



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

**NOTICE:** This meeting of the Town Council is being held completely on-line using Zoom teleconferencing. Please refer to the “Zoom Call-in and Public Input Instructions” for this meeting located at the end of the agenda.

## **AGENDA**

DURHAM TOWN COUNCIL  
MONDAY, SEPTEMBER 14, 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 Announcement**  
Remembering the late Dr. Kenneth (Kenny) Rotner and officially declaring his vacancy on the Durham Town Council
- IV. **Selection of Chair Pro Tem**
- V. **Filling Vacancy in the Office of Councilor**  
Discussion and possible action to appoint a Durham resident to replace Kenny Rotner on the Durham Town Council
- VI. **Public Comments (\*)**
- VII. **Approval of Minutes - August 3, 2020**
- VIII. **Councilor and Town Administrator Roundtable**
- IX. **Report from the UNH Student Senate External Affairs Chair or Designee**
- X. **Unanimous Consent Agenda** *(Requires unanimous approval. Individual items may be removed by any councilor for separate discussion and vote)*
  - A. Shall the Town Council, upon recommendation of the Administrator, award a construction contract for the Thompson Lane Bridge Project to Hansen Bridge, LLC of Springfield, NH for the contract price of \$238,396 and authorize the Administrator to sign associated documents?
  - B. Shall the Town Council schedule a Public Hearing for Monday October 5, 2020, on a resolution to accept and expend unanticipated grant funds totaling \$80,000 to be used toward the Orchard Drive / Thompson Lane Pedestrian Bridge Over the Oyster River?

- C. Shall the Town Council Schedule a Public Hearing for Monday, October 15, 2020 on a resolution to name the Thompson Lane Bridge after the late Dr. Kenny Rotner in accordance with Resolution #2002-13 for naming public facilities after citizens who have made lasting contributions to the community?
- D. **RESOLUTION 2020-18** authorizing the acceptance and expenditure of CARES Act grant funds in an amount up to \$34,921.86 and authorizing the Administrator to sign and submit the SOS Election Assistance CARES Grant Agreement on behalf of the Town of Durham
- E. Shall the Town Council grant an extension to the Planning Board on its review of a proposed Council-initiated Zoning Ordinance amendment, Ordinance #2020-10, with said extension to go until October 28, 2020?
- F. Shall the Town Council accept the recommendation of the Town Assessor relative to the FY 2019 property tax abatement for PREFCO XXV, Ltd. Partnership, 121 Technology Drive?

**XI. Committee Appointments**

Shall the Town Council appoint James Tobias, 107 Madbury Road, as an alternate member to the Trustees of Trust Funds?

**XII. Presentation Items - None**

**XIII. Unfinished Business**

- A. **PUBLIC HEARING AND ACTION ON ORDINANCE #2020-12** creating a new Chapter, Chapter 71, titled "Horses on Town Trails" within the Durham Town Code prohibiting horses from traversing trails designed for pedestrian activity within the Town of Durham
- B. Continued discussion regarding the use of fireworks within the Town of Durham

**XIV. New Business**

- A. Shall the Town Council appoint Council representatives to replace the late Kenny Rotner's vacancies on the Parks & Recreation Committee and the Land Stewardship Subcommittee?
- B. Other Business

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

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

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

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*(\*) 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.*

## ZOOM VIDEO CALL-IN & PUBLIC INPUT INSTRUCTIONS

### To Participate by Audio

**AUDIO ONLY CALL-IN INSTRUCTIONS:** In order to access any LIVE Zoom Public Meeting by telephone, you **MUST** be preregistered for that meeting. You may then call: **1-929-436-2866** then type in the **Meeting ID** and **Password**. Zoom Meeting ID's and Passwords are only available for **preregistered** participants. You can **preregister** [HERE](#)

### To Participate by Video

**VIDEO ONLY INSTRUCTIONS:** In order to access any LIVE Zoom Public Meeting, you must be Preregistered. You can preregister for any Zoom Public Meetings by clicking [HERE](#).

### IMPORTANT!

1. **Please be sure your full name is viewable, and you are identifiable when using Zoom.**
2. **You will be muted until the Public portion of the meeting opens.**
3. **If you're watching on Channel 22 or DCAT LiveStream be sure to mute when using Zoom.**

These are LIVE Public meetings and your audio and video should be muted when you enter the room (if not, the host will mute them for you). You will not be able to communicate directly with anyone in the Zoom meeting at this time. Participants will have the opportunity to comment during Public Comments, or when a Public Hearing is opened. We ask that you mute your audio and video after you've commented (if not, the host will mute them for you). If you wish to submit comments for public input, please submit them via email to [council@ci.durham.nh.us](mailto:council@ci.durham.nh.us) by 5:00 PM on the day of the meeting.

If you should have difficulty, please send DCAT an email: [dcats@ci.durham.nh.us](mailto:dcats@ci.durham.nh.us) or by calling **603-590-1383**.

**PUBLIC INPUT INSTRUCTIONS:** Due to the ongoing situation with COVID-19, the Town of Durham will be taking extra steps to allow for public input during public meetings while still ensuring participant safety and social distancing. Per Executive Order by Governor Sununu, scheduled gatherings of 10 or more people will be prohibited. Therefore, those wishing to share comments are required to do so via email to [council@ci.durham.nh.us](mailto:council@ci.durham.nh.us) by 5:00 PM on the day of the meeting.

For Zoom Meeting **Preregistration** click [HERE](#).



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8 NEWMARKET ROAD  
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AGENDA ITEM: **# 5**

DATE: September 14, 2020

## COUNCIL COMMUNICATION

**INITIATED BY:** Durham Town Charter

**AGENDA ITEM:** DISCUSSION AND POSSIBLE ACTION TO APPOINT A DURHAM RESIDENT TO REPLACE KENNY ROTNER ON THE DURHAM TOWN COUNCIL

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

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

**AGENDA DESCRIPTION:**

On August 15, 2020, due to his continuing decline in health, Councilor Kenny Rotner submitted his resignation on the Town Council. Sadly, on August 24, 2020, Kenny passed away.

**Sec. 3.5. " Vacancies"** of the Durham Town Charter states that *"Vacancies occurring in the office of Councilor at any time shall be filled, until the next regular election, by the Council at its next regular meeting, by affirmative vote."*

Two citizens have completed and submitted applications for consideration to fill Kenny's vacancy. They are former Council member Carden Welsh, 3 Fairchild Drive, and Guy Johnson, 1 Surrey Lane. Both applications are attached for the Council's information.

At Monday night's meeting, the Council should discuss how it wants to move forward with filling the vacancy and possibly make an appointment at that time. Mr. Johnson will be present to answer any questions Council members may have for him concerning his interest in serving. Unfortunately, Mr. Welsh will be out of the state and unable to participate.

Re: Discuss and Consider Appointing a Durham Resident to fill Kenny Rotner's  
Vacancy on the Town Council

**LEGAL AUTHORITY:**

Durham Town Charter:

**Sec. 3.5. Vacancies.**

*"Vacancies occurring in the office of Councilor at any time shall be filled, until the next regular election, by the Council at its next regular meeting, by affirmative vote."*

**Sec. 11.5 Vacancies in Elected or Appointed Office:**

*"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:**

Hold discussion regarding the applications submitted for the vacancy on the Town Council and appoint a candidate if appropriate at this time.

**From:** [Todd Selig](#)  
**To:** [Jen Berry](#)  
**Cc:** [Durham Town Council](#)  
**Subject:** Resignation from Councilor Kenny Rotner  
**Date:** Saturday, August 15, 2020 6:07:56 PM

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Dear Jennie,  
Please include with our official correspondence and place as an agenda item at the Council's next mtg to accept with sincere regret, understanding, and good wishes.  
Todd

Todd Selig  
Durham, NH USA  
Cell: 603.817.0720  
Sent from my iPhone.  
~~ Please pardon typographical errors.

Begin forwarded message:

**From:** Tlsinnh <tlsinnh@aol.com>  
**Date:** August 15, 2020 at 2:24:23 PM EDT  
**To:** Todd Selig <tselig@ci.durham.nh.us>, external forward for kmarple <kittyfmarple@comcast.net>, external forward for kmarple <kittyfmarple@comcast.net>  
**Subject:** resignation  
**Reply-To:** Tlsinnh <tlsinnh@aol.com>

Dear Todd and Kitty,

It is with much sorrow that the juncture has arrived whereby it is best for me to resign from the Town Council and all of my associated responsibilities. My health has deteriorated to the point where I am no longer able to carry on with what is necessary to fulfill these roles. It has been a great privilege to have served our community and equally of importance, to have been able to work with you and so many others.

Please feel free to share this communication with others. I feel myself to have been so fortunate to have had these experiences and hopefully made some positive impact on our community during my involvement.

Regretfully and with many thanks,  
Kenny Rotner







## 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

**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.**

**Applicant has:**

- ATTENDED A MEETING (Virtually)  
 SPOKEN WITH CHAIR/V CHAIR (Councilor)  
 BEEN RECOMMENDED FOR MEMBERSHIP

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Name: Guy Johnson

Date: 28 Aug 2020

Address: 1 Surrey Ln, Durham

E-Mail Address: Guy@GuyJohnson.org

Telephone: 408-605-5106

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. **Town Council**

2.  
3.

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) ~~NO~~

(Over)

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

*My ever-learning approach to life has brought considerable depth in a wide variety of topics. My experience living in many places in the U.S. and exploring locations around the world has provided a lot of perspective and understanding of different ways of thinking. Decades of experience in large companies has honed my communication and organizational skills, including a listen-first approach to engaging with different perspectives, and a widely recognized knack for getting to the essence of issues and expressing topics so people can understand. I would like to apply these skills to local engagement as a way to become better connected to my community.*

Please provide brief background information about yourself:

*I grew up in the northeast, except for a couple of years living on a ranch in west Texas as a middle-schooler. My career began in western New York state, and then took me to Austin, Texas, and then the bay area of California. I met my wife there and all three of our kids were born there. We then moved back to Austin for a few years, then toured the country for 2 years in an RV, spending much of our time in the mountains and on the west coast. The end of that journey brought us here to Durham, which we consider to be our long-term home. The kids are still in middle and elementary school.*

*Politically I've always been an independent. I tend to see the benefits of all approaches to a topic and know how to mitigate problems with solutions. I believe in seeking consensus whenever possible, but also have the courage to act when necessary. I'm remarkably well read and my engineering background gives me a systemic view and a strong sense of how to balance theory and practice.*

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

Name: **Tom Gialousis** Telephone: 603-205-5920

Name: **Brian Bonafato** Telephone: 603-380-0765

Name: **Neil Niman** Telephone: 603-617-6062



Thank you for your interest in serving the Town. Please return this application, along with a resume, if available, to: Town Administrator, 8 Newmarket Road, Durham, NH 03824, or email Jennie Berry at [jberry@ci.durham.nh.us](mailto:jberry@ci.durham.nh.us).



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AGENDA ITEM: **# 7**  
DATE: **September 14, 2020**

## COUNCIL COMMUNICATION

**INITIATED BY:** Durham Town Council

**AGENDA ITEM:** APPROVE THE TOWN COUNCIL MEETING MINUTES FOR  
AUGUST 3, 2020

**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 regular Town Council meeting held on Monday, August 3, 2020. 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:**

*The Durham Town Council does hereby approve the Town Council regular meeting minutes for Monday, August 3, 2020 (as presented) (as amended). (ROLL CALL VOTE REQUIRED)*

Sally Tobias	___	Wayne Burton	___
Dinny Waters	___	James Lawson	___
Al Howland	___	Sally Needell	___
Katherine Marple	___	Andrew Corrow	___



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**AGENDA ITEM: # 10A**

**DATE: September 14, 2020**

## COUNCIL COMMUNICATION

**INITIATED BY:** Public Works Department

**AGENDA ITEM:** SHALL THE TOWN COUNCIL, UPON RECOMMENDATION OF THE ADMINISTRATOR, AWARD A CONSTRUCTION CONTRACT FOR THE THOMPSON LANE BRIDGE PROJECT TO HANSEN BRIDGE, LLC OF SPRINGFIELD, NH FOR THE CONTRACT PRICE OF \$238,396 AND AUTHORIZE THE TOWN ADMINISTRATOR TO SIGN ASSOCIATED DOCUMENTS?

**CC PREPARED BY:** Richard Reine, Director of Durham Public Works

**PRESENTED BY:** Richard Reine, Director of Durham Public Works  
Dennis Meadows, Durham resident

**AGENDA DESCRIPTION:**

The purpose of this Council Communication is to request the Town Council's approval to award a Construction Contract for the Thompson Lane Bridge Project to Hansen Bridge, LLC of Springfield, NH in the amount of \$238,396.

Bids for this project were opened on September 4. Four bids were received from contractors: Hansen Bridge - \$238,396; T. Buck Construction - \$540,000; Evroks Corp. - \$302,387; and CPM Constructors - \$449,749.

The project is to:

- subcontract to Gator Bridge for the manufacture of a 100' aluminum pedestrian bridge according to Durham's specifications,
- construct one concrete abutment on each shore of the Oyster River, and
- receive, assemble, and install the bridge on the abutments.

The project will greatly improve the connection of the Foss Farm neighborhood with the center of Durham and will allow easy, quick, and safe pedestrian access from the center of Durham and the UNH campus to 2000 acres of undeveloped land south of town and to the extensive trail network linking Stevens Woods with the Doe Farm. The work should require less than 2 months later this year, and we expect that residents will be minimally impacted during this project.

Hansen Bridge satisfactorily completed the Crommet Creek Bridge restoration for Durham. Their work was satisfactory. We will hire HEB Engineers to provide project administration and inspection services. The HEB contract will be small enough for Todd to approve it without a specific Council resolution.

**LEGAL AUTHORITY:**

Article 4-20 of the Administrative Code of the Town of Durham requires every purchase or contract in excess of \$15,000 shall be made only after receipt of publicly invited sealed competitive bids on uniform specifications and that all purchases in excess of \$35,000 requires approval by the Town Administrator and Town Council by affirmative vote.

**LEGAL OPINION:**

N/A

**FINANCIAL DETAILS:**

The NH Recreational Trails Program has offered to reimburse \$80,000 of the town’s expenses on this project. Thus Durham will pay \$158,396 for Hansen’s work. In addition to the Hansen contract Durham must budget for up to \$20,000 of expenses associated with technical supervision and up to \$20,000 for currently unforeseen contract contingencies.

None of the money will come from Durham tax funds. A sub account within the Durham Land Stewardship Trust has been established to hold the funds received from donations and grants made in support of the project. Fund-raising is on-going. Already approximately \$35,000 has been received with an additional \$50,000 pledged from almost 100 donors. A Durham resident has deposited in Durham's Land Stewardship Trust account an escrow deposit sufficient to pay all bridge-related invoices in excess of the funds provided by the fund-raising program.

**SUGGESTED ACTION OR RECOMMENDATIONS:**

**MOTION:**

*The Durham Town Council does hereby, upon recommendation of the Administrator, award a construction contract in the amount of \$238,396 for the Thompson Lane Bridge Project to Hansen Bridge, LLC and authorizes the Administrator to sign said contract with the monies to come from Account #07-2071-801-36-000. (ROLL CALL VOTE REQUIRED)*

Sally Tobias \_\_\_\_\_  
Dinny Waters \_\_\_\_\_  
Al Howland \_\_\_\_\_  
Katherine Marple \_\_\_\_\_

Wayne Burton \_\_\_\_\_  
James Lawson \_\_\_\_\_  
Sally Needell \_\_\_\_\_  
Andrew Corrow \_\_\_\_\_

September 8, 2020

April Talon, Town Engineer  
Rich Reine, Director of Public Works  
Town of Durham  
100 Stone Quarry Drive  
Durham, NH 03824



**Re: Oyster River Pedestrian Bridge Site Construction, Durham, NH  
HEB Project #2020-033**

Dear April and Rich,

Bids were received for the Site Construction associated with the Oyster River Pedestrian Bridge project on September 4, 2020. The purpose of this letter is to summarize the bid analysis and to recommend a contractor for the project.

**Five bid packages were received, but only four were considered responsive. The following is a summary of the responsive results:**

<b><u>BID RESULTS</u></b>	<b>Hansen Bridge</b>	<b>T. Buck Construction</b>	<b>Evroks Corporation</b>	<b>CPM Constructors</b>
<b>Base Bid: Abutments &amp; Access</b>	\$119,317	\$354,000	\$198,808	\$321,670
<b>Additive Alternate 1: Bridge Installation</b>	\$137,079	\$204,000	\$121,579	\$146,079
<b>Additive Alternate 2: Pedestrian Path</b>	\$52,085	\$104,000	\$60,790	\$83,875
<b>Total Bid Price</b>	<b>\$308,481</b>	<b>\$662,000</b>	<b>\$382,177</b>	<b>\$551,624</b>

Hansen Bridge submitted the lowest prices for the base bid and as a total bid price. Evroks Corporation submitted the next lowest bid prices, which came in 67% higher for the base bid, 12% lower for Additive Alternate 1, and 17% higher for Additive Alternate #2, when compared with the prices submitted by Hansen Bridge. All bidders except for ACK Marine & General Contracting were considered responsive. A full summary of bids is attached.

Conversations with Town representatives following the bid opening indicate the selection of Hansen Bridge as the Contractor for the award of the Base Bid and Additive Alternate #1 appears to be feasible based on funds available for the project. While the high bid prices, in general, may reflect the short turnaround time and seasonal complexities of the project, the Hansen Bridge prices are close to those that were estimated for the project. As such, their selection appears to be preferable to a rescheduling and/or rebidding of site construction. That, combined with the potential complexity of further modifications to the bridge manufacturing schedule, suggests it would be prudent to move forward with Hansen Bridge as the site contractor, if financially feasible. This decision necessitates the following considerations on the part of the Town and project partners:

- » As noted after the bid opening, HEB has some concerns about the administrative capacity/responsiveness of Hansen Bridge. These concerns warrant increased emphasis on Construction Administration services for the project. An HEB proposal for such services will be prepared accordingly.
- » Decisions regarding the additive alternates associated with the bridge contract should be made in order to dictate the amount of funding available for the site construction contract. If the base model bridge is chosen, the cost for manufacturing and supply will be \$75,079, whereas the inclusion of additive alternates (outlined in the bridge Procurement Manual) would allot additional funds to the bridge that could otherwise be used for site construction. This is a decision to be made by the Town and its partners with consideration for the amount of funds available and project priorities.

- » The total contract amount to be approved for Hansen Bridge, assuming award of the Base Bid and Additive Alternate #1 with the base model bridge, would be \$238,396. Given that \$80,000 of this amount will be provided by RTP funds, the Town's share of the contract would be \$158,396.

Once HEB has received the Town's decisions regarding the matters outlined above, we will prepare the Contract Documents for execution. If you have any questions or would like to discuss anything further, please do not hesitate to contact us.

Sincerely,

**HEB Engineers, Inc.**



Jeff D. Sires, EIT  
Water Resources Engineer

Copy: File

P:\Jobs\2020\2020-033 Durham - Orchard Drive - Thompson Lane Pedestrian Bridge, Durham, NH\Specifications\Bidding - Construction\Correspondence\Orchard River Ped. Bridge - Site Construction Bid Results 09-08-20.docx

**OYSTER RIVER PEDESTRIAN BRIDGE, DURHAM, NH - SUMMARY OF BIDS - SEPTEMBER 4, 2020**  
**Prepared by HEB Engineers, Inc. for the Town of Durham, NH**  
**BASE BID**

Item	Description	Unit	Quantity	Hansen Bridge		T Buck Construction		Evroks Corporation		CPM Constructors		ACK Marine	
				Unit Price	Cost	Unit Price	Cost	Unit Price	Cost	Unit Price	Cost	Unit Price	Cost
201.1	Clearing And Grubbing (F)	A	0.33	20,000.00	6,600.00	30,000.00	9,900.00	15,000.00	4,950.00	23,000.00	7,590.00	25,000.00	8,250.00
201.21	Removing Small Trees	EA	3	100.00	300.00	500.00	1,500.00	550.00	1,650.00	450.00	1,350.00	1,200.00	3,600.00
201.22	Removing Large Trees	EA	2	200.00	400.00	750.00	1,500.00	1,450.00	2,900.00	6,900.00	13,800.00	3,800.00	7,600.00
201.52	Trimming Of Trees	LS	1	200.00	200.00	7,500.00	7,500.00	2,640.00	2,640.00	2,500.00	2,500.00	4,000.00	4,000.00
202.7	Removal Of Guardrail	LF	10	10.00	100.00	20.00	200.00	21.50	215.00	20.00	200.00	85.00	850.00
203.1	Common Excavation	CY	300	25.00	7,500.00	25.00	7,500.00	20.00	6,000.00	30.00	9,000.00	58.00	17,400.00
209.1	Granular Backfill	CY	225	25.00	5,625.00	65.00	14,625.00	28.00	6,300.00	60.00	13,500.00	70.00	15,750.00
209.201	Granular Backfill (Bridge) (F)	CY	50	30.00	1,500.00	85.00	4,250.00	168.00	8,400.00	170.00	8,500.00	75.00	3,750.00
503.201	Cofferdams	U	1	20,000.00	20,000.00	65,000.00	65,000.00	14,100.00	14,100.00	18,000.00	18,000.00	11,600.00	11,600.00
504.1	Common Bridge Excavation (F)	CY	105	26.00	2,730.00	30.00	3,150.00	100.00	10,500.00	65.00	6,825.00	62.00	6,510.00
504.2	Rock Bridge Excavation	CY	18	100.00	1,800.00	150.00	2,700.00	160.00	2,880.00	350.00	6,300.00	385.00	6,930.00
508.67	Structural Fill (3/4") (F)	CY	17	26.00	442.00	200.00	3,400.00	95.00	1,615.00	75.00	1,275.00	165.00	2,805.00
520.12	Concrete Class A, Above Footings (F)	CY	19	680.00	12,920.00	3,500.00	66,500.00	2,500.00	47,500.00	1,700.00	32,300.00	3,000.00	57,000.00
520.21	Concrete Class B, Footings (F)	CY	23	620.00	14,260.00	3,000.00	69,000.00	750.00	17,250.00	1,100.00	25,300.00	1,000.00	23,000.00
534.3	Water Repellent (Silane/Siloxane)	GAL	2	100.00	200.00	150.00	300.00	200.00	400.00	600.00	1,200.00	156.00	312.00
544.001	Reinforcing Steel (Contractor Detailed)	LB	3,400	2.00	6,800.00	3.00	10,200.00	4.00	13,600.00	2.50	8,500.00	9.00	30,600.00
593.221	Geotextile; Separation Cl.2, Non-Woven	SY	50	25.00	1,250.00	5.00	250.00	3.30	165.00	5.00	250.00	17.00	850.00
606.91	Resetting Or Setting Guardrail	LF	10	100.00	1,000.00	100.00	1,000.00	21.50	215.00	40.00	400.00	147.00	1,470.00
634	Boulders for Barricade	EA	12	200.00	2,400.00	100.00	1,200.00	160.00	1,920.00	150.00	1,800.00	320.00	3,840.00
645.44	Temporary Slope Matting Type D (Wildlife Friendly)	SY	590	8.00	4,720.00	4.00	2,360.00	2.20	1,298.00	2.00	1,180.00	15.00	8,850.00
645.531	Silt Fence	LF	900	3.00	2,700.00	4.00	3,600.00	4.60	4,140.00	4.00	3,600.00	18.00	16,200.00
645.54	Permanent Channel Stabilization Type A	SY	200	20.00	4,000.00	4.00	800.00	4.70	940.00	2.00	400.00	20.00	4,000.00
646.51	Turf Establishment With Mulch, Tackifiers And Loam	SY	590	3.00	1,770.00	13.00	7,670.00	17.00	10,030.00	10.00	5,900.00	38.00	22,420.00
692	Mobilization	U	1	20,000.00	20,000.00	59,000.00	59,000.00	30,200.00	30,200.00	145,000.00	145,000.00	22,000.00	22,000.00
699.1	Miscellaneous Temporary Erosion And Sediment Control	U	1	100.00	100.00	10,895.00	10,895.00	10,000.00	10,000.00	7,000.00	7,000.00	4,440.00	4,440.00
					119,317.00		\$354,000		\$199,808		\$321,670		\$169,045

**OYSTER RIVER PEDESTRIAN BRIDGE, DURHAM, NH - SUMMARY OF BIDS - SEPTEMBER 4, 2020**  
**ADDITIVE ALTERNATE #1**

Item	Description	Unit	Quantity	Hansen Bridge		T Buck Construction		Evroks Corporation		CPM Constructors		ACK Marine	
				Unit Price	Cost	Unit Price	Cost	Unit Price	Cost	Unit Price	Cost	Unit Price	Cost
1	Installation of Aluminum Truss Pedestrian Bridge	Unit	1	38,000.00	38,000.00	95,921.00	95,921.00	18,500.00	18,500.00	37,000.00	37,000.00	12,400.00	12,400.00
2	Mobilization	Unit	1	6,000.00	6,000.00	15,000.00	15,000.00	10,000.00	10,000.00	16,000.00	16,000.00	5,000.00	5,000.00
3	Prefabricated Bridge	Unit	1	93,079.00	93,079.00	93,079.00	93,079.00	93,079.00	93,079.00	93,079.00	93,079.00	93,079.00	93,079.00
					137,079.00		\$204,000		\$121,579		\$146,079		\$110,479

**OYSTER RIVER PEDESTRIAN BRIDGE, DURHAM, NH - SUMMARY OF BIDS - SEPTEMBER 4, 2020**  
**ADDITIVE ALTERNATE #2**

Item	Description	Unit	Quantity	Hansen Bridge		T Buck Construction		Evroks Corporation		CPM Constructors		ACK Marine	
				Unit Price	Cost	Unit Price	Cost	Unit Price	Cost	Unit Price	Cost	Unit Price	Cost
203.1	Common Excavation	CY	180	30.00	5,400.00	35.00	6,300.00	30.00	5,400.00	35.00	6,300.00	44.00	7,920.00
214	Fine Grading	U	1	6,000.00	6,000.00	5,000.00	5,000.00	5,600.00	5,600.00	5,000.00	5,000.00	2,000.00	2,000.00
304.3	Crushed Gravel (F)	CY	160	52.00	8,320.00	75.00	12,000.00	62.00	9,920.00	95.00	15,200.00	111.00	17,760.00
403.11	Hot Bituminous Pavement, Machine Method	TON	40	260.00	10,400.00	250.00	10,000.00	230.00	9,200.00	350.00	14,000.00	300.00	12,000.00
585.3	Stone Fill, Class C	CY	30	28.00	840.00	100.00	3,000.00	40.00	1,200.00	90.00	2,700.00	120.00	3,600.00
593.421	Geotextile; Perm Control Cl.2, Non-Woven	SY	45	25.00	1,125.00	5.00	225.00	1.00	45.00	5.00	225.00	13.00	585.00
605.506	6" Perf. Corr. Polyethylene Pipe Underdrain	LF	375	20.00	7,500.00	60.00	22,500.00	35.00	13,125.00	14.00	5,250.00	27.00	10,125.00
645.531	Silt Fence	LF	800	3.00	2,400.00	5.00	4,000.00	5.00	4,000.00	4.00	3,200.00	9.00	7,200.00
692	Mobilization	U	1	10,000.00	10,000.00	35,000.00	35,000.00	10,300.00	10,300.00	27,000.00	27,000.00	18,200.00	18,200.00
699.1	Miscellaneous Temporary Erosion And Sediment Control	U	1	100.00	100.00	5,975.00	5,975.00	2,000.00	2,000.00	5,000.00	5,000.00	2,200.00	2,200.00
					52,085.00		\$104,000		\$60,790		\$83,875		\$81,590



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

# **10B**

**AGENDA ITEM:**  
**DATE: September 14, 2020**

## COUNCIL COMMUNICATION

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

**AGENDA ITEM:** SHALL THE TOWN COUNCIL SCHEDULE A PUBLIC HEARING FOR MONDAY OCTOBER 5, 2020, ON A RESOLUTION TO ACCEPT AND EXPEND UNANTICIPATED GRANT FUNDS TOTALING \$80,000 TO BE USED TOWARD THE ORCHARD DRIVE / THOMPSON LANE PEDESTRIAN BRIDGE PROJECT?

**CC PREPARED BY:** Deborah Ahlstrom, Staff Accountant

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

### **AGENDA DESCRIPTION:**

The 2020 Capital Improvement Program includes a Pedestrian Bridge over Oyster River Project to be partially funded with private donations and grants. The proposed Pedestrian Bridge will connect the Faculty Road neighborhood with the Orchard Drive neighborhood and will also span the Oyster River and open several miles of woodland trails.

Durham resident Dennis Meadows has been actively pursuing grants and fund-raising for the bridge and trail project. He prepared and Town officials signed an application for a Recreational Trails Program Grant from the NH Department of Natural and Cultural Resources which has been approved for \$80,000 to be matched with \$20,000 of local funding. Fundraising efforts organized by Dennis Meadows have exceeded the amount needed for this grant and are ongoing for the project goal.

At this time, it is recommended that the Town Council schedule a Public Hearing for October 5, 2020 to accept and authorize the expenditure of the RTP grant of \$80,000.

A public hearing notice will be published in *Foster's Daily Democrat* and notices will also be posted on the public bulletin board located outside of the Town Hall, as well as at the Durham Public Library and the Department of Public Works.

**LEGAL AUTHORITY:**

New Hampshire Revised Statutes Annotated (RSA) 31:95-b authorizes the Town Council to apply for, accept and expend, without further action by the town or village district meeting, unanticipated money from the state, federal or other governmental unit or a private source which becomes available during the fiscal year if they first adopt an article authorizing this authority indefinitely until specific rescission of such authority. On July 12, 1999, the Town Council adopted Resolution #99-19 granting this authority to the Town Council.

RSA 31:95 III. (a) states that: **“For unanticipated moneys in the amount of \$10,000 or more, the selectmen or board of commissioners shall hold a public hearing on the action to be taken.** Notice of the time, place and subject of such hearing shall be published in a newspaper of general circulation in the relevant municipality at least 7 days before the hearing is held.”

**LEGAL OPINION:**

N/A

**FINANCIAL DETAILS:**

The Town of Durham has been awarded a grant of \$80,000 by the NH-RTP to be used to toward the Orchard Drive/Thompson Lane Pedestrian Bridge Over Oyster River.

**SUGGESTED ACTION OR RECOMMENDATIONS:**

**MOTION**

*The Durham Town Council does hereby schedule a Public Hearing for Monday, October 5, 2020 on a resolution authorizing the acceptance and expenditure of unanticipated grant funding totaling \$80,000 to be used toward the Orchard Drive/Thompson Lane Pedestrian Bridge Project. (ROLL CALL VOTED REQUIRED)*

Sally Tobias	___	Wayne Burton	___
Dinny Waters	___	James Lawson	___
Al Howland	___	Sally Needell	___
Katherine Marple	___	Andrew Corrow	___

## **RESOLUTION #2020-XX OF DURHAM, NEW HAMPSHIRE**

**AUTHORIZING THE ACCEPTANCE AND EXPENDITURE OF A \$80,000 RECREATIONAL TRAILS PROGRAM GRANT FROM THE NEW HAMPSHIRE DEPARTMENT OF NATURAL AND CULTURAL RESOURCES BUREAU OF TRAILS FOR CONSTRUCTION OF A PEDESTRIAN BRIDGE OVER THE OYSTER RIVER AT THOMPSON LANE AS A GREENBELT CONNECTION WHICH IS PART OF THE ORCHARD DRIVE/STEVENS WOODS TRAIL PLAN**

**WHEREAS**, in November 2019 the Town acquired a 25 acre parcel of undeveloped property on Orchard Drive from the Oyster River Cooperative School District with funds raised in donations and grants; and

**WHEREAS**, in 2020 the town's approved Capital Improvement Plan included the project to place a Pedestrian Bridge over the Oyster River on this newly acquired property with \$30,000 from the Operating Budget to be funded by the purchase of a right of way from the Town by UNH, with additional funds for the bridge to be raised in grants and donations; and

**WHEREAS**, in July 2020 the Town was notified that the Recreational Trails Program funding of \$80,000 to be matched with \$20,000 of local funding to construct abutments and place a bridge over the Oyster River was approved for funding by the Governor and Council; and

**WHEREAS**, fundraising is ongoing but has to date surpassed the \$20,000 needed to match the grant; and

**WHEREAS**, on July 12, 1999, the Durham Town Council approved Resolution #99-19 adopting the provisions of RSA 31:95-b authorizing the Town Council to apply for, accept, and expend unanticipated funds from a Federal, state, or other governmental unit or a private source which becomes available during the Fiscal Year; and

**WHEREAS**, Council approval is required for the acceptance and expenditure of these funds; and

**WHEREAS**, RSA 31:95-b III(a) requires that a Public Hearing be held on unanticipated funds in excess of \$10,000; and

**WHEREAS**, on Monday, October 5, 2020, a duly posted Public Hearing was held by the Durham Town Council on the \$80,000 grant monies in accordance with RSA 31:95-b;

**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 **Resolution #2020-XX** authorizing the acceptance and expenditure of a \$80,000 Recreational Trail Program (RTO) Grant from the New Hampshire Department of Natural and Cultural Resources Bureau of Trails for construction of a Pedestrian Bridge over the Oyster River at Thompson Lane as a Greenbelt Connection component of the Orchard Drive / Stevens Woods Trail Plan.

**PASSED AND ADOPTED** this \_\_\_\_ day of October, 2020 by an \_\_\_\_ roll call vote of the Durham Town Council as follows:

Sally Tobias	___	Wayne Burton	___
Dinny Waters	___	James Lawson	___
Al Howland	___	Sally Needell	___
Katherine Marple	___	Andrew Corrow	___

\_\_\_\_\_  
Katherine A. Marple, Chairman  
Durham Town Council

**ATTEST:**

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



TOWN OF DURHAM  
8 NEWMARKET ROAD  
DURHAM, NH 03824  
Tel: 603/868-5111  
Fax: 603/868-1858

# **10C**

AGENDA ITEM:  
DATE: September 14, 2020

## COUNCIL COMMUNICATION

**INITIATED BY:** Public Works Department

**AGENDA ITEM:** SHALL THE TOWN COUNCIL SCHEDULE A PUBLIC HEARING FOR MONDAY, OCTOBER 15, 2020 ON A RESOLUTION NAMING THE THOMPSON LANE BRIDGE AFTER THE LATE DOCTOR KENNY ROTNER IN ACCORDANCE WITH RESOLUTION #2020-13 FOR NAMING PUBLIC FACILITIES AFTER CITIZENS WHO HAVE MADE LASTING CONTRIBUTIONS TO THE COMMUNITY?

**CC PREPARED BY:** Richard Reine, Public Works Director

**CC PRESENTED BY:** Richard Rein, Public Works, Director

### **AGENDA DESCRIPTION:**

In 2002 the Town received several requests to name Town facilities in honor of Town residents. In response the Town Council passed Resolution #2002-13, which establishes a policy for the naming of public facilities as noted below.

#### **Process**

The name of the individual and designated facility must be submitted by a citizen, local organization, or Town Department to the Department of Public Works for review. The Department of Public Works will review the request, make comments, and then forward the proposal to the Town Council for consideration. A 2/3 vote of the Council shall be required for approval, following the close of a duly noticed public hearing.

#### **Criteria**

Qualifying facilities must be under the ownership of, and be funded through, the Town of Durham. The criteria for naming items after an individual will require that at least one of the following requirements is fulfilled as determined solely by the Town Council.

1. A well-known community leader, either elected, appointed, or a volunteer;
2. A person who has positively influenced a large population within the Town through significant contribution of money, time, material or land;

Re: Schedule Public Hearing on Resolution Naming the Thompson Lane Bridge After Kenny Rotner

3. A person who has received national recognition for personal service and accomplishment above and beyond the call of duty with respect to the public good;
4. An individual who had a major involvement in the acquisition or development of the facility;
5. An individual whose civic leadership or volunteerism clearly contributed to the betterment of the Town;
6. An individual who is deceased and whose personal attributes symbolized the principles and standards of a community organization.

The Public Works Department received a letter from Dennis Meadows requesting formal approval of the proposal to use the Thompson Lane bridge for acknowledging Kenny Rotner's many contributions to the town. The Department has reviewed the criteria within Resolution #2002-13 and finds that five of the six criteria (excluding only #3) apply to Mr. Rotner as justifications for him to receive this honor. This proposal has the support of Kenny's family.

- **About Kenny Rotner**

Kenny lived in Durham for 30 years and worked here as a beloved and esteemed family doctor. In addition he devoted enormous amounts of time to service in many public capacities - Town Councilor, member of the board of the Oyster River Cooperative School District, Chair of the Land Stewardship Committee, and Chair of the Parks & Recreation Committee. He was involved in most aspects of the two-year effort by Durham to construct a pedestrian bridge from Thompson Lane to Stevens Woods. The Department of Public Works is pleased and honored to recommend to the Durham Town Council that they consider naming the Thompson Lane Bridge in honor of Doctor Kenny Rotner.

**LEGAL AUTHORITY:**

Resolution #2002-13 dated October 28, 2002.

**LEGAL OPINION:**

N/A

**FINANCIAL DETAILS:**

Manufacture and installation of appropriate signs on or near the north end of the bridge, \$200.

**SUGGESTED ACTION OR RECOMMENDATIONS:**

**MOTION:**

*The Durham Town Council does hereby schedule a Public Hearing for Monday, October 5, 2020 in accordance with Resolution 2002-13 regarding a resolution naming the Thompson Lane bridge after the late Dr. Kenny Rotner. (ROLL CALL VOTE REQUIRED)*

Sally Tobias	___	Wayne Burton	___
Dinny Waters	___	James Lawson	___
Al Howland	___	Sally Needell	___
Katherine Marple	___	Andrew Corrow	___

## **RESOLUTION #2020-XX OF DURHAM, NEW HAMPSHIRE**

### **NAMING THE THOMPSON LANE BRIDGE AFTER THE LATE DR. KENNETH (KENNY) ROTNER IN ACCORDANCE WITH THE PROVISIONS OF RESOLUTION #2002-13 DATED OCTOBER 28, 2002 FOR NAMING PUBLIC FACILITIES, TRAILS, FORESTS, OR TREES**

**WHEREAS**, on October 28, 2002, the Durham Town Council adopted Resolution #2002-13 establishing a policy for the naming of public facilities, trails, forests or trees; and

**WHEREAS**, the Department of Public Works received a request to name the Thompson Lane Bridge after the late Dr. Kenny Rotner which reads, in part: *"Kenny Rotner was involved in and supported virtually every step in the two-year long effort to build a bridge over the Oyster River from Thompson Lane to Stevens Woods. We expect the bridge will be completed within the next few months. After Kenny's death several weeks ago, many Durham residents suggested that it would be appropriate to name the bridge after him in recognition of his many contributions to the town."*

**WHEREAS**, after careful review and consideration of the criteria within Resolution #2002-13, the Department of Public Works finds that five of the six criteria (excluding only #3) apply to Dr. Rotner as justifications for him to receive this honor and that it is therefore reasonable and appropriate to name the Thompson Lane Bridge after Dr. Rotner for the following reason(s):

*"Kenny lived in Durham for 30 years and worked here as a beloved and esteemed family doctor. In addition he devoted enormous amounts of time to service in many public capacities - Town Councilor, member of the board of the Oyster River Cooperative School District, Chair of the Land Stewardship Subcommittee, and Chair of the Parks & Recreation Committee. He was involved in most aspects of the two-year effort by Durham to construct a pedestrian bridge from Thompson Lane to Stevens Woods. The Department of Public Works is pleased and honored to recommend to the Durham Town Council that they consider naming the Thompson Lane Bridge in honor of Dr. Kenny Rotner."*

**NOW, THEREFORE BE IT RESOLVED** that the Durham Town Council, the governing body of the Town of Durham, New Hampshire, is privileged to hereby adopt Resolution #2020-XX accepting the recommendation forwarded by the Department of Public Works to name the Thompson Lane Bridge after the late Dr. Kenny Rotner.

**PASSED AND ADOPTED** this \_\_\_\_ day of October, 2020 by an \_\_\_\_ roll call vote of the Durham Town Council as follows:

Sally Tobias            \_\_\_  
Dinny Waters        \_\_\_  
Al Howland           \_\_\_  
Katherine Marple    \_\_\_

Wayne Burton        \_\_\_  
James Lawson        \_\_\_  
Sally Needell        \_\_\_  
Andrew Corrow      \_\_\_

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

***ATTEST:***

\_\_\_\_\_  
Lorrie Pitt, Town Clerk

DATE: September 8, 2020

FROM: Dennis Meadows

TO: Rich Reine, Director  
Department of Public Works  
Town of Durham, NH

SUBJ: Recommendation that the Durham Town Council vote to name the Thompson Lane after Kenny Rotner

Kenny Rotner was involved in and supported virtually every step in the two-year long effort to build a bridge over the Oyster River from Thompson Lane to Stevens Woods. We expect the bridge will be completed within the next few months. After Kenny's death several weeks ago, many Durham residents suggested that it would be appropriate to name the bridge after him in recognition of his many contributions to the town.

Three attachments to this letter offer information in support of this proposal. The first is the obituary written by Kenny's family mentioning his connection with the bridge project. The second is a message from James Morse, Superintendent of the Oyster River Cooperative School District, about Kenny's contributions as a member of the ORCSD board. The third is a message from Dr. Jan Nisbet, formerly a resident of Durham and Vice Provost for Research at UNH about her experience of Kenny as a family physician.

I also support the proposal. If it is approved by the Town Council, I will take responsibility, in collaboration with Kenny's family, to design and install appropriate signage near the north end of the bridge when it is completed.

Attached is a draft resolution that you could edit as you consider appropriate, approve, and forward to Jennie Berry for inclusion in the Council packet prior to their September 14 meeting.

**A1: Obituary for Kenny written by his family and published in the August 8, 2020 *Friday Updates*.**

It is with heavy hearts we report that one of Durham's longtime citizens, Dr. Kenneth (Kenny) Rotner, died on August 24, 2020. Kenny was an active and devoted public servant, serving on the Town Council and many other Town boards and committees, as well as devoting many years on the Oyster River School Board. His obituary follows:

Dr. Kenneth Rotner passed away on Monday, August 24 at the age of 66 after a courageous battle with cancer. Kenny was an avid hiker, a ruthless prankster, a compassionate doctor, and a tie-dye loving Dead-Head, who lived in no particular way, but his own. He is survived by his wife Tracy, who was his summer love in the spring, fall, and winter, by his daughter Emma, who he taught to be the eyes of the world, his sister Shelley, and friends who became family along the way.

Kenny brought his compassion, empathy, and wisdom into every corner of his life, from his 30 years of work as a family doctor in the Durham community, to his service on the Durham Town Council and the Oyster River School Board. He made connections and left impressions on those who crossed his path whether it was swimming laps in the UNH pool, chatting in the grocery store, or simply out on a dog walk.

Kenny's legacy will live on in the service he gave to his community, the care he provided as a doctor, the connections he made, and the love that he imparted on his family. His spirit will be found in the wildflower meadows of Colorado, in shell-covered beaches of Sanibel Island, in the poetic lyrics and sweet jams of a Grateful Dead song, and in the hearts of those who love him more than words can tell.

In lieu of flowers, gifts in memory of Kenny can be made to causes he felt strongly about.

The Oyster River Pedestrian Bridge Project, a project that was near to Kenny's heart during his time on the Town Council

## **A2: Note from James Morse, Superintendent of the Oyster River Cooperative School District.**

The Oyster River Cooperative School District lost an advocate and a friend with the passing of School Board member Kenny Rotner. His powerful voice for social justice changed the district.

His influence changed our focus from one that was exclusively academic to one that included a comprehensive approach to social emotional learning, mental health and wellness, as well as diversity and inclusion. Due to Kenny's unwavering support of the children of the district, we began to live our vision and mission more fully.

Whenever policies were discussed, he always looked at them from the perspective of the student. His was the voice that asked, is this policy punitive or is it designed to educate and elevate a child's personal growth.

He had so much respect and love for the ORCSD, the teachers, the support staff, the parents and the children. He would always challenge us to be our better selves, to earn our reputation for quality, to live up to his belief in us.

He was proud to be part of the ORCSD School Board. He thoroughly enjoyed discussion and debate on all issues. His was the voice empathy, sympathy and courage.

We will miss him.

Dr. Jim Morse  
Superintendent, Oyster River CSD

### **A3: Note from Dr. Jan Nisbet about Kenny's work as a family doctor in Durham**

Kenny Rotner was my doctor since the early 1990's. Working at Durham Family Health, I saw him for routine physicals. He lived in my neighborhood, so I would see him more frequently there, walking his golden retrievers while reading the *New York Times*. Sometime in the 1990's, I developed a health issue. He worked with me to try to understand its mysterious origins, reading articles and suggesting diagnostic and treatment possibilities. During this period of time, we got to know each other. I remember being in the examining room when we both realized that we had recently been in San Francisco, me for a conference, Kenny for a Grateful Dead concert. I asked him, "Are you a Dead-Head?" I am not sure he appreciated the question, but he did acknowledge his fondness for the music of the Grateful Dead. It was one of those moments when the hierarchy between patient and doctor dissolve. As a physician, he was always a gracious human being, never talking down to me, asking great questions, helping me address this issue or that, and enjoying the conversations we had about our families and work. He took time with me, a lot of time, which I valued and looked forward to. He was a great doctor and I followed him to whatever practice he was in at the time.

Naming a pedestrian bridge after Dr. Rotner is a perfect tribute. He walked beside his patients, recommended more walking and healthier lifestyles, and found joy in walking. I imagine him listening to the Grateful Dead lyrics that could serve us all.

"Walk in the sunshine, watch for the bright sun, Be all those things you're able to be.

Open space, walking trails, and a pedestrian bridge over the Oyster River named after Kenny Rotner will help us all not to hurry and be caught up in time. Dr. Rotner would say that is good for your blood pressure and mental health.



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Fax: 603/868-1858

# **10D**

AGENDA ITEM:

DATE: September 14, 2020

## COUNCIL COMMUNICATION

**INITIATED BY:** Coronavirus Aid, Relief, and Economic Security (CARES)  
Act signed into law on March 27, 2020

**AGENDA ITEM:** **RESOLUTION 2020-18 AUTHORIZING THE ACCEPTANCE AND EXPENDITURE OF CARES ACT GRANT FUNDS IN AN AMOUNT UP TO \$34,921.86 AND AUTHORIZING THE ADMINISTRATOR TO SIGN AND SUBMIT THE SOS ELECTION ASSISTANCE CARES GRANT AGREEMENT ON BEHALF OF THE TOWN OF DURHAM**

**CC PREPARED BY:** Deborah Ahlstrom, Staff Accountant

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

### **AGENDA DESCRIPTION:**

Town of Durham received notice dated August 10, 2020, from the State of New Hampshire Secretary of State Office announcing that \$3 million of federal Coronavirus Aid, Relief, and Economic Security (CARES) Act funds would be used for municipal grants to defray the costs incurred in processing absentee ballots calculated based on the number of absentee ballots sent out this election season over the 2016 levels.

In that letter, Durham was informed that it had been allocated up to \$34,921.86. These federal funds can cover eligible expenses incurred in the increased costs of processing absentee voting in 2020 resulting from COVID-19. The grant will pay out at standard cost rate per Absentee Ballots Issued and Cast by Voters. This rate is to be determined by the accounting firm of BerryDunn who is managing this grant on behalf of the NH Secretary of State's Office, and will include time, materials and postage.

While these relief funds have been allocated to Durham, action must be taken to receive the funds. Each local government must submit a signed grant agreement to the BerryDunn for the NH-SOS to be eligible for funds. This agreement has been completed.

Re: Resolution #2020-18 to Accept and Expend up to \$376,233 in CARES Act Funds

New Hampshire Revised Statutes Annotated (RSA) 31:95-b permits municipalities to authorize acceptance and expenditure of funds from the state, federal or other governmental unit, or a private source, which becomes available during the fiscal year if they first adopt an article authorizing this authority indefinitely until specific rescission of such authority. On July 12, 1999, the Town Council adopted Resolution #99-19 granting this authority to the Town Council. Once authorized, a grant in the amount of \$10,000 or more must be approved by the governing body at a public hearing, with notice of the hearing published in a newspaper of general circulation in the relevant municipality at least 7 days before the hearing is held.

On April 29, 2020, the NHMA provided information for the Acceptance and Expenditure of CARES Act Assistance by Local Governments. In that letter, in addition to citing the above, the NHMA stated that notwithstanding RSA 31:95-b, RSA 21-P:43 would permit acceptance and expenditure of CARES Act grants in any amount, including amounts of \$10,000 or greater, without a public hearing or notice being published in a newspaper 7 days in advance. RSA 21-P:43 states that gifts, grants or loans for emergency management purposes may be accepted by the *“executive officer, city council, or board of selectmen.”* There is no public hearing requirement. Although this law would seemingly permit a city manager, town manager, or mayor to accept and expend a CARES grant, the NHMA felt the better practice is to have the city or town council, select board or board of commissioners vote to accept and expend a CARES Act gift or grant. In order for a public body to accept a CARES Act, grant a public meeting would be required, which could be conducted in a virtual manner, and the ordinary notice requirements for public meetings under RSA 91-A should be followed.

**LEGAL AUTHORITY:**

Coronavirus Aid, Relief, and Economic Security (CARES) Act signed into law on March 27, 2020

New Hampshire Revised Statutes Annotated (RSA) 31:95-b and RSA 21-P:43

**LEGAL OPINION:**

N/A

**FINANCIAL DETAILS:**

Coronavirus Aid, Relief, and Economic Security (CARES) Act signed into law on March 27, 2020

**SUGGESTED ACTION OR RECOMMENDATIONS:**

**MOTION:**

*The Durham Town Council does hereby adopt Resolution #2020-18 authorizing the acceptance and expenditure of CARES Act grant funds in an amount up to \$34,921.86 and authorizes the Administrator to sign and submit the NH-SOS Election Assistance Grant Agreement on behalf of the Town of Durham. (ROLL CALL VOTE REQUIRED)*

Sally Tobias            \_\_\_  
Dinny Waters        \_\_\_  
Al Howland          \_\_\_  
Katherine Marple   \_\_\_

Wayne Burton        \_\_\_  
James Lawson        \_\_\_  
Sally Needell        \_\_\_  
Andrew Corrow      \_\_\_

## **RESOLUTION #2020-18 OF DURHAM, NEW HAMPSHIRE**

**AUTHORIZING THE ACCEPTANCE AND EXPENDITURE OF CARES ACT GRANT FUNDS IN AN AMOUNT UP TO \$34,921.86 AND AUTHORIZING THE ADMINISTRATOR TO SIGN AND SUBMIT THE SECRETARY OF STATE ELECTION ASSISTANCE GRANT AGREEMENT ON BEHALF OF THE TOWN OF DURHAM**

**WHEREAS**, the Town of Durham received notice dated August 10, 2020, from the State of New Hampshire Secretary of State Office announcing that \$3 million of federal Coronavirus Aid, Relief, and Economic Security (CARES) Act funds would be used for municipal grants to defray the costs incurred in processing absentee ballots calculated based on the number of absentee ballots sent out this election season over the 2016 levels; and

**WHEREAS**, in that letter, Durham was informed that it had been allocated up to \$34,921.86 to cover eligible expenses incurred for the Primary and General Elections; and

**WHEREAS**, while these relief funds have been allocated to Durham, action must be taken to receive the funds, including the submission of a signed grant agreement to be eligible for funds; and

**WHEREAS**, the Town has completed the Secretary of State (SOS) agreement form and now requires approval by the Town Council to authorize the Administrator to sign the agreement documents for submission; and

**WHEREAS**, New Hampshire Revised Statutes Annotated (RSA) 31:95-b permits municipalities to authorize acceptance and expenditure of funds from the state, federal or other governmental unit, or a private source, which becomes available during the fiscal year if they first adopt an article authorizing this authority indefinitely until specific rescission of such authority; and

**WHEREAS**, on July 12, 1999, the Town Council adopted Resolution #99-19 granting this authority to the Town Council; and

**WHEREAS**, under normal circumstances, once authorized, a grant in the amount of \$10,000 or more must be approved by the governing body at a public hearing, with notice of the hearing published in a newspaper of general circulation in the relevant municipality at least 7 days before the hearing is held; and

**WHEREAS**, on April 29, 2020, the New Hampshire Municipal Association (NHMA) provided information for the acceptance and expenditure of CARES Act Assistance by Local Governments which stated that notwithstanding RSA 31:95-b, **RSA 21-P:43** would permit acceptance and expenditure of CARES Act grants in any amount, including amounts of \$10,000 or greater, without a public hearing or notice being published in a newspaper 7 days in advance. RSA 21-P:43 states that gifts, grants or loans for emergency management purposes may be accepted by the "executive officer, city council, or board of selectmen." **There is no public hearing requirement;** and

**WHEREAS**, although this law would seemingly permit a city manager, town manager, or mayor to accept and expend a CARES grant, the NHMA recommended that the better practice is to have the city or town council, select board or board of commissioners vote to accept and expend a CARES Act gift or grant; and

**WHEREAS**, in order for a public body to accept a CARES Act grant a public meeting would be required, which could be conducted in a virtual manner, and the ordinary notice requirements for public meetings under RSA 91-A should be followed,

**NOW, THEREFORE, BE IT RESOLVED**, that the Durham Town Council, the governing and legislative body of the Town of Durham, New Hampshire does hereby approve **Resolution #2020-18** authorizing the acceptance and expenditure of CARES Act grant funds in an amount up to \$34,921.86 and authorizes the Administrator to sign and submit the SOS Coronavirus Relief Fund Grant Agreement on behalf of the Town of Durham.

**PASSED AND ADOPTED** this \_\_\_\_ day of September, 2020 by an \_\_\_\_ roll call vote of the Durham Town Council as follows:

Sally Tobias \_\_\_\_\_  
Dinny Waters \_\_\_\_\_  
Al Howland \_\_\_\_\_  
Katherine Marple \_\_\_\_\_

Wayne Burton \_\_\_\_\_  
James Lawson \_\_\_\_\_  
Sally Needell \_\_\_\_\_  
Andrew Corrow \_\_\_\_\_

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

**ATTEST:**

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



TOWN OF DURHAM  
8 NEWMARKET ROAD  
DURHAM, NH 03824  
Tel: 603/868-5579  
Fax: 603/868-1858

# **10E**

AGENDA ITEM:

DATE: September 14, 2020

## COUNCIL COMMUNICATION

**INITIATED BY:** Planning Board

**AGENDA ITEM:** SHALL THE TOWN COUNCIL GRANT AN EXTENSION TO THE PLANNING BOARD FOR ADDITIONAL TIME TO CONSIDER TOWN COUNCIL-INITIATED ZONING AMENDMENT (ORDINANCE #2020-10) PERTAINING TO STORIES, CONFIGURATION OF USES AND HEIGHT IN THE CENTRAL BUSINESS DISTRICT; METHOD FOR DETERMINING BUILDING HEIGHT; AND DRIVE-THROUGH FACILITIES?

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

**PRESENTED BY:** Sally Tobias and Jim Lawson, Councilors

### **AGENDA DESCRIPTION:**

#### **BACKGROUND**

The Town Council voted to initiate a zoning amendment on August 3, 2020 pertaining to stories, configuration of uses, and height in the Central Business District; the method for determining building height; and drive-through facilities. Subsection 175-14. B. of the ordinance states (The provision for an extension is underlined).

*Amendments Initiated by the Town Council.* The Town Council may, upon its own initiative, from time to time, consider changes to the Zoning Ordinance, including its overlay districts and the zoning map. All such Council-initiated changes shall be referred to the Planning Board for its review and study. The referral shall be made in writing by the Town Administrator. The Planning Board shall, after following the public notice and hearing requirements contained in Subsection D below, submit a recommendation regarding the changes to the Town Council members within sixty (60) days of their referral. (the date of the letter from the Town Administrator). The Town Council may grant extensions to this timeframe at its discretion.

The proposed amendment was presented to the Planning Board on August 12. The board held a public hearing on August 26. Several residents spoke at the hearing raising a number of issues. The public hearing was continued to September 23 (not

Re: Extension for Zoning Changes for building height, stories, uses, and drive-through facilities

September 9 due to a busy agenda that evening). It is possible that the Planning Board will formulate its comments on September 23 but given the significance of the changes the board may need more time to discuss the amendment and might need to schedule another hearing should it propose meaningful revisions.

The 60-day timeframe will not allow for another meeting beyond September 23. The board's request will provide for two additional meetings on October 14 and October 28 if necessary.

**LEGAL AUTHORITY:**

Section 175-14. B

**LEGAL OPINION:**

N/A

**FINANCIAL DETAILS:**

N/A

**SUGGESTED ACTION OR RECOMMENDATIONS:**

**MOTION:**

*The Durham Town Council does hereby grant the extension to the October 28, 2020 Planning Board, as requested by the Planning Board, to provide additional time for the board to review and provide comments on the Town Council-initiated zoning amendments pertaining to stories, configuration of uses, and height in the Central Business District; the method for determining building height; and drive-through facilities. (ROLL CALL VOTE REQUIRED)*

Sally Tobias            \_\_\_  
Dinny Waters        \_\_\_  
Al Howland           \_\_\_  
Katherine Marple    \_\_\_

Wayne Burton        \_\_\_  
James Lawson        \_\_\_  
Sally Needell        \_\_\_  
Andrew Corrow       \_\_\_



TOWN OF DURHAM  
8 NEWMARKET ROAD  
DURHAM, NH 03824  
Tel: 603/868-5571  
Fax: 603/868-1800

# **10F**

AGENDA ITEM:

DATE: September 14, 2020

## COUNCIL COMMUNICATION

**INITIATED BY:** Jim Rice, Assessor

**AGENDA ITEM:** SHALL THE TOWN COUNCIL ACCEPT THE RECOMMENDATION OF THE TOWN ASSESSOR RELATIVE TO A FY 2019 PROPERTY TAX ABATEMENT FOR PREFCO XXV, LTD. PARTNERSHIP, 121 TECHNOLOGY DRIVE?

**CC PREPARED BY:** Jim Rice, Assessor

**CC PRESENTED BY:** Todd Selig, Town Administrator  
Jim Rice, Assessor

**AGENDA DESCRIPTION:**

Each year the Town receives requests for property tax abatements. The deadline for filing abatement requests is March 2, 2020 (March 1<sup>st</sup> fell on a Sunday). The Town must respond to the applicants in writing by July 1, 2020 or the application is automatically denied.

The Assessor's Office has reviewed abatement requests received to date, conducted site inspections, and met with those property owners or tax representatives who requested a meeting. These inspections and meetings have been held on an ongoing basis. Once these meetings concluded, the Assessor reviewed the requests in more detail and formulated recommendations. If the taxpayer has appealed their assessment with the municipality and is dissatisfied with the decision of the Town, they may appeal the abatement to either the New Hampshire Board of Tax and Land Appeals or Superior Court, but not both.

Attached for the Council's review and information are abatement recommendations for the following properties:

1. **PREFCO XXV Ltd. Partnership; 121 Technology Drive**  
Recommendation: GRANT (for Tax Year 2019). The Assessor is asking the Council for a reconsideration to grant an abatement request based on new information obtained after the original abatement request was denied. See attached abatement recommendation from the assessor outlining the reasons for granting this request.

**LEGAL AUTHORITY:**

RSA 76:16 describes the process for the apportionment, assessment, and abatement of property taxes.

**LEGAL OPINION:**

N/A

**FINANCIAL DETAILS:**

As part of the FY 2020 budget, the Town of Durham has appropriated \$125,000 to be used for tax abatement/appeal purposes. To date, the Town has abated \$17,464.89 to taxpayers who have appealed their assessments with the municipality, to the Board of Tax and Land Appeals or Superior Court.

**SUGGESTED ACTION OR RECOMMENDATIONS:**

**MOTION:**

*The Durham Town Council does hereby, upon recommendation of the Assessor and consent of the Administrator, approve the FY 2019 property tax abatement totaling \$70,164.00 pertaining to PREFCO XXV, Ltd. Partnership, 121 Technology Drive (ROLL CALL VOTE REQUIRED).*

Sally Tobias            \_\_\_  
Dinny Waters        \_\_\_  
Al Howland           \_\_\_  
Katherine Marple   \_\_\_

Wayne Burton        \_\_\_  
James Lawson        \_\_\_  
Sally Needell        \_\_\_  
Andrew Corrow       \_\_\_



*TOWN OF DURHAM  
8 NEWMARKET ROAD  
DURHAM, NH 03824-2898  
Tel: 603/868-8064  
Fax: 603/868-1858*

ABATEMENT RECOMMENDATION - RECONSIDERATION

**DATE:** September 2, 2020

**TOWN OF:** Durham

**TO:** Town Council

**FROM:** Jim Rice, CNHA

**OWNER:** PREFCO XXV LTD Partnership  
121 Technology Drive  
Durham, NH 03824

**REPRESENTATIVE:** Commercial Property Tax Management, LLC  
345 Cilley Road, Suite 1  
Manchester, NH 03103

**PROPERTY LOCATION:** 121 Technology Drive, Durham, NH 03824

**PID:** 9-10-4

**PROPERTY TAX YEAR APPEALED:** 2019

**APPLICATION FILING DATE W/MUNICIPALITY:** March 2, 2020 (March 1<sup>st</sup> fell on Sunday)

**INVENTORY FILING DATE (Filing Date April 15<sup>th</sup>):** N/A

**ASSESSMENT APPEALED:** \$23,017,943

Municipalities may abate taxes “for good cause shown.” RSA 76:16. Good cause is generally established by showing an error in the assessment calculation or a disproportionate assessment. Good cause can also be established by showing poverty and inability to pay the tax. If the abatement application is based on disproportionate assessment, the taxpayer has the burden to show how the assessment was disproportionate. To carry this burden the taxpayer must show:

- a. What the property was worth (market value) on the assessment date.
- b. The property’s “equalized assessment” exceeded the property’s market value. To calculate the equalized assessment, simply divide the assessment by the municipality’s equalization ratio (assessment ÷ ratio). Because a property’s market value is a crucial issue, **taxpayers must have an opinion of the market value estimate. Obtaining an appraisal or presenting sales of comparable properties can show this value estimate.**

**REASON(S) FOR APPEAL:** The applicant submitted a “retrospective” appraisal report with an estimated market value of \$14,000,000 as of 4/1/18. They also submitted a Property Condition Report conducted by Shepard Consulting Group; Inc. who estimated it would cost approximately \$4,100,000 to rectify immediate deferred maintenance to the structure. They believe their assessment of \$21,017,943 is excessive.

**ASSESSOR’S COMMENTS:** The appealed property identified on tax map 9, lot 10-4 is a research and development facility owned by Lexington Durham Limited Partnership (fka PREFCO XXV LTD Partnership) and leased to Goss International of the Americas through 2026. According to the lease agreement, Goss is responsible for the property taxes. Because Goss is the aggrieved taxpayer, they have filed for the abatement. The building is comprised of approximately 508,000 square feet; 46% office space and 54% warehouse space and is not fully occupied by Goss due to downsizing.

Although Goss International is the primary tenant, they have subleased 20,640+/- SF of office space and 23,355+/-SF industrial Space to USNH and are currently trying to sublease additional office/industrial space which is broken down as followed: 26,406 to 91,636 SF partially furnished office space and 23,092 to 113,609 SF warehouse space per listing sheet. Thomas Farrelly, executive director and real estate broker for Cushman & Wakefield said the property has been challenging to sublease due to deferred maintenance and location.

Goss International have appealed their assessment for tax years 2017 & 2018 at the local and State level. The Board of Tax and Land Appeals have consolidated both tax years and had scheduled both appeals in November 2020. However, the hearing has since been canceled and postponed to a later date due to the Covid-19 pandemic.

Although their abatement request for 2019 was previously denied, I am asking the Council for a reconsideration based on the following information:

In February 2020, Steve Traub from Property Valuation Advisors was contracted by the Town of Durham to conduct a retrospective appraisal report with an effective date of April 1, 2017. The property was appraised for \$20 million. As you can see on the attached spread sheet, applying the equalization ratio to the appraised amount reveals that the property has been over-assessed.

Currently, the Town has a balance of approximately \$107,000 that was appropriated in the 2020 budget for 2019 abatements. Although it is not enough to abate for 2017, 2018 & 2019 tax years, we can adjust the current assessment from \$21,317,943 to \$18,760,000 for tax year 2019 and abate the difference. This will also adjust the assessment for 2020. The December 2020 tax bill will self-correct for the value difference, so no abatement will be required for 2020. As for tax years 2017 and 2018, the Town can appropriate the funds in the 2021 budget to abate for those appeals that are outstanding at the BTLA.

**RECOMMENDATION:** I recommend adjusting the assessment from \$21,317,943 to \$18,760,000 and granting the abatement request for the assessed value difference of \$2,557,943. This calculates to an abatement of \$70,164.00 ( $(\$2,557,943/1,000) \times \$27.43$ ) plus interest at six percent per annum from the date paid to refund date per RSA 76-17-a. If the taxes have not been paid, then no refund or interest is due.

If you have any questions regarding this information, please don’t hesitate to contact me.

## PREFCO (Goss) Outstanding Appeals

Tax Year	Equalization Ratio	BTLA or Superior Court	Docket #	Current Assessment	Appealed Opinion of Value	Traub Appraisal	Equalized Value from Traub Appraisal (Revised Assessment)	Delta Between Current Assessment & Revised Assessment	Total Tax Rate	Abatement
2017	88.00%	BTLA	29102-17PT	\$21,317,801	\$14,000,000	\$20,000,000	<b>\$17,600,000</b>	\$3,717,801	\$30.64	\$113,913
2018	97.80%	BTLA	29510-18PT	\$21,317,801	\$14,000,000	\$20,000,000	<b>\$19,560,000</b>	\$1,757,801	\$26.80	\$47,109
2019	93.80%			\$21,317,943	\$14,500,000	\$20,000,000	<b>\$18,760,000</b>	\$2,557,943	\$27.43	\$70,164
<b>Total:</b>										<b>\$231,187</b>

### Notes

2017 - Town reduced assessment from \$23,013,880 to \$21,317,801 and granted abatement.

2018 - EQ ratio adjusted due to 2018 statistical update.

2019 - To date, they have only appealed at local level and not to the BTLA.



TOWN OF DURHAM  
8 NEWMARKET ROAD  
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# **11**

AGENDA ITEM:  
DATE: September 14, 2020

## COUNCIL COMMUNICATION

**INITIATED BY:** James Tobias, 107 Madbury Road

**AGENDA ITEM:** SHALL THE TOWN COUNCIL APPOINT JAMES TOBIAS, 107 MADBURY ROAD, AS AN ALTERNATE MEMBER TO THE TRUSTEES OF TRUST FUNDS FOR A ONE YEAR TERM?

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

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

**AGENDA DESCRIPTION:**

At the March 10, 2020 Town Election, voters adopted an amended to Section 5.15 "Trust Funds" of the Durham Town Charter allowing the Trustees of the Trust Funds to recommend to the Town Council the names of no more than two (2) persons who may serve as alternate members on the board. The alternate members shall be appointed to one (1) year terms.

Attached for the Council's information and consideration is an application for board appointment submitted by James Tobias, 107 Madbury Road, requesting appointment as an alternate to the Trustees of the Trust Funds.

Mr. Tobias has attended recent trustee meetings and has spoken and/or met with Trustee Chair Michael Everngam. Attached for the Council's information is Chair Everngam's endorsement of Mr. Tobias' 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."*

Re: Appoint James Tobias as Alternate to Trustees of Trust Funds

**LEGAL OPINION:**

N/A

**FINANCIAL DETAILS:**

N/A

**SUGGESTED ACTION OR RECOMMENDATIONS:**

**MOTION:**

*The Durham Town Council does hereby appoint James Tobias, 107 Madbury Road, as an alternate to the Trustees of the Trust Funds for a one year term, with a term expiration of April 30, 2021. (ROLL CALL VOTE REQUIRED)*

Sally Tobias            \_\_\_  
Dinny Waters        \_\_\_  
Al Howland           \_\_\_  
Katherine Marple   \_\_\_

Wayne Burton        \_\_\_  
James Lawson        \_\_\_  
Sally Needell        \_\_\_  
Andrew Corrow      \_\_\_



## 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

**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.**

**Applicant has:**

ATTENDED A MEETING  
 SPOKEN WITH CHAIR/V CHAIR  
 BEEN RECOMMENDED FOR MEMBERSHIP

Name: James S Tobias

Date: 06/29/2020

Address: 107 Madbury Rd Durham NH 03824

E-Mail Address: James.Tobias1993@icloud.com

Telephone: 831 214 6232

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. Alternate Trustee

2.

3.

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  NO

(Over)



**From:** [meverngam@aol.com](mailto:meverngam@aol.com)  
**To:** [Jen Berry](#)  
**Subject:** Council Appointment  
**Date:** Thursday, August 06, 2020 11:02:55 AM

---

To the Town Council:

James Tobias has applied to be appointed as an Alternate Trustee of Trust Funds. He has accomplished the meeting attendance and briefings that are prescribed for the application. The Trustees recommend his appointment as an Alternate Trustee at the Council's September 7, 2020 meeting.

Respectfully,

Michael H. Everngam  
Chair, Trustees of Trust Funds



TOWN OF DURHAM  
8 NEWMARKET ROAD  
DURHAM, NH 03824  
Tel: 603/868-5111  
Fax: 603/868-1858

# **13A**

AGENDA ITEM:  
DATE: September 14, 2020

## COUNCIL COMMUNICATION

**INITIATED BY:** Ellen Snyder, Land Stewardship Coordinator

**AGENDA ITEM:** PUBLIC HEARING AND ACTION ON ORDINANCE #2020-12  
CREATING A NEW CHAPTER, CHAPTER 71, TITLED "HORSES ON  
TOWN TRAILS" WITHIN THE DURHAM TOWN CODE PROHIBITING  
HORSES FROM TRAVERSING TRAILS DESIGNED FOR PEDESTRIAN  
ACTIVITY WITHIN THE TOWN OF DURHAM

**CC PREPARED BY:** Ellen Snyder, Land Stewardship Coordinator

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

### **AGENDA DESCRIPTION:**

The issue of horses on Town trails was discussed at the June 22, 2020, Conservation Commission meeting and at the July 9, 2020 Land Stewardship Subcommittee meeting. The issue was raised because visitors to Doe Farm were noting a truck and horse trailer parked at the Doe Farm trailhead on Bennett Road and that horse riders were using the trail system, including out to Moat Island.

There are several issues related to horses on Town trails that are different from other trail users:

- The parking areas at Durham conservation area trailheads were not designed to handle large vehicles that include trailers. We recently expanded the Doe Farm parking area to handle the popularity of this property - space is suited for individual vehicles. The same is true for most other conservation areas.
- During the past two years we have built eight trail bridges on Doe Farm, to allow visitors to walk, ski, bike, or run across wet or muddy sections of trails. These bridges were not designed to handle horses. The possibility of a horse breaking through or horse riders walking around the bridge is a concern. Similar bridges have been or will be built at other conservation areas.
- Horses leave behind large piles of waste in the trail. This is a detraction for other trail users. A Town ordinance requires dog walkers to pick up and remove their dog's waste.

Ellen Snyder contacted Emma Tutein, UNH Cooperative Extension Land Conservation Field Specialist, about this issue. She works with land trusts and towns on trail-related issues. She said there is not much guidance available, noting the lack of such in the NH State trail BMP guide, and that most relevant information is focused on the western U.S. where horse riding and horse trails are more prevalent. Ellen also spoke with Pam McPhee, Director of the UNH Browne Center; she also rides horses. Pam agreed that these are important issues to discuss and that horses can cause degradation of trails. She felt that the bridges were the biggest issue as riders would be unlikely to use the bridges due to safety concerns and thus would have to ride around the bridge. Given the higher risk to the land versus the benefit to only a few people, she thought it was fine to consider prohibiting horseback riding on the town trails. She noted that there are other places where people can ride: Rockingham Recreation Trail, dirt roads, and some state parks.

The Southeast Land Trust (SELT) does not allow horseback riding on most of its trails. When horseback riding is allowed, it is only on a trail that has a solid surface such as a woods road. SELT parking lots are also not designed for horse trailers so typically riders have to get there some other way. The Forest Society also does not promote horseback riding on its reservations in the Seacoast. Most conservation entities don't outright prohibit, but also don't encourage given the nature of trails and access points in this region.

**Following the discussion, the Land Stewardship Subcommittee passed the following MOTION: Knowing that there are alternative places to ride horses and that Durham trails and bridges were not built to accommodate horses, the LSC recommends that the Town Council adopt an ordinance that prohibits horses and horseback riding on town trails.**

On August 3, 2020, the Town Council reviewed and discussed the attached proposed ordinance, moved it on First Reading, and scheduled a Public Hearing on the ordinance for September 14, 2020. A Public Hearing notice was published in the *Foster's/Seacoast Online* for Thursday, August 7, 2020. The notice was also posted on the outside bulletin board at Town Hall, as well as at the Durham Public Library and Department of Public Works.

**LEGAL AUTHORITY:**

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

**LEGAL OPINION:**

The draft 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 1:

*The Durham Town Council does hereby OPEN the public hearing on Ordinance #2020-12 creating a New Chapter, Chapter 71, titled "Horses on Town Trails" within the Durham Town Code prohibiting horses from traversing trails designed for pedestrian activity within the Town of Durham. (ROLL CALL VOTE REQUIRED)*

Sally Tobias	___	Wayne Burton	___
Dinny Waters	___	James Lawson	___
Al Howland	___	Sally Needell	___
Katherine Marple	___	Andrew Corrow	___

MOTION 2:

*The Durham Town Council does hereby CLOSE the public hearing on Ordinance #2020-12 creating a New Chapter, Chapter 71, titled "Horses on Town Trails" within the Durham Town Code prohibiting horses from traversing trails designed for pedestrian activity within the Town of Durham. (ROLL CALL VOTE REQUIRED)*

Sally Tobias	___	Wayne Burton	___
Dinny Waters	___	James Lawson	___
Al Howland	___	Sally Needell	___
Katherine Marple	___	Andrew Corrow	___

MOTION 1:

*The Durham Town Council does hereby ADOPT (as presented) (as amended) Ordinance #2020-12 creating a New Chapter, Chapter 71, titled "Horses on Town Trails" within the Durham Town Code prohibiting horses from traversing trails designed for pedestrian activity within the Town of Durham. (ROLL CALL VOTE REQUIRED)*

Sally Tobias	___	Wayne Burton	___
Dinny Waters	___	James Lawson	___
Al Howland	___	Sally Needell	___
Katherine Marple	___	Andrew Corrow	___

## **ORDINANCE #2020-12 OF DURHAM, NEW HAMPSHIRE**

### **ORDINANCE #2020-12 CREATING A NEW CHAPTER, CHAPTER 71, TITLED "HORSES ON TOWN TRAILS" WITHIN THE DURHAM TOWN CODE PROHIBITING HORSES FROM TRAVERSING TRAILS DESIGNED FOR PEDESTRIAN ACTIVITY WITHIN THE TOWN OF DURHAM**

**WHEREAS**, the Durham Conservation Commission, Land Stewardship Subcommittee, volunteers, town staff, and partners have invested significant time and public and private funds to improve trails and bridges on Durham conservation areas to improve the experience for visitors--hikers, runners, dog walkers, cyclists, cross-country skiers, snowshoeing and to protect the ecological health of the soils, fields, woods, and wetlands; and

**WHEREAS**, trail bridges have been built or re-built across wet or muddy trail sections to protect the sensitivity of these locations and to provide safe, sustainable passage for pedestrians and cyclists; and

**WHEREAS**, the trail bridges are not built to sustain the weight of a horse; and

**WHEREAS**, horses can damage trails and trail bridges designed for hiking, jogging and pedestrian activity, while also leaving significant waste behind; and

**WHEREAS**, many trails on town-owned conservation areas are narrow, and thus unable to accommodate horses along with pedestrians and cyclists; and

**WHEREAS**, trailhead parking areas owned by the Town of Durham were not designed to accommodate larger vehicles with horse trailers, and

**WHEREAS**, the higher potential risk of damage to the land and infrastructure outweighs the smaller benefit of a few visitors that may want to ride horses, especially since there are other, better places for riders to enjoy a day on the trail, such as the Rockingham Recreational Trail or nearby state parks, and

**WHEREAS**, the Durham Town Council held a duly posted Public Hearing on this ordinance on Monday, September 14, 2020;

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 #2020-12 and does hereby amend the Durham Town Code to add a new chapter, Chapter 71, titled "Horses on Town Trails" prohibiting horses from traversing trails designed for pedestrian activity within the Town of Durham. Wording to be deleted is annotated with ~~strikeout~~ type. New wording is annotated with underscoring.

---

## CHAPTER 71

### HORSES ON TOWN TRAILS

[HISTORY: Adopted by the Town Council of the Town of Durham through Ordinance #2020-12 dated August 3, 2020]

No person shall ride a horse on any property owned by the Town of Durham

#### 71.1 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.

#### 71.2 Purpose and Intent

- A. To prevent potential conflict of the pedestrian users of Town property that may result from horseback riding at these locations.
- B. To prevent damage to Town property including, trails, parking areas, wetlands, activity areas and other improvements such as bridges designed for pedestrians, thereby reducing the cost to the taxpayers of Durham for operating and managing these facilities.
- C. To prevent soil erosion, damage to vegetation and turf, and other injury to the environment.
- D. To limit the Town's exposure to liability for any injuries that might result from the act of horseback riding on Town property.
- E. Such prohibitions shall *not* include:

The use of horses in the harvesting of trees on Town owned property if approved by the Town of Durham

**71.3 Definitions**

“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 NH, which may include but not be limited to recreational facilities and sports fields.

**71.4 Penalties**

The penalty for the violation of this ordinance shall be a fine not to exceed one hundred dollars (\$100.00) for each instance.

PASSED AND ADOPTED this \_\_\_\_ day of \_\_\_\_\_, 2020 by a roll call vote of \_\_\_\_ to \_\_\_\_ of the Durham Town Council as follows:

Sally Tobias	_____	Wayne Burton	_____
Dinny Waters	_____	James Lawson	_____
Al Howland	_____	Sally Needell	_____
Katherine Marple	_____	Andrew Corrow	_____

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

**ATTEST:**

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



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

# **13B**

AGENDA ITEM:

DATE: September 14, 2020

## COUNCIL COMMUNICATION

**INITIATED BY:** Katherine Marple, Council Chair

**AGENDA ITEM:** CONTINUED DISCUSSION REGARDING THE USE OF FIREWORKS  
WITHIN THE TOWN OF DURHAM

**CC PREPARED BY:** Katherine Marple, Council Chair  
Jennie Berry, Administrative Assistant

**PRESENTED BY:** Katherine Marple, Council Chair  
Todd I. Selig, Administrator

### **AGENDA DESCRIPTION:**

The State of New Hampshire gives wide latitude to municipalities to allow or restrict permissible fireworks displays. Currently, Durham allows permissible kinds of fireworks with a permit so that the Fire Department may provide information on their safe use. I did not know how many residents actually apply for a permit (Live Free or Die seems to be a state of mind for some) and therefore some might be more likely to disregard things like drought conditions or personal/neighborhood safety.

Todd provided feedback from Fire Chief Dave Emmanuel which states that he will support whichever direction the Council chooses. The current \$25 permit is not obtained by too many citizens. Chief Rene Kelley states that there has been relatively little complaint about personal fireworks.

The Council held a discussion regarding this subject at its meeting on August 3, 2020. At that time it was decided that the Administrator would meet with both Fire and Police and determine whether they can add some nuance restrictions to the existing language pertaining to fireworks to see what that might look like and then bring this matter back to the Council for further discussion.

On August 27, 2020, Administrator Selig, Councilors Kitty Marple and Al Howland, Police Chief Rene Kelley, and Fire Chief David Emanuel met. Administrator Selig and Councilors Marple and Howland will report on their results at Monday night's

Re: Continued Discussion Regarding the Use of Fireworks within the Town of Durham

meeting. Consensus of the group was that the Town should maintain the status quo, although Councilor Marple favors prohibiting fireworks in Durham.

**LEGAL AUTHORITY:**

N/A

**LEGAL OPINION:**

N/A

**FINANCIAL DETAILS:**

N/A

**SUGGESTED ACTION OR RECOMMENDATIONS:**

Receive report from Administrator Selig and Councilors Kitty Marple & Al Howland regarding their meeting with Fire and Police Chiefs regarding this matter and continue discussion regarding whether fireworks should continue to be allowed within Durham's town limits and provide direction to staff if needed.



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# **14A**

AGENDA ITEM:  
DATE: September 14, 2020

## COUNCIL COMMUNICATION

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

**AGENDA ITEM:** SHALL THE TOWN COUNCIL APPOINT COUNCIL REPRESENTATIVES TO REPLACE THE LATE KENNY ROTNER'S VACANCIES ON THE PARKS & RECREATION COMMITTEE AND THE LAND STEWARDSHIP SUBCOMMITTEE?

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

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

**AGENDA DESCRIPTION:**

In March of this year, Kenny Rotner was appointed as the Council representative to the Parks & Recreation Committee as well as the Land Stewardship Subcommittee for a one-year term. At this time, the Council should appoint a Council member to each of these committees with terms to end March 2021.

**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

Re: Appoint Council Representatives to Replace the Late Kenny Rotner

On the Parks & Recreation Committee and Land Stewardship Subcommittee

**SUGGESTED ACTION OR RECOMMENDATIONS:**

**MOTION:**

*The Durham Town Council does hereby appoint \_\_\_\_\_ as the Council representative on the Parks & Recreation Committee for a one-year term, said term to expire March 2021. (ROLL CALL VOTE REQUIRED)*

Sally Tobias	___	Wayne Burton	___
Dinny Waters	___	James Lawson	___
Al Howland	___	Sally Needell	___
Katherine Marple	___	Andrew Corrow	___

**MOTION 2:**

*The Durham Town Council does hereby appoint \_\_\_\_\_ as the Council representative on the Land Stewardship Subcommittee for a one-year term, said term to expire March 2021. (ROLL CALL VOTE REQUIRED)*

Sally Tobias	___	Wayne Burton	___
Dinny Waters	___	James Lawson	___
Al Howland	___	Sally Needell	___
Katherine Marple	___	Andrew Corrow	___