preserve the town's access to cable television as it is phased out for streaming services. The new franchise agreement includes requirements in the last agreement and updates several areas. The expiration date is extended; the agreement keeps the current cable TV franchise fee at 4 percent of the gross revenue generated by the operation of the cable system in town; and Comcast will continue providing free cable to town facilities and schools. Comcast will also provide two additional Public, Educational and Governmental Access (PEG) high-definition channels and a third in 18 months to the town. Town has also negotiated the possible addition of another channel within two years. She said the agreement doesn't include cable rates, channel selection, phone services or internet services.

Chair Needell said the Town Council met with Ms. Matuszko before this meeting to go over the agreement and made some minor changes, most of which were updating the location and addresses of town facilities and schools in the list of properties that will receive free cable service. Administrator Selig listed the changes.

*The motion to approve the cable television franchise renewal agreement PASSED 8-0 on a unanimous voice vote.*

- B. **Update on the Oyster River Cooperative School District's FY 2025/26 Budget Process** – Dr. Robert Shaps, Superintendent

Dr. Shaps wished everyone Happy New Year and introduced School Board member Denise Day, who is also present. He noted it was his third visit to the Town Council in six months and wanted to acknowledge the great working relationship he has with Administrator Selig and his gratitude for it. He distributed to councilors a document about the school district's budget.

He said one thing that has impressed him since he arrived is the district's long-standing academic success and its commitment to the whole child.

He referred the Council to Page 11 in the budget document, saying the district has 2,083 students, a number which includes the universal Pre-K program housed at Oyster River High School.

He noted the slight unexpected increase in kindergarten enrollment in August, which totaled about 18 additional students.

He said Page 12 of the document has the projected impact for next year, noting it's expected the middle school enrollment will continue to decline, which is estimated at about 40 students, and that there will be a slight reduction at the high school of about 20 students.

He said the school board approved an extension of the Barrington tuition agreement for the next eight years. It anticipates a ramp up of Barrington students for a maximum of 280 students over grades 9 to 12.

In response to a question from Councilor Bubar, he said the enrollment decrease is not a factor in the apportionment formula used to determine how much Durham pays toward the school budget. He said the town's equalized value also determines it. Both these factors lag by a couple years when used, he said.

He said the district has lost 17 or 18 students to the Education Freedom Accounts, a slight uptick but not significant, when asked by Councilor Burton, who noted the much larger numbers other districts in the state are seeing.

He said the recurring theme from his round of Community Coffees was the amount of people who went through the school district who returned here so their children could do the same, and of those who moved here specifically for the schools. He said he often receives requests from parents outside the district to tuition their child into Oyster River, something the school district doesn't do.

In answer to a question from Councilor Burton, Dr. Shaps said he didn't think homeschooled students were generally behind their peers when they begin to attend high school. He said New Hampshire is different in not monitoring home schooling and there is no connection with the student. He said in New York where he worked before, the school is the arbiter of the quality of home-schooling programs. He said

there is always an adjustment period when students come back into school after being homeschooled.

He clarified that the school district does pay for the services prescribed in a student's IEP whether they happen at home or at school, and is responsible for ensuring the impact of those services.

Chair Pro Tem Friedman asked why the district doesn't accept individual tuition students and Dr. Shaps said it is the school district's policy not to because it is difficult to manage individual relationships with families and it makes it hard to predict enrollment as it would change unexpectedly and the district wouldn't know what numbers to prepare for until just a few months before the school year starts. He said a partnership agreement with a school district like the Barrington tuition program allows the district to manage fluctuations in enrollment and provides stability.

He said the district is seeing an upward trend in early-to-college enrollment. He said he thinks there are 14 students taking early college classes at UNH, but he thinks the number may be higher than that. He said he's uncertain because UNH has changed how it enrolls students and the district is disconnected from the process now, but the district is going to start tracking these enrollments itself. The early start program at Great Bay Community College has 280 students enrolled this semester, which is a significant number. Last year, 240 students enrolled there across both semesters. This is a dual credit program, where students get credit at both the high school and college, he said. Those students taking UNH courses after school and in the evening aren't captured by the district now, but the district is developing a way to track them going forward.

He said he has been able to look at the district's expenditures historically and set goals (Page 14 of budget document) to adjust expenditures according to actual use, focus on priorities for maximizing the educational experience by making sure students at all levels have an opportunity to explore their interests in extracurricular activities, athletics and performing arts, and maintain and invest in quality educational programs, especially supporting innovative and quality teaching and increasing the professional development budget.

He said the new teachers contract (on Page 15) will keep the district competitive in attracting and retaining mid-career and beginning teachers, which was a budget goal. The district is planning for the budget impact of negotiating two collective bargaining agreements next year and two more the year after that.

He said the district is also in the process of launching a new strategic development process this spring, another of its goals, which will consider how to focus on budget priorities while maintaining the expectation of taxpayers and their burden to support public education.

He said the school district's overall operating budget (overview on Page 16) is growing by \$1.4 million, which is 2.65 percent, not including the teachers' contract agreement.

He said the federal state grants and awards have no impact on the growth of the budget.

He said the first year of the guild contract is \$1.1 million, which is a 2 percent impact. The combined increase of the budget including the cost of the teachers' contract is 4.65 percent.

The first warrant article is the operating budget (Page 25).

Warrant Article 4 is the teachers' contract's impact (Page 26). The teachers contract agreement includes an 11 percent increase over three years; 3.5 percent the first two years and 4 percent the last year.

Warrant Article 6 is the continuing support for the solar panels on the middle school. Warrant Article 7 is the planning for the capital maintenance to replace the turf field.

Warrant Article 3 (Page 16) is planning for the design and expansion of the elementary schools. Dr. Shaps said when concern over space arose in the spring, the first thought was to add classrooms at Moharimet. That school has 17 usable classrooms. Art has already moved out of its room, and if kindergarten enrollment continues to grow, music would have to move out of its room. He said last May the school board agreed that the district should develop a capital plan looking into expanding Moharimet. When he arrived in July, Dr. Shaps said he asked for a broader building needs assessment. The school district received the architects' report in November, which found the district needs to do \$45 million in repairs over the next 10 years across all its buildings.

He said that process found many of the elementary school service providers, such as reading support, psychologists, occupational therapists, speech therapists, etc., do not have space in the elementary schools. They concluded it would be best to add classrooms to Moharimet to bring it up to 20 classrooms like Mast Way. The warrant is for \$530,000. If approved, the district would move forward to break ground the following summer.

He said the district needs to invest in continual capital repair work at the high school and elementary schools, such as replacing roofs and working on HVAC systems, through the budget. Next step, he said, for the school board is to figure out how to tackle the capital plan.

He said the increases in this year's operating budget are due to health insurance increases, updating technology and security, professional development for staff, state

initiatives for mandated program reviews, the process of replacing buses, and special education mandated services.

Councilor Burton asked about revenue and the amount of adequacy the district will receive. Dr. Shaps said the district's estimated revenue is on Page 18, and that he would get the adequacy number, which isn't included there, to counselors. He cautioned the revenue figures are estimates.

He said the Barrington tuition is \$3.5 million. He said the state's reimbursement for high-cost special ed has been decreasing.

He said Page 19 of the document has the history of the district's annual operating increases; Page 20 is the total proposed budget; Page 21 is the estimated tax impact based on the formula; Page 22 shows the formula does a good job of predicting the tax rates in recent years. He said the Durham tax rate had gone down in the past year because of a reduction of students and the total revaluation.

Noting in the document that 13 percent of the senior class goes into the military or to work after graduation, Councilor Register asked if the district would consider opening a JROTC program. Dr. Shaps said he didn't know the history here, but would find out. Councilor Register said it would be a source of revenue.

Councilor Register complimented Dr. Shaps on his handling of the teacher contract negotiations.

Councilor Burton offered to review pending legislative bills that would affect the school district with the superintendent and Dr. Shaps welcomed the opportunity.

Councilor Ford advocated for tuitioning in individual students. He said the district used to do this because that's how his son got into Oyster River schools. Dr. Shaps reiterated the difficulties of managing individual tuition students. He agreed it could be figured out if the district decided to go that route.

Councilor Lund asked if he was considering partnering with any other communities for tuition agreements. Councilor Burton asked if he would consider bringing Barrington into the SAU. Dr. Shaps said he wasn't considering any other partnerships or expanding the school district.

Dr. Shaps offered to answer any questions from councilors individually between now and the Feb. 4 deliberative session.

## **XI. Councilor and Town Administrator Roundtable**

### Chair Needell - Human Rights Commission

The Human Rights Commission has not met since the last Town Council meeting.

Chair Needell

Chair Needell praised the Churchill Ice Rink and the great resource it is for the community. She visited there with her grandchildren over the holidays and said there was great energy, music and lights, and it was a positive experience for all.

Councilor Bubar - Integrated Waste Management Advisory Committee

Councilor Bubar said the recent IWMAC meeting was almost completely a discussion of composting. Guest speakers from a Vermont town, which has implemented a program, made a presentation, and the committee is in the process of identifying available grants to apply for. Administrator Selig said that the Climate Action Plan that is being developed will include a composting goal.

Councilor Bubar - Zoning Board of Adjustment

He reported that the ZBA has not met since the last Council meeting.

Councilor Grant - Planning Board

Councilor Grant reported the Planning Board has not met since the last Council meeting. It will meet Wednesday, Jan. 8.

Councilor Grant - Housing Task Force

She reported that the Housing Task Force last met in December and talked about its role in the study of the downtown area and about zoning specifications it is considering recommending for single family residences. She said the special group studying the downtown area will meet with the task force on Wednesday, Jan. 8 at 2 p.m.

Councilor Grant

She brought up the recent incidents of fraud in area towns and asked if there's a way the town can communicate with other towns and learn from their experience.

She also brought up the wetlands violation on Durham Point Road and asked how the Planning Department is handling it. She had received an email from Councilor Friedrichs who said ze has heard concerns from several residents about how it's being resolved. Councilor Grant said there may be a perception of a lack of quick response to the issue. She said some are concerned what the town's process is and asked for clarification. Councilor Burton added it appeared to be a clear violation of a town ordinance in the presentation he saw.

Councilor Register - School Board

Councilor Register congratulated Kristin Perron, assistant principal at Oyster River High School, on being named Assistant Principal of the Year for the state of New Hampshire. Next school board meeting is Jan. 15 at 7 p.m. in the Morse Recital Hall.

Councilor Register - Agricultural Commission

He said the Agricultural Commission will next meet on Jan. 13 at 7 p.m.

Councilor Register

He encouraged town residents to make sure to vote in the Town Election on March 11 and to consider running for office in the election.

He added he is not a big fan of public job performance evaluations as is the process with Administrator Selig, but that he is keeping an open mind about the process.

Councilor Ford - Land Stewardship Subcommittee

Councilor Ford said the subcommittee has not met since the last Town Council meeting. Next meeting is Wednesday, Jan. 8 at 8:30 a.m.

Councilor Lund - Historic District/Heritage Commission

He said the commission's meeting scheduled for Jan. 9 has been cancelled due to a lack of business.

Councilor Lund

Councilor Lund announced he is one of the councilors whose term expires this year and he intends to run for re-election.

Councilor Burton - Conservation Commission

Councilor Burton reported the commission met on Dec. 23 and an applicant for work on Riverview Court returned with a much improved plan because of the knowledgeable answers and suggestions the commissioners and Mr. Behrendt had given him at an earlier meeting. The applicant addressed all the issues the commissioners had raised. The site is on the river and requires a variance for the coastal buffer. He said it showed what the town and commissioners can do for a sensitive piece of land. He said he was really impressed with the knowledge of the members of the commission.

Chair Pro Tem Friedman - Parks and Recreation Committee

He said Parks and Rec didn't meet in December and will next meet on Jan. 28.

Chair Pro Tem Friedman - Seacoast Economic Development Stakeholders

He said the SEDC didn't meet in late December and would next meet on Jan. 28.

Chair Pro Tem Friedman

He said he is one of three councilors whose term expires this year and he intends to run for re-election.

Discussion revealed Councilor Bubar's term is also expiring this year. He said he was told he didn't have to commit until Jan. 22. Councilor Burton said if James knew he wasn't going to run, it would give councilors the chance to recruit residents to run. Councilor Bubar did not announce if he is going to run again or not.

Administrator Selig

Administrator Selig announced the filing period for town office opens Jan. 22 at 8 a.m. and closes on Jan. 31 at 5 p.m. He confirmed Councilor Bubar has until then to decide.



He said there are three positions open for Town Council, three positions for the Library Board of Trustees and one position for Trustee of the Trust Funds.

He also reminded all dog owners that it is time to register your dog with the town. When a dog is registered, it is entered in the annual Top Dog raffle.

He said one of the town's police officers has proposed that the town get a comfort dog. Police Chief Rene Kelley is reviewing the proposal and may move forward with a pilot program for one year. As a service dog owner, Councilor Register spoke in favor of the town acquiring a comfort dog, clarified that it's not a K-9 unit, and said having one has helped him immensely.

Councilor Burton remarked the town is losing two police chiefs this year - UNH Police Chief Paul Dean is leaving his position to work for incoming governor Kelly Ayotte and Durham Police Deputy Chief David Holmstock is retiring in July.

Administrator Selig said he and the Durham Police Chief feel there are qualified internal candidates that would simply move up to replace the assistant chief. He said at UNH, Deputy Chief Steven Lee will become the interim chief while the UNH department considers how to move forward. He announced another Durham police officer has resigned to take a position in Londonderry. He said this is the third officer to leave for Londonderry, which pays \$8 more an hour and offers signing bonuses. He said the Durham department has looked at recruiting more aggressively and has decided to have its officers help. It will award a \$5,000 bonus to an officer who identifies a candidate that successfully joins the department.

Administrator Selig addressed the recent cases of fraud by town employees in Lebanon and Seabrook, which Councilor Grant mentioned earlier in the meeting. He said there are conversations between towns about these kinds of cases. He said the best line of defense is hiring good, ethical people, and for police and fire in particular there is an extensive background check including a polygraph test to ensure they are ethical. He said the town also has policies in place, and different levels of review and approval for purchases and personnel compensation to combat fraud. He recalled that about 24 years ago when he first came to Durham, an administrative assistant did take employees' personal information and opened credit cards in their names. The case was referred to the County Attorney for investigation and prosecution, and the employee was terminated. At the police department 12 or 15 years ago, he said there was collusion between two officers who obtained a sergeant's exam and studied it in advance, and they were terminated.

Councilor Lund recalled about seven years ago two scientists at UNH were found to be embezzling grant funds through the use of UNH-issued purchasing cards and forging receipts. He said the university has taken measures to safeguard against this in the future.

Councilor Grant said it is a good time to refresh and review the town's policies and learn from the feedback from other towns.

Administrator Selig recalled another case about 20 years ago at Durham DPW where employees were taking on side jobs and using town equipment for them. That was addressed and policies were revised to preclude that in the future. He said the town's external auditor does do spot checks on all parts of the process and that is helpful. He said petty cash is another issue where the town tries not to keep any at off-site locations. He said there are lots of checks and balances, and lots of eyes on everything in the town's processes.

Administrator Selig then addressed the questions about the wetlands violation at 361 Durham Point Road, asking Mr. Behrendt to describe his handling of it. Administrator Selig said the issue first came to light because of cutting, not in the wetlands buffer, but along the stonewalls along Durham Point Road, which is a scenic road. He said two attorneys advised the town that the Scenic Road Ordinance prohibits the town or utilities from cutting down trees along a scenic road, but not the landowner.

Administrator Selig said Mr. Behrendt went out for an initial review and was definitive about where invasive species removal could take place, but later it appeared in photos the town has seen that there is more going on the site than just that.

Mr. Behrendt said the site is a two-lot subdivision, which the Planning Board approved about a year and a half ago. The lot is quite large with a conservation easement with the Nature Conservancy, but the buildable part is quite small. He said there is a pond and a 100-foot buffer around it. A new party bought the property and is building a single-family home on the lot. Mr. Behrendt said he got a complaint from a neighbor and went out several times, walked the site with the owner, and it appeared he hadn't done anything wrong at that point. He wanted to clear an invasive species area and Mr. Behrendt said he gave him permission to clear it. He said the owner was very clear about the wetlands ordinance, that there's a 100-foot buffer and you can't do anything in the buffer without approval from the town. He said Planning Board member Richard Kelley then contacted him because he thought there was a violation. He said he was skeptical at first because the owner had understood, but he went back out to the site, didn't go on the property and said from Adams Point Road it looked like work had been done within the buffer. Administrator Selig noted the property is posted No Trespassing so Mr. Behrendt could not go on the property. Mr. Behrendt said at the very least he saw a large pile of rock in the buffer so that was a clear violation. He said there was also lumber in the area. He said there was an area near the pond where stone had been laid down. He has looked at the issue with Building Inspector Audrey Cline and the ordinance allows forestry within the buffer so there is a question if they laid down the stone to do logging, if it is allowed under the ordinance. He said he spoke with the Town Attorney about the clear violation for guidance about language and then he sent a note to the property owner. He said he, Public Works Director and Tree Warden Rich Reine, Ms. Cline, Conservation Commission Chair Dwight Trueblood and Planning Board member Rob Sullivan will visit the site on Friday to meet with the owner's representative and walk the property. Once the situation is clear to everyone, Behrendt said he would work with Administrator Selig, Ms. Cline and the town attorney to address any violations they find.

Administrator Selig added the town would only go to a judge to get permission to go on the property only if the owner was not cooperating and they are at this point. He added two weeks ago the owner went to the Durham Police Department to file a complaint against Mr. Behrendt and unknown board members accusing them of trespassing on his property. Mr. Behrendt confirmed he never went on the property.

Administrator Selig said the owner also accused Mr. Behrendt of issuing a quid pro quo. Mr. Behrendt identified the owner as Al Graziano, who owns Dave's Hot Chicken. Mr. Behrendt recalled when he met with the owner and learned he had the restaurants, he said, "I would love it, people would love it if you'd open one in Durham." He said the owner's representative later told Administrator Selig that Mr. Behrendt told the owner something to the effect of "If you build a Dave's Hot Chicken in Durham, all your Planning Board problems will go away."

Mr. Behrendt said that did not occur because, first, he would not have the authority to do that and, second, there were no Planning Board issues at the time he talked with the owner.

Councilor Burton asked if Mr. Behrendt basically issued a cease and desist order to him when they were talking, and Behrendt said no. He said that didn't happen until he sent the owner the note after consulting with the Town Attorney, which effectively put him on notice that the town is watching and the owner cannot do anything that violates the ordinance in the buffer.

Councilor Bubar asked if the town had any evidence he received the email. Mr. Behrendt said he sent it to his agent, Tim Collins, whom the owner requested the town work through, and he hasn't responded.

Administrator Selig added Tim Collins had responded in confirming the site walk. He said there was a delay because Mr. Collins had to attend to a death in the family or a close associate and was unavailable for a period. Mr. Behrendt said that was part of the delay in following up with possible violations because he wanted to walk the site before accusing them of a violation and it's taken several weeks to schedule it. Administrator Selig said Mr. Collins called him at home, asserting the town was harassing him and that he didn't see what the problem at the site was.

Administrator Selig said the town needs to determine from the site walk definitely what if any violations exist and then it will work from there.

#### Councilor Burton

Councilor Burton added UNH President Chilton has called a meeting with the legislative delegation for an update on what's going on at the university. He said he is not sure if it is a private or public meeting so he is uncertain if he can report back to the Town Council on what he learns.

## **XII. Unfinished Business**

**Continued Discussion and First Reading on Ordinance #2025-01** Amending Chapter 175 “Zoning,” Article II, “Definitions,” Article XII.1, “Use and Dimensional Standards,” Article XV, “Flood Hazard Overlay District,” Article XVI, “Aquifer Protection Overlay District,” Article XVII, “Durham Historic Overlay District,” Article XVIII, “Personal Wireless Service Facilities Overlay District,” Article XX.1, “Standards for Agricultural Uses,” and Article XXIII, “Signs and Communications Devices.” A Public Hearing can be set for February 17, 2025.

Mr. Behrendt said the Planning Board is now engaged in a comprehensive zoning rewrite. The zoning ordinances haven’t been significantly rewritten in about 25 years. The first major part of that process is the definitions, Article 2, which this ordinance addresses. The Planning Board spent many months going through Article 2 and making changes. He said the language has to be very particular and it’s important to get it right because it can affect a lot of uses. There was a Public Hearing on April 24, 2024 and the amendment was presented to the Town Council in June. The Planning Board reviewed the Town Council’s comments, incorporated some of the comments into the proposed amendment and rewrote it. The Planning Board held a Public Hearing and voted to approve the amendment on Nov. 20, 2024. Mr. Behrendt compiled a list of the changes in the revised amendment that differ from the original amendment the Council reviewed in April. He offered to meet with the councilors individually to answer questions.

Mr. Behrendt read an email with questions and some proposed changes from Councilor Friedrichs. Ze recommended simplifying the abutter definition, which he said he would do. In the Table of Uses (Page 54), there is a new category of residence called multi-unit complex. Councilor Friedrichs pointed out residence multi-unit is defined as one building and asked if developments like The Cottages or The Lodges are residence multi-unit. The Planning Board decided to make it a separate use called residence multi-unit complex if there are two or more buildings. This new use is not allowed in any zone in town, but he said the Planning Board will soon take up revising the Table of Uses and consider it.

Discussion ensued about how the order of passing zoning ordinance revisions is important, creates confusion and is difficult to track. Whether to add the new use now or later was debated. Mr. Behrendt said most of the words defined in Definitions are used in the zoning ordinance somewhere but there are a few that are not, such as boarding house, which is not an allowed use, or planned unit development, which is coming before the town soon so it was included for a frame of reference in Definitions, but not in the Table of Uses.

Councilor Register suggested the document be made an electronic working document instead of a static one so it would always be up to date. Discussion followed on how to handle the ongoing changes. Mr. Behrendt gave examples of changes to Definitions such as parking garage and its allowed uses in different zones.

Administrator Selig said as soon as the Council passes a zoning ordinance change, his office updates the town website with the revised information so the information there is timely for residents or potential developers. Councilor Bubar said commercial developers and homeowners are different, and residents should just consult with the town Planning Department to decide if a use is allowed or not, as commercial developers do routinely. Administrator Selig pointed out it's important to move in a timely fashion on pending zoning changes so people aren't left in limbo.

Mr. Behrendt said Councilor Friedrichs also asked for a change in the parking garage definition language, which he will tweak. Ze made a point about the word buffer and felt it should be changed to buffering, and he recommended not making that change.

Mr. Behrendt went through the changes in the ordinance since April, which he handed out earlier to councilors. He noted the Planning Board added the state's new definition of abutter, deleted the definition of apartment as the town uses "multi-unit," modified the definition of awning slightly, modified the definition of development, eliminated the word natural from disturbed area, changed accredited to approved under education facility, added a definition for historic or special interest tree, added to home occupation that products can be sold in addition to a service, eliminated the word "temporary" under inn, deleted the term "semi-contiguous" under neighborhood, added language under steep slope, and added the workforce housing conservation subdivision. Under the Table of Uses, the board eliminated the student housing use, they changed parking garage and parking lot making them more restrictive, and made caretaker apartment a permitted use in every zone.

Chair Needell asked councilors if they were ready to approve the First Reading. Discussion ensued on whether the ordinance is ready to go to a Public Hearing. Councilor Register suggested creating an easier-to-use quick reference sheet for each of the town's zones and improving the zoning map to be more detailed, such as adding primary street names. Administrator Selig said the town's GIS could do this by laying the zones over the tax map. Mr. Behrendt said he would look into updating the map. He said the town uses its matrix for uses and a table for allowed dimensions. He said he doesn't have the resources or time to create a quick reference sheet for each zone or supervise a UNH student intern to do it. The value of the quick sheets to residents and the difficulty of keeping the information consistent, in sync and up to date was debated. Councilor Grant suggested the Council take up the improvement of the many resident interfaces that could be better at another meeting.

***Chair Needell MOVED that the Durham Town Council approve the First Reading of Ordinance #2025-01 and schedule a Public Hearing for Monday, Feb. 17, 2025. Councilor Heather Grant SECONDED the motion. The motion PASSED on a unanimous 8-8 voice vote.***

### **XIII. Approval of Minutes - Dec. 9, 2024 and Dec. 16, 2024**

On the Dec. 9, 2024 minutes, Councilor Lund said that Councilor Ford called a question, but the vote is not recorded. Chair Needell reviewed this part and said the Council didn't vote on calling the question. The vote on the motion is recorded, but the way it is written could be misunderstood so she and Lund agreed that inserting a paragraph break would make it clearer.

***Chair Needell MOVED the Town Council approve the minutes of its meeting on Dec. 9, 2024 as amended. Councilor Lund SECONDED the motion. The motion passed on a unanimous 8-0 vote by a show of hands.***

Councilors said they only had minor changes to the Dec. 16 minutes, which they would forward to Karen Edwards.

***Chair Needell MOVED the Town Council approve the minutes of its meeting on Dec. 16, 2024, as amended. Councilor Lund SECONDED the motion. The minutes were APPROVED in a 7-0 vote by a show of hands with 1 abstention. Councilor Register was not present at the Dec. 16 meeting so abstained from voting.***

#### **XIV. New Business**

- A. **First Reading on Ordinance #2025-02** Amending Chapter 175, "Zoning," Article XVII, "Durham Historic Overlay District," Section 175-94, "Purview of the Board," and scheduling a Public Hearing for Monday, February 17, 2025.

Chair Needell asked about No. 7 on Page 4 about the colors of paint or stain applied to a single-family house. This is not a change to the ordinance, but is already in the ordinance.

Councilor Bubar asked about the allowing of benches with no review as a change to the ordinance. Councilor Lund said there was no discussion about this at the HDC. Mr. Behrendt said the only benches that are reviewed are the ones attached to the ground making them a structure.

***Chair Needell MOVED that the Durham Town Council approve on first reading Ordinance #2025-02 and schedule a Public Hearing for Monday, Feb. 17, 2025. Councilor Lund SECONDED the motion. The motion PASSED on a unanimous roll call vote of 8-0.***

- B. **Discussion of Administrator's Progress Report** (as of December 31, 2024) on the list of approved 2024/25 Town Council Goals adopted on June 3, 2024.

Administrator Selig noted that no matter how the town focuses on reaching these goals, it is always hard to predict what is going to become a pressing issue and take a lot of time away from them. He gave the examples of the defense of the not-more-than-3-unrelated definition and the May 1 student protest as unexpected issues that demanded a lot of time that might have been spent on the town's goals.

He noted the work on several DPW projects, the zoning revision process, and the new waste collection rollout as accomplishments. Another time-consuming issue has been staffing and filling open positions, he said, adding that day he had learned of two staff members who are retiring - Wastewater Superintendent Dan Peterson is retiring in June, which the town anticipated and has been grooming a staff member to take his position, and one longtime firefighter who isn't ready to be identified yet but who will retire March 1. Ms. Cline will be formally retiring March 1, off for a full month as required by retirement system guidelines, and then coming back part-time. Renegotiating the police contract and revising the fire contract also took a lot of time.

Administrator Selig said he just learned the day of the meeting in a call from HealthWatch, which provides health insurance to three of the town's employee groups, that the group of employees has fallen below 50 members, that there is a different health plan for smaller pools, and now the town has to change their health insurance plans, an event that was completely out of the town's control.

Councilor Lund suggested adding addressing staffing into the town's goals for the year. A discussion ensued about the difficulties of attracting candidates, hiring and retaining employees.

- C. **Begin the Administrator's Annual Performance Evaluation Process** for 2024 in accordance with the Employment Agreement between the Administrator and the Town of Durham.

Chair Needell explained the performance evaluation process and timeline include the form and the option to add narrative to the form. She noted the question about transparency that came up earlier in the meeting and said Administrator Selig has always chosen to have his evaluation to be open.

Councilor Grant said she feels the open evaluation process really doesn't give Councilors the opportunity to have a good, frank discussion back and forth in the forum of a Town Council meeting. She said, it doesn't feel like a very solid way to do a performance review. She gave the example of talking about issues with Human Resources where you can't bring up examples or an individual in a public forum. She said she could see giving a public summary during a Council meeting after a non-public evaluation.

Chair Needell noted the Town Council could have a non-public session if the Town Council chooses and can add that to the evaluation process. Councilor Bubar agreed with Councilor Grant. Councilor Burton disagreed saying the public will think the Town Council is hiding something. He said the Council has used this process for ten years and it works.

Chair Needell noted the present format of the evaluation is that way because it's valuable to Administrator Selig. She said evaluations should not be punitive, should be about how you can improve, and this format provides that information.

Councilor Grant said in the past she's had the employee do a self-evaluation and then discuss both evaluations with them. She reiterated a public summary would follow the non-public process. Council Register said whatever benefits Administrator Selig is what matters, but he feels the public nature inhibits the evaluation process. He said he watched a past public evaluation of Administrator Selig and felt the video capture of some of the exchanges could be used to create issues where there are not issues.

Administrator Selig said his goal long-term is to have a productive relationship with the Town Council, which is his employer. He said his situation is a little different because he has a seven-year contract with the town that sets his pay in advance so evaluations are not about pay and that outlines how to fire him so his evaluations are not about merit. He said he insisted on having an evaluation because he's seen managers over time get out of alignment with their town board or council. He said an open discussion of how he's doing allows the Council and the town to work out issues that come up that sometimes aren't related at all to his performance, but are related to other decisions or factors, but his evaluation is the only time it seems appropriate to bring it up. He said he doesn't want to get into a self-evaluation process because it takes a lot of time and he doesn't believe that has a lot of benefit. He said he is the Town Council's only employee and everyone else works for him so if there is a problem with a specific employee, that should definitely be discussed in a non-public session. He said he started making his evaluation public to make it more direct and objective at a point early in his tenure because it seemed a lot of politics and intrigue were present. He said he is open to doing his evaluation behind closed doors if it's important to the Council. He said it is his choice whether his evaluation is public or private. He said his evaluation is just to check in with each Councilor and see how he's doing, get their feedback. If there is a mid-course correction they'd like to see made, they can then discuss together if that can or cannot be done.

Councilor Bubar said it would be helpful to have Administrator Selig evaluate the Town Council, and talk about whether it is helping him or hindering him. He said it's a two-way street.

Councilor Burton said Administrator Selig is the best town administrator in the state, and that the Council has more important work to do than spend any additional time on his evaluation. He said the Council works for the voters, not the town administrator, and the election is their evaluation.

Administrator Selig suggested going through the written process, having Chair Needell summarize it, and then having a non-public conversation around it so if there are concerns about his oversight of staff, they can discuss it, and then go from there.



Councilor Register said he is comfortable with what Selig is comfortable with, but he wanted to add his perspective that there could be a more constructive back and forth if the discussion was non-public. Councilor Burton said the whole process is to relate Administrator Selig's performance to the goals the Town Council is trying to accomplish and in a way the Council is evaluating itself, too.

Councilor Lund asked the form be sent to him. Chair Needell said everyone would get it electronically the next day and it was due back to her on Jan. 15.

#### **D. Discussion of the present composition of Downtown Durham**

Chair Pro Tem Friedman began by thanking the existing merchants and business owners for investing in Durham's downtown. He said the purpose of the discussion is to identify some of the issues going on downtown and what Town Council-led improvements can be made.

Administrator Selig put up the map of downtown showing its zones on the screen. Chair Pro Tem Friedman said 66 Main St. is Durham owned, though the map indicates it's still owned by UNH. He identified the town-owned parking space and lots, and the Campus Crossing lot owned by the university, which is a potential site for a parking garage. Other potential garage sites are UNH's A Lot, the Sammy's lot or the Pettee Brook lot.

To be successful, retailers need full-time housing and he said there's a third of the year where there's not many people living within a 10-minute walk to downtown so that is challenging. More housing density for Durham in the downtown area would help, he said. Demand is high for housing and retail will follow that.

Utilities - water, sewer and broadband - are in abundance downtown so that's a competitive advantage as well as the bus system and the train. Adding more cars needs more parking, and the town is in line with UNH on pushing cars out of downtown to outer lots, bike use and buses.

Changing zoning to increase density downtown and increasing height limitations could be done. Working with UNH to maximize advantage such as the RFP for the West Edge project highlighting 66 Main Street as also available for development is another way to help. Building a parking garage would help, too. He gave the examples of Dover and Portsmouth, which built parking garages, and saw their downtown retail businesses thrive. He said changes to zoning are needed to get more downtown housing and better retail.

Discussion included possible hotel demand and student housing demand at 66 Main St., noting many don't want student housing, but the demand is there.

Councilor Burton said Torrington Properties is not going to do much to Mill Pond Plaza beyond upgrading the buildings and wondered if they are aware of the UNH RFP. Administrator Selig said Torrington Properties does know about the UNH RFP, and 66 Main St., and that they may be interested in developing a hotel at the Mill Pond Plaza in the future.

Selig said they challenged Torrington to consider residential development and they said the company feels the only housing that is feasible there is student housing. Where the town didn't want student housing, it wasn't a direction the company was interested in.

Discussion included graduate student housing being definitely needed and past proposals for 66 Main St. development not being found feasible because of the need for \$2 million of ledge removal.

Councilor Grant said she hopes a parking garage can be done on UNH property, because the town's land downtown is needed. Chair Pro Tem Friedman said a garage could be a joint venture with a private developer, UNH and the town.

Discussion included the UNH demand for faculty and day parking is down, but long-term parking for students, downtown residents and short-term parking is in high demand. Councilor Burton noted how the back end of the Mill Pond Plaza lot always has plenty of spaces, but no one can park there. The town is working with UNH to determine where the best location for a garage would be good. Restaurants, walkability, destination retail downtown would be desirable. He said local business owners have sent some input in emails and the Council would encourage more. The idea of a pedestrian mall or similar model came up. Councilor Grant brought up the importance of working with the downtown special group that is meeting. Discussion will be continued under Unfinished Business at a future meeting.

#### **XV. Nonpublic Session - Not Required**

#### **XVI. Adjourn (NLT 10:30 PM)**

***Councilor Ford MOVED to adjourn the meeting. Councilor Register SECONDED the motion. The meeting was adjourned at 10:29 PM on a unanimous 8-0 vote by a show of hands.***

*- Jane Murphy, Minutes Taker*