



TOWN OF DURHAM  
8 NEWMARKET ROAD  
DURHAM, NH 03824  
Tel: 603/868-5571  
Fax: 603/868-1858

## **AGENDA**

**DURHAM TOWN COUNCIL**  
**MONDAY, JANUARY 13, 2020**  
**DURHAM TOWN HALL - COUNCIL CHAMBERS**  
**7:00 PM**

**NOTE:**     *The Town of Durham requires 48 hours notice if special communication aids are needed.*

- I.     Call to Order**
- II.    Approval of Agenda**
- III.   Special Announcements**
- IV.   Public Comments (\*)**
- V.    Approval of Minutes - December 9 and December 16, 2019**
- VI.   Councilor and Town Administrator Roundtable**
- VII.   Report from the UNH Student Senate External Affairs Chair or Designee**
- VIII. Unanimous Consent Agenda** *(Requires unanimous approval. Individual items may be removed by any councilor for separate discussion and vote)*
  - A.** Shall the Town Council approve the 1<sup>st</sup> Warrant for 2020 Water and Sewer totaling \$564,616.54 and authorize the Administrator to sign said warrant?
  - B.** **FIRST READING ON ORDINANCE #2020-01** amending Chapter 153 "Vehicles and Traffic", Section 153-34 "Schedule II: Speed Limits" of the Durham Town Code by reducing the speed limits on a number of roads in the Woodridge neighborhood from 30 mph to 25 mph
  - C.** **FIRST READING ON ORDINANCE #2020-02** amending Chapter 153 "Vehicles & Traffic of the Durham Town Code by creating a new section, Section 153-20.1, "Patron Parking" governing patron parking at the Durham Public Library parking lot
  - D.** **FIRST READING ON ORDINANCE #2020-03**, a Council-initiated ordinance amending certain sections of Chapter 175 "Zoning" of the Durham Town Code to address concerns related to short-term rental establishments

**IX. Committee Appointments**

Shall the Town Council appoint Michael Hoffman, 300 Durham Point Road, to the Historic District Commission/Heritage Commission?

**X. Presentation Items**

Oyster River Cooperative School District 2020/2021 budget update - Dr. James Morse, Superintendent (20 mins)

**XI. Unfinished Business**

**FIRST READING ON ORDINANCE #2020-04** creating a new chapter in the Durham Town Code, Chapter 55, "Electronic Motorized Devices/Electric Scooters" governing the use of such motorized devices within the Town of Durham

**XII. New Business**

- A. Shall the Town Council consider a request from Marti and Michael Mulhern to use a town right of way situated at the end of Gerrish Drive for a new road to provide access to a proposed subdivision?
- B. **FIRST READING ON ORDINANCE #2020-05** amending Chapter 153 "Vehicles and Traffic", Section 153-34 "Schedule II: Speed Limits" of the Durham Town Code by reducing the speed limit on the section of Packers Falls Road between Sullivan Falls Road and the Newmarket Town line from 35 mph to 30 mph
- C. **FIRST READING ON ORDINANCE #2020-06** creating a new chapter in the Durham Town Code, Chapter 88, "Off Highway Recreational Vehicles (OHRV)", prohibiting the use of these types of vehicles from traversing trails on town property designed for pedestrian activity
- D. Begin Administrator's 2019 annual performance evaluation process
- E. Other Business

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

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

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

---

**(\*)** *The public comment portion of the Council meeting is to allow members of the public to address matters of public concern regarding town government for up to 5 minutes. Obscene, violent, disruptive, disorderly comments, or those likely to induce violence, disruption or disorder, are not permitted and will not be tolerated. Complaints regarding Town staff should be directed to the Administrator.*



TOWN OF DURHAM  
8 NEWMARKET ROAD  
DURHAM, NH 03824  
Tel: 603/868-5571  
Fax: 603/868-1858

AGENDA ITEM: **# 5**

DATE: January 13, 2020

## COUNCIL COMMUNICATION

**INITIATED BY:** Durham Town Council

**AGENDA ITEM:** APPROVE THE TOWN COUNCIL MEETING MINUTES FOR  
MONDAY, DECEMBER 9 AND MONDAY, DECEMBER 16, 2019

**CC PREPARED BY:** Jennie Berry, Administrative Assistant

**PRESENTED BY:** Todd I. Selig, Administrator

### **AGENDA DESCRIPTION:**

Attached for the Council's review and approval are the minutes for the Town Council meetings held on Monday, December 9 and Monday, December 16, 2019. Please call or email Jennie Berry with any grammatical/spelling changes prior to the meeting. Discussion at Monday evening's meeting should be limited only to substantive changes.

### **LEGAL AUTHORITY:**

RSA 91-A:2 (II) specifies what must be contained in minutes of public meetings:  
*"Minutes of all such meetings, including names of members, persons appearing before the bodies or agencies, and a brief description of the subject matter discussed and final decisions, shall be promptly recorded and open to public inspection not more than 5 business days after the public meeting, except as provided in RSA 91-A:6, and shall be treated as permanent records of any body or agency, or any subordinate body thereof, without exception."*

### **LEGAL OPINION:**

N/A

### **FINANCIAL DETAILS:**

N/A

### **SUGGESTED ACTION OR RECOMMENDATIONS:**

#### **MOTION 1:**

*The Durham Town Council does hereby approve Town Council meeting minutes for Monday, December 9, 2019 (as presented) (as amended).*

#### **MOTION 2:**

*The Durham Town Council does hereby approve Town Council meeting minutes for Monday, December 16, 2019 (as presented) (as amended).*





TOWN OF DURHAM  
8 NEWMARKET ROAD  
DURHAM, NH 03824  
Tel: 603/868-5571  
Fax: 603/868-1858

**# 8A**  
**AGENDA ITEM:**

**DATE:** January 13, 2020

## **COUNCIL COMMUNICATION**

**INITIATED BY:** April Talon, Town Engineer

**AGENDA ITEM:** SHALL THE TOWN COUNCIL APPROVE THE 1<sup>ST</sup> 2020  
WARRANT FOR WATER AND SEWER TOTALING \$564,616.54  
AND AUTHORIZE THE ADMINISTRATOR TO SIGN SAID  
WARRANT?

**CC PREPARED BY:** Jennie Berry, Administrative Assistant

**PRESENTED BY:** Todd I. Selig, Administrator

**AGENDA DESCRIPTION:**

Attached for the Council's approval is the 1<sup>st</sup> 2020 Warrant for Water and Sewer totaling \$564,616.54 in accordance with RSA 38:22 II (a) which states: "*A municipality may commit bills for charges to the Tax Collector with a warrant signed by the appropriate municipal officials requiring the Tax Collector to collect them.*" The commitment list is available for viewing in the Town Clerk-Tax Collector's Office and will be available for viewing once the warrant is approved Monday evening.

**LEGAL AUTHORITY:**

RSA 38:22 II (a)

**LEGAL OPINION:**

N/A

**FINANCIAL DETAILS:**

The warrant details are as follows:	Water \$	262,232.18
	Sewer \$	302,384.36
	<b>Total \$</b>	<b><u>564,616.54</u></b>

with interest at twelve percent (12%) on all sums not paid thirty days (30) from the due date.

**SUGGESTED ACTION OR RECOMMENDATIONS:**

**MOTION:**

*The Durham Town Council does hereby approve the 1<sup>st</sup> 2020 Warrant for Water and Sewer totaling \$564,616.54, commits the bills for charges to the Tax Collector for collection, and authorizes the Administrator to sign said warrant on its behalf.*



**STATE OF NEW HAMPSHIRE**  
**WATER/SEWER – 1<sup>st</sup> WARRANT 2020**

**STRAFFORD SS**

To Lorrie Pitt, Collector of Water and Sewer Taxes for the Town of Durham in said County.

In the name of said State, you are directed to collect the water and sewer taxes in the list herewith committed to you, amounting in all to the sum of

*Five Hundred Sixty-Four Thousand Six Hundred Sixteen Dollars and Fifty-Four Cents (\$564,616.54)*

Water \$	262,232.18
Sewer \$	<u>302,384.36</u>
<b>Total \$</b>	<b>564,616.54</b>

with interest at eight percent (8%) on all sums not paid thirty (30) days from the due date.

And we further order you to pay all monies collected to the Treasurer of said Town at least on a weekly basis.

As attested by the Town Clerk-Tax Collector, the list on the following pages is a correct list of the assessment of the 1<sup>ST</sup> billing of 2020 computed from the 4<sup>th</sup> quarter water and sewer readings of 2019.

**ATTEST:**

\_\_\_\_\_  
Lorrie Pitt, Town Clerk-Tax Collector

Given under our hands and seal at Durham this 13<sup>th</sup> day of January 2020.

\_\_\_\_\_  
Todd I. Selig, Administrator  
Per Town Council vote on 1/13/2020



TOWN OF DURHAM  
8 NEWMARKET ROAD  
DURHAM, NH 03824  
Tel: 603/868-5571  
Fax: 603/868-1858

AGENDA ITEM:

# **8B**

DATE: January 13, 2020

## COUNCIL COMMUNICATION

**INITIATED BY:** David L. Kurz, Police Chief

**AGENDA ITEM:** FIRST READING ON ORDINANCE #2020-01 AMENDING CHAPTER 153 "VEHICLES & TRAFFIC", SECTION 153-34 OF THE DURHAM TOWN CODE BY REDUCING THE SPEED LIMITS ON A NUMBER OF ROADS IN THE WOODRIDGE NEIGHBORHOOD FROM 30MPH TO 25MPH

**CC PREPARED BY:** David L. Kurz, Police Chief

**PRESENTED BY:** David L. Kurz, Police Chief

**AGENDA DESCRIPTION:**

This ordinance will amend speed limits on Bartlett Road, Woodridge Road, Fogg Lane, Fogg Drive, Meserve Road and Moharinet Way which comprises the Woodridge neighborhood. A neighborhood petition was received by the Traffic Safety Committee asking for a reduction of 30 MPH to 25 MPH for the roadways within the neighborhood. At the 2019 October Traffic Safety Committee meeting there was general consensus that the speed limits of all the roadways within the Wedgewood neighborhood should be designated 25MPH for consistency of the roadway system within the neighborhood. As you are aware, the Durham Town Code assigns all roadways to be 30MPH unless otherwise specified. In other words if the Code is silent regarding a speed limit on a roadway, by default it is 30MPH.

The desire of the Traffic Safety Committee was to propose all of the amendments at once rather than consume valuable Council agenda time.

At the Traffic Safety Committee meeting on October 15, 2019, the committee was unanimous in its recommendation. Due to a full calendar schedule involving budget deliberations this item was delayed until January for Council consideration. A letter has been sent to all residents on the affected roadways notifying them of the proposed Council action and the relevant dates for Council consideration so there would be an awareness to participate in Council discussion if they so desire.

**LEGAL AUTHORITY:**

The Town Council may enact Ordinances pursuant to Section 3.8 of the Durham Town Charter.

**LEGAL OPINION:**

No legal opinion was sought, as this is the standard format for ordinances of this type to be issued.

**FINANCIAL DETAILS:**

Ten (10) 25MPH signs will be ordered @ \$78.40 each for a total of \$784.00. Additionally, ten (10) galvanized posts may be necessary at a cost of \$ 40.56 each for a total of \$405.60 equaling a grand total of \$1,189.60

**SUGGESTED ACTION OR RECOMMENDATIONS:**

**MOTION:**

*The Durham Town Council does hereby move on First Reading (as presented) (as amended) Ordinance #2020-01 amending Chapter 153 "Vehicles & Traffic", Section 153-34 of the Durham Town Code by reducing the speed limits on a number of roads in the Woodridge neighborhood from 30MPH TO 25MPH and schedules a Public Hearing for Monday, February 3, 2020.*



# **ORDINANCE #2020-01 OF DURHAM, NEW HAMPSHIRE**

## **AMENDING CHAPTER 153 “VEHICLES AND TRAFFIC”, SECTION 153-34 “SCHEDULE II: SPEED LIMITS” OF THE DURHAM TOWN CODE BY REDUCING THE SPEED LIMITS ON A NUMBER OF ROADS IN THE WOODRIDGE NEIGHBORHOOD FROM 30 MPH TO 25 MPH**

**WHEREAS**, there is significant vehicular traffic throughout the Woodridge neighborhood; and

**WHEREAS**, these same areas have significant pedestrian, bicycle, children playing as well as a Town playground; and

**WHEREAS**, there is significant concern for the safety of all persons residing in the Woodridge neighborhood; and

**WHEREAS**, the Durham Town Code establishes the speed for every street within Durham at 30 mph unless specifically noted in this ordinance; and

**WHEREAS**, these adjustments are being requested by petition of the residents of the neighborhood; and

**WHEREAS**, the Traffic Safety Committee is unanimous in their recommendations that the posted speed limits of 30 mph be reduced to 25 mph upon all the below listed roadways,

**NOW, THEREFORE BE IT RESOLVED** that the Durham Town Council, the governing and legislative body of the Town of Durham, New Hampshire does hereby adopt Ordinance #2020-01 and does hereby amend Chapter 153 “Vehicles & Traffic”, Section 153-34 “Schedule II: Speed Limits” of the Durham Town Code by reducing the speed limits on a number of roads in the Woodridge neighborhood from 30 mph to 25 mph respectively. Wording to be omitted is annotated with ~~striketrough~~ type. New wording is annotated with underscoring.

---

### **153-34. Schedule II: Speed limits.**

In accordance with the provisions of 153-4, speed limits other than thirty (30) miles per hour are established as indicated upon the following streets or parts of streets:

<b>Name of street</b>	<b>Speed limit (mph)</b>	<b>Location</b>
Bagdad Road	25	Entire length
<a href="#"><u>Bartlett Road</u></a>	<a href="#"><u>25</u></a>	<a href="#"><u>Entire length</u></a>
Bay Road	35	Entire length
Bayview Road	25	Entire length
Beech Hill Road	35	Entire length
Bennett Road	35	Entire length
Burnham Ave	25	Entire length
Canney Road	25	Route 108 to Madbury Town line
Cedar Point Road	25	Entire length
Chesley Drive	25	Entire length
Coe Drive	25	Entire length
Colony Cove Road	35	Entire length
Cowell Drive	25	Entire length
Croghan Lane	25	Entire length
Cutts Road	25	Entire length
Dame Road	25	From Durham Point Road to the Newmarket Town line
Davis Avenue	25	From Edgewood Rd to Fairchild Dr.
Denbow Road	25	Entire length
Dennison Road	25	Entire length
Durham Point Road	35	Entire length
Edgewood Road	25	Entire length
Emerson Road	25	From Madbury Rd. to the intersection of Bagdad Rd.
Faculty Road	25	Entire length
Fairchild Drive	25	All from Davis Ave. to the cul-de-sac
Ffrost Drive	25	Entire length
<a href="#"><u>Fogg Drive</u></a>	<a href="#"><u>25</u></a>	<a href="#"><u>Entire length</u></a>
<a href="#"><u>Fogg Lane</u></a>	<a href="#"><u>25</u></a>	<a href="#"><u>Entire length</u></a>
Garden Lane	25	Entire length
Garrison Avenue	25	Entire length
Glassford Lane	25	Entire length
Hamel Drive	25	Entire length
Hampshire Avenue	25	Entire length
Hoitt Drive	25	Entire length
Jenkins Court	25	Entire length
Langley Road	35	Entire length
Littlehale Road	25	Entire length
Longmarsh Road	35	Entire length

<b>Name of street</b>	<b>Speed limit (mph)</b>	<b>Location</b>
Lundy Lane	25	Entire length
McGrath Road	25	Entire length
Madbury Road	25	Main Street to Edgewood Road
Main Street	25	Between Route 108 and Mast Road
Main Street	25	Between College Brook Road and Gables Residence Access Rd.
Maple Street	25	Entire length
Mast Road Extension	25	Entire length
Meadow Road	25	Entire length
<u>Meserve Road</u>	<u>25</u>	<u>Entire length</u>
Mill Pond Road	25	Entire length
Mill Road	35	From Woodridge Rd. to Packers Falls Rd.
Mill Road	25	From Main Street to Woodridge Rd.
<u>Moharimet Way</u>	<u>25</u>	<u>Entire length</u>
Old Landing Road	25	Entire length
Old Piscataqua Road	25	Entire length
Oyster River Road	25	Entire length
Packers Falls Road	35	Entire length
Palmer Drive	25	Entire length
Park Court	25	Entire length
Pettee Brook Lane	25	Main St. from College Rd. to Newmarket Rd. and from Main St. to Garrison Ave.
Pinecrest Lane	25	Entire length
Rocky Lane	25	From Fairchild Dr. to cul-de-sac
Rosemary Lane	25	Entire length
Sauer Terrace	25	Entire length
Schoolhouse Lane	25	Entire length
Scotland Road	25	Entire length
Stagecoach Road	25	Entire length
Strafford Avenue	25	Entire length
Sunnyside Drive	25	Entire length
Thompson Lane	25	Entire length
Tom Hall Road	25	Entire length
Valentine Hill Road	25	Entire length
Wednesday Hill Road	35	Entire length
Wiley Road	25	Entire length
Wine Cellar Road	35	Entire length
Wiswall Road	35	Entire length
Wood Road	25	Entire length



<b>Name of street</b>	<b>Speed limit (mph)</b>	<b>Location</b>
Woodman Drive	25	Entire length
Woodman Road	25	Entire length
<u>Woodridge Road</u>	<u>25</u>	<u>Entire length</u>
Young Drive	25	Entire length

**PASSED AND ADOPTED** this \_\_\_\_ day of \_\_\_, **2020** by a majority vote of the Durham Town Council with \_\_\_\_\_ affirmative votes, \_\_\_\_\_ negative votes, and \_\_\_\_\_ abstentions.

\_\_\_\_\_  
Katherine Marple, Chair  
Durham Town Council

**ATTEST:**

\_\_\_\_\_  
Lorrie Pitt, Town Clerk-Tax Collector



TOWN OF DURHAM  
8 NEWMARKET ROAD  
DURHAM, NH 03824  
Tel: 603/868-5571  
Fax: 603/868-1858

# **8C**

AGENDA ITEM: DATE: January 13, 2020

## COUNCIL COMMUNICATION

**INITIATED BY:** David L. Kurz, Police Chief

**AGENDA ITEM:** FIRST READING ON ORDINANCE #2020-02 AMENDING CHAPTER 153 "VEHICLES & TRAFFIC" OF THE DURHAM TOWN CODE BY CREATING A NEW SECTION 153-20.1 "PATRON PARKING" AT THE DURHAM TOWN LIBRARY PARKING LOT

**CC PREPARED BY:** David L. Kurz, Chief of Police

**PRESENTED BY:** David L. Kurz, Chief of Police

### **AGENDA DESCRIPTION:**

This ordinance will ensure that parking at the Durham Library is limited and available to patrons and employees of the library. Recently there has been experience with persons parking at the Library while attending classes at the University of New Hampshire. While attempting to curtail this issue, it was found that there was no controlling legislation that prevented this type of parking to the potential exclusion of patrons and employees.

### **LEGAL AUTHORITY:**

The Town Council may enact Ordinances pursuant to Section 3.8 of the Durham Town Charter.

### **LEGAL OPINION:**

No legal opinion was sought, as this is the standard format for ordinances of this type to be issued.

### **FINANCIAL DETAILS:**

Several signs advising of the time limitations will need to be purchased and installed by Durham Public Works.

### **SUGGESTED ACTION OR RECOMMENDATIONS:**

#### **MOTION:**

*The Durham Town Council does hereby move on First Reading (as presented) (as amended) Ordinance #2020-02 amending Chapter 153 "Vehicles & Traffic" of the Durham Town Code by creating a new Section 153-20.1 "Patron Parking" at the Durham Town Library parking lot and schedules a Public Hearing for Monday, February 3, 2020.*

# ORDINANCE #2020-02 OF DURHAM, NEW HAMPSHIRE

## AMENDING CHAPTER 153 "VEHICLES & TRAFFIC OF THE DURHAM TOWN CODE BY CREATING A NEW SECTION 153-20.1 "PATRON PARKING" GOVERNING PATRON PARKING AT THE DURHAM PUBLIC LIBRARY PARKING LOT

WHEREAS, the Durham Library parking lot is the property of the Town of Durham; and

WHEREAS, the Town of Durham desires to have readily available parking for patrons of the Durham Library; and

WHEREAS, there is no controlling legislation that prevents persons from occupying limited parking spaces for any purpose to the exclusion of patrons of the library,

NOW, THEREFORE BE IT RESOLVED that the Durham Town Council, the governing and legislative body of the Town of Durham, New Hampshire does hereby adopt Ordinance #2020-02 and does hereby create a new subsection, 153-20.1, "Patron Parking", of the Durham Town Code governing patron parking at the Durham Public Library parking lot. Wording to be omitted is annotated with ~~strikeout~~ type. New wording is annotated with underscoring.

---

### 153-20.1 Patron Parking

Any person who owns or is in control of any vehicle that parks within a designated parking space for the use of the Durham Town Library shall be engaged as a patron of the library or be employed by the library. Any vehicle found in violation of this provision may be issued a parking violation and subject to being towed at the owner's expense

PASSED AND ADOPTED this \_\_\_\_ day of \_\_\_, 2020 by a majority vote of the Durham Town Council with \_\_\_\_\_ affirmative votes, \_\_\_\_\_ negative votes, and \_\_\_\_\_ abstentions.

---

Katherine Marple, Chair  
Durham Town Council

ATTEST:

---

Lorrie Pitt, Town Clerk-Tax Collector





TOWN OF DURHAM  
8 NEWMARKET ROAD  
DURHAM, NH 03824  
Tel: 603/868-5571  
Fax: 603/868-1858

AGENDA ITEM:

# **8D**

DATE: January 13, 2020

## COUNCIL COMMUNICATION

**INITIATED BY:**

Carden Welsh, Councilor  
Audrey Cline, Code Administrator  
Michael Behrendt, Town Planner

**AGENDA ITEM:**

**FIRST READING ON ORDINANCE #2020-03, A COUNCIL-INITIATED  
ORDINANCE AMENDING CERTAIN SECTIONS OF CHAPTER 175  
"ZONING" OF THE DURHAM TOWN CODE FOR THE REGULATION OF  
SHORT TERM RENTAL ESTABLISHMENTS**

**CC PREPARED BY:**

Carden Welsh, Councilor  
Audrey Cline, Code Administrator  
Michael Behrendt, Town Planner

**PRESENTED BY:**

Carden Welsh, Councilor

**AGENDA DESCRIPTION:**

*\*This Council Communication is updated from one prepared for the July 15, 2019 Town Council packet. Minor changes were also made in the preamble (Whereas section) of the ordinance from the original.*

On July 15, 2019, the Town Council initiated a set of amendments to the Zoning Ordinance for the regulation of bed and breakfast/ Air bed and breakfast-type establishments. (You can see information from that packet if desired starting on page 228 of this link:

[https://www.ci.durham.nh.us/sites/default/files/fileattachments/town\\_council/meeting/packets/55040/july\\_15\\_2019\\_council\\_packet.pdf](https://www.ci.durham.nh.us/sites/default/files/fileattachments/town_council/meeting/packets/55040/july_15_2019_council_packet.pdf).)

The Town Council sent the proposal to the Planning Board which made extensive recommended changes. The board held public hearings on several iterations before finalizing the enclosed document. Of course, the Town Council may make changes to this document but if the changes are significant the Town Council would need to send them back to the Planning Board for additional review.

\*A document is enclosed which shows the changes that the Planning Board made from the original Town Council version (shown in purple).



You can see documents related to this amendment including comments from the public at this link: [https://www.ci.durham.nh.us/boc\\_planning/zoning-amendments-short-term-rental-ordinance](https://www.ci.durham.nh.us/boc_planning/zoning-amendments-short-term-rental-ordinance).

**BACKGROUND:**

**Description in July 15 communication**

The information in this section is virtually the same as was included in the July 15 packet. The current zoning ordinance includes provisions for the traditional bed and breakfast establishment. However, with the advent of Air Bed and Breakfast and similar operations (now typically referred to as “short-term rentals”) the ordinance needs to be updated.

A number of Durham property owners have sought to rent their houses to short-term visitors largely via the internet, but to provide fewer services and operate with less formality and oversight than the traditional bed and breakfast. A short-term rental operation can help home-owners raise income through home rental, but can also have significant adverse impacts upon a neighborhood, in terms of traffic, parking, trash, noise, unruly guests, and partying, if not carefully managed.

In early 2016 an amendment to the ordinance to address these same issues was presented to the Town Council. That draft was prepared by then Council Chair Jay Gooze, Town Administrator Todd Selig, Building Official Audrey Cline, Corey Landry, fire chief at the time, Town Attorney Laura Spector, and Town Planner Michael Behrendt. Council members had some concerns with the proposal so it did not move forward.

Given ongoing concerns about proposed short-term rental operations in Durham, and problems experienced in other towns and cities nationwide, Councilor Welsh spoke with the staff about developing a new proposal. He conducted research into the current marketplace for short-term rental establishments and reviewed ordinances and issues in several other communities. He worked with Audrey Cline and Michael Behrendt to develop a new proposal to accommodate the use while incorporating appropriate safeguards.

A bed and breakfast is currently permitted by right (P) in the four residential zones and as a conditional use - adaptive reuse of an existing building (CUA) in every other commercial/industry zone except for ORLI and the Durham Business Park. This use would be changed to a special exception (SE) in the residential zones to provide more protection for those sensitive districts. The CUA is a restrictive and cumbersome designation so the use would be changed to a permitted use in the five retail/commercial zones and a special exception in the OR, MUDOR, and ORLI zones.

Site plan review would not be required but the Zoning Administrator would review the application carefully for compliance with building and fire codes and the ordinance requirements.

**Changes from Town Council proposal recommended by the Planning Board**

The key changes from the Town Council proposal (as marked in purple on the enclosed document) include the following.

- Change in name of use from “bed and breakfast” to “short-term rental.”
- Changes to definitions for *hotel*, *inn*, and *motel* to enhance consistency with definition of *short-term rental*.
- Changes in provisions for hotels and motels under Article XX.
- Changes to special exception provisions for short-term rentals under Article XX.
- Change to language regarding property owner being on the premises when the property is rented.
- Change to language regarding rental housing program and inspections.
- Removing reference to New Hampshire Meals and Room Tax.
- Removing provision regarding parking.
- Clarification regarding prohibition of use of recreational vehicle or temporary shelter in conjunction with the short-term rental.
- Eliminating reference to lighting.

**LEGAL AUTHORITY:**

RSA 674:16, RSA 675:2, and Section 175-14 of the Durham Zoning Ordinance

**LEGAL OPINION:**

The Town Attorney has reviewed the proposed changes and has no concerns.

**FINANCIAL DETAILS:**

N/A



**SUGGESTED ACTION OR RECOMMENDATIONS:**

Move on first reading and schedule a public hearing on the draft if acceptable:

**MOTION:**

*The Durham Town Council does hereby move on first reading (as presented) (as amended) Ordinance #2020-03, a Council-initiated ordinance amending certain sections of Chapter 175 "Zoning" of the Durham Town Code for regulation of short-term rental establishments and, in accordance with Section 175-14. A. of the Durham Zoning Ordinance, and schedules a public hearing for Monday, February 3, 2020.*

## **ORDINANCE #2020-03 OF DURHAM, NEW HAMPSHIRE**

### **A TOWN COUNCIL-INITIATED AMENDMENT TO CHAPTER 175 “ZONING” OF THE DURHAM TOWN CODE TO ADDRESS CONCERNS RELATED TO SHORT-TERM RENTAL ESTABLISHMENTS**

**WHEREAS**, there is a current nationwide phenomenon of the establishment of less-formal bed and breakfast-type establishments now often referred to as short-term rentals, promoted by [airbnb.com](https://www.airbnb.com) and other organizations operating on the internet and in other media; and

**WHEREAS**, this type of establishment may be an appropriate and beneficial use in the community, but can also be disruptive and inappropriate in certain situations, so various safeguards should be created; and

**WHEREAS**, the current provisions in the Durham Zoning Ordinance address only traditional bed and breakfasts establishments, without regard for the newer form of short term rentals, potentially preventing appropriate and beneficial business activity, supplemental income to homeowners, and opportunities for visitors to Durham; and

**WHEREAS**, without adopting an appropriate ordinance, interested parties would need to seek variances to allow for this use, but such activity should be clearly regulated by a carefully-crafted ordinance rather than by individual requests for variances, and without an ordinance other parties might be more likely to attempt to establish this use illegally without pursuing a permit from the Town; and

**WHEREAS**, the proposed amendment has been carefully considered to provide for necessary safeguards for the protection of the social capital of neighborhoods and the community and should make enforcement upon illegal establishments easier; and

**WHEREAS**, the version revised by the Planning Board was carefully considered after receiving much input from concerned residents and operators of short-term rental establishments, and the Planning Board determined that the revised version achieved a balance between allowing for reasonable use of single-family houses for this use while protecting the neighborhoods; and

**WHEREAS**, the Durham Town Council formally initiated this amendment, the Durham Planning Board held public hearings on several revised versions of the amendment and recommended a number of changes to the draft initiated by the Town Council, and the Durham Town Council duly held first reading, second reading, and a

public hearing prior to adoption on the revised set of amendments proposed by the Planning Board.

**NOW, THEREFORE BE IT RESOLVED** that the Durham Town Council, the governing and legislative body of the Town of Durham, New Hampshire does hereby in accordance with Section 175-14(A) of the Durham Zoning Ordinance adopt Ordinance #2020-03, a Town Council-Initiated amendment to Chapter 175 “Zoning” of the Durham Town Code to address concerns related to Short-Term Rental Establishments. Wording to be deleted is annotated with ~~strikeout~~ type. New wording is annotated with underscoring. **The document in its revised form is attached to this Ordinance as a matter of final record.**

**PASSED AND ADOPTED** this \_\_\_\_ day of \_\_\_\_, **2020** by a majority vote of the Durham Town Council with \_\_\_\_ affirmative votes, \_\_\_\_ negative votes, and abstentions.

\_\_\_\_\_  
Katherine Marple, Chair  
Durham Town Council

**ATTEST:**

\_\_\_\_\_  
Lorrie Pitt, Town Clerk-Tax Collector

**Amendments to the Durham Zoning Ordinance**  
**SHORT-TERM RENTAL ESTABLISHMENTS**

Presented to Durham Town Council on January 13, 2020.

This document incorporates changes recommended by the Planning Board to the original amendments initiated by the Town Council (on July 15, 2019)

*Proposed additions to the present ordinance are shown like this.*

~~*Proposed deletions from the present ordinance are shown like this.*~~

---

## ARTICLE II - DEFINITIONS

### 175-7. Definitions.

- *Make the following changes.*

~~**BED-AND-BREAKFAST**~~ **SHORT TERM RENTAL** – An accessory use to an ~~An~~ owner-occupied single-family residence containing, in addition to living accommodations for the owner and the owner's family, not more than ~~three~~ four (4) ~~individual~~ sleeping rooms, ~~without cooking facilities,~~ for the purpose of providing to the general public, for compensation, lodging, with or without breakfast, for less than thirty consecutive days. ~~lodging, bathroom facilities and breakfasts to overnight patrons only and for no longer than two (2) consecutive weeks.~~ A short-term rental is not considered a home occupation.

**HOTEL** – A building containing seven (7) or more ~~individual~~ sleeping rooms or suites, each with a private bathroom ~~having a private bathroom attached thereto~~, for the purpose of providing overnight lodging facilities to the general public for stays of less than thirty consecutive days ~~two (2) consecutive weeks~~ for compensation, ~~with or without meals,~~ and usually providing on-site dining facilities, recreational services, function rooms, housekeeping, laundry and related services. Access to ~~individual~~ guest rooms is provided through interior corridors. (See Article XX)

**INN** – An owner-occupied, single-family residence containing, in addition to living accommodations for the owner and his or her family, four (4) to ~~not more than~~ six (6) ~~individual~~ sleeping rooms, without cooking facilities, for the purpose of providing to the general public, for compensation, lodging, bathroom facilities and breakfast to overnight patrons only and for less than thirty consecutive days ~~no longer than two (2) consecutive weeks.~~

**MOTEL** – A building containing seven (7) or more ~~individual~~ sleeping rooms or suites, each with a private bathroom ~~having a private bathroom attached thereto~~, for the purpose of providing overnight lodging facilities to the general public for compensation for stays of less than thirty consecutive days ~~two (2) consecutive weeks~~ with or without meals, and usually providing on-site function rooms, housekeeping, laundry and related services. Access to ~~individual~~ guest rooms is provided directly from the outside or from exterior corridors or walkways. ~~, walkways, or balconies.~~ (See Article XX)

-----

## ARTICLE VIII – VARIANCES AND SPECIAL EXCEPTIONS

### 175-26. Special Exceptions.

➤ *Make the following changes.*

A. ***Criteria for the Granting of Special Exceptions.*** The Zoning Board of Adjustment is authorized to grant a special exception in accordance with RSA 674:33 IV, as amended. The board shall grant a special exception if and only if it finds that all of the following general criteria, along with additional specific criteria for particular uses and activities given elsewhere, are met. ~~For the purposes of this chapter, the~~ The following are ~~established as~~ conditions ~~upon the granting~~ of all "special exceptions," ~~subject to such further conditions as may be defined elsewhere herein as to the uses concerned.~~

1. That the use will not be detrimental to the character or enjoyment of the neighborhood by reason of undue variation from the kind and nature of other uses in the vicinity or by reason of obvious and adverse violation of the character or appearance of the neighborhood.
2. That the use will not be injurious or noxious and thus detrimental to the neighborhood by reason of any of the causes stated in Part B. Zoning Districts (See Table of Contents) of this chapter.
3. That the use will not be contrary to the public health, safety or welfare by reason of undue traffic congestion or hazards, undue risk to life or property, unsanitary or unhealthful emissions or waste disposal, excessive noise, or ~~similar~~ comparable adverse causes, impacts, or conditions.

## ARTICLE XII.1 – USE AND DIMENSIONAL STANDARDS

### 175-53. Table of Uses.

➤ *Change name in the table from “Bed & Breakfast” to “Short-term rental.” Relocate this use from Section VII in the table to Section III. Residential Uses under “Uses Accessory to a Single Family Residential Use.” Change the allowance for a Short-term rental (formerly Bed and Breakfast) under each zone as follows:*

#### Residential Zones:

Rural	<del>P</del> <u>SE</u>
Residence A (RA)	<del>P</del> <u>SE</u>
Residence B (RB)	<del>P</del> <u>SE</u>
Residence C (RC)	<del>P</del> <u>SE</u>

#### Retail/Commercial Zones:



Central Business (CB)	<del>CUA</del> <u>P</u>
Professional Office (PO)	<del>CUA</del> <u>P</u>
Church Hill (CH)	<del>CUA</del> <u>P</u>
Courthouse (C)	<del>CUA</del> <u>P</u>
Coe's Corner (CC)	<del>CUA</del> <u>P</u>

Research/Industrial Zones:

Office Research - Route 108 (OR)	<del>CUA</del> <u>SE</u>
Mixed Use and Office Research (MUDOR)	<del>CUA</del> <u>SE</u>
Office Research Light Industry (ORLI)	<del>X</del> <u>SE</u>

ARTICLE XX – STANDARDS FOR SPECIFIC USES

175-109. Compliance Required.

➤ Make the following change:

L. Hotels and Motels. A stay in a hotel or motel is restricted to less than thirty days (as defined in Article II – Definitions). However, a guest or guests may stay in a hotel or motel for thirty days or longer if allowed by special exception. The maximum that may be allowed by a special exception is a stay of 60 consecutive days and 90 days in any 6 month period. ~~No person may stay in a hotel or motel as a guest for more than 60 days in a row, nor more than 90 days in any 6 month period.~~

➤ Add new subsection R. below and change letter of existing subsection from R. to S.

R. Short-term rental. The following terms and conditions apply to a short-term rental.

1. A short-term rental may not be established until a permit to operate a short-term rental has been issued by the Zoning Administrator. The property owner shall submit an application to operate a short-term rental to the Zoning Administrator. The proposal shall be reviewed for compliance with all Building, Fire, and Life Safety Codes. Site plan review is not required for a short-term rental.

2. Special Exceptions. In those districts where a short-term rental is allowed by special exception, the property owner shall obtain a special exception prior to issuance of a permit to operate a short-term rental. The following specific requirements apply to special exceptions for short-term rentals:

a. ZBA Hearing. For notification purposes, abutting properties shall include those lots within 300 feet of the subject property.

- b. Other Conditions. The Zoning Board of Adjustment may set additional conditions on the special exception based upon potential impact of the proposal to the neighborhood.
- 3. The site where the short-term rental is located must be the property owner's primary residence.
- 4. The property owner or a member of the property owner's family must be on the premises overnight each night while the property is rented.
- 5. Those areas of the premises open to use by lodgers remain subject to periodic safety inspections per state law.
- 6. No recreational vehicle, travel trailer, tent, or other temporary shelter may be used by the renter(s) on the premises in conjunction with the short-term rental.
- 7. Signage is restricted to the following:
  - a. One non-illuminated sign not exceeding two square feet. If ground mounted the sign must be set back at least 10 feet from all lot lines and be no taller than three feet. If mounted on the house no part of the sign may be higher than the top of the first floor windows.
  - b. Non-advertising auxiliary signs (such as "No Parking Here" and "Entrance to the Right") that are non-illuminated and do not exceed one square foot for each sign.

**Proposed Amendments**  
**Durham Zoning Ordinance**  
**Short-term Rental Establishments**  
*\*Changes from Town Council document proposed by Planning Board\**  
November 13, 2019

*Proposed additions by the Planning Board are shown like this*

*Proposed deletions by the Planning Board are shown like this*

Note that the provisions shown in Article II (Short-term rental/bed and breakfast definition) and Article VIII below are existing provisions incorporating changes proposed by the Town Council. The section in Article XX below, proposed by the Town Council, is all new. In all sections, only changes from the Town Council amendment proposed now by the Planning Board are marked. The Town Council proposed no changes to hotels, inns, and motels.

---

---

## ARTICLE II - DEFINITIONS

**SHORT-TERM RENTAL BED-AND-BREAKFAST** – An accessory use to an owner-occupied single-family residence containing, in addition to living accommodations for the owner and the owner’s family, not more than three *individual* sleeping rooms, for the purpose of providing to the general public, for compensation, lodging *and bathroom facilities*, with or without breakfast, for less than thirty consecutive days. A *short-term rental bed-and-breakfast* is not considered a home occupation.

HOTEL – A building containing seven (7) or more *individual* sleeping rooms or suites, each *with a private bathroom having a private bathroom attached thereto*, for the purpose of providing overnight lodging facilities to the general public for stays of less than *thirty consecutive days two (2) consecutive weeks* for compensation, ~~*with or without meals*~~, and usually providing on-site *dining facilities*, recreational services, function rooms, housekeeping, laundry and related services. Access to *individual* guest rooms is provided through interior corridors. (See Article XX)

INN – An owner-occupied, single-family residence containing, in addition to living accommodations for the owner and his or her family, *four (4) to not more than* six (6) *individual* sleeping rooms, without cooking facilities, for the purpose of providing to the general public, for compensation, lodging, bathroom facilities and breakfast to overnight patrons only and for *less than thirty consecutive days no longer than two (2) consecutive weeks*.

MOTEL – A building containing seven (7) or more *individual* sleeping rooms or suites, *each with a private bathroom having a private bathroom attached thereto*, for the purpose of providing overnight lodging facilities to the general public for compensation for stays of less than *thirty consecutive days two (2) consecutive weeks* with or without meals, and usually providing on-site function rooms, housekeeping, laundry and related services. Access to

*individual* guest rooms is provided directly from the outside or from exterior corridors or walkways. , ~~walkways, or balconies.~~ (See Article XX)

## ARTICLE VIII – VARIANCES AND SPECIAL EXCEPTIONS

- A. ***Criteria for the Granting of Special Exceptions.*** The Zoning Board of Adjustment is authorized to grant a special exception in accordance with RSA 674:33 IV, as amended. The board shall grant a special exception if and only if it finds that all of the following general criteria, along with additional specific criteria for particular uses and activities given elsewhere, are met. The following are conditions of all special exceptions.
1. That the use will not be detrimental to the character or enjoyment of the neighborhood by reason of undue variation from the kind and nature of other uses in the vicinity or by reason of obvious and adverse violation of the character or appearance of the neighborhood.
  2. That the use will not be injurious or noxious and thus detrimental to the neighborhood by reason of any of the causes stated in Part B. Zoning Districts (See Table of Contents) of this chapter.
  3. That the use will not be contrary to the public health, safety or welfare by reason of undue traffic congestion or hazards, undue risk to life or property, unsanitary or unhealthful emissions or waste disposal, excessive noise, or comparable adverse causes, impacts, or conditions.

- *Change name in the table from “~~Bed & Breakfast~~” to “Short-term rental.” Relocate this use from Section VII in the table to Section III. Residential Uses under “Uses Accessory to a Single Family Residential Use.” Change the allowance for a Bed and Breakfast under each zone as follows:*

## ARTICLE XII.1 – USE AND DIMENSIONAL STANDARDS

### 175-53. Table of Uses.

#### Residential Zones:

Rural	SE
Residence A (RA)	SE
Residence B (RB)	SE
Residence C (RC)	SE

#### Retail/Commercial Zones:

Central Business (CB)	P
-----------------------	---

Professional Office (PO)	P
Church Hill (CH)	P
Courthouse (C)	P
Coe's Corner (CC)	P

Research/Industrial Zones:

Office Research - Route 108 (OR)	SE
Mixed Use and Office Research (MUDOR)	SE
Office Research Light Industry (ORLI)	SE

-----

## ARTICLE XX – STANDARDS FOR SPECIFIC USES

- L. Hotels and Motels. *A stay in a hotel or motel is restricted to less than thirty days (as defined in Article II – Definitions). However, a guest or guests may stay in a hotel or motel for thirty days or longer if allowed by special exception. The maximum that may be allowed by a special exception is a stay of 60 consecutive days and 90 days in any 6 month period. No person may stay in a hotel or motel as a guest for more than 60 days in a row, nor more than 90 days in any 6 month period.*

*R. H. Short-term rental Bed and Breakfast.* The following terms and conditions apply to a *short-term rental Bed and Breakfast.*

1. A *short-term rental bed and breakfast* may not be established until a permit to operate a *short-term rental bed and breakfast* has been issued by the Zoning Administrator. The property owner shall submit an application to operate a *short-term rental bed and breakfast* to the Zoning Administrator who will review the proposal for compliance with all Building, Fire, and Life Safety Codes. Site plan review is not required for a *short-term rental bed and breakfast.*
2. Special Exceptions. In those districts where a *short-term rental bed and breakfast* is allowed by special exception, the property owner shall obtain a special exception prior to issuance of a permit to operate a *short-term rental bed and breakfast.* The following specific requirements apply to special exceptions for *short-term rentals bed and breakfasts:*
  - a. ZBA Hearing. For notification purposes, abutting properties shall include those lots within 300 feet of the subject property.
  - b. Other Conditions. The Zoning Board of Adjustment may set additional conditions on the special exception based upon potential impact of the proposal to the neighborhood.*



~~b. Expiration. Any approved special exception shall expire if the property is not used pursuant to the special exception for 24 consecutive months.~~

~~3. Expiration. If the property is not used as a bed and breakfast for 24 consecutive months the permit to operate the bed and breakfast shall expire (along with the special exception, above).~~

3. 4. The site where the short-term rental bed and breakfast is located must be the property owner's primary residence.

4. 5. The property owner or a member of the property owner's family must be on the premises overnight each night while the property is rented.

~~The property owner must be on the premises while the property is rented.~~

5. 6. Those areas of the premises open to use by lodgers remain subject to periodic safety inspections per state law.

~~The property owner shall register the bed and breakfast with the Durham Rental Housing Program and maintain compliance with the program's requirements.~~

~~7. The property owner shall provide to the Zoning Administrator a copy of their current New Hampshire Meals and Rooms Tax License and proof of payment of the New Hampshire Meals and Rooms Tax on an annual basis.~~

~~8. Vehicular parking and access shall be provided on the site as reasonably determined by the Zoning Administrator.~~

6. 9. No recreational vehicle, travel trailer, tent, or other temporary shelter may be used by the renter(s) on the premises in conjunction with the short-term rental bed and breakfast.

7. 10. Signage is restricted to the following:

- a. One non-illuminated sign not exceeding two square feet. If ground mounted the sign must be set back at least 10 feet from all lot lines and be no taller than three feet. If mounted on the house no part of the sign may be higher than the top of the first floor windows.
- b. Non-advertising auxiliary signs (such as "No Parking Here" and "Entrance to the Right") that are non-illuminated and do not exceed one square foot for each sign.

~~11. Any lighting on site shall be fully shielded to prevent glare onto the road and any neighboring properties.~~



TOWN OF DURHAM  
8 NEWMARKET ROAD  
DURHAM, NH 03824  
Tel: 603/868-5571  
Fax: 603/868-1858

AGENDA ITEM: **# 9**

DATE: January 13, 2020

## COUNCIL COMMUNICATION

**INITIATED BY:** Michael Hoffman, 300 Durham Point Road

**AGENDA ITEM:** SHALL THE TOWN COUNCIL APPOINT MICHAEL HOFFMAN, 300 DURHAM POINT ROAD, TO FILL AN UNEXPIRED REGULAR MEMBER TERM ON THE HISTORIC DISTRICT COMMISSION/HERITAGE COMMISSION?

**CC PREPARED BY:** Jennie Berry, Administrative Assistant

**PRESENTED BY:** Todd I. Selig, Administrator

### **AGENDA DESCRIPTION:**

Attached for the Council's information and consideration is an application for board appointment submitted by Michael Hoffman, 300 Durham Point Road, requesting appointment to the Historic District Commission/Heritage Commission. This is the last remaining vacancy on the commission.

Mr. Hoffman has attended at least one meeting of the HDC/HC and has spoken and/or met with commission Chair, Andrew Corrow. Attached for the Council's information is Chair Corrow's endorsement of Mr. Hoffman's appointment.

Mr. Hoffman will attend Monday night's Council meeting relative to his request for appointment.

### **LEGAL AUTHORITY:**

Section 11.5 "Vacancies in Elected or Appointed Office" states that, *"Unless otherwise specified in this Charter, in the event of a vacancy in an elected or appointed office, board, commission or committee of the town, the Town Council shall fill that vacancy by appointment, such appointment to continue until the next town election for elected positions or the remainder of a person's term if an appointed position."*

### **LEGAL OPINION:**

N/A

**FINANCIAL DETAILS:**

N/A

**SUGGESTED ACTION OR RECOMMENDATIONS:**

**MOTION:**

*The Durham Town Council does hereby appoint Michael Hoffman, 300 Durham Point Road, to fill an unexpired regular member term on the Historic District Commission/Heritage Commission, with a term expiration of April 30, 2020.*



## Town of Durham

8 Newmarket Road  
Durham, NH 03824-2898

Tel: 603/868-5571

Fax 603/868-1858  
jberry@ci.durham.nh.us

### Application for Board Appointment

Type of Appointment and Position Desired (Please select only one):

☒ New appointment/regular member

☐ New appointment/alternate member

☐ Reappointment/regular member

☐ Reappointment/alternate member

Name:

MICHAEL HOFFMAN

Date:

12/11/19

Address:

300 DURHAM POINT RD

E-Mail Address:

MHOFFMAN33@COMCAST.NET

Telephone:

603-817-8071

Board/Commission/Committee to which you are interested in being appointed. (Please list in order of preference, if interested in more than one appointment).

1. H.D.C.
- 2.
- 3.

**NOTE:** New applicants are asked to attend **AT LEAST ONE** meeting, as well as to meet separately with the Chair(s) of the committee(s) to which they are applying, prior to submitting an application for appointment.

Circle one: ☒ I have / ☐ Have not attended a meeting(s) of the committee(s) listed above.

Circle one: ☒ I have / ☐ have not met with the chairperson of the committee(s) listed above.

Are you willing to attend ongoing educational sessions offered by the New Hampshire Municipal Association, Strafford Regional Planning Commission, et al, and otherwise develop skills and knowledge relevant to your work on the board/committee? YES

Please provide a brief explanation for your interest in appointment to a particular board, commission or committee:

I WOULD DESCRIBE MYSELF AS AN HISTORICAL PRESERVATIONIST WHO TRULY VALUES OUR COMMUNITY'S HERITAGE

Please provide brief background information about yourself:

COMMUNITY MEMBER FOR ROUGHLY 30 YEARS  
PREVIOUS MEMBER OF SEVERAL BOARDS & COMMITTEES

Please provide below the names and telephone numbers of up to three personal references:

Name: TODD SERIO

Telephone: 868-5571

Name: DAVE ENMANER

Telephone: 868-5531

Name: MICHAEL BEHRNDT

Telephone: 808-8064

◆ ◆ ◆ ◆ ◆

Thank you for your interest in serving the Town. Please return this application, along with a resume, if available, to: Town Administrator, 15 Newmarket Road, Durham, NH 03824.



## Jen Berry

---

**From:** Andrew Corrow <andrew\_corrow@yahoo.com>  
**Sent:** Monday, January 06, 2020 10:23 AM  
**To:** Jen Berry  
**Subject:** Re: Reqeust for Appointment to HDC from Michael Hoffman

Town Council,

I would like to endorse Michael Hoffman's application to the HDC/HC. I think he is an outstanding candidate and will bring a lot of expertise and insight to the Commission.

Michael has attended a meeting and has met with me. With his background in code enforcement and building inspection etc. I he will be value added to the HDC. He has also served on the ZBA in the past.

Please let me know if you have any questions.

Andy

On Monday, January 6, 2020, 10:07:21 AM EST, Jen Berry <[jberry@ci.durham.nh.us](mailto:jberry@ci.durham.nh.us)> wrote:

Hi Andy,

Please see the application attached from Michael Hoffman requesting appoint to the HDC. Would you please send over an email to me, addressed to the Town Council, endorsing his appointment? I plan to have it on next Monday's TC agenda.

Thank you!

Jennie-

Jennie Berry  
Admin. Assistant  
Town of Durham  
8 Newmarket Road  
Durham, NH 03824  
(603) 868-5571

-----Original Message-----

From: MFP Sender  
Sent: Monday, January 06, 2020 10:10 AM  
To: Jen Berry  
Subject: Scanned image from Administrative Copier

Reply to: Admin MFP <[mfp\\_sender@ci.durham.nh.us](mailto:mfp_sender@ci.durham.nh.us)> Device Name: Administrative Copier Device Model: MX-3070N  
Location: Administration Office, 8 Newmarket Road

File Format: PDF MMR(G4)  
Resolution: 300dpi x 300dpi

Attached file is scanned image in PDF format.

Use Acrobat(R)Reader(R) or Adobe(R)Reader(R) of Adobe Systems Incorporated to view the document.  
Adobe(R)Reader(R) can be downloaded from the following URL:



TOWN OF DURHAM  
8 NEWMARKET ROAD  
DURHAM, NH 03824

Tel: 603/868-5571

Fax: 603/868-1858

AGENDA ITEM:

# **10**

DATE: January 13, 2020

## COUNCIL COMMUNICATION

**INITIATED BY:** Dr. James Morse, Superintendent, ORCSD

**AGENDA ITEM:** OYSTER RIVER COOPERATIVE SCHOOL DISTRICT PROPOSED  
2020/2021 BUDGET – DR. JAMES MORSE, SUPERINTENDENT

**CC PREPARED BY:** Jennie Berry, Administrative Assistant

**PRESENTED BY:** Dr. James Morse, Superintendent, ORCSD

**AGENDA DESCRIPTION:**

Dr. Morse has been invited to attend Monday evening's Town Council meeting to provide the Council with an overview of the Oyster River Cooperative School District's proposed FY2020/2021 budget.

The ORCSD notice indicated that the presentation could be a public forum, so if members of the public desire to ask questions, a limited amount of time will be allowed for Dr. Morse to respond.

**LEGAL AUTHORITY:**

N/A

**LEGAL OPINION:**

N/A

**FINANCIAL DETAILS:**

N/A

**SUGGESTED ACTION OR RECOMMENDATIONS:**

No formal action required. Receive presentation from Superintendent James Morse regarding the ORCSD's proposed 2020/2021 budget and hold discussion, if desired.



TOWN OF DURHAM  
8 NEWMARKET ROAD  
DURHAM, NH 03824  
Tel: 603/868-5571  
Fax: 603/868-1858

AGENDA ITEM:

# **11**

DATE: January 13, 2020

## COUNCIL COMMUNICATION

**INITIATED BY:** David L. Kurz, Police Chief

**AGENDA ITEM:** FIRST READING ON ORDINANCE #2020-04 CREATING A NEW CHAPTER, CHAPTER 55 "ELECTRONIC MOTORIZED DEVICES/SCOOTERS", IN THE DURHAM TOWN CODE GOVERNING THE USE OF SUCH MOTORIZED DEVICES WITHIN THE TOWN OF DURHAM

**CC PREPARED BY:** David L. Kurz, Police Chief

**PRESENTED BY:** David L. Kurz, Police Chief

### **AGENDA DESCRIPTION:**

There could be an influx of microtransit and micromobility devices, commonly referred to as motorized scooters, arriving in Durham possibly within months. Currently there are no entities other than the University of New Hampshire who are considering a relationship with Lime, Bird, Skip, Spin, Lyft, and Jump, to name a few of the larger corporations who rent electronic scooters. The impetus is largely due to student interest and pressure to have the devices on campus. As there will be significant spillover into the downtown area specifically, there was substantial concern that Durham was not prepared for the unique issues associated with these devices. The Town has been working collaboratively with UNH administrators, as well as the Student Senate, to develop regulations regarding traffic protocols, parking and other guidelines that would enable oversight of this rented equipment's use within Durham.

The proposed amendment for consideration by the Town Council has been vetted by Town staff, legal counsel, and UNH staff.

### **LEGAL AUTHORITY:**

The Town Council may enact Ordinances pursuant to Section 3.8 of the Durham Town Charter.



**LEGAL OPINION:**

The sample ordinance presented to the Town Council was fully vetted by Town Attorney Laura Spector-Morgan.

**FINANCIAL DETAILS:**

There are no direct financial implications for this proposed amendment. However, the oversight and management of the registration will have implications for the Durham Police Department.

**SUGGESTED ACTION OR RECOMMENDATIONS:**

**MOTION:**

*The Durham Town Council does hereby move on First Reading Ordinance #2020-04 (as presented) (as amended) creating a new chapter, Chapter 55 "Electronic Motorized Devices/Scooters", in the Durham Town Code governing the use of such motorized devices within the Town of Durham and schedules a Public Hearing for Monday, February 3, 2020.*



# **ORDINANCE #2020-04 OF DURHAM, NEW HAMPSHIRE**

## **CREATING A NEW CHAPTER IN THE DURHAM TOWN CODE, CHAPTER 55 “ELECTRONIC MOTORIZED DEVICES/ELECTRIC SCOOTERS”, GOVERNING THE USE OF MOTORIZED DEVICES /ELECTRIC SCOOTERS WITHIN THE TOWN OF DURHAM**

**WHEREAS**, there is a significant interest in identifying Durham and the University of New Hampshire as a prime location to establish corporations who will rent micromobility devices to persons; and

**WHEREAS**, the Town of Durham has no regulations that would govern and/or regulate their use and storage on Durham streets, sidewalks and ways; and

**WHEREAS**, in anticipation of an influx of micromobility devices, the ordinance presented will assist staff in regulating these devices throughout the Town of Durham,

**NOW, THEREFORE BE IT RESOLVED** that the Durham Town Council, the governing and legislative body of the Town of Durham, New Hampshire does hereby adopt Ordinance #2020-04 and does hereby amend Chapter 153 “Vehicles & Traffic”, Section 153-34 creating a new chapter in the Durham Town Code, Chapter 55 “Electronic Motorized Devices/Electric Scooters”, governing the use of such motorized devices within the Town of Durham. Wording to be omitted is annotated with ~~strikethrough~~ type. New wording is annotated with underscoring.

---

### **CHAPTER 55**

### **ELECTRONIC MOTORIZED DEVICES /SCOOTERS**

#### **55-1. General Provisions**

**This ordinance shall govern the use of all motorized devices, such as scooters, within the Town of Durham. Motorized devices are not considered motorized vehicles per NH motor vehicles laws.**

#### 55-2. Definition

For the purpose of this ordinance the term ‘motorized devices’ shall mean any device with a gas or electric engine and wheels joined to the bottom of a narrow platform with a vertical handle fixed to the platform, frame or wheels that is powered without the assistance of human peddling, pushing or gliding. It shall not include mobility devices used by the elderly or those with disabilities.

#### 55-3. Obedience to traffic control ordinances; effect of conflict

Any person operating a motorized device operated upon any public roadway within the Town shall be operated in accordance with all the provisions contained in the traffic ordinances of the Town and with the provisions of New Hampshire Chapter 265-Rules of the Road, except that when any provision contained in such ordinances conflicts with any provision in this chapter, the provisions of this chapter shall predominate, or when by their nature they can have no application thereto. Operation of these devices upon any Town sidewalk is strictly prohibited. Use of motorized devices on University of New Hampshire multi-use trails, sidewalks or roadways shall be subject to regulations of the University of New Hampshire

#### 55-4. Obedience to traffic control ordinances; exceptions

Drivers of motorized vehicles must obey all official traffic signals, signs, and other control devices within the Town used in regulating and directing traffic, unless otherwise directed by a police officer; and on public roadways where authorized signs are erected, no person or persons operating a motorized device in the Town shall disobey the regulation contained therein, except that when such person dismounts from the motorized device to make any such maneuver, the operator shall obey all the traffic ordinances provisions applicable to pedestrians.

#### 55-5. Age Requirements

The use of a motorized device on public rights of way by individuals under the age of 16 is strictly prohibited.

#### 55-6. Equipment Required

No person shall operate a motorized device unless it is equipped with a brake, lights, and bell or audible alert.

Any motorized devices operated upon any public roadway during the period one-half (1/2) hour after sunset to one-half (1/2) hour before sunrise, and whenever rain, snow or fog shall interfere with the proper view of the road shall be equipped with a lamp emitting a white light visible from a distance of 300 feet in front of the motorized device and with a red reflector on the rear that will be visible from a distance of 300 feet to the rear when directly in front of the headlamps of a vehicle.

**55-7. Speed; direction**

Motorized devices shall not be operated within the Town at a speed greater than is reasonable and prudent under the conditions then existing and in no event shall they exceed 15MPH and shall be operated as near the right-hand side of the roadway as practicable, exercising due care when passing a parked vehicle or a vehicle proceeding in the same direction.

**55-8. Yielding Right-of-Way**

Motorized devices emerging from a driveway or building shall upon approaching a sidewalk or roadway yield the right-of-way to all pedestrians approaching on the said sidewalk area; and upon entering the roadway shall yield the right-of-way to all vehicles approaching on said roadway.

**55-9. Parking of Unattended Motorized Devices**

Unattended motorized devices may only be parked on streets, sidewalks or other Town properties in the following areas:

- Areas specifically designated and marked by the Town for the parking of such devices, including but not limited to corrals, pods, bike racks, or other locations designated by the Town of Durham for the parking of mobile devices; or
- Areas in which a shared mobile device provider has received written approval from the Town for the creation of sidewalk encumbrances for the purpose of parking shared motorized devices

If any motorized device is found unattended in violation of the provisions of this ordinance by any Town official, then;

- The Town registration information will be utilized to contact the owner, who shall be given two (2) hours to properly park the motorized device and a violation notice shall be placed on the device; or
- If the motorized device does not contain the required registration information or if two (2) hours has passed since an attempt has been made to notify the owner that the motorized device is improperly parked, then the Town shall remove the motorized device from the street, sidewalk or, other location of improper parking and secure the motorized device in a location to be determined by the Town.

If a motorized device is left unattended in a manner which blocks pedestrian passage on a sidewalk or street or otherwise presents a public safety hazard, it shall be removed immediately by the Town and secured in a location to be determined by the Town.

Whenever a device has been removed from the street, sidewalk, or other public area by the Town, it shall be removed and impounded at the owner's risk and expense and shall not be released until authorized by the Durham Police Department and after the owner has provided satisfactory proof that the person making the request owns the motorized device and has paid any and all costs incurred by the Town in impounding the motorized device as well as any other penalties due as a result of the illegal parking.

Any motorized device that has been removed from the street, sidewalk, or other public area in the Town and not redeemed as allowed by this ordinance within thirty (30) days shall be disposed of by the Town without compensation to the owner.

#### 55-10. Rental

No person shall rent, or offer for rent, any motorized device within the Town unless it is properly registered and equipped in accordance with the provision of this chapter.

#### 55-11. Registry Required

No person shall ride or propel a motorized device on any public roadway within the Town, or upon any other public path established for the exclusive use of bicycles, unless such motorized device has been properly registered as herein provided.

#### 55-12. Penalties

Any person or persons violating any act or provision of this ordinance shall be fined not more than \$100 for the first offense and \$150 for the second offense. Also any person or persons violating this ordinance a third time faces a summons as well as impoundment of the motorized device and any cost of towing and storage.

#### 55-13. Application

Any person or corporation requiring a motorized devices registration shall submit application in writing to the Chief of Police, or their authorized agents. Each application shall be made on an approved form to be provided by the Police Department as it may deem necessary for the proper enforcement of this chapter.

#### 55-14. Issuance

It shall be the duty of the Chief of Police or their agents to act on all motorized devices registration applications received and to issue the same when the provisions of this chapter have been met by the applicant, including the certification by the applicant that the motorized device is in good state and safe mechanical condition.

**55-15. Fee; Duration**

- A. The fee for each motorized device registration issued shall be \$10. A motorized device shall be considered registered for the entire life of the motorized device, unless the sticker provided by the Chief of Police has been mutilated, destroyed, altered, lost, or removed. If a new sticker is required, there will be a \$5.00 fee**
- B. Upon transfer of ownership of the motorized device the new owner shall re-register the motorized device for a \$10.00 fee.**

**PASSED AND ADOPTED** this \_\_\_\_ day of \_\_\_, **2020** by a majority vote of the Durham Town Council with \_\_\_\_\_ affirmative votes, \_\_\_\_\_ negative votes, and \_\_\_\_\_ abstentions.

\_\_\_\_\_  
Katherine Marple, Chair  
Durham Town Council

***ATTEST:***

\_\_\_\_\_  
Lorrie Pitt, Town Clerk-Tax Collector





TOWN OF DURHAM  
8 NEWMARKET ROAD  
DURHAM, NH 03824  
Tel: 603/868-5571  
Fax: 603/868-1858

**AGENDA ITEM: #12A**

**DATE: January 13, 2020**

## **COUNCIL COMMUNICATION**

**INITIATED BY:** Michael Behrendt, Town Planner

**AGENDA ITEM:** SHALL THE TOWN COUNCIL CONSIDER A REQUEST FROM MARTI AND MICHAEL MULHERN TO USE A TOWN RIGHT OF WAY SITUATED AT THE END OF GERRISH DRIVE FOR A NEW ROAD TO PROVIDE ACCESS TO A PROPOSED SUBDIVISION?

**CC PREPARED BY:** Michael Behrendt, Town Planner

**PRESENTED BY:** Michael Behrendt, Town Planner  
Mike Sievert, MJS Engineering, for the applicant  
Sharon Somers, Attorney with Donahue, Tucker, and Ciandella

### **AGENDA DESCRIPTION**

Marti and Michael Mulhern own a lot with the address of 91 Bagdad Road - Map 10, Lot 8-6. The lot is about 15.6 acres which includes about 2 acres in Madbury. The lot is undeveloped except for a single family house in the southerly portion where the Mulherns live.

The Mulherns submitted a preliminary conceptual application for a conservation subdivision on the lot which would include between 8 and 12 houses. The Planning Board held public hearings on the application on December 11, 2019 and January 8, 2020. The review and hearing has been continued to February 12.

The Mulherns seek to use a vacant right of way owned by the Town of Durham located off Gerrish Drive to build a road to access their site. Because the right of way is owned by the Town, approval from the Town Council is required for its use. The Mulherns have requested action from the Town Council before proceeding further with the subdivision application. They said they do not wish to spend more money on the project without this approval since the project as proposed is dependent on using this access.

- *The request before the Town Council is from Marti and Michael Mulhern for approval to use the vacant Town right of way at the end of Gerrish Drive for a road to provide access to a subdivision on Map 10, Lot 8-6 (The lot is presently addressed as 91 Bagdad Road). The road could be a Town road or a private road depending on which would be approved by the Planning Board. Approval would also include drainage structures and any attendant utilities (including Town water and electric).*

## **BACKGROUND**

### **Gerrish Drive Subdivision**

The Gerrish Drive - Ambler Way subdivision, then called Pine Ridge, was approved by the Planning Board on January 5, 1972. Walter Cheney was the developer. The approved plat includes a right of way extending from Gerrish Drive to the lot now owned by the Mulherns. The right of way is labeled on the plat as "Future Street." It is vacant and wooded and partly wetland. (In a subsequent lot line adjustment from 1997, the right of way is labeled "Unbuilt Town Right of way.")

Unfortunately, we do not have a copy of the approval notice for the Gerrish Drive - Ambler Way subdivision nor the minutes of the Planning Board when it was approved (we have records extending back to the 1950s but the board minutes from 1971 and 1972 are missing).

Inclusion of this kind of right of way, also called a *paper street*, *stub*, *spur*, or *reserve strip*, as part of a subdivision, is fairly common practice when there is a vacant potentially developable adjacent parcel. Subdivision regulations or planning boards can require (or at least negotiate) dedication of the land to allow for connection to a future subdivision because the adjacent parcel may be landlocked and because interconnectivity can enhance a broader sense of community (though it could be argued otherwise) and provide additional emergency access.

The present Subdivision Regulations do not include any reference to this kind of right of way but the Subdivision Regulations in effect at the time had various references to reserve strips (See section below). Without the board minutes we do not know what discussions there may have been about the reserve strip that was part of the Gerrish Drive subdivision.

A number of residents in the 23-house Gerrish Drive - Ambler Way subdivision have expressed concern about and opposition to the use of the right of way for this project because of drainage, wetlands, and open water within and near the right of way; traffic from the project; and change in character of the open space on the subject lot. A number of neighbors will likely speak to the Town Council at the January 13 meeting about the request.

You can see the documents related to the proposed subdivision, including emails and letters from several concerned neighbors, at this link:

[https://www.ci.durham.nh.us/boc\\_planning/conceptual-consultation-91-bagdad-road-subdivision](https://www.ci.durham.nh.us/boc_planning/conceptual-consultation-91-bagdad-road-subdivision)

**Maps and Other Documents**

*\*See the maps at the bottom.* Also, the following documents are included in this packet:

- 1) An email from Marti Mulhern to me formally requesting use of the right of way for a road.
- 2) Approved plat of the subdivision dated January 5, 1972. The future street is shown at the upper right.
- 3) 1971 letter from Walter Cheney.
- 4) 1971 memo from Henry LeClair, Public Works Direct at the time.
- 5) A preliminary design for the road within the Gerrish Drive right of way prepared by Mike Sievert, design engineer for the project. The vertical stone wall in the middle is the westerly boundary of the subject parcel. The bold blue lines demarcate the edges of wetlands. The wetland in the right of way is located to the left of the blue line. You can see the northeasterly corner of Gerrish Drive and Ambler Way at the far left.
- 6) Preliminary Site Analysis Plan. This plan prepared by Mike Sievert shows the subject parcel in green, wetlands in blue, and the planned building area in white (ledge is shown in red). The three access ways (See below) are shown in shading: Gerrish Drive at the upper left, Dover Road at the upper right, and Bagdad Road at the bottom. The northerly portion of the parcel, shown in light green, is in Madbury.

**Water in the Gerrish Drive Right of way**

The westerly 2/3 of the right of way is jurisdictional wetlands. From photographs and videos provided by neighbors it appears that the right of way and adjacent areas are quite wet with running water (at least right now).

If the Town Council approves use of the right of way there would be other related approvals required: a) from NH Division of Environmental Services Wetlands Bureau to fill/alter the wetlands and b) a conditional use from the Planning Board to fill the wetland and cross the adjacent 75-foot wide wetland buffer. The Conservation Commission would provide a recommendation to the Planning Board.

While much of the right of way is a wetland and there appear to be challenging drainage issues in the right of way and on several adjacent private lots, NHDES, the Planning Board, and Conservation Commission will review the proposed road and drainage impacts carefully. NHDES often approves wetland changes to allow for crossings to access developable areas on a parcel. Mike Sievert has presented a preliminary road design and will provide a detailed road design to NHDES and the Planning Board later.



He has stated that he is confident he can develop a design that will meet requirements of NHDES and the Town of Durham though this remains to be seen.

In order for the road to be approved, under the Town's Subdivision Regulations, the design cannot aggravate any existing drainage situation. It is possible that the design would improve the drainage in the area as it would provide ditches and culverts to direct the water away more efficiently. The stormwater makes its way to the east, to an easement on the east side of the Kelley lot (north of the right of way) and the wetland on the Mulhern lot, then north into Madbury to an unnamed tributary of Gerrish Brook, then easterly to Gerrish Brook, then southerly in Johnson Creek, then to the Oyster River. There is no flood zone within the right of way or in the immediate vicinity.

### Reserve Strip

The Subdivision Regulations in place when the Gerrish Drive subdivision was approved included the following references to reserve strips:

Definitions. 2.6 Reserve Strip means and includes areas for which future public use is planned or intended, whether for streets, pedestrian ways, recreation or other services.

### 4.2 Design and Technical Requirements.

B. Streets. (2) Arrangement. The street pattern within the subdivision shall (a) provide for the continuation of the principal streets in adjoining land, and/or (b) correspond in its location and lines with an adopted major street plan or official map, and/or (c) provide for the projection of the principal streets of the proposed subdivision when adjacent land is undeveloped.

C. Inspection. (11) Reserve Strips. No subdivision showing reserve strips controlling access to streets shall be approved unless the land included in such reserve strips has been dedicated to the public use under conditions approved by the Planning Board.

5.2 Reserved Land. In general, no reserve strips controlling access to land dedicated or to be dedicated to public use will be permitted, unless such strips are conveyed to the Town of Durham. Reserve strips of land which may prove to be untaxable for improvements shall not be permitted.

### Other Access Ways

There are two other easements leading to the subject lot. See the map at the end. Several neighbors in the Gerrish Drive subdivision request that one of the other access ways be used. However, there are hurdles with these two other access ways.

Dover Road/Route 108. There is an easement leading from Dover Road that is partly on the subject lot and partly on a lot owned by a different party (so it is questionable whether the easement would legally allow for a road in contrast to a shared driveway), part of the easement is situated in Madbury, there is an existing driveway within the easement

serving several lots, and there are some steep slopes and significant ledge within the easement.

Bagdad Road. There is an easement situated off Bagdad Road at the southerly end. The Mulherns executed a lot line adjustment in 2018 which placed the easement on a different lot which they subsequently sold. Therefore the easement is not available for use now. Several neighbors have stated that the Mulherns elected to convey this easement to another party and therefore created a hardship themselves. (There is a link to the lot line adjustment at the bottom of the link to the current subdivision, above.)

Apart from this point, there are/were several challenges with the prospective use of this easement: a) it turns out, according to Mike Sievert, that the Mulherns never owned the easement area in the beginning though they believed they did when the lot line adjustment was executed, so it would not have been available even without the lot line adjustment; b) use of this access would require a much longer road, with more impact upon the parcel and the open spaces areas, to reach the buildable area of the lot situated in the northerly section; c) the road would need to go either through parts of the large wetland on the lot, through the wetland buffer, or along the easterly edge near some other houses; and d) the road would pass very close to a house at the southerly section of the lot. The Mulherns built this house for themselves in 2006 after they acquired the lot; it was sold after the lot line adjustment.

Marti Mulhern told me that when they bought the lot in 2005 they were thinking of possibly doing a subdivision at some time in the future and assumed they would use the right of way off Gerrish Drive to provide access.

### Traffic impacts

Neighbors have expressed concern about traffic impacts from a new subdivision. The Planning Board will likely require a traffic study at the appropriate time. Mike Sievert offered these preliminary estimates:

*"According to the latest Institute of Traffic Engineers, (ITE) Trip Generation manual for traffic generation from residential developments, this proposed development of 8-12 units will generate between 6 – 9 average vehicle trip ends in the peak AM hour, and 8 – 12 average vehicle trip ends in the peak PM hour."*

If there are some or all senior units there would likely be fewer trips at peak times. One advantage of the layout of the Gerrish Drive subdivision is that traffic could be distributed with some vehicles coming from Bagdad Road likely using Ambler Way and some vehicles heading toward Bagdad Road likely using Gerrish Drive.

### Proposed project

A drawing at the end shows a proposed design. This is very much subject to change as the design is refined during the subdivision review. A conditional use would also be needed for placement of a road in the developable area within the 75 foot buffer. The

applicant proposes a private road with one or two legs in the subdivision and a Town or private road leading from Gerrish Drive.

There would be 8-12 privately owned houses, possibly including a few duplexes. The applicant is considering making some or all of the houses for seniors (55+). There would not be individual lots but the site would remain largely unsubdivided and owned and maintained by a homeowners association. There might be some kind of limited common space around each house controlled by the homeowner. The applicant proposes what is called a "pocket neighborhood."

### *Town Attorney's guidance*

Laura Spector, Durham Town Attorney, offered comments in response to my request for guidance. Comments from the Town Attorney are ordinarily confidential but the Town Administrator has authorized sharing pertinent excerpts here. From the Town Attorney:

"...The council can't act in a manner that is arbitrary. This particular piece of property was deeded to the town to be a street...The fact that the developer did a lot line adjustment which affected access to the property isn't something that the council can take into consideration. The only question is whether this parcel can be used as a road, as it was originally intended to be.

"...The wetlands and open space issues are not something the council should consider. Really, the issue for the council is whether this 'should' be a road. While that seems to imply a lot of discretion, unless the existing Gerrish Drive or Ambler Way are roads which cannot safely accommodate the traffic that is anticipated to be created by this subdivision, I don't see a rational basis on which to deny the request to construct what was always intended to be a street...The mere fact that the abutters would prefer not to have that additional traffic is not a consideration for the council in making this decision.

"If the council does feel that the existing Gerrish Drive and/or Ambler Way need to be improved to accommodate this traffic, it can, of course, require that as a condition of approval of the road construction. The planning board will also review that issue, and even if the council does not require such upgrades, the planning board may do so if it determines they are necessary..."

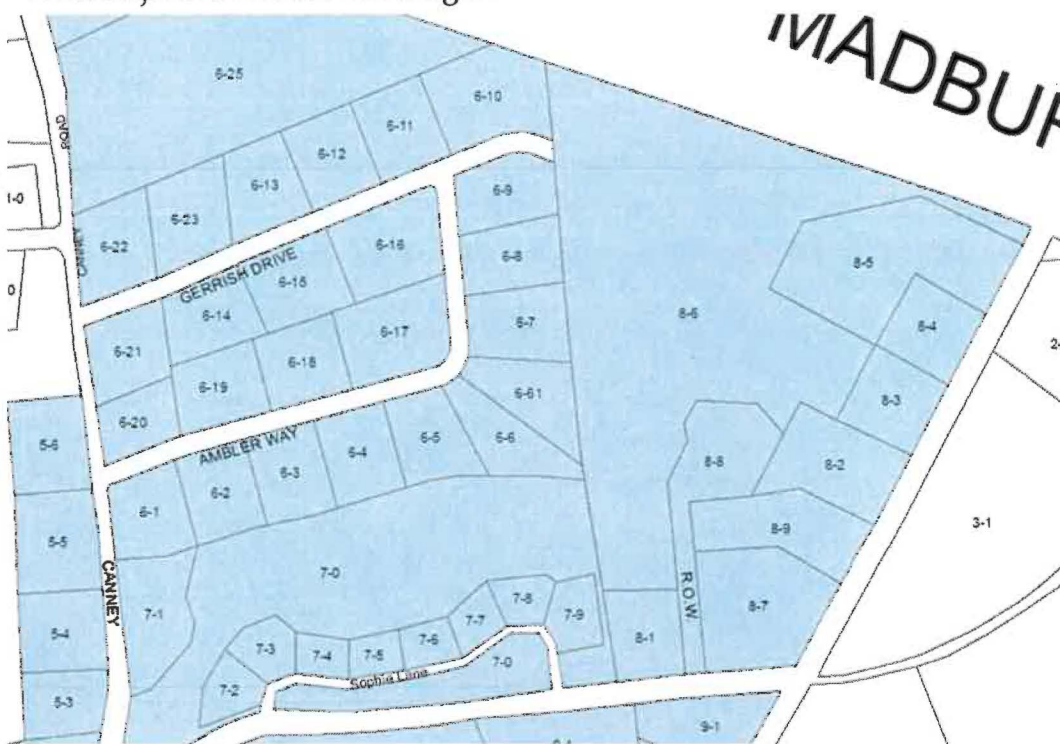
"...It's up to the Council whether or not to grant permission to build the road. But the planning board has to consider whether the spur road, along with the existing road network, will be sufficient to accommodate the expected traffic from the subdivision..."

### *Maps and images*

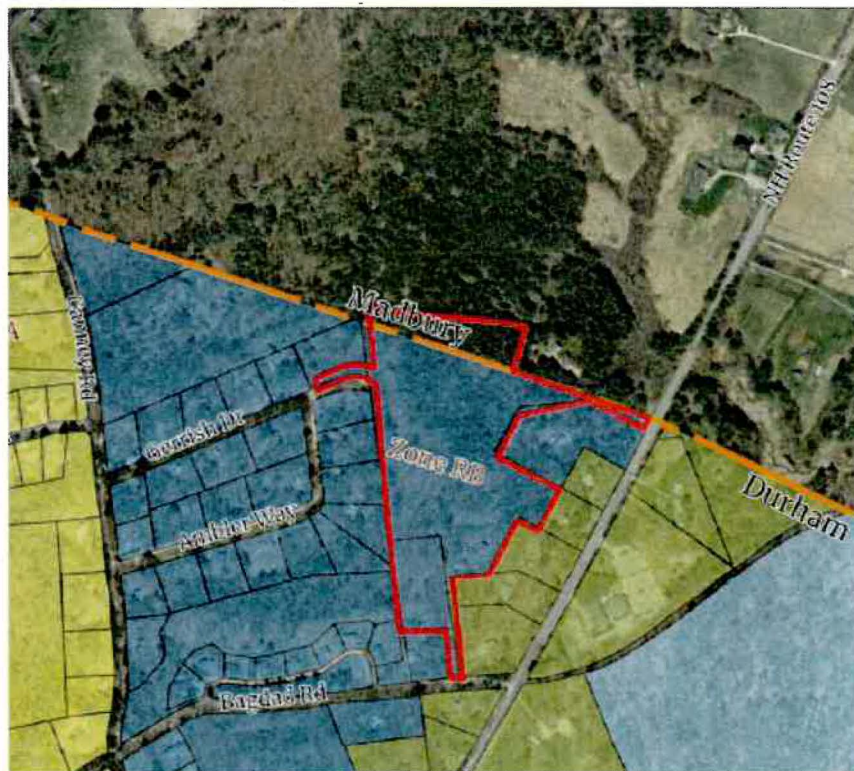
See the maps and images below.



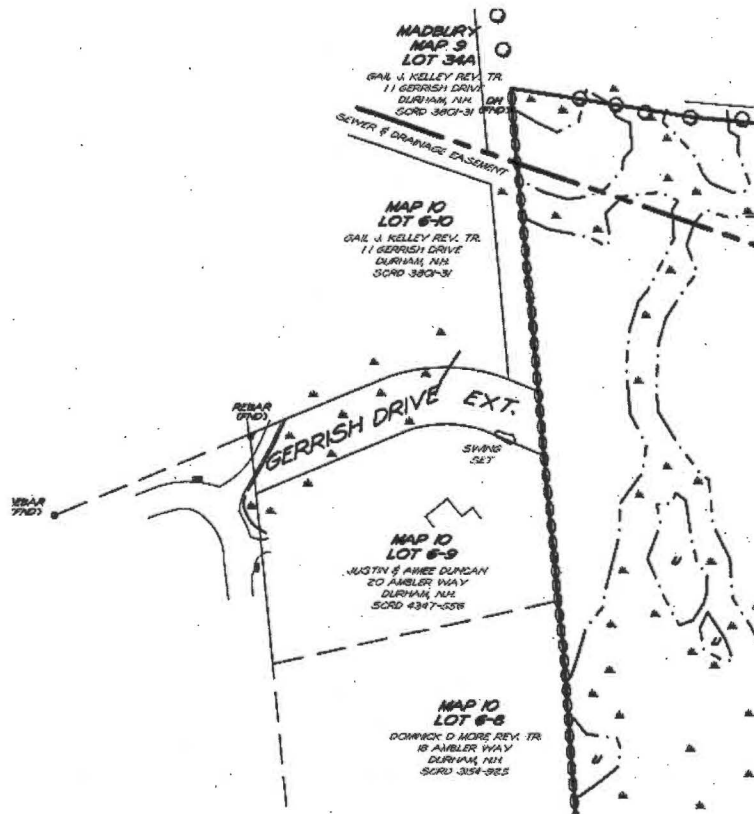
The subject lot is 8-6 on the right:



Here is an area map:



The westerly 2/3 of the right of way, "Gerrish Drive Ext.," is a wetland (2017 plat):

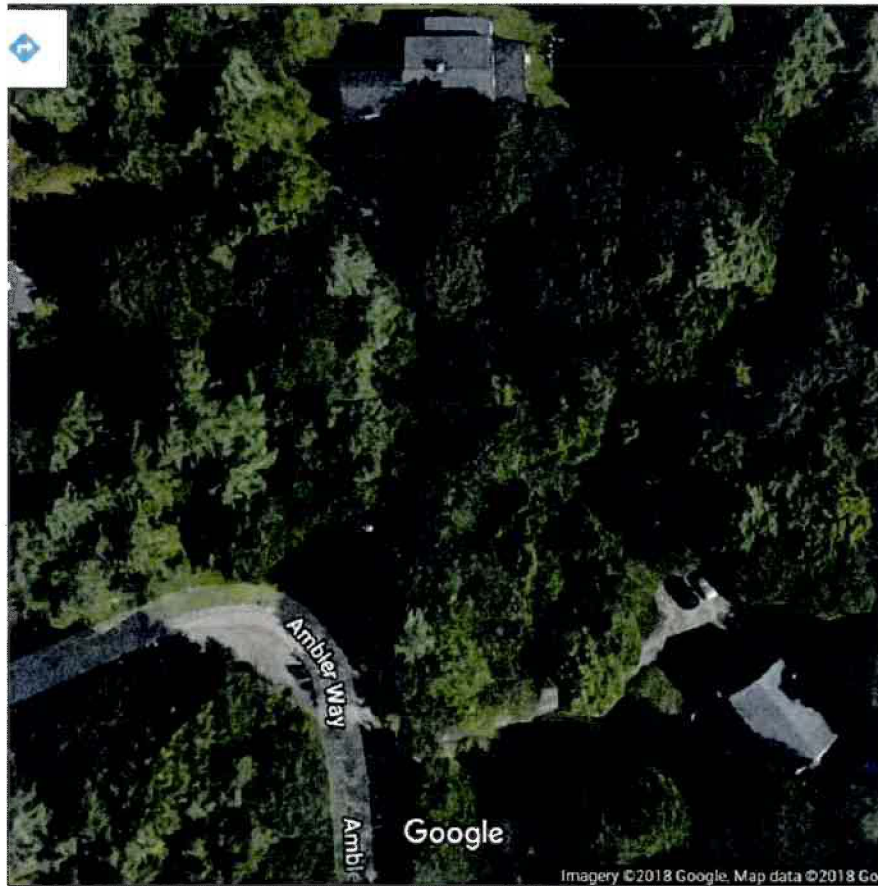


Preferred option for the subdivision layout at this point:





Aerial photo of right of way. Kelley house at the top and White house at lower right



Looking due east toward spur (It's much wetter now):



**AUTHORITY:**

The right of way is owned by the Town.

**LEGAL OPINION:**

Pertinent comments from the Town Attorney are included above.

**FINANCIAL DETAILS:**

N/A

**SUGGESTED ACTION OR RECOMMENDATIONS:**

In response to the request, the options for the Town Council include:

- 1) Approve the request, i.e. allow the applicant to use the Town right of way at the end of Gerrish Drive for a new road (whether Town or private) including drainage structures and any attendant utilities to access their property for a subdivision. The Town Administrator would coordinate to provide the appropriate documentation (If the road is private an easement from the Town would likely be needed).
- 2) Approve the request with conditions (including language in 1, above). The right of way could not be used without subdivision approval from the Planning Board.
- 3) Continue the discussion to another meeting. The Town Council could schedule a site walk of the right of way if desired though the area is presently covered in snow.
- 4) Deny the request. If the request is denied the Town Council should include clear reasons for the decision.

**MOTION:**

*See options listed above relative to possible actions the Council may take on this item.*

## Michael Behrendt

---

**From:** Marti MULHERN <mmulhern@comcast.net>  
**Sent:** Thursday, January 09, 2020 11:14 AM  
**To:** Michael Behrendt  
**Cc:** Mike Mulhern  
**Subject:** R.O.W.

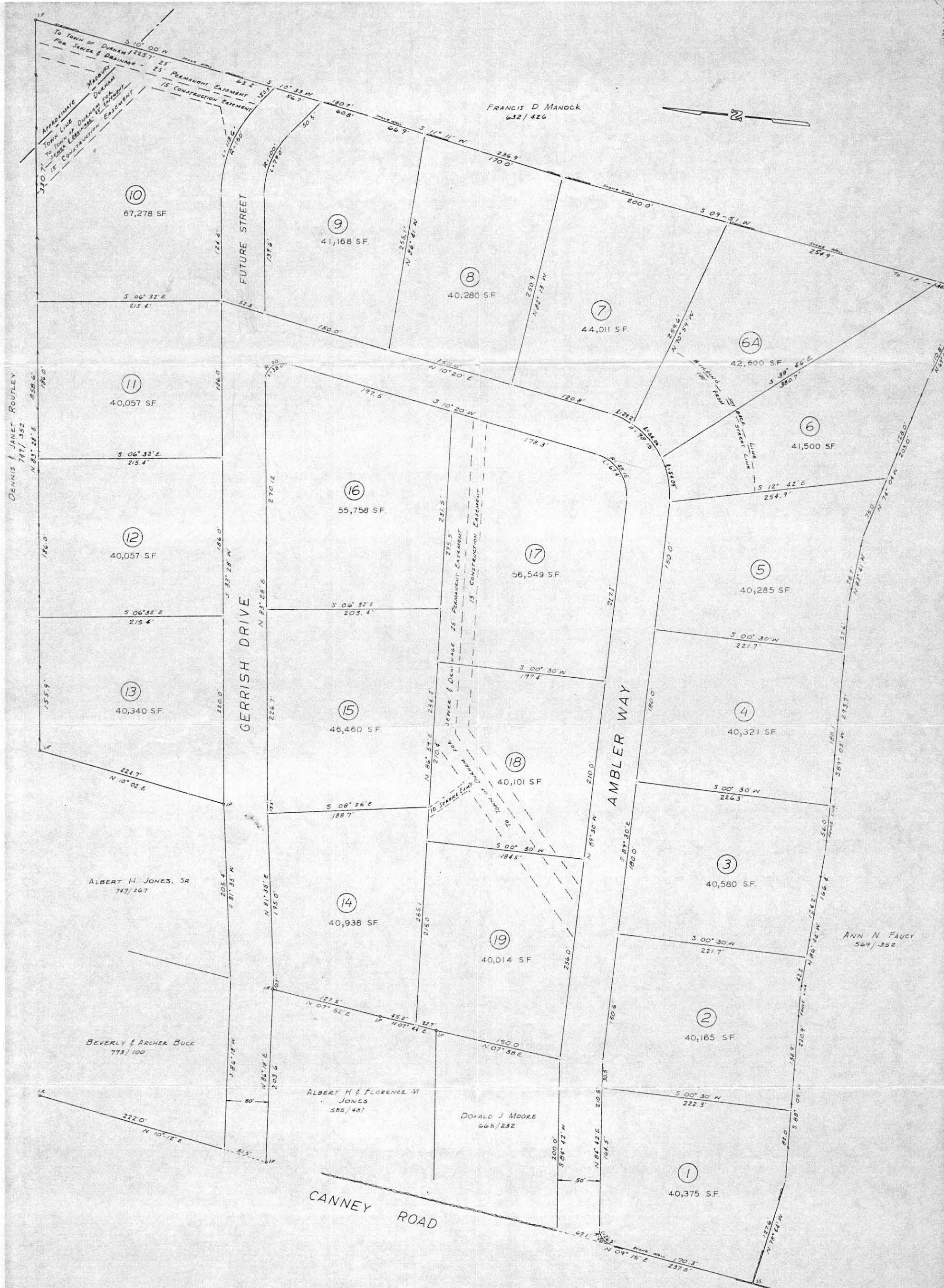
**Follow Up Flag:** Follow up  
**Flag Status:** Flagged

Dear Michael,

I am writing to you on behalf of myself and my husband Mike Mulhern to request that we be granted permission to use the "Future Street" that was deeded from Walter Cheney to the Town of Durham. The right of way extends from Gerrish Drive into our lot #10-8-6. We understand that the road could be private or a town road at the discretion of the Planning Board. We would like to develop the road in order to access our 16+ acres parcel of land that currently has 1 home at 91 Bagdad Road. We wish to create a conservation subdivision and the Gerrish Extension leads directly into the 3+- acres that have been deemed buildable.

Thank you,  
Marti Mulhern





FOR RECORDING:  
DURHAM PLANNING BOARD  
APPROVED 5 JANUARY 1972  
*Charles J. Johnson*  
*John J. Johnson*  
*James W. Jones*  
*Robert D. Johnson*

MAP OF LOTS  
PINE RIDGE  
WALTER W. CHENEY, INC.  
DURHAM, NEW HAMPSHIRE

G. L. DAVIS & ASSOCIATES  
CIVIL ENGINEERS  
15 FISHER STREET  
DOVER, NEW HAMPSHIRE

SCALE 1 IN. = 50 FT.  
DR. BY HRW DATE NOV 1971  
CK. BY FILE NO. 132-60

THE STATE OF NEW HAMPSHIRE  
GRANT L. DAVIS  
No. 60  
REGISTERED  
PROFESSIONAL ENGINEER



December 8, 1971

The Planning Board  
Town of Durham  
Durham, N.H. 03824

RE: Merrick Development

Gentlemen,

The future road shown on Final Plan will be deeded to  
The Town of Durham with the following stipulation.

The portion of the road ( description ) cannot be  
built for seven years without the consent of Walter W.  
Cheney, Inc. At the end of that time, the Town of  
Durham will own the land free and clear.

Sincerely yours,

WALTER W. CHENEY, INC.

Walter W. Cheney  
President

WWC/rr

October 6, 1971

To: Planning Board

From: Henry N. LeClair

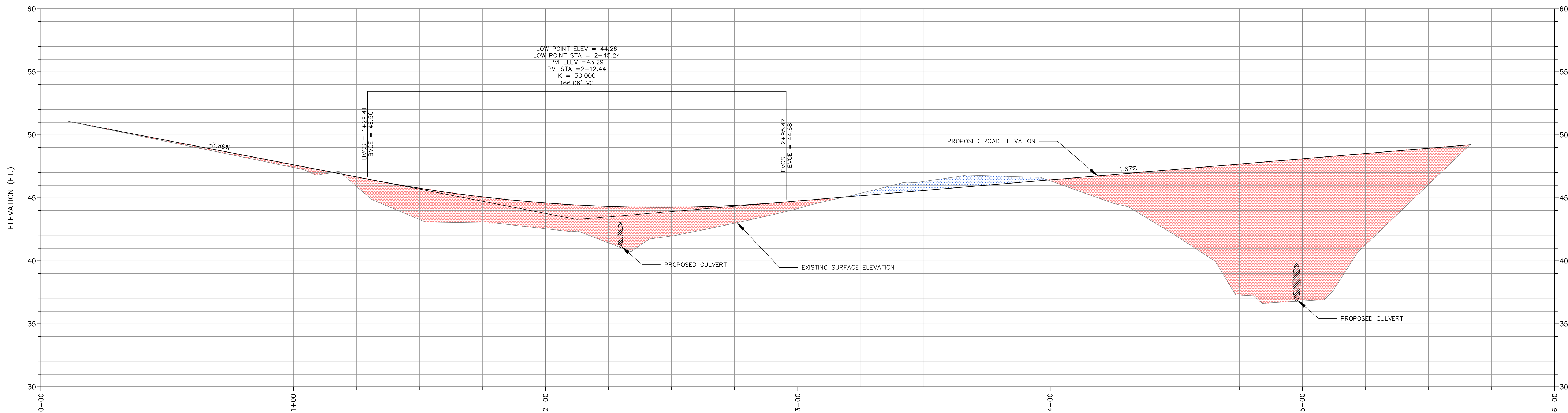
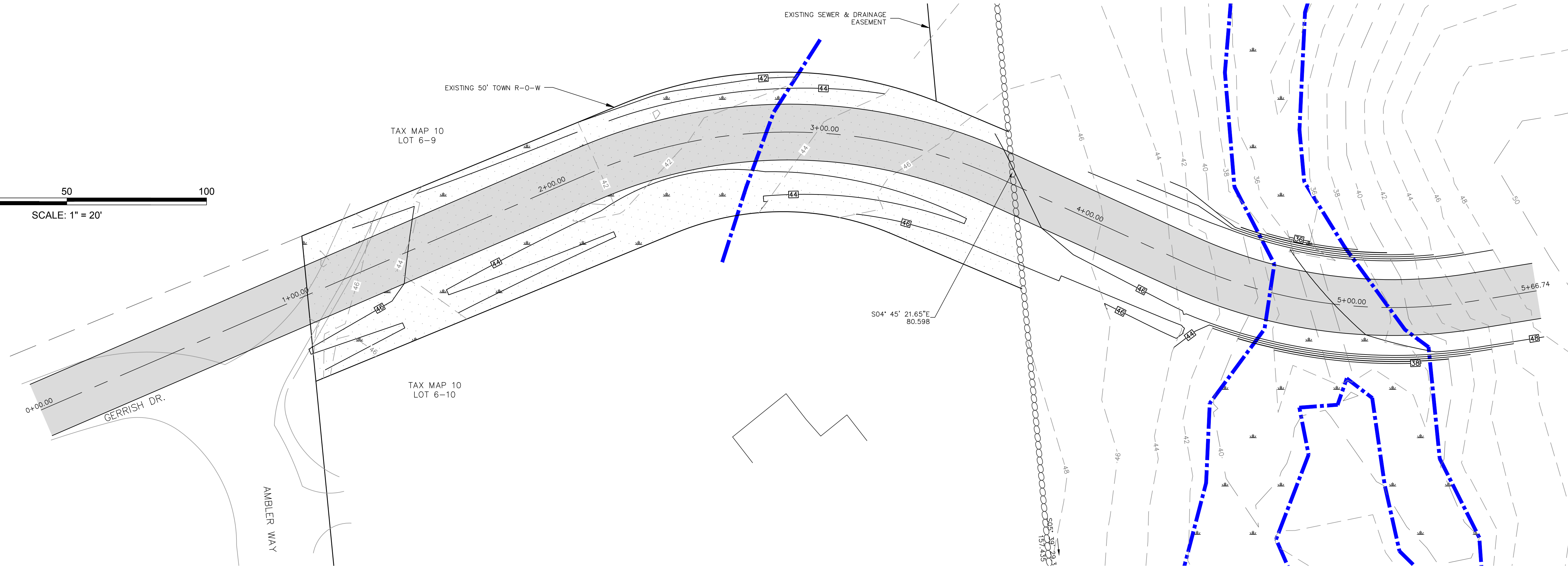
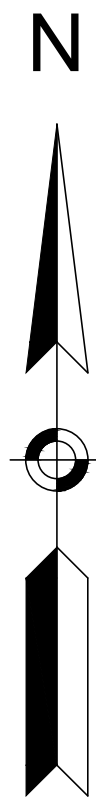
Subject: Comments Re: Cheney-Merrick Development

1. Station 10 + 25: Approximately a 70° curve between a 5% and an 8% grade.
2. Drainage easement through entire Development should be submitted with street deed.

This should be a temporary 40' construction easement; 25' permanent easement for the present natural drainage of surface water and the feasibility of a future sewer line easement accessible to Lots Nos. 1, 2, 3, 17, 18, 19, 16, 15, 14, and 10.

3. Water pressure on the one or two highest lots is expected to be no better than 30 pounds. While this is adequate, I feel that this should be noted in the record so that a future home owner would be placed in at least a "buyer beware" situation.
4. The hydrant at 18 + 20 should be at 16 + 40 so that all properties are within 500'.
5. The developer proposes the use of Class 150 AC pipe. While this is sufficient, I point out that most of the Town system is cement lined cast iron, and it is less apt to cause problems in Durham type soils.
6. Declaration re: private utilities -- If overhead, located on final plan with future lights positioned.
7. Station 14 + 50 indicates 6-7' cut at centerline. The circle, however, is another 5' +, making either an unacceptable grade or a cut in excess of 11-1/2 feet. This appears to be an attempt to get around the 150' lot frontage requirement by designing, building and maintaining excess street, and if possible should be waived.
8. Rights of way with time-lock should be deeded to Town. Principle street should be designated on the plan as a future residential collector street.
9. The Plan should include a future sewer feasibility study.

10. Locate Hadbury T. line.



PROPOSED ROAD PROFILE  
SCALE: 1"=20'H 1"=4'V

DATE: 1/8/20		SEAL		PRELIMINARY PLAN & PROFILE		MJS ENGINEERING, P.C. CIVIL - STRUCTURAL - ENVIRONMENTAL 5 RAILROAD ST., SUITE 209 DURHAM, NH 03824 PHONE: (603) 659-4579, FAX: (603) 659-4627 E-MAIL: MJS@MJS-ENGINEERING.COM	
SCALE: 1"=20'				prepared for			
DESIGNED BY: MJS				MICHAEL & MARTHA MULHERN			
DRAWN BY: MCS				MAP 10, LOT 8-6			
APPROVED BY: MJS				91 BAGDAD ROAD			
DWG FILE: 19063_CivilG_ALI.dwg				DURHAM, NH 03824			
NO.		REVISIONS		DATE		INT.	
0.		INITIAL SUBMISSION TO TOWN OF DURHAM		1/18/20		MCS	







TOWN OF DURHAM  
8 NEWMARKET ROAD  
DURHAM, NH 03824  
Tel: 603/868-5577  
Fax: 603/868-1858

AGENDA ITEM:

# **12B**

DATE: January 13, 2020

## COUNCIL COMMUNICATION

**INITIATED BY:** David L. Kurz, Police Chief

**AGENDA ITEM:** FIRST READING ON ORDINANCE #2020-05 AMENDING CHAPTER 153 "VEHICLES & TRAFFIC", SECTION 153-34 OF THE DURHAM TOWN CODE BY REDUCING THE SPEED LIMIT ON A SECTION OF PACKERS FALLS ROAD BETWEEN SULLIVAN FALLS ROAD AND THE NEWMARKET TOWN LINE FROM 35MPH TO 30MPH

**CC PREPARED BY:** David L. Kurz, Police Chief

**PRESENTED BY:** David L. Kurz, Police Chief

### **AGENDA DESCRIPTION:**

This ordinance will amend the speed limit on Packers Falls Road, which is currently 35MPH the entire length from Lee to Newmarket, to 30MPH commencing at the intersection of Sullivan Falls Road southerly to the Newmarket Town line. The remaining section from the Lee town line to Sullivan Falls Road will remain at the current speed of 35MPH. This amendment is motivated by a neighborhood concern regarding sight distance for their private driveway where a fatal motorcycle accident occurred in the immediate vicinity. While the sight distance issue was not a causation factor in the accident, it did propel the neighborhood to highlight their concerns to the Traffic Safety Committee.

At the Traffic Safety Committee meeting on October 15, 2019, the committee was unanimous in its recommendation. Due to a full calendar schedule involving budget deliberations this item was delayed until January for Council consideration. A letter has been sent to all residents on Packers Falls Road notifying them of the proposed Council action and the relevant dates for Council consideration so there would be an awareness to participate in Council discussion if they so desire.

### **LEGAL AUTHORITY:**

The Town Council may enact Ordinances pursuant to Section 3.8 of the Durham Town Charter.

**LEGAL OPINION:**

No legal opinion was sought, as this is the standard format for ordinances of this type to be issued.

**FINANCIAL DETAILS:**

Two (2) 30MPH signs will be ordered at \$78.40 each for a total of \$156.80 with the potential need of two (2) galvanized posts at a cost of \$81.12 for a total of \$237.92

**SUGGESTED ACTION OR RECOMMENDATIONS:**

**MOTION:**

*The Durham Town Council does hereby move on First Reading (as presented) (as amended) Ordinance #2020-05 amending Chapter 153 "Vehicles & Traffic", Section 153-34 of the Durham Town Code by reducing the speed limit on a section of Packers Falls Road between Sullivan Falls Road and the Newmarket Town line from 35MPH TO 30MPH and schedules a Public Hearing for Monday, February 3, 2020.*



## ORDINANCE #2020-05 OF DURHAM, NEW HAMPSHIRE

### AMENDING CHAPTER 153 "VEHICLES AND TRAFFIC", SECTION 153-34 "SCHEDULE II: SPEED LIMITS" OF THE DURHAM TOWN CODE BY REDUCING THE SPEED LIMIT ON A PACKERS FALLS ROAD FROM 35 MPH TO 30 MPH

WHEREAS, there is significant vehicular traffic on Packers Falls Road; and

WHEREAS, there are a number of private driveways with less than perfect sight distance onto Packers Falls Road; and

WHEREAS, there is significant pedestrian, jogging, and bicycle activity on this rural roadway; and

WHEREAS, these adjustments are being requested by a number of residents of the neighborhood; and

WHEREAS, the Traffic Safety Committee is unanimous in their recommendations that the posted speed limits of 35 mph be reduced to 30 mph upon this section of Packers Falls Road; and

WHEREAS, the Durham Town Code establishes the speed for every street within Durham,

NOW, THEREFORE BE IT RESOLVED that the Durham Town Council, the governing and legislative body of the Town of Durham, New Hampshire does hereby adopt Ordinance #2020-05 and does hereby amend Chapter 153 "Vehicles & Traffic", Section 153-34 "Schedule II: Speed Limits" of the Durham Town Code by reducing the speed limit on a section of Packers Falls Road between Sullivan Falls Road and the Newmarket Town line from 35 MPH to 30 MPH. Wording to be omitted is annotated with ~~striketrough~~ type. New wording is annotated with underscoring.

---

#### 153-34. Schedule II: Speed limits.

In accordance with the provisions of 153-4, speed limits other than thirty (30) miles per hour are established as indicated upon the following streets or parts of streets:

<b>Name of street</b>	<b>Speed limit (mph)</b>	<b>Location</b>
Bagdad Road	25	Entire length
Bay Road	35	Entire length
Bayview Road	25	Entire length
Beech Hill Road	35	Entire length
Bennett Road	35	Entire length
Burnham Ave	25	Entire length
Canney Road	25	Route 108 to Madbury Town line
Cedar Point Road	25	Entire length
Chesley Drive	25	Entire length
Coe Drive	25	Entire length
Colony Cove Road	35	Entire length
Cowell Drive	25	Entire length
Croghan Lane	25	Entire length
Cutts Road	25	Entire length
Dame Road	25	From Durham Point Road to the Newmarket Town line
Davis Avenue	25	From Edgewood Rd to Fairchild Dr.
Denbow Road	25	Entire length
Dennison Road	25	Entire length
Durham Point Road	35	Entire length
Edgewood Road	25	Entire length
Emerson Road	25	From Madbury Rd. to the intersection of Bagdad Rd.
Faculty Road	25	Entire length
Fairchild Drive	25	All from Davis Ave. to the cul-de-sac
Ffrost Drive	25	Entire length
Garden Lane	25	Entire length
Garrison Avenue	25	Entire length
Glassford Lane	25	Entire length
Hamel Drive	25	Entire length
Hampshire Avenue	25	Entire length
Hoitt Drive	25	Entire length
Jenkins Court	25	Entire length
Langley Road	35	Entire length
Littlehale Road	25	Entire length
Longmarsh Road	35	Entire length
Lundy Lane	25	Entire length
McGrath Road	25	Entire length
Madbury Road	25	Main Street to Edgewood Road

<b>Name of street</b>	<b>Speed limit (mph)</b>	<b>Location</b>
Main Street	25	Between Route 108 and Mast Road
Main Street	25	Between College Brook Road and Gables Residence Access Rd.
Maple Street	25	Entire length
Mast Road Extension	25	Entire length
Meadow Road	25	Entire length
Mill Pond Road	25	Entire length
Mill Road	35	From Woodridge Rd. to Packers Falls Rd.
Mill Road	25	From Main Street to Woodridge Rd.
Old Landing Road	25	Entire length
Old Piscataqua Road	25	Entire length
Oyster River Road	25	Entire length
Packers Falls Road	35	<b>Entire length</b> <u>Between Lee Town line and Sullivan Falls Rd.</u>
<u><b>Packers Falls Road</b></u>	<u><b>30</b></u>	<u>Between Sullivan Falls Rd. and Newmarket Town line</u>
Palmer Drive	25	Entire length
Park Court	25	Entire length
Pettee Brook Lane	25	Main St. from College Rd. to Newmarket Rd. and from Main St. to Garrison Ave.
Pinecrest Lane	25	Entire length
Rocky Lane	25	From Fairchild Dr. to cul-de-sac
Rosemary Lane	25	Entire length
Sauer Terrace	25	Entire length
Schoolhouse Lane	25	Entire length
Scotland Road	25	Entire length
Stagecoach Road	25	Entire length
Strafford Avenue	25	Entire length
Sunnyside Drive	25	Entire length
Thompson Lane	25	Entire length
Tom Hall Road	25	Entire length
Valentine Hill Road	25	Entire length
Wednesday Hill Road	35	Entire length
Wiley Road	25	Entire length
Wine Cellar Road	35	Entire length
Wiswall Road	35	Entire length
Wood Road	25	Entire length

<b>Name of street</b>	<b>Speed limit (mph)</b>	<b>Location</b>
Woodman Drive	25	Entire length
Woodman Road	25	Entire length
Young Drive	25	Entire length

**PASSED AND ADOPTED** this \_\_\_\_ day of \_\_\_, **2020** by a majority vote of the Durham Town Council with \_\_\_\_\_ affirmative votes, \_\_\_\_\_ negative votes, and \_\_\_\_\_ abstentions.

\_\_\_\_\_  
Katherine Marple, Chair  
Durham Town Council

**ATTEST:**

\_\_\_\_\_  
Lorrie Pitt, Town Clerk-Tax Collector



TOWN OF DURHAM  
8 NEWMARKET ROAD  
DURHAM, NH 03824  
Tel: 603/868-5571  
Fax: 603/868-1858

AGENDA ITEM:

# **12C**

DATE: January 13, 2020

## COUNCIL COMMUNICATION

**INITIATED BY:** David L. Kurz, Police Chief

**AGENDA ITEM:** FIRST READING ON ORDINANCE #2020-06 CREATING A NEW CHAPTER, CHAPTER 88 "OFF HIGHWAY RECREATIONAL VEHICLES" IN THE DURHAM TOWN CODE PROHIBITING OFF HIGHWAY RECREATIONAL VEHICLES (ORRV) FROM TRAVERSING TRAILS ON TOWN PROPERTY DESIGNED FOR PEDESTRIAN ACTIVITY

**CC PREPARED BY:** David L. Kurz, Police Chief

**PRESENTED BY:** David L. Kurz, Police Chief

### **AGENDA DESCRIPTION:**

Several concerns by hikers, joggers and mountain bicyclists, who have encountered motorized vehicles on trails traversing Durham property, have been reported to the Durham Police. Many of these encounters were described as harrowing and upsetting as the hikers attempted to walk through pristine woodlands to enjoy the solace and simply "get away". There are currently no prohibitions for any Off-Highway Recreational Vehicles (OHRV) from being on any Durham owned property which this amendment rectifies.

The proposed amendment for consideration by the Town Council has been vetted by Town staff as well as legal counsel.

### **LEGAL AUTHORITY:**

The Town Council may enact Ordinances pursuant to Section 3.8 of the Durham Town Charter.

### **LEGAL OPINION:**

The sample ordinance presented to the Town Council was fully vetted by Town Attorney Laura Spector-Morgan.

**FINANCIAL DETAILS:**

There are no direct financial implications for this proposed amendment. However, the oversight and management of the registration will have implications for the Durham Police Department.

**SUGGESTED ACTION OR RECOMMENDATIONS:**

**MOTION:**

*The Durham Town Council does hereby move on First Reading Ordinance #2020-06 (as presented) (as amended) Creating a New Chapter, Chapter 88 "Off Highway Recreational Vehicles" in the Durham Town Code prohibiting Off Highway Recreational Vehicles (ORRV) from traversing trails on Town property designed for pedestrian activity and schedules a Public Hearing for Monday, February 3, 2020.*



## **ORDINANCE #2020-06 OF DURHAM, NEW HAMPSHIRE**

**CREATING A NEW CHAPTER IN THE TOWN OF DURHAM CODE, CHAPTER 88 "OFF HIGHWAY RECREATIONAL VEHICLES (OHRV) ON TOWN PROPERTY", PROHIBITING THE USE OF THESE TYPES OF VEHICLES FROM TRAVERSING TRAILS ON TOWN PROPERTY DESIGNED FOR PEDESTRIAN ACTIVITY**

**WHEREAS**, an Off-Highway Recreational Vehicle (OHRV) has the ability to maneuver quickly they pose dangerous encounters on trails shared with hikers, joggers and other pedestrians; and

**WHEREAS**, OHRV operations on trails designed for hiking, jogging and other pedestrian can significantly damage the trail itself; and

**WHEREAS**, the Town of Durham has no regulations that would prohibit an OHRV from operating on town property intended and designed for foot traffic only; and

**WHEREAS**, there has been numerous reported encounters of pedestrians with OHRV on Town of Durham owned hiking trails,

**NOW, THEREFORE BE IT RESOLVED** that the Durham Town Council, the governing and legislative body of the Town of Durham, New Hampshire does hereby adopt Ordinance #2020-06 and does hereby amend Chapter 153 "Vehicles & Traffic", Section 153-34 creating a new chapter, Chapter 88 "Off Highway Recreation Vehicles (OHRV) on Town Property" in the Durham Town Code prohibiting Off Highway Recreational Vehicles (ORRV) from traversing trails on town property designed for pedestrian activity. Wording to be omitted is annotated with ~~striketrough~~ type. New wording is annotated with underscoring.

---

### **CHAPTER 88**

#### **OFF HIGHWAY RECREATION VEHICLES (OHRV) ON TOWN PROPERTY:**

**No person shall operate any Off-Highway Recreational Vehicle (OHRV) on any property owned by the Town of Durham**

#### **88-1. Authority**

This ordinance has been enacted pursuant to the authority granted the Durham Town Council by NH RSA 41:11-a (Town Property), which allows the Durham Town Council to adopt ordinances to regulate the use of Town owned lands.

#### 88-2. Purpose and Intent

- To protect the users of Town property from physical injury that may result from the unrestricted operation of motor vehicles at these locations.
- To prevent damage to Town property including playing fields, trails, parking areas, steep slopes, wetlands, activity areas and other improvements, thereby reducing the cost to the taxpayers of Durham for operating and managing these facilities.
- To prevent soil erosion, damage to vegetation and turf, and other injury to the environment.
- To reduce the risk of fire from motorized vehicles on Town property.
- To reduce the amount of unwanted noise, dust and flying debris.
- To encourage indigenous wildlife to inhabit Durham's conservation areas.
- To protect the use and enjoyment of these areas for the users of these areas.
- To limit the Town's exposure to liability for any injuries that might result from the unrestricted operation of motor vehicles on Town property.

#### 88-3. Definitions

"Off Highway Recreational Vehicle (OHRV)" shall mean any and all liquid petroleum, gasoline, propane or electrically powered vehicles which travel on one or more wheels or tracks, including but not limited to All-Terrain Vehicles (ATVs), Off Highway Recreational Vehicles (OHRVs), Utility Terrain Vehicles (UTVs), and trail bikes as defined by RSA 215-A:1, as well as snowmobiles.

Such vehicles shall *not* include:

- Wheeled devices typically designed and intended for use by, and operated by the handicapped which were not originally manufactured as motor vehicles such as trail bikes or ATVs;
- Maintenance and repair equipment operated by or with the authorization of the Town of Durham;

- Any emergency vehicles operated by or under the direction of the Durham Police, Fire, and/or McGregor Ambulance service as well as similar vehicles of local, State or federal government agencies conducting similar activities;

“Town-owned Land” shall mean any and all land acquired by the Town of Durham whether by purchase, gift, tax deeding, or any other means in accordance with the laws of the State of New Hampshire, which may include but not be limited to recreational facilities and sports fields.

#### **88-4. Penalties**

The penalty for the violation of this ordinance shall be a fine not to exceed one hundred dollars (\$150.00) for each instance.

**PASSED AND ADOPTED** this \_\_\_\_ day of \_\_\_, **2020** by a majority vote of the Durham Town Council with \_\_\_\_\_ affirmative votes, \_\_\_\_\_ negative votes, and \_\_\_\_\_ abstentions.

\_\_\_\_\_  
Katherine Marple, Chair  
Durham Town Council

**ATTEST:**

\_\_\_\_\_  
Lorrie Pitt, Town Clerk-Tax Collector

AGENDA ITEM: **#12D**

DATE: January 13, 2020

## COUNCIL COMMUNICATION

**INITIATED BY:** Durham Town Council

**AGENDA ITEM:** BEGIN THE ADMINISTRATOR'S ANNUAL PERFORMANCE EVALUATION PROCESS FOR 2019 IN ACCORDANCE WITH THE EMPLOYMENT AGREEMENT BETWEEN THE ADMINISTRATOR AND THE TOWN OF DURHAM

**CC PREPARED BY:** Todd I. Selig, Administrator

**PRESENTED BY:** Todd I. Selig, Administrator

**AGENDA DESCRIPTION:**

Pursuant to Section 17 of Administrator Selig's Employment Agreement (**attached**) [which was specifically requested to be included in the Employment Agreement by Mr. Selig] with the Town:

"Commencing in April of 2017, and each succeeding April thereafter, the Town Council and Selig shall mutually establish goals and objectives [*these are the approved 2019/2020 Town Council goals*] which they deem necessary and appropriate for the proper management of the Town during the succeeding twelve (12) months. Such goals and objectives shall be committed to writing and formally adopted by the Town Council. . . Commencing in January 2018, and for each January thereafter, the Town Council shall review/evaluate Selig's performance in accord with the criteria provided to Selig by the Town the preceding April. The Town Council shall provide Selig with a written summary of this Annual Performance Evaluation and shall provide Selig with an opportunity to discuss this evaluation with the Town Council."

Over each of the last many years of Mr. Selig's service, the Council has utilized varying approaches to fulfilling this contractual requirement. In 2012 the Council began utilizing a one-page evaluation form/matrix (**attached**) outlining key elements of importance and ranking the administrator's performance (on a scale of 1 to 5) for each of these elements which included five categories: Ability to maintain or improve strong relationships, Financial oversight, Leadership, Initiative, and Other. Rankings included: 5=Excellent, 4=Very Good, 3=Good, 2=Acceptable, 1=Unacceptable.

Unless during its discussion on Monday evening the Council decides to use another evaluation process, Administrator Selig recommends using the same format as last year with the objective being to develop a consensus of the Council regarding the performance of the Administrator over the course of the previous year and to offer collective guidance (one voice to the extent possible) for the upcoming year.

Using this process, Council members will be provided with the matrix via email in Microsoft Word format by January 15, 2020. Councilors will then have until **Friday, January 31<sup>st</sup>** to return their responses electronically to Council Kitty Marple. Chair Marple will then compile the responses for distribution to Councilors electronically in advance of the February 17<sup>th</sup> Council meeting at which time the Council and Mr. Selig would discuss the results.

**Attached** for the Council's information is a **timeline** developed initially by Councilor Burton and approved by the Council in 2014 which illustrates the process that will be followed throughout the year relating to Administrator Selig's annual evaluation. Also **attached is a "year-end wrap up"** prepared by Mr. Selig, as well as a **quarterly goal progress report dated 12/31/19**.

In accordance with Mr. Selig's Employment Agreement, the term of his employment *"shall be for a period of nine (9) years (except as it may be modified as explained herein) commencing January 1, 2017 and ending December 31, 2025."* Mr. Selig's compensation is outlined in the Employment Agreement dated 4/3/17 (**attached**).

#### **LEGAL AUTHORITY:**

Article 4 "Administration of Government", Section 4.1 of the Durham Town Charter:

"The chief administrative officer of the town shall be the Town Administrator (hereinafter called the "Administrator"), who shall be a full-time regular employee of the Town. The Council shall appoint a person especially qualified by experience and training, who receives the votes of at least five (5) members of the Council, to be Administrator. The Administrator shall serve at the pleasure of the Council, which will fix the Administrator's salary and terms of employment."

Article 4 "Administration of Government", Section 4.3 of the Durham Town Charter:

"The Administrator may be reprimanded or removed for cause by the affirmative vote of at least six (6) members of the Council as herein provided. At least thirty (30) days before the proposed reprimand or removal of the Administrator, the Council shall adopt a resolution stating its intention to reprimand or remove him, the reasons therefor and an effective date. A copy of the resolution shall be served forthwith on the Administrator, who may, within ten (10) days, demand a public hearing, in which event the Administrator shall not be reprimanded or removed until such public hearing has been held. Upon or after passage of a resolution of intent to remove, the Council may suspend the Administrator from duty, but his pay shall continue until removal. In case of such suspension, the Council shall, by the affirmative vote of the

Council, appoint an Acting Administrator to serve at the pleasure of the Council for not more than ninety (90) days. The action of the Council in removing the Administrator shall be final."

In addition to the above Charter provision, Section 14 of the Employment Agreement also addresses termination of the Administrator, as follows:

**14. Termination.**

**A. By the Town with Cause.** This Agreement may be terminated by the Town for cause, in accord with the provisions of Section 4.3 of the Town Charter, if Selig willfully breaches or habitually neglects the duties to be performed under Paragraph 2 of this Agreement; engages in dishonest conduct; or for the conviction of any crime for which the punishment involves incarceration.

**B.** In the event Selig's employment is terminated pursuant to subparagraph A, Selig shall be entitled to his base salary compensation earned prior to the date of termination (minus all appropriate federal, state and authorized withholdings), as provided for in Paragraph 4 of this Agreement, computed pro rata up to and including the date of termination, as well as any other benefits to which he may be entitled as a matter of law.

**C. By Selig.** This Agreement may be terminated by Selig, without cause, by giving eight (8) months' notice to the Town.

**D. By the Town without Cause.** In the event that this Agreement is terminated by the Town for reasons other than those outlined in subparagraph A above, the Town shall be responsible for the payment to Selig of one (1) full year's base salary (minus all appropriate federal, state and authorized withholdings) plus all benefits (or their monetary equivalent) accrued during that one (1) year period regardless of the length of the remaining term of this Agreement.

Article II, "Administrative Organization", Section 4-4 of the Administrative Code":  
"The chief administrative officer of the town shall be the Town Administrator ("Administrator"), who shall be appointed by the Council based upon his training and experience. The Administrator shall serve at the pleasure of the Council, who will also establish his compensation and terms of employment."

**LEGAL OPINION:**

N/A

**FINANCIAL DETAILS:**

N/A

**SUGGESTED ACTION OR RECOMMENDATIONS:**

Begin discussion concerning Administrator Selig's 2019 annual performance evaluation.



**ANNUAL EVALUATION OF TODD SELIG  
2019**

**1 = Unacceptable      2 = Acceptable      3 = Good      4 = Very Good      5 = Excellent**

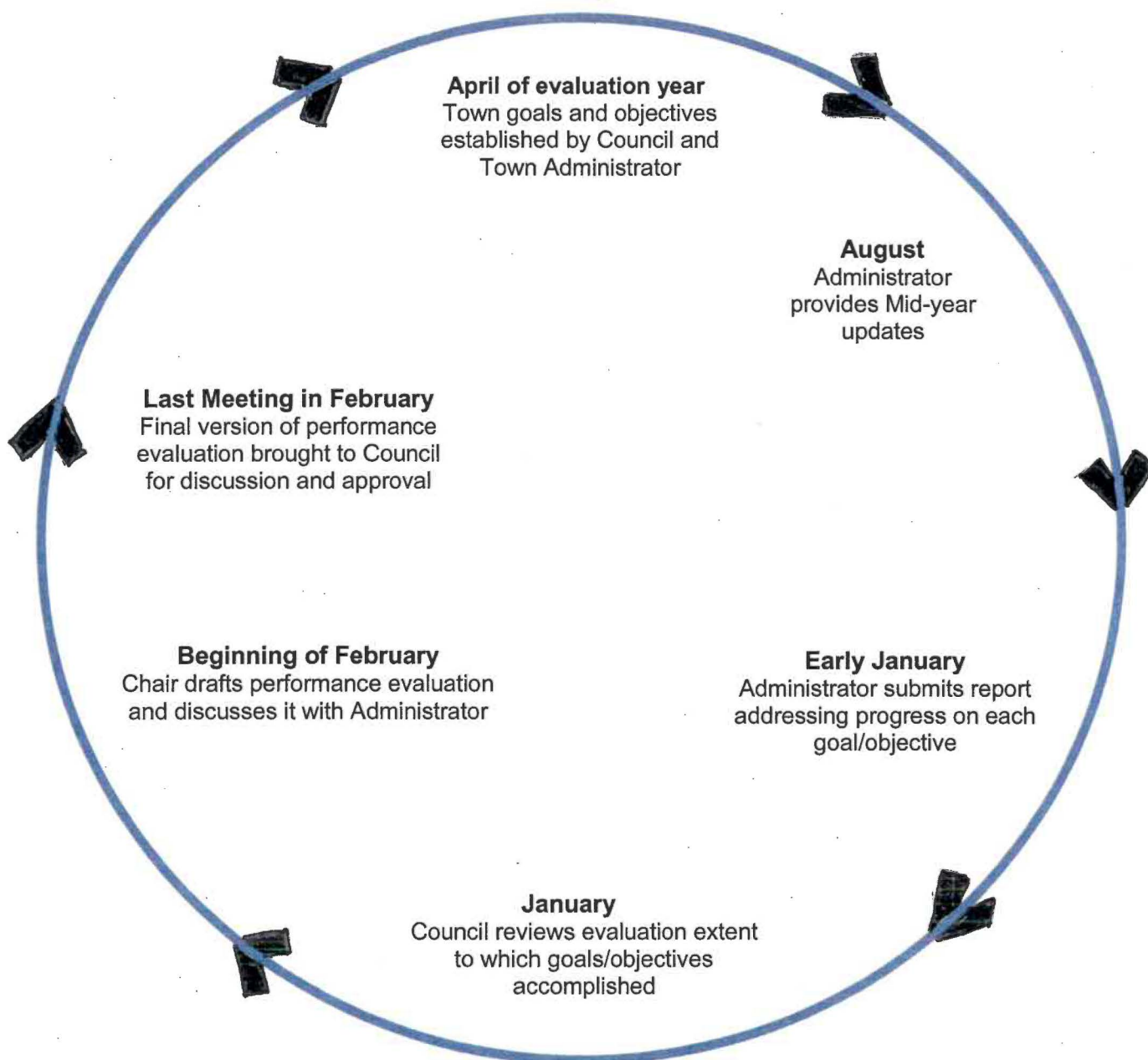
	1	2	3	4	5	N/A
Ability to maintain or improve strong relationships with:						
• Town Council (responsiveness to concerns)						
• External entities such as UNH, town businesses, etc.						
• Town department heads and staff						
• Town committees and boards						
• Serves citizens effectively and efficiently						
Financial oversight:						
• Financial performance of the Town						
• Fiscal responsibility						
• Budget (process, preparation, dissemination)						
• Budget (creation of budget within Council guidelines)						
• Accomplishment of meaningful modifications in the economic relationship with UNH						
Leadership:						
• Provides clear guidance to the Council on all issues						
• Provides effective management of town staff and departments						
• Improves the performance of town staff, when needed. When necessary, has removed individuals who have failed to perform consistent with their job description and/or compensation						
• Competency in human resource area with new hires during his administration						
• Provides leadership and support to town committees and boards as necessary.						
Initiative:						
• Proposes appropriate initiatives/strategic direction to the Council						
• Is timely in follow up reports to Council initiatives						
• Accomplishment of Council's goals and objectives						
• Ability to be a visionary for future community planning						
Other:						
• Appropriately challenges the status quo						
• Willingness to challenge and support his convictions						
• Appropriate allocation of time and energies, including delegating non-essential tasks						

Provide additional written evaluation below or separately if you wish. **Evaluation forms are due to Kitty Marple not later than FRIDAY, JANUARY 31, 2020.**



# Town of Durham

## Town Administrator Performance Evaluation Process



Town of Durham  
Year End Wrap Up for 2019

Todd Selig, Administrator

12/31/19

Town staff, elected, and appointed officials are working to address community needs, control costs, and maintain the municipality's fiscal position despite many competing pressures. From preserving the quality of life within our traditional residential neighborhoods, to grappling with human rights and societal issues, to managing development pressures, to exploring new ways to address solid waste and recycling amidst market headwinds, to striving to be sustainable on numerous fronts, many individuals have collectively worked diligently on behalf of the community in 2019.

Moody's Investors Services reported on Nov. 5, 2019 that the credit position for Durham is very good. Its Aa2 rating is slightly higher than the median rating of Aa3 for cities nationwide. The notable credit factors include a strong financial position, a very strong wealth and income profile, and a modestly sized tax base. The Town has a strong financial position, which is relatively favorable in comparison to Durham's assigned rating of Aa2. The Town's cash balance as a percent of operating revenues (88.4%) far exceeds the US median and it remained stable between 2014 and 2018. Additionally, Durham's fund balance as a percent of its operating revenues (30.3%) is consistent with that of other Moody's-rated cities nationwide. These indices are all indicative of measured success in realizing the Town's fiscal goals.

The Town Council's goals in 2019 envisioned developing a General Fund budget for FY 2020 that would keep the local municipal portion of the tax rate unchanged at \$7.60. The tax rate had previously remained at \$7.37 for 2015, 2016, 2017, and 2018. Through a very deliberative budget process this ultimately proved infeasible as a result of little new revenue or additional taxable value coming on line. Yet even so, the Council, working with staff, was able to bring the projected 2020 budget in at an increase of 19 cents or 2.5%. This change is estimated to cost the average Durham property taxpayer with a home valued at \$350,000 an additional \$66.50 in Town taxes per year.

Our weekly "Friday Updates" continues to keep the Town Council and members of the community informed of news and happenings in Durham. Nearly 3,300 individuals subscribe to this weekly broadcast. Durham also continues to bolster its Twitter and Facebook presence in order to meet the demands of residents' changing preferences for information distribution. Our goal is to keep residents informed of local affairs so they may become engaged when issues are of interest/importance to them.

Oyster River School District Superintendent of Schools James Morse and I continue to work to remain in regular communication with one another regarding issues of mutual interest/concern. It is important to note as well that Town Councilors Kenny Rotner and Allan Howland are also members of the ORCSD School Board, and in this

way ensure there is good communication between Durham and the ORCSD School Board relative to issues of mutual interest. The ORCSD and the Durham have remained in close contact throughout the design process for the proposed new middle school project/bond issue, which the voters will take up at the polls in March 2020. Collaboration has included the Durham Energy Committee in suggesting strategies to make the proposed new facility as green as feasible, as well as partnership with public safety staff concerning traffic patterns, bicycle routes, and pedestrian walkways around the proposed facility.

Durham again received the top ranking score in NH by the Human Rights Campaign's Municipal Equity Index relative to addressing GLBT-Q concerns. We sponsored programming celebrating Indigenous Peoples' Day in 2019. The Town Council and its appointed Winter Celebration Committee endeavored to thoughtfully address the issue of the annual Tree Lighting in Memorial Park, renamed Frost Fest in 2019, which sparked a wider conversation about inclusivity within the context of the Town's annual celebration. Finally, new welcoming roadway signage was installed at the various entrances to Durham in 2019 with the statement, "A Welcoming Community."

Indeed, we are a community that truly welcomes and encourages citizen involvement/engagement, and visitors from the around the world continue to visit Durham to learn from our efforts as part of World Affairs Council of N.H. programming in conjunction with the U.S. State Department Bureau of Visitor Affairs. In many respects, we have the privilege of discussing challenging topics in Durham in part due to the openness of our local government and in part due to the talented staff and Town Councilors who work tirelessly to keep the municipality prudently managed and on an even keel, allowing citizens to focus their efforts on deeper social, quality of life, and aspirational issues.

Over the last year, Durham has continued to pursue Long-Term Economic as well as Environmental Sustainability, which are inextricably linked. Without economic sustainability, the Town will not have the financial resources available over the long-term to stabilize the tax rate, pursue desired projects or necessary municipal infrastructure enhancements, preserve open space, etc. Without a healthy natural environment, we will not sustain the Durham in which residents hope and desire to live, work, and play. Both the 2011 and 2017 Master Plan processes indicate residents of the community seek balance.

Due in large part to the efforts of long-time Durham resident (and retired UNH Professor) Dennis Meadows and a number of other dedicated volunteers, as well as closely coordinated efforts between the Town and the ORCSD, we've just closed on a 40-acre parcel along the Oyster River (utilizing private donations). We hope to successfully raise additional funds through grants and private donations which will allow us to build a small pedestrian bridge spanning the river, directly linking downtown Durham, our Faculty Neighborhood, and the UNH core campus to 2,000 acres of conservation land – creating an easily accessible future natural oasis for residents on future hot 100 + degree days resulting from the anticipated impacts of climate change.

Projected sea level rise will contribute in the years ahead to the gradual inundation of coastal areas. We're already seeing it -- and are responding locally. Interested Durham residents were given the opportunity to join other volunteers in late-July of this year for a day of planting a brand new living shoreline at the Town's Wagon Hill Farm. Completed last month, we now have 350 feet of shoreline restored, re-graded, armored with natural hard and soft-scape materials, and planted to restore the salt marsh and tidal buffer that has eroded over time. It's a project that has taken 4+ years of design and close collaboration between the Town, state/Federal regulators, the NHDES Coastal Program, the Harbor Master, the Strafford Regional Planning Commission, and UNH environmental researchers utilizing around \$500,000 in local and state grant funds. We believe it will become a regional demonstration project for living shorelines, and an additional \$213,765 (budgeted in the 2020 CIP from Eversource) is now targeted for 2020/21 utilizing monies negotiated with Eversource, along with what we hope will be a second round of Aquatic Resource Mitigation (or ARM) funding to extend the shoreline stabilization farther along the property boundary.

Durham is working with the Strafford Regional Planning Commission utilizing NHDES funding to study the potential impact of sea level rise on fresh water private wells within the community. It's an interesting initiative focusing on an issue that, until now, has literally been out of site and out of mind.

Since 2012, Durham has been successful in moving forward a municipal construction program to replace/renovate aged public infrastructure resulting in a new state of the art public library, newly renovated police station, ongoing improvements to our water and wastewater systems, and a new Town Hall receiving LEED Silver certification. **The Oyster River Cooperative School District is proposing a state of the art new middle school along Coe Drive for the voters to consider in March 2020. Meanwhile the Town Council has approved incremental enhancements to the Churchill Rink, which will enable that facility to serve the community more effectively and efficiently into the future.** Our philosophy is that if we want local developers, private citizens and businesses to meet new construction standards that provide adaptation and resilience, Durham has to set the example.

As of this fall, a newly installed backup generator at the Town Hall now means that all of our public buildings and critical infrastructure are able to operate on emergency backup generation during power outages.

Over the years, Durham has replaced all of its roadside and decorative street lighting with energy efficient LED fixtures. We've installed, under an umbrella power purchase agreement (or PPA), 120 kW of solar capacity at our police station, the public library, and Churchill Rink. This was followed up with a 640 kW solar array at our gravel pit in Lee, NH. Together, these efforts have allowed Durham to offset 100% of the electric demand of all municipal infrastructure with renewable power with the exception of our wastewater treatment plant. We hope to find a green solution for powering the WWTP in the years to come as technology continues to evolve and opportunities present themselves.



Crosswalk improvements, pedestrian pathway modifications, incentivizing new downtown mixed-use development within walkable proximity to the UNH campus, painstaking traffic planning, demand management parking enhancements, bicycle infrastructure, and a system of sharrows all make it possible to get around Durham and the UNH campus more safely, easily, and resiliently while lowering our carbon footprint. We're currently evaluating the introduction of micromobility devices (e-bikes/e-scooters) and determining what policies will be needed to manage such a program safely and effectively.

We have painstakingly worked over many years to create a municipal water system that is inherently resilient in order to reliably provide approximately 1.2 million gals/day of water to both town and campus. Together, Durham/UNH operate four water sources, one of which utilizes an artificial recharge system pumping raw water from the Lamprey River to our Spruce Hole Aquifer in Lee during times of plentiful flow, increasing our reserves for drought conditions. A new \$20 million Water Treatment Plant on the UNH campus is nearing completion, which will deploy state of the art technology – replacing an aged/outdated facility, for the benefit of UNH and Durham water users alike.

On an extremely creative note, the Town partnered in 2019 with the Strafford Regional Planning Commission, UNH Cooperative Extension, and Northeastern University Art Professor Tom Starr on a grant-funded project that conveys the potential impacts of climate change on the collective Durham community looking ahead into the next 100 years. We've identified strategic locations around town to highlight, have developed a description, map, and signage featuring an innovation or impact associated with climate change that is not only plausible, but likely to occur at the identified location if actions are not taken today to achieve a different collective tomorrow.

Through the efforts of Ellen Snyder, our part-time contract Land Stewardship Coordinator, and the Land Stewardship Subcommittee of the Conservation Commission, we have at long last made significant inroads in properly managing the numerous lands and easements under the Town's stewardship. The Council also established the Durham Town Land Stewardship Patron's Trust in 2018 to enable citizens or organizations to donate money to support our local conservation land management efforts, rather than relying solely on tax dollars for this purpose. These monies, as well as the Conservation Fund under the oversight of the Conservation Commission, have provided an ongoing source of modest funding to move targeted stewardship initiatives forward.

The Town and UNH, through the joint administrative Water, Wastewater, Stormwater, and Roads Committee, continue to address a multitude of Town/Gown items to include efficient operation of our water combined system, focusing attention on water quality deficiencies within the Great Bay Estuary (nitrogen) as identified by the NHDES and the EPA, meeting EPA wastewater and stormwater MS-4 mandates (a draft Total Nitrogen General Permit will be issued by EPA in early January 2020), maintaining a required NHDES backflow prevention program, general water/sewer infrastructure, the Lee water line extension in coordination with the NHDES and the Town of Lee to

address MBTE contamination at the Lee Traffic Circle, and more. On the front lines of our utility infrastructure both on and off campus, the Town and the University are joined at the hip and work seamlessly together.

On this note, we have developed cooperative and collaborative efforts with UNH to enhance the mutual intellectual, cultural, environmental, social, and economic benefits associated with hosting New Hampshire's flagship state university, including redevelopment of 66 Main St., Hetzel/Alexander Halls, and the creation of a West Edge Innovation District. Town and gown continue to communicate and work toward the redevelopment of 66 Main St. (commercial/office/residential/public space – likely 2020/2021) and the Hetzel/Alexander site (hotel – a potential 2021/2022 project). Following many months of review by USNH Board of Trustees/UNH/developer, a delegation from UNH/Town will be traveling to meet with Elliott Sidewalk Communities in late-January 2020.

Under the leadership of Director Rachel Gasowski and the Parks & Recreation Committee, we've seen interest and participation in Parks & Recreation programming flourish in Durham. Durham's vision for its Parks & Recreation Department is that it will offer a wide variety of opportunities and concentrations for all residents of any age wishing to participate in accessible, affordable activities. The department also plans/coordinates community-wide events such as Durham Day, summer children's programming in conjunction with the school district, the summer concert series, as well as managing the Churchill Rink. The new recreation van has also opened up new possibilities such as senior trips to regional museums, etc.

While taxes are undeniably high in Durham, home sales remain strong, commercial investment is active, downtown vacancies are almost non-existent, the tax base continues to grow (albeit more slowly than we would ideally like), the Town is beautiful, and a positive sense of community is pervasive.

In closing, I would like to note that our Town employees within public works, police, fire, planning, zoning, town clerk/tax collector's Office, IT, DCAT, and more — are terrific people, working hard with finite resources to meet the needs of a demanding citizenry with high expectations for exceptional service delivery at the local level. Our Town Council is comprised of thoughtful, hard-working, and dedicated individuals with varied backgrounds and perspectives. The Council, along with the benefit of ongoing public feedback and indispensably active involvement by dedicated citizens on local boards, committees, and commissions, all contributes to ensuring Durham remains a strong, vibrant, and welcoming community.

All in all, it has once again been a solid year for our town.



TOWN OF DURHAM  
8 Newmarket Road  
Durham, NH 03824-2898  
603.868.5571  
[www.ci.durham.nh.us](http://www.ci.durham.nh.us)

**2019-2020 Council Goals\* ADOPTED – 6/3/19**  
**Quarterly Update – December 31, 2019**

*Note: These goals are intended to convey a 1-3 year time horizon.*

**Core Values**

- Embrace openness in the transaction of public business while conducting Town affairs in a manner that is just and best demonstrates a genuine respect for different ideas, opinions, and perspectives.
  1. Inform Councilors of Right to Know Law rules regarding email use and electronic communications shortly following March election. **COMPLETE**
  2. Hold orientation for incoming Councilors following 2nd Tuesday in March. **COMPLETE**
  3. Hold orientation for new board chairs/officers/interested members on RSA 91-A and good board practices. **COMPLETED 6/19/19.**
  4. Hold orientation session for public and staff on Right to Know Law annually. **Completed 1/15/19.**
  5. Production of weekly “Friday Updates” & use of various forms of social media (Facebook/Twitter) to communicate effectively with public. **Ongoing**
  6. Air public meetings & events on DCAT as widely as possible. **Ongoing.**
  7. Share Council goals with all boards and commissions, the public via the “Friday Updates,” and post in Council chamber. **COMPLETE**
  8. Councilors assigned to boards provide update at each Council/board meeting as needs require. **Ongoing**
  9. Publish quarterly updates on fire department response and inspection activities in Friday Updates and on the fire department web site. We began to do so in three successive issues for 2<sup>nd</sup> qtr. in July 2019 and repeated the process of doing so in October 2019. **COMPLETE**
- Honesty and integrity.
- Excellence in all endeavors.

**Standards of Performance**

**Pursue long-term economic and environmental sustainability and resiliency,** anticipating the community’s and the region’s future needs by considering multiple elements including society, ecology, economics, transportation, agriculture, food and drinking water, and energy resources, specifically taking into account existing and predicted impacts of climate change.

1. Grant application via SRPC to fund/develop a Climate Change chapter of the Master Plan. **COMPLETE/APPROVED** (Note, the development of the actual plan is to come in 2020/21.)
2. Work to promote additional housing options for Durham’s aging population as opportunities become available. Riverwoods as of 12/31/19 is partially occupied and is proceeding on schedule for a February full opening. In addition, the EDC has established a Housing Subcommittee, where productive work can occur on this topic. **Ongoing.**

3. A new draft ordinance sponsored by Councilor Carden Welsh concerning regulating Air BnB's is now returning to the Council for discussion/action after many months before the Planning Board. This is an active work in process. **Ongoing.**
  4. DPMMA (Durham Professional Middle Manager Agreement) and AFSCME contract negotiations for a successor bargaining contracts are now under way. The Town team met to obtain direction from the Council on November 4<sup>th</sup>. **Ongoing.**
  5. Continue with Traffic Safety Committee involvement on matters concerning residents' questions, problems perceived and/or anticipated with recommendation to the Administrator. **Ongoing.**
  6. We closed on the Orchard Drive Woods parcel with the ORCSD in October. We closed in December on extinguishing the gost easement by working with Stevens family heirs/assigns. In Jan. 2020 , we hope to effectuate an access easement across the parcel with UNH for the sum of \$30,000. **Ongoing.**
- Evaluate how to market the historical, agricultural, and academic nature of the community to encourage Durham as a destination. **Celebrate Durham has been making inroads courtesy of Councilors Al Howland and Sally Tobias (and other contributors). A summer 2019 article on the Durham Historical Association Museum is a good example. Ongoing.**
  - Find a pathway to provide Celebrate Durham's long-term sustainability as a community promotional entity. How can we best ensure the values Celebrate Durham has worked for can stay alive and relevant going forward? **Celebrate Durham has remained an active non-governmental effort with the volunteer activity of Councilors Al Howland and Sally Tobias and attendance at meetings by Economic Development Director Christine Soutter (and by Mr. Selig as time allows). Meanwhile, Mr. Selig serves an an Ex Officio member of the Durham Business Association Board of Directors representing the Town. Ongoing.**
  - Review, discuss, and develop a more sustainable solid waste and recycling management program for the community. **The topic has been under active discussion by Integrated Waste Management Advisory Committee for many months. Three community forums were held this summer/fall, and the Council held a public hearing for November 4<sup>th</sup>, to hear from the public concerning PAYT and/or curbside composting to follow as part of the FY 2020 budget process for 2020 implementation. After much discussion, the Council asked the IWMAC to return to it with a firm proposal for action in 2020. Ongoing.**
  - Create a Work Force Housing Committee to investigate opportunities, challenges and options for affordable quality housing in Durham. **Councilors Sally Tobias and Al Howland have worked with Sarah Wrightsman, Durham resident and Executive Director of the Seacoast Workforce Housing Coalition, to bring forward a proposal for consideration by the Economic Development Committee in November, which the EDC subsequently adopted to establish a subcommittee dedidcated to this subject. The separate Celebrate Durham Website has also has an interesting series of articles on [Affordable Housing](#). Ongoing.**
  - Take steps as appropriate to promote the long-term health of Great Bay.

- DPW/UNH have remained active in engaging with the EPA in evaluating the best path forward toward compliance with new MS-4 and WWTP point source discharge Federal EPA requirements. Officials from Durham/UNH will be sitting down with representatives from NHDES in November to discuss current thinking on the topic by regulators. Mr. Selig recently attended a meeting organized by Dover/Rochester, at which time those two community's expressed concern in NHDES/EPH methodologies concerning the impact of (and future solutions to addressing) Nitrogen within the Estuary. We have received word that the new EPA General Permit is in the process of being issued in early 2020. **Ongoing.**
- Mr. Selig serves as a member of the Piscataqua Region Estuaries Partnership's (PREP) Management Committee. We have identified a path forward for the PREP "Road Map" initiative for Estuary with Settlement Agreement funds totaling \$525,000 (from Eversource), or similar initiative as necessary. This work will be in PREP's hand as of early 2020. **COMPLETE.**
- We worked with The Nature Conservancy to establish an Oyster Garden public project at Durham's Old Landing. Training was undertaken in August 2019. Cages put in place, but in early fall two of the cages went missing. The remaining oysters were collected by TNC for the season. Interpretive signage was fabricated to explain the project and the benefits of oysters to the Estuary. **COMPLETE.**
- Monitor construction of the Eversource Seacoast Reliability Project to ensure local infrastructure, environmental, scenic, cultural, and historic resources are protected consistent with appropriate conditions of approval from the NH Site Evaluation Committee and relevant agreements with the Town of Durham. **Public Works with the assistance of MJS Engineering has provided oversight of this significant project impacting many facets of town. The Planning Board approved cutting/trimming along Durham Point Road for distribution line upgrades, which was also independently monitored by the Town. We understand work in the Little Bay is now nearly complete. The project continues to dominate a great deal of time for DPW and the Administrator's Office. Ongoing.**
- Review zoning for West-end Research Park initiative, the downtown core, and other areas of the community, as appropriate, and consider modifications as deemed necessary. **On August 14, 2019, Town Planner Michael Behrendt gave a presentation to the Planning Board about the PUD. We currently await further word from UNH before proceeding with PUD planning, as time/resources allow. Ongoing.**
- The realization that within our community we have a significant amount of town-owned lands and other lands held in conservation and easement with nonprofit organizations; and with the recognition that these lands need to be managed in ways that preserve and protect their environmental well-being while at the same time improving public access and use of those lands, we should continue current land stewardship activities. **Land Stewardship Coordinator Ellen Snyder continues to do yeoman's work on a variety of initiatives that are aligned with this goal. Ongoing.**



**Strengthen the community by supporting the needs of residents, families, and other stakeholders** by offering a wide array of active and passive recreational opportunities, celebrating Durham's history, and encouraging community walkability and bikeability.

1. Numerous activities, programs, and community opportunities have been offered by the Parks & Recreation Committee and Department to date and these have been well attended. Music on Main Street, Summer Splash, Halloween Bash recently took place, and the Durham/ORCSD Reach Camp was a real success this summer, as have been myriad other P&R initiatives. We are also looking at Churchill Rink improvements for FY 2020, with potential additional upgrades for FY 2021 and FY 2022, dependent on future rink financial performance. If we don't continue to invest in the facility, however, it will become obsolete. **Ongoing.**
2. The Planning Department worked with the NH Division of Historical Resources (NHDHR) and the HDC to prepare a grant last year to evaluate in 2018 the historical significance of Wagon Hill Farm to potentially place WHF on the NH or National Historic Register. Received a \$5,000 grant. Council approved acceptance on 6/18/18. The inventory by our consultant Lynne Monroe of Preservation Company was completed and it was determined the facility will qualify for listing on the NH State Register. Grant had to be complete by 9/30/19. Mr. Selig signed the requisite paperwork to list the structure on the NH State Register in December 2019. **Complete.**
3. We continue to work on developing initiatives that promote public transportation options and ensure safe walking and biking. To this end, we utilized the \$15,000 budgeted in 2019 to determining the extent of the Town's rights-of-way around the Oyster River Middle School area so that potential roadway/bike/pedestrian alterations/improvements can be evaluated by the ORCSD and/or the Town in the coming years to complement the new Middle School project and generally improve safety and diminish congestion in the area. **Ongoing.**
4. Durham has engaged with NHDOT on taking steps to evaluate and improve the safety of the Route 4/Madbury Road intersection. New reflective shade guards have been installed, the light sequence timing of the intersection has been evaluated/improved by NHDOT, and Durham has received notification from NHDOT that a revamp of the intersection, to include dedicated turn lanes and new signalization, will proceed in the coming years. The Durham Planning Dept. has also provided a list of local resources for NHDOT to consider as part of design process. The project is now in the NHDOT's hands so I will list as **COMPLETE.**
5. Work to ensure the Oyster River Youth Association (ORYA) offers an array of activities pursuant to best management practices in order to meet identified needs within the broader Durham and Oyster River community. Facility agreements updated in spring 2019. Further work, if needed, must be undertaken by ORYA itself. Funding for ORYA for 2020 was reduced by the Council from \$28,000 to \$14,000, and ORYA plans to move its office space from Durham to Madbury in 2020. **COMPLETE.**
6. DPW had planned to re-ditch Dame Road and undertake roadside trimming in fall 2019 and at other times during the year when it is safe for the Blandings Turtles sanctuary to improve drainage. The department ultimately undertook some tree trimming as time allowed this fall. The plan for tree trimming in 2020 is make additional progress this winter/spring, weather permitting. Ditching is scheduled for this summer 2020. **Ongoing.**
7. Updating 2013 Emergency Operations Plan and development of a Continuity of Operations Plan. Scope and grant applications were submitted and approved by NHSHEM. Funds have been included in the FY 2020 proposed budget to offset the

Town's contribution. The actual work on the projects must be complete by the end of 2020 or the first part of 2021. **Ongoing.**

8. Update Multi-Jurisdictional ID Policy/protocols for municipal officials for use during times of emergency operations. **COMPLETE.**
  9. Provide diversity training for Town staff. Training took place in June 2019. **COMPLETE.**
  10. Provided ALICE table top emergency training exercise at Town Hall for staff. Completed in October 2019 by DPD. **COMPLETE.**
  11. Development of a Microgrid PILOT project in conjunction with UNH and Eversource. This is a slow process and discussion/analysis continues. Our next worksession is planned for 1/15/20. **Ongoing.**
  12. Provide programming to coincide with Indigenous Peoples' Day on October 14<sup>th</sup> in Durham. A successful was coordinated/planned for Town Council meeting on 10/7/19 by John Moody. **COMPLETE.**
  13. Working with NHDOT to integrate new bike (3 foot rule) signage along Newmarket Road/NHDOT Rt. 108 between Durham and Newmarket. A question has arisen whether NHDOT has abandoned this new signage as non-MUTCD compliant. DPW is following up with NHDOT. **Ongoing.**
- Complete structural assessment/analysis of the old Town Hall/Courthouse and Wagon Hill farmhouse and develop long-range plan and budget for use of the farmhouse, ell, and barn. Arron Sturgis (Preservation Timber Framing) contracted to undertake analysis. It was scheduled to be undertaken in May 2019 but was delayed by the contractor to Oct./Dec. 2019 timeframe. Still awaiting results. **Ongoing.**

**Continue cooperative and collaborative efforts with UNH** to enhance mutual intellectual, cultural, environmental, social, and economic benefits associated with hosting New Hampshire's flagship state university, including redevelopment of 66 Main St., Hetzel/Alexander Halls, and the creation of a West Edge Innovation District.

1. Durham/UNH continue to communicate and work toward the redevelopment of 66 Main St. (commercial/office/residential/public space) and the Hetzel/Alexander site (hotel). Following many months of review by USNH BOT/UNH/developer, a delegation from UNH/Town will be traveling to meet with Elliott Sidewalk Communities in late-January 2020. **Ongoing.**
  2. Replace outgoing Economic Development Director Mary Ellen Humphrey. Christine Soutter was hired for the part-time position. **COMPLETE.**
  3. The Water Works Road site is feasible and has been identified as the future Durham Fire Department location as part of a combined public safety complex potentially involving Durham Fire, UNH Police, and McGregor EMS. See below under Facilities goal for more information. With other priorities and limited UNH financial resources, this item is dormant for the time being. **Ongoing.**
  4. Work in support of UNH concerning the development of a performing arts center in the vicinity of the downtown area. UNH would require donor/state funding for this initiative. Durham stands ready to assist. No major donors have stepped forward to date. This is a long-term initiative. For the time being, we should simply list as **COMPLETE** as there is nothing more that can be accomplished in the near term.
- Review zoning for West-end Research Park initiative and consider modifications as needed. **Actively exploring the viability of locating potential technology spin-off**

ventures developed at UNH within taxable parcels located off campus in Durham. Promising potential at UNH's West Edge as part of potential research park for the collective benefit of UNH, the State of NH, and Durham. This will be a long-term goal and has been integrated into the Future Land Use Chapter of the Master Plan. **Ongoing.**

- Collaboration with faculty, staff, and students on mutually beneficial initiatives as needed/appropriate. We continue to seek opportunities to engage with UNH students in positive ways and identify potential research projects/opportunities that provide them with experience with the Town, a positive connection to Durham, and with scholarly input on topical items. Councilors Tobias and Howland have been working diligently to forge new relationships with the UNH Student Senate. The Council has established a standing UNH Senate report at each Council meeting to create ongoing dialogue. Durham worked with UNH to bring on a UNH Sustainability Fellow for summer 2019, and the approved FY 2020 budget includes funding for a UNH Sustainability Fellow and/or graduate student for the summer/fall 2020 semesters and beyond on an annual basis. **COMPLETE**

**Continue revitalizing Durham's commercial core and neighborhoods** in ways that enhance our sense of community; better provide for the needs of our residents and businesses, strengthen the fiscal health of the Town and University, and align with the Master Plan.

1. PT Code Officer initiative focusing on trash/zoning. This has provided positive results preliminarily to date for downtown neighborhoods. Some court challenges have been decided in the Town's favor. We have ongoing negotiations with one landlord concerning long-term violations in an attempt to bring these to a fruitful conclusion for the community. We also replaced our part-time code person mid-year due to the transition of personnel. **COMPLETE**
2. Mill Plaza redevelopment application. The Applicant and Hannaford were in communications addressing tenant concerns and at the request of the Applicant, the application review was been delayed. Durham staff offered to meet with Hannaford/Colonial Durham and did so by traveling to Maine to meet with Hannaford in the late summer. At this time, Colonial Durham has returned to the Planning Board to reactivate their application process, likely in November. At this point, the ball is in Colonial Durham's court. **COMPLETE**
3. Town officials had met several times in 2017 and early 2018 with the G4 Group concerning possible redevelopment of properties along Main Street – Hayden Sports/Laundry Center, Young's, DHop, Mariner Realty buildings and the owners of these properties. There has been little activity since that time. Zoning has been amended as of December 2018. The ball is in G4's court. **COMPLETE.**
4. A great deal of time has been devoted to supporting downtown businesses through the efforts of the Economic Development Office and Celebrate Durham. An array of successful, community-oriented programming in conjunction with the Parks & Rec. Dept. have been held downtown. **Ongoing.**
5. Durham was named the 10<sup>th</sup> safest college community in America on 8/7/19 by SafeWise that welcomes businesses to operate in Durham. **COMPLETE.**
6. Implementing PILOT project at Newmarket Road (Town Hall) crosswalk using hand-held flags and signage to improve pedestrian visibility. So far it has proven a success and flags have NOT been stolen. **COMPLETE.**

7. Planner Michael Behrendt and Zoning Officer Audrey Cline worked closely with the Planning Board to bring forward a zoning change to revamp/update the parking regulations across all zoning districts to address historical issues that have arisen. This proposal generated a lot of feedback and was adopted by the Council in November 2019. **COMPLETE.**
- Continue to pursue and reevaluate the development/redevelopment needs of the CBD and align our zoning to meet the requirements as needed. **Zoning changes and other public policy levers (i.e., RSA 79-E, TIF, etc.) have been evaluated to achieve the Master Plan vision of the Downtown and Commercial Core Chapter within the Central Business District. We are also engaging with existing businesses and downtown property owners to make sure that we zone with their development needs in mind, to complement the Town's vision with what is actually going to be financially feasible. Revised zoning was implemented in December 2018 to move this forward. Conversation continues to focus on downtown parking needs, a new Italian restaurant (now under construction), etc. Revisions to the Town's RSA 79-E criteria are being discussed by staff and the Council at present. A Council mtg. on the topic took place in December 2019, and will involve more conversation amongst staff in early 2020. Ongoing.**
- Continue to investigate the needs of the downtown business owners and the challenges they have to be successful in town and to develop strategies to help Durham be more business friendly. **ED Director Soutter worked with DPW to develop and install new parking maps and downtown signage. An American Flag program or a banner program concept was turned down by the Council in the summer. ED Director Soutter is also developing a new maps linking downtown and conservationlands in Durham. COMPLETE**
- Continue to pursue a relationship with the downtown property owners that provides open and informed communication. **Councilors Howland and Tobias, along with ED Director Soutter, attend Celebrate Durham weekly meetings on Wednesday mornings at the Town Hall. Admin. Selig is once again active on the board of the DBA as an Ex Officio. Ongoing.**
- Continue to investigate the parking needs of businesses and what the town can realistically do to help alleviate some of the challenges that employees face in finding parking. **Limited activity has been undertaken concerning a plan for the development of a downtown structured parking solution, potentially in conjunction with UNH, to addressing downtown parking needs within the Central Business District, helping to foster a Park-Once-and-Walk system. Obviously, the new developments will have to address their own parking needs. As older buildings redevelop or repurpose, downtown parking needs may become more critical. Parking is a utility that the public expects, like sidewalks and streetlights. New downtown commercial opportunities are limited by (perceived or real) parking challenges, even now. DPW has developed a revised parking layout for the Sammy's Lot and this is being discussed a Town working group advising Admin. Selig. In addition, Chief Kurz has suggested the concept of adding a deck to the proposed parking lot behind the Red Tower on Church Hill. Ongoing.**

**Task the administrator with meeting the following budget goals for 2020.** Hold the municipal tax rate at the 2019 level or less. For the medium and long-term, the Town will continue to make an effort to control its spending and explore innovative ways to reduce the municipal tax rate. The FY 2020 proposed budget was delivered to the Town Hall/Town Council and made available per Town Charter by Oct. 31<sup>st</sup>, and presented to the Council on Nov. 4<sup>th</sup>. The Admin. was not able to responsibly meet this goal due to conflicting needs/priorities/programs and limited new tax base/revenues. Following many meetings, the Council ultimately adopted a budget that, like the Administrator's budget, made every effort to find balance between this goal and the realities of local government funding alternatives. **COMPLETE**

**Encourage residents to explore joining one of the Town's boards, committees or commissions.** We have worked to publicize board/committee vacancy opportunities through the weekly "Friday Updates." We've also encouraged staff, Councilors, and existing board members to approach potential residents about considering such opportunities. We have also run blurbs in the "Friday Updates" to promote interest in serving on local boards. Ultimately, the best approach is through direct word of mouth and asking potentially qualified individuals to serve. **COMPLETE**

**Encourage all Town boards, committees, and commissions to align their efforts with the Council goals** and the Master Plan, actively collaborate and communicate with each other, and communicate with the community at large.

1. We continue to work with ORCSD on the district's design efforts for a new middle school to address being located in town and in a manner that is pedestrian/bicycle friendly, energy efficient, etc. Future work lies now with the ORCSD. **COMPLETE**
2. The Agricultural Commission completed its extensive revisions to the Zoning Ordinance to provide for the wide range of agricultural activities as defined in RSA 21-34-a, as outlined in the Master Plan. The proposal is working its way through the Planning Board and in the near future Council process. **Ongoing.**
3. Work at the IWMAC is focusing on improving our sustainability as a community by refining our solid waste and recycling collection system. **Ongoing.**

**Refine plans for new or existing public facilities/infrastructure, including, among others, downtown structured parking, a replacement building for the Fire Department, and public safety radio communication improvements, to meet the present and future needs of the community.**

1. Town Councilor Jim Lawson, Fire Chief Dave Emanuel, Police Chief David Kurz, and Admin. Selig, along with IT Dir. Luke Vincent, are working on evaluating public safety radio upgrades that are necessary for the Durham radio system over the long-term. Although we had planned to build a new radio tower at Beech Hill in summer 2019, staffing time limitations have pushed this out to 2020. Coordination with Strafford County is also needed, and those conversations have been slow going but are proceeding. The Town has contracted with a firm to coordinate the bid process, which is currently ongoing as of December 31, 2019. **Ongoing.**
2. In conjunction with UNH, we need to develop support over the long-term for funding a new fire station at the Water Works Road location. Capital funding limitations at UNH have hampered progress in 2019. **Ongoing.**
3. The Wagon Hill Farm shoreline stabilization project utilizing a living shoreline approach was under active construction all season and is now complete. DPW is completing as



built plans and finalizing grant reimbursement forms. A \$213,000 payment from Eversource will set us up for an additional phase of this effort in 2020/2021.

**COMPLETE**

4. Support the work of the Land Stewardship Subcommittee to increase the utilization and responsible management of Durham Town lands by residents and visitors in a substantial and sustainable manner. Land Stewardship Coordinator Ellen Snyder has been working on a variety of initiatives in conjunction with the Land Stewardship Subcommittee of the DCC. Durham Parks & Rec., DPW, and many volunteers have also been active in these efforts. A thank you to Councilor Rotner for so ably chairing this subcommittee. For the purpose of tracking within this report, the effort can be considered **COMPLETE** and now part of our ongoing municipal efforts.
5. Install new “Durham: A Welcoming Community signage- Chartered 1732” signage to the entrances of Durham. The signs have been designed, fabricated, and are in the process of being installed at present at: Madbury Road, Mill Road, Old Concord Road. The sign location at Dover Road that was delayed due to Riverwoods water/sewer extension through that area is now in place. DPW worked with NHDOT on a location for Newmarket Road, which as of July 2019 is now in place. **COMPLETE.**
6. Develop a plan for the Mill Pond area/Oyster River (Mill Pond) Dam that is cost-effective and environmentally sustainable. As part of the FY 2019 budget, the Council approved funding for feasibility/initial engineering moving toward dam removal. Bid award for feasibility was provided by Council on 8/19/19. VHB was selected and a meeting with the HDC/Heritage Commission took place in November. Dam and sediment borings are taking place at this time. A public forum on the feasibility process will occur in late-January 2020. **Ongoing.**
7. Complete Littlehale Dam project with decommissioning of existing dam. Funds were budgeted for the project, and it kicked off with an anticipated completion date of Summer 2019. NHDES wetland/Dam Bureau permitting issues caused delays yet the project is now largely **COMPLETE.**
8. Completed design and installation of backup emergency generator at Town Hall. The new generator required fence screening by HDC. The screening caused some traffic sight distance concerns, which were evaluated and have now been addressed. **Complete.**
9. Acquire approximately 900 SF of additional space from UNH that is contiguous to the existing fire station to provide temporary relief to space constraints of the existing building. This was approved as part of FY 2019 budget -- a \$320,00, 5-yr. bond, after which new station would be constructed. Still under design/discussion with UNH and DFD. **Ongoing.**
10. Evaluate new barn at Wagon Hill Farm to determine what improvements might be needed to more fully utilize the structure beyond dry storage. DPW had intended to install a new ADA ramp system and some fire protection to allow temporary occupancy/use of the structure. Our long-time tenant moved out of the farmhouse in December 2018. Before any decisions are made, we are having Arron Sturgis of Preservation Timber Framing evaluate the property. As noted earlier in this report, the effort is still **Ongoing.**
11. Revamp the poorly growing grassy area in front of the Durham Public Library. The Library Trustees and DPW have both indicated they will make a concerted effort to provide more TLC to this grassy area. Moving to a paver system instead of grass was researched by DPW at the request of the Library Trustees but eventually there was support for maintaining the grass. **Complete.**

12. Develop a plan/program to better manage the building/grounds at the Durham Public Library. A 9 hr/wk part time position was proposed for FY 2020 as part of Mr. Selig's proposed budget but not ultimately funded. We are hopeful that DPW with one additional staff member within the roadway trimming division will be able to free up hours to address this need. **COMPLETE.**
13. Continue efforts to improve communication reliability/resiliency between physical infrastructure by connecting the Town Hall and the Police Department via fiber to allow for DCAT broadcasting and redundant networking. Comcast has constructed in spring 2019 per franchise agreement. **COMPLETE.**
14. Development of GIS Tax Map database and orthoimagery/planimetrics base layers for Town-wide long-term implementation/use. Contractor on board. Imagery undertaken. This is part of a 3-year process. The FY 2020 budget includes a full time staff person to take on this new initiative beginning in July 2020. **Ongoing.**

**Staff and Legal Counsel conduct a review of the Town Charter and bring forward recommendations, as needed, for alignment with current state laws and adjustments to address identified deficiencies over time and recommendations relative to borrowing threshold limitations to account for inflation over the last 30-year timeframe.** Staff has been working with the Town attorney to bring a number of accumulated Charter amendments forward for a vote at the March 10, 2020 Town Election. Initial discussion with the Town Council to take place on November 4<sup>th</sup>. Charter changes adopted by the Council have been forwarded to several state agencies to review. **Ongoing.**

*\* Note that the order of the goals does not imply priority.*

## **Employment Agreement – Town Administrator**

AGREEMENT made this 3<sup>rd</sup> day of April, 2017, between The Town of Durham, a municipal Town located in the County of Strafford and the State of New Hampshire, (hereinafter “Town”)

and Todd I. Selig of Durham, New Hampshire (hereinafter “Selig”).

WHEREAS, Selig and the Town desire to set forth in writing their Contract with respect to Selig’s employment by the Town as its Town Administrator;

NOW, THEREFORE, in consideration of their mutual promises set forth herein, the parties hereby agree as follows:

1. **Employment.** The Town hereby employs Selig as its Town Administrator, and Selig hereby accepts such employment, upon the terms and conditions set forth in this Agreement.
2. **Duties and Authority.**
  - A. Selig will hold the position of Town Administrator.
  - B. As Town Administrator, Selig will have the powers granted to that position by the Charter and Administrative Code of the Town and pertinent State statutes including RSA 49-D:2(c) and RSA 37, subject to the control of the Town Council to the extent permitted by the Charter and statute. He shall have general supervision, direction and control over the business and affairs of the Town and its employees. Selig will be primarily responsible in addition to his Statutory and Charter duties, for carrying out all orders and resolutions of the Town Council and such duties as may from time to time be assigned to Selig by the Town Council.
  - C. Selig agrees to devote his full time, attention and best efforts to the performance of his responsibilities as Town Administrator.
  - D. Selig shall not, during the term of this Agreement, directly or indirectly engage in any business, either as an employee, corporation, principal, corporate officer, or in any other capacity, whether or not compensated, without the prior written consent of the Town.
  - E. Notwithstanding anything to the contrary contained in paragraph 2.D above, Selig may engage in teaching in an adjunct position, writing or consulting during his normal time off provided that he first inform the Town Council of his activities and provided, further, that those activities

do not unreasonably interfere with his duties and responsibilities to the Town.

F. It is recognized that Selig must devote a great deal of time outside the normal office hours on business for the Town, and to that end Selig shall be allowed to establish an appropriate work schedule.

3. **Term of Employment.** The term of employment shall be for a period of nine (9) years (except as it may be modified as explained herein) commencing on January 01, 2017 and ending December 31, 2025.
4. **Compensation.** Selig shall receive compensation during the term of this Agreement as follows: A base annual salary of \$137,500 for 2017 which shall increase by 2% annually thereafter during the contract term, effective each January 1<sup>st</sup>. Notwithstanding the above, as of 1/1/18, 1/1/20, 1/1/22, and 1/1/24, Selig's base annual salary shall be reset at the greater of 2% above his prior year's base annual salary or the average of the actual base annual salaries of the full time town/city managers within the following NH communities as of January 1<sup>st</sup> of said year: Bedford, Concord, Derry, Dover, Hanover, Keene, Merrimack, Portsmouth, and Rochester.
5. **Medical and Group Insurance.** The Town agrees to provide Selig with all of the benefits offered to non union employees in the Town's Personnel Plan including participation in the Town group medical, hospital and dental plan(s) of the Town, as well as all other insurance plans which the Town offers to its employees on the same terms and conditions as that of the Town's other non-unionized employees. Notwithstanding the above, Selig shall pay twenty percent (20%) of the monthly health and dental premiums. The Town shall pay eighty percent (80%) of the appropriate monthly premiums.
6. **Vacation.** Selig shall be entitled to thirty (30) days of paid vacation during each year of employment; the time for the vacation shall be mutually agreed upon by Selig and the Town Council. If vacation is not taken Selig shall be reimbursed at his base salary rate for time not taken in excess of 240 hours of accrual by December 31<sup>st</sup> of the succeeding year.

In addition to the vacation listed in the first paragraph, in recognition of Selig's completion of 21 years of service with the Town of Durham in 2022, and every six years thereafter, Selig shall be afforded a six (6) week paid sabbatical for personal and professional rejuvenation. The sabbatical shall not be used to fulfill the notice requirement outlined in Section 14.C of this contract.

7. **Automobile.**

A. The Town shall provide to Selig, during the term of his employment, the use of a Town automobile of Selig's choice, for business use, to be selected from the Town's inventory. The Town shall pay all automobile operating expenses incurred by Selig in the performance of Selig's business duties. In the event that Selig utilizes his personal automobile for Town business, he shall be reimbursed for the mileage at the then prevailing Internal Revenue Service reimbursement rate.

B. The Town shall provide to Selig, during the term of his employment, an annual stipend in the amount of \$7,500.00 in lieu of unlimited personal use of a Town vehicle.

8. **Dues and Subscriptions.** The Town shall budget and pay the dues, expenses and subscriptions of Selig for his continuation and participation in local, city, county, state, national, and international associations that he deems prudent and fiscally responsible for his continued effective management of the Town.

9. **Professional Development.** The Town shall budget and pay for the registration, travel and subsistence expenses of Selig to attend the annual conferences of the New Hampshire Municipal Association and the International City/County Management Association, and such other conferences, short courses, and seminars that Selig deems prudent and fiscally responsible for his professional development and for the continued, effective management of the Town. The Town recognizes that Selig is a Board member of the New Hampshire Center for Public Policy Studies, and the Town encourages such activities and other similar activities as part of Selig's professional development.

In addition, during the term of this contract the Town shall support Selig's attendance with pay at three specialized advanced training courses such as those offered at the Harvard Kennedy School of Government or equivalent experiences that Selig deems prudent and fiscally responsible for his professional development and for the continued, effective management of the Town.

10. **Expense Reimbursement.** Selig shall be entitled to reimbursement for all reasonable expenses, including travel and entertainment, incurred by him in the performance of his duties. Selig shall maintain records and written receipts and shall submit vouchers for expenses for which reimbursement is made.

11. **General Expenses.** The Town recognizes that certain expenses of a personal nature are or may be incurred by Selig in the performance of his business duties, and the Town agrees that it shall reimburse Selig for all such reasonable expenses upon receipt of expense vouchers, receipts, statements or personal affidavits detailing the expenses related to the performance of Selig's business duties.

Selig shall be responsible for obtaining a mobile data telephone device that meets the specifications of the Town's IT infrastructure such that he is reasonably accessible to the Town during times of emergency. Upon the execution of this Agreement, Selig's Town-issued iPhone shall become the personal property of Selig, and Selig shall bear the cost of the device (as well as future devices) and the associated telephone/data plan thereafter.

12. **Permanent Disability.** In the event Selig becomes permanently disabled (herein defined as a disability which substantially impairs or limits Selig from performing the essential duties of his position) as determined by a licensed physician mutually agreed upon by the Town and Selig, or if Selig is otherwise unable to perform his duties because of sickness, accident or injury for a period of six (6) months, the Town may terminate this Agreement subject to the provisions of paragraph 14D.

13. **Death.** In the event that Selig dies during the term of this Agreement, this Agreement shall immediately terminate.

14. **Termination.**

A. **By the Town with Cause.** This Agreement may be terminated by the Town for cause, in accord with the provisions of Section 4.3 of the Town Charter, if Selig willfully breaches or habitually neglects the duties to be performed under Paragraph 2 of this Agreement; engages in dishonest conduct; or for the conviction of any crime for which the punishment involves incarceration.

B. In the event Selig's employment is terminated pursuant to subparagraph A, Selig shall be entitled to his base salary compensation earned prior to the date of termination (minus all appropriate federal, state and authorized withholdings), as provided for in Paragraph 4 of this Agreement, computed pro rata up to and including the date of termination, as well as any other benefits to which he may be entitled as a matter of law.

C. **By Selig.** This Agreement may be terminated by Selig, without cause, by giving eight (8) months' notice to the Town.



- D. **By the Town without Cause.** In the event that this Agreement is terminated by the Town for reasons other than those outlined in subparagraph A above, the Town shall be responsible for the payment to Selig of one (1) full year's base salary (minus all appropriate federal, state and authorized withholdings) plus all benefits (or their monetary equivalent) accrued during that one (1) year period regardless of the length of the remaining term of this Agreement.
15. **Renewal.** The parties contemplate that they will want to renegotiate, extend or modify the length of this Agreement for so long as the relationship is mutually satisfactory. Notwithstanding anything contained herein, the parties may mutually agree to modify any or all provisions of this Agreement at any time for so long as those modifications are in writing and signed by the authorized parties.
16. **Renewal Negotiations.** If either the Town or Selig wishes to renew this Agreement at the conclusion of its original nine (9) year term, that party shall notify the other of such intent no later than December 31, 2024. In the event that the parties have not successfully concluded their negotiations by March 1, 2025, subsection 14C shall not apply and Selig shall be free to seek and obtain employment elsewhere at any time, even during the remaining term of this Agreement.
17. **Performance Evaluation.**
- A. Commencing in April of 2017, and each succeeding April thereafter, the Town Council and Selig shall mutually establish goals and objectives which they deem necessary and appropriate for the proper management of the Town during the succeeding twelve (12) months. Such goals and objectives shall be committed to writing and formally adopted by the Town Council. The funds necessary for the attainment of those goals and objectives shall be included in the annual budget for the same time period.
- B. Commencing in January 2018, and for each January thereafter, the Town Council shall review/evaluate Selig's performance in accord with the criteria provided to Selig by the Town the preceding April. The Town Council shall provide Selig with a written summary of this Annual Performance Evaluation and shall provide Selig with an opportunity to discuss this evaluation with the Town Council.
18. **Indemnification.** The Town agrees to include Selig under its general insurance coverage and further agrees that it shall indemnify and hold Selig harmless for any liability related to, or arising out of, his position as Town Administrator in accord with the provisions of New Hampshire R.S.A. 31:105.

19. **Residency.** In accord with the provisions of the Town Charter, Selig agrees to live within the corporate limits of the Town for so long as he serves as its Town Administrator.
20. **Supplemental Retirement Plan.** In addition to the base annual salary paid by the Town to Selig, the Town shall pay \$18,000 annually on Selig's behalf into a Section 457 deferred compensation plan. This payment shall be increased by \$500 annually beginning in 2022 so long as the additional contribution is permissible pursuant to Section 457 deferred compensation regulations.
21. **Notices.** Any notice provided for in this Agreement shall be given in writing. Notices shall be effective from the date of service, if served personally on the party to whom notice is to be given, or on the second day after mailing, if mailed by first class mail, postage prepaid. Notices shall be properly addressed to the parties at their respective addresses or to such other address as either party may later specify by notice to the other.
22. **Entire Agreement.** This Agreement contains the entire agreement and supersedes all prior agreements and understandings, oral or written, with respect to the subject matter hereof. This Agreement may be changed only by an agreement in writing signed by the party against whom any waiver, change, amendment or modification is sought.
23. **Waiver.** The waiver by the Town of a breach of any of the provisions of this Agreement by Selig shall not be construed as a waiver of any subsequent breach by Selig.
24. **Governing Law; Venue.** This Agreement shall be construed and enforced in accordance with the laws of the State of New Hampshire. The Strafford County Superior Court shall be proper venue for any litigation arising out of this Agreement.
25. **Paragraph Headings.** Paragraph headings are for convenience only and are not intended to expand or restrict the scope or substance of the provisions of this Agreement.
26. **Severability.** If any provision of this Agreement is held by a court of competent jurisdiction to be invalid or unenforceable, the remainder of the Agreement shall remain in full force and shall in no way be impaired.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the \_3rd\_ day of April, 2017.

THE TOWN OF DURHAM:

By: Katherine Marple  
Katherine Marple, Chairman  
Duly Authorized

TOWN ADMINISTRATOR:

Todd I. Selig