

**This set of minutes was approved at the May 5, 2014 Town Council meeting**

**DURHAM TOWN COUNCIL  
MONDAY, FEBRUARY 3, 2014  
DURHAM TOWN HALL- COUNCIL CHAMBERS  
7:00PM  
MINUTES**

**MEMBERS PRESENT:** Council Chair Jay Gooze; Council Chair Pro Tem Jim Lawson; Councilor Julian Smith; Councilor Robin Mower; Councilor Diana Carroll; Councilor Kitty Marple; Councilor Wayne Burton; Councilor Dave Howland (arrived at 7:05 pm); Councilor Carden Welsh (arrived at 8:25pm)

**MEMBERS ABSENT:** None

**OTHERS PRESENT:** Town Administrator Todd Selig; Town Clerk Lorrie Pitt; Town Moderator Chris Regan; Public Works Director Mike Lynch; Town Planner Michael Behrendt

**I. Call to Order**

Chair Gooze called the meeting to order at 7:01 pm.

**II. Approval of Agenda**

*Councilor Smith MOVED to approve the Agenda. Councilor Burton SECONDED the motion, and it PASSED unanimously 7-0.*

Councilor Howland arrived at 7:05 pm.

**III. Public Comments**

**Bill Hall, Smith Park Lane**, said he'd watched the recent presentation on the nitrogen issue, and said he thought the Town was getting ahead of itself administratively, and was on shaky ground. He spoke in some detail on this. He also said there was a dam management plan for the Wiswall dam but said it was just a rehash of the regulations, and noted that he'd recently spoken to the Council about the lack of an operational plan for the dam. He spoke in some detail about the need for such an operational plan.

**James Houle, Mill Road**, said he was happy to see the letter written by Councilor Howland and Councilor Welsh, and said he thought they could all agree that this was a tricky issue with no roadmap and guidelines, and that it was important to move forward in a strategic way. He said the insights on this from the Council and Town staff were great.

Mr. Houle spoke about some of the things he was looking for as this process moved forward. He said it was important to have an accounting mechanism, and noted as an example of this how UNH had been able to measure the amount of nitrogen removed from A lot. He said there should be something like this sooner or later for the Town's project that EPA could sign off on. He noted the issue of a lag time between putting nitrogen in the soil of the watershed today and the time it would take for this nitrogen to get to Great Bay, and asked what the accounting mechanism was that would get at this.

He said Durham ranked high concerning innovative approaches to resource management, and said the benefit of being an innovator was that there was access to assistance. He said there was a lot of risk associated with pioneering, and said there were grants to help with this in order to defray some of the costs so they weren't on the backs of the taxpayers. He noted that he wrote grants as part of his work, and said funders were always looking for projects that told a story.

**Kathy Bubar, Dover Road**, said she was running for the Town Council. She said she'd lived in Durham for 5 years and had retired about a year ago, She said she'd served on the ZBA for 3 years, and was interested in the exciting, innovative things the Town was doing concerning the downtown and expanding the tax base. She said some key issues for her were the Town's water resources, maintaining farmland and green space. She also said she was interested in the relationship between the University and the Town. She said she was very excited about the opportunity to serve the people of Durham.

#### **IV. Special Announcements**

Drawing of candidate names running for elected offices to establish order of listing on the March 11, 2014 Town Election ballot -Lorrie Pitt, Town Clerk Tax Collector; Town Moderator Chris Regan

The order for listing candidates on the ballot for the Town Council and Library Trustees positions was determined to be as follows:

##### Town Council

Kathy Bubar  
Julian Smith  
Kitty Marple

##### Library Trustees

Susan Roman  
Dianne Thompson

It was noted that in the races for the other elected offices, there was only one candidate.

Supervisors of the Checklist: Ann Shump  
Town Clerk-Tax Collector: Lorrie Pitt

Town Treasurer: Karl VanAsselt

Trustees of the Trust Funds: Bruce Bragdon

**V. Approval of Minutes - None**

**VI. Councilor and Town Administrator roundtable**

Chair Gooze said the Historic District Commission would be meeting on Thursday.

Councilor Lawson said the Planning Board met last Wednesday and would meet again this Wednesday, for their sixth meeting in six weeks. He thanked the Board, including Councilor Smith, for their willingness to step up and put so much energy into reviewing the projects before them. He briefly updated the Council on the status of projects currently before the Planning Board:

Orion site plan application, 25-35 Main Street: He said the Board approved this project at the January 29<sup>th</sup> meeting after lengthy discussion about the issue of a pre-blast survey, and the sense on the Board that there was a need for third party review as part of this survey. He also said that while at the January 22<sup>nd</sup> meeting there was discussion on the idea of 5% of dwelling units being inspected by the Code Officer, there was no discussion on this at the most recent meeting.

Madbury Road – Madbury Commons site plan application: Councilor Lawson said much of the lengthy discussion with the applicant at the most recent Planning Board meeting related to the design of the two proposed bridges for the project. He also said there was some limited discussion on several items in the draft Notice of Decision, and said a revised draft would be the focus of the meeting on Wednesday. He said there was discussion about the issue of habitable floor space per bedroom vs. gross floor space per bedroom.

Councilor Lawson noted that a parking map included in a recent Friday Update was slightly different than the map he had provided in the Council Communication, which contained an error on his part. He said the map in the Council Communication had indicated that parking in the Tedeschi lot would be metered, but said what was in the Ordinance and in the map online was that there would be free parking there for an hour and the metered parking would apply after that.

Councilor Carroll said the Conservation Commission would hold a site walk tomorrow at 12 pm to look at a wetland intrusion that was proposed as part of constructing South Road on the University campus. She noted that this road was intended to relieve traffic congestion. Councilor Marple asked when the road would be put in, and Councilor Carroll said she would find out about this.

Councilor Burton said Strafford Regional Planning Commission had recently held a public hearing at the Durham Library on the proposed Route 108 Scenic Byway, and said it went well other than some strong emotions expressed concerned the Byway by a few

members of the public. Councilor Burton suggested the idea of SRPC coming to Durham to give a presentation on the Transportation chapter of the Regional Master Plan that was being developed.

Councilor Mower noted that there were a number of Town committees, including the Conservation Commission, the ZBA and the Energy Committee that were looking for additional members. She said the Energy Committee would meet tomorrow at the Library.

She said that the proposed House bill to eliminate regional planning commissions and require elected planning boards had been determined to be inexpedient to legislate, on a 15-0 vote.

Councilor Mower noted an issue she had raised in an email to Councilors, concerning the fact that March 2014 was the 40<sup>th</sup> anniversary of the vote against amending the Zoning Ordinance to permit the location of an oil refinery at Durham Point. She said Minutes from 2004 indicated that there was no 30<sup>th</sup> anniversary recognition. She said if the Council agreed that having this celebration was a good idea, it would be nice to invite the key participants.

Chair Gooze and others said having this celebration was a good idea, stating that this issue had helped to define Durham. Councilor Lawson said he thought a lot of people in the community would be very interested in this event, and suggested holding it at the Library, and possibly starting out with the documentary on the story that wasn't completed but had great interviews. Councilor Mower noted footage from Channel 11 that was taken the year of the 25<sup>th</sup> anniversary.

Councilor Mower said she would like the Council to approve a Resolution concerning this. Councilor Lawson said he would be willing to work on this. Councilor Burton said a relevant question to be asked was why this project was stopped but the USA Springs case was so difficult. He noted that the way that local control worked was at play in both situations, and said there had to be legislation passed at the State and local level. Administrator Selig recommended that DCAT coordinator Craig Stevens be asked for his assistance in filming the celebration.

Concerning the recent passing of resident Shirley Thompson, Councilor Smith told Councilors a story about Shirley that dated back to his early days as a resident of Durham, when he first became acquainted with her. Administrator Selig said the funeral was scheduled for Friday at St. George's Episcopal Church, and said the Town Clerk's office would be closed to allow staff to attend.

Administrator Selig said the meeting planned regarding the UNH outdoor pool had been postponed. He said there was a wide variation between the two estimates that were received, so it was felt that a third estimate was needed. He said the meeting would be rescheduled after this estimate was received.

He noted as Councilor Mower had that there was a need for additional members of the ZBA, and said it was a very interesting board to sit on.

He said SRPC planner Kyle Pimental had told him after the Scenic Byways public hearing that Dover, which had opted not to participate in the Scenic Byways program, had previously come up with a few different iterations for the byway, one of which was a downtown loop. He noted that right now, the route in Durham was along Newmarket Road/Route 108 to the traffic light and then out Route 108 to Dover Road.

He said Mr. Pimental had told him that if Durham wanted, the route of the byway in Durham could be altered to go up Church Hill, do the downtown loop and then back out to Route 108. He said this route would take full advantage of the Historic district and could perhaps bring more people to the downtown. He said if Councilors agreed on this, he would suggest to Mr. Pimental that this change be made. After brief discussion, Councilors agreed that this change should be made.

## **VII. Unanimous Consent Agenda**

- A. Shall the Town Council, upon recommendation of the Administrator, approve a Special Event Permit application submitted by the Oyster River High School Friends of Oyster River Track to close certain sections of Town roads for its annual "Todd's Trot" 5K road race on Saturday, April 12, 2014?
- B. Shall the Town Council, upon recommendation of the Administrator, accept the recommendations of the Town Assessor relative to FY 2013 property tax abatements?
- C. Shall the Town Council, upon recommendation of the Administrator, award a contract to Vanasse Hangen Brustlin, Inc. (VHB) in the amount of \$20,000 to create a Historic Resource Chapter of Durham's Master Plan?

Councilor Mower said the qualifications of the VHA consultants were impressive.

*Councilor Smith MOVED to approve Unanimous Consent Agenda items A, B and C. Councilor Mower SECONDED the motion, and it PASSED unanimously 8-0.*

Councilor Howland spoke about the fact that Shirley Thompson had read to many of Durham's children, including his own, over a long period of time including recently. He said she was very special to everyone.

## **VIII. Committee Appointments - None**

## **IX. Presentation Item**

Update on the New Hampshire Preservation Alliance "Seven to Save" retreat and the Mill Pond Dam- Andrea Bodo, HDC/HC member

Ms. Bodo spoke about the recent "Seven to Save" retreat she'd attended. She said she was invited there to share the Town's experiences with the preservation of the Mill Pond dam, which was listed on the Seven to Save list in 2010, and said she was honored to be

asked to do this. She noted that the NH Preservation Alliance had played a major role in why so many private citizens in NH moved forward to preserve treasures of their history like the Mill Pond dam.

She said in 2009, she and Dick Lord submitted the first application to the NH Division of Historic Resources for the dam to be placed on the State Register of Historic Places. She said although it was deemed to be eligible in 10 categories, the Town was hesitant to accept the nomination since the dam was still so controversial an issue in Durham. She said in 2010, she was approached about listing the dam on the Seven to Save list, and said although she was quite nervous about doing this, the NH Preservation Alliance was behind her and others, and the dam was listed in 2010.

Ms. Bodo said Durham was one of 6 towns that presented at this year's retreat, and said the other towns were New Durham, Langdon, Washington, Moultonborough and Boscaawen. She said each Town did a presentation, and there was then discussion about how other towns had dealt with similar issues. She said she hadn't planned on talking about the Grange, Smith Chapel and the Orion project, but said it was clear that as Durham had been moving forward with preservation projects, it was becoming recognized on the State level as a leader.

She said Durham received high praise for the Grange project, which was described as a wonderful example of preserving and repurposing a Grange structure. She said the Town was also praised for meeting the challenges of new construction in an historic building, and said Linda Wilson from the NH Division of Historic Resources praised Durham for all of its achievements in preservation.

She said it was pointed out at the event that the best way to fundraise was to do it in small increments, and that if the money was well spent and people saw that, more people would be inclined to add on to it. She said it was noted that Durham had received a Moose Plate grant for the Chapel, then a NH Division of Historic Resources grant, and then a Certified Local Government grant.

Ms. Bodo said it was interesting to learn about the fact that some other towns had beautiful historic structures that were falling into disrepair, and didn't have the mechanisms in place for preservation that Durham did. She noted that the Historic District Commission was formed in 1975; the Certified Local Government status was established in 1996, and the Heritage Commission was established in 2006. She said the other towns at the retreat had preservation commissions that were viewed as social groups, didn't have historic districts, didn't have town councils and were not Certified Local Governments.

She said there was concern expressed at the retreat about the dissolution of town centers in New Hampshire. She said Linda Wilson explained that a town only needed one historic building to create a Historic District, and also advised the towns at the retreat to apply for the Certified Local Government status.

Ms. Bodo said thanks to this Town Council, a Resolution was drafted to preserve the Mill Pond dam for its useful life, and said it was the first dam to be listed on the Seven to Save list and on the State Historic Register. She said the value of the Town's historic heritage was becoming increasingly recognized by residents and Town government, and said she was very proud of Durham.

***Councilor Smith MOVED to move Agenda item XIA to be heard before item XA.  
Councilor Lawson SECONDED the motion and it PASSED unanimously 8-0.***

## **XI. New Business**

- A. Discussion regarding a possible resolution expressing the Town of Durham's support for the passage of Senate Bill 307 establishing a committee to review Citizens United amendments to the United States Constitution

Councilor Marple said she was very concerned about this issue. She said anyone who tried to run for national office these days had to be crazy because it was impossible to raise money on an honest level. She said politics was rife with money that shouldn't be there, and said she would be happy to promote a resolution to support the passage of SB307.

***Councilor Burton MOVED that the Durham Town Council supports NH Senate Bill 307, which along with the Resolution already passed by the NH House of Representatives, will call upon the Congress of the United States to move forward a Constitutional amendment that guarantees the right of our elected representatives to safeguard fair elections through authority to regulate political spending, and clarifies that constitutional rights were established for people, and that corporations are not people. Councilor Marple SECONDED the motion.***

Councilor Burton noted that the bill itself was a study bill: "This bill establishes a committee to review constitutional amendments regarding the Citizens United decision and related cases that have been introduced in the United States Supreme Court." He said bill sponsors included Senator Martha Fuller Clark and Senate President Sylvia Larsen.

He said he was recruited to run for Congress in 1998, and found that he would have had to raise \$700,000 in order to do this. He said it struck him that they really didn't have a democracy when so many good people were precluded from running for office because they didn't have the capacity to raise millions of dollars. He also noted that he had been an advocate in Washington, and said there wasn't a democracy when one could buy legislation. He said this was a very important issue.

Councilor Lawson asked if Councilor Burton wasn't satisfied with the draft Resolution in Council packets, given the wording in his motion. There was discussion. Administrator Selig said the Resolution was crafted to coincide with the underlying spirit of the legislation, which was to establish a committee to review the Citizens United decision and related cases, and then to make a recommendation to the Congressional delegation.

Councilor Burton said he had no problem with substituting the Resolution for the motion he had made.

Councilor Lawson said he was inclined to support this based on the way it had come forward. But he said the dilemma for him was regarding the precedent the Council was setting in doing so. He asked if there was a risk that the Council would be a conduit to speak for the community instead of the State representatives who represented residents.

Councilor Mower said a question was how Durham got representation, and said if this Resolution opened the doors for representation across the board at all levels, it was valuable. She said they wanted representatives who were not constrained by financial challenges.

Councilor Carroll said she understood what Councilor Lawson had said, and noted that she had been approached by outside groups with resolutions on clean water, etc. She said it was a judgment call, and said she supported the Resolution because of what it said and what it did. She said she didn't think it went too far, and said it made a clear statement and was an opportunity to speak up. She said there were times in history when it was important to speak up, and said this was one of those times.

Chair Gooze said he wasn't sure that the Resolution was saying what the Council wanted it to say, given what the bill said regarding creating a committee. He said the Council had to be careful about what it approved. Administrator Selig suggested striking the second paragraph of the Resolution:

“WHEREAS, members of the Durham Town Council desire to add their voices to people and municipalities throughout the State of New Hampshire in support of Senate Bill 307, that, along with the resolution already passed by the New Hampshire House of Representatives, will call upon the Congress of the United States to move forward a constitutional amendment that guarantees the right of elected representatives to safeguard fair elections through authority to regulate political spending, clarifies that constitutional rights were established for people, and that corporations are not people.”

Chair Gooze said he would feel more comfortable doing that, and said if the committee did come out for what was in this paragraph, the Council would need to have another discussion about whether they were comfortable with that. He noted that as an individual, he would write a letter supporting what he hoped the committee came up with.

Councilor Mower said the warrant article that would go to Town meeting in Exeter went several steps further, and said the narrowness of this Resolution as proposed now should give Councilors some comfort. Chair Gooze said once the committee's recommendations came out, there could possibly be a petition drive from residents on this issue. Councilor Mower noted that this is what happened with the climate change issue. Councilor Carroll said Durham's resolution was more general than others and made a clear statement without getting bogged down with a lot of detail.



Councilor Burton said passage of this bill, and reversing the Citizens United case, didn't restrict individuals from making campaign contributions, so wouldn't completely solve the problem of money in political campaigns. Concerning Councilor Lawson's point, he said he agreed that the Council shouldn't necessarily take public positions on issues. But he said the Town Council was the "Town meeting" for Durham, and this issue was about a challenge to their democracy, so an exception could be made in this instance. He agreed that the second paragraph of the Resolution could be taken out. He said it would be good for Durham's State Representatives to be able to say they had the support of the Town on this issue, as evidenced by this Resolution.

Councilor Lawson said this Resolution was brought forward in a very thoughtful way, and was articulated well by a member of the community, as opposed to coming from an outside organization that wanted Durham's buy-in concerning an issue.

After further discussion, Councilor Burton withdrew his motion and Councilor Marple withdrew her second of the motion.

***Councilor Smith MOVED that the Durham Town Council does hereby ADOPT Resolution #2014-XX expressing its support for the passage of Senate Bill 307 establishing a committee to review Citizens United amendments to the United States Constitution. Councilor Marple SECONDED the motion.***

Councilor Howland said he was wrestling with this, noting that he was concerned about a precedent being set with this Resolution. He said he realized that there were exceptions to rules and that speaking to the Town meeting principle was very important. But he said they might see other residents coming to the Council asking it to weigh in on national issues.

Chair Gooze said he was comfortable with the idea of a committee, but said he thought more discussion would be needed by the Council depending on what the committee came up with. Administrator Selig said in dropping the second paragraph, the Council was still acknowledging that this was an issue and was supporting the committee looking into it and developing thoughtful recommendations, rather than saying what it believed the solution was. Councilor Howland said the Council wasn't accepting the status quo.

Councilor Burton said it would be a great problem to have if the Council room was full of citizens interested enough in issues to ask the Council to take a public stand. He said that would be a great day.

***The motion PASSED unanimously 8-0.***

Council stood in recess from 8:14 – 8:24 pm.

Councilor Welsh arrived at 8:25 pm.

## **X. Unfinished Business**

- A. Continued discussion on the Oyster River Integrated Watershed Plan Project – Town Engineer David Cedarholm and William Arcieri of Vanasse Hangen Brustlin, Inc.

Mr. Cedarholm said he appreciated the memo from Councilor Howland and Councilor Welsh, and said there were a lot of deep questions in it. He said he was part of the way through a response to it, and said the draft plan being developed by VHB would clear up of some of the questions. He explained that there were some stops in the contract with VHB, and said written approval would be needed before the next phase of the project began. He said the Town needed to make sure that the water quality data was understood before preparing the implementation plan, and said this data had come in just before Christmas. He said it was expected that the plan would be available in March.

He said the contract for this phase (phase 3) included about 19 tasks, and said Paul Chamberlin in particular wanted to make sure that the baseline data was in and well understood before developing the plan. He said he was comfortable with giving VHB the go ahead to do the plan and said he expected the same confirmation on this from Mr. Chamberlin shortly.

Mr. Cedarholm said there some questions he and Mr. Arcieri wanted to address right now. He said the CIP information provided last year, which was put together in July and was honed in the fall, was preliminary numbers. He said this was an adaptive plan, and would depend on what was working. He said a draft implementation plan would be developed and said they hoped to implement some of it this year, and figure out what the most cost effective BMPs were that addressed stormwater/nonpoint/nitrogen issues most effectively. He said the \$499,000 number was a preliminary number, and said they might only spend half of it this year. He noted that many of the line items in the CIP had already changed.

He said it was good that the Town and UNH were getting scrutiny and input from the Council, watershed groups, etc. so this project could move forward with as much forethought as possible. He said the Exeter administrative order from the EPA spelled out how much time the towns and cities in the region were being given. He said Exeter and Newmarket were both given 10 years to put a plan together and start to implement it. He said Durham was afforded this as well, and was told it would have as much time as it needed to figure things out, and that there wasn't a specific roadmap to follow. He said progress needed to be made, but there was plenty of time.

He said Newmarket had 5 years to upgrade its wastewater treatment plant to 8 mg/liter, which was where Durham was at now. He said Newmarket also had to develop a nonpoint source plan, monitor progress, and also deal with the MS4 stormwater piece. He said the stormwater piece was not described in their administrative order. He spoke about the overlaps between the NPDES wastewater permit, the nonpoint source program and the overlap of the requirements of the MS4 permit.

Councilor Lawson said in looking at the Exeter order, his conclusion was that in 10 years, they needed far more than a plan, and had to show things that justified leaving the modifications in place, looking at nitrogen, BOD, chlorophyll, macro-algae, etc. He said it looked like they needed to show substantive improvements in 10 years.

Mr. Cedarholm said they needed a plan developed and an implementation plan to show they were making improvements, through quantitative and qualitative measurements. He said the EPA planned to have municipalities demonstrate what they had done and where they were doing it, and would give them credit for the types of programs and structural improvements being made. He said the EPA acknowledged that actually showing improvements was going to be very difficult. He said it would be great if improvements could be demonstrated in 2 years, but said it didn't look like the EPA expected that Durham would be able to do this.

He noted that there could be something like an increase in coal use in the Midwest and the subsequent deposition here would overshadow small improvements being made locally concerning nitrogen. He said if Durham could show that it had made some improvements and that the attitudes of residents were trending toward addressing the problems with Great Bay, this all would be considered by the EPA and DES in interpreting success being made.

Mr. Cedarholm said the question that was the most challenging to answer was how to define success. He said if the Town simply asked for the permits, the EPA would be defining success. He said the real benefit of the approach Durham was taking was that the Town got to define what success was. He said Durham would be combining the permits so there was no overlap and duplication of efforts.

Councilor Lawson confirmed that this would be defined in the permit that would be developed for Durham, whereas with Exeter it wouldn't be. He asked if the EPA was likely to let Durham do a permit that at some point didn't have some element that quantified the success of the program. Mr. Cedarholm said there were mixed messages on this from the EPA. He said the agency wanted to know that improvements were being tracked, and said this would be weighed more heavily than what might be some very questionable water quality data.

Chair Gooze said there hadn't been a definitive answer from the EPA on this. Mr. Cedarholm said it would be tough to get a definitive answer from the EPA until the Town got a permit. He said the permit would have language that said if Durham wasn't tracking and showing that it was attempting to make improvements, it might make the Town go all the way to 3 mg/liter.

Councilor Lawson said if things got to the point where the EPA said it wouldn't let Durham define success, and yet the Town had done all of this work, this appeared to be the same work that Exeter and other municipalities had to do to comply with the order they had been given. He spoke further on this. Mr. Cedarholm said in the long run Durham would be doing something very similar to what Exeter and most other

communities would do. He said the EPA was anxious for everyone to focus on nonpoint source pollution in addition to the standard point source discharge permit tasks they had been doing all along.

Councilor Howland said the key selling point for the nonpoint source approach was that this would avoid having to invest a lot of money on an end of the tail pipe solution. But he said if Durham put effort, money and time into a nonpoint solution and this didn't bear the fruit that was expected, wasn't it the case that the Town would have to go back to the end of the tail pipe approach.

Mr. Cedarholm said it was cheaper to get as much as they could out of the wastewater treatment plant in terms of nitrogen removal from the system down to a point where there was a diminishing return. He said when they hit 5 mg/liter, then getting to 3 mg/liter meant an upgrade of the wastewater treatment plan would be needed.

Councilor Howland said the bet was that the Town would save money by addressing nonpoint pollution because it wasn't cost effective to do nitrogen removal at the wastewater treatment plant below 5 mg/liter. He said if that was the case, a big question was whether the Town could have an arrangement with the EPA where it was spelled out in advance that if the Town took the nonpoint source approach, it wouldn't be punished later if this approach didn't bear fruit. He said one way to soften the blow was to hedge things with grants, and said another way would be to have an agreement ahead of time with the EPA, perhaps like communities around the Chesapeake Bay did.

He said what concerned him was the notion that the EPA was a moving target, and couldn't hold still and come to an understanding with the Town. He said he didn't understand why there wasn't confidence that the Town could go to the table with the EPA and reach an understanding on the reductions to achieve, go after funding, take a good look at the plan being developed and the funding involved, and move forward

Councilor Lawson said another part of this moving target question was regarding the fact that 3 mg/liter was considered to be the limit of technology today. He said 10 years out, a question was whether it would still be the limit of technology, and if enough scaling would have occurred so reaching that limit would be less expensive. But he said in some ways, the EPA wasn't really a moving target, in looking at the order with Exeter. He said it seemed to be a moving target because the approach the Town was taking would have to be justified in 10 years. But he said Durham could go the route that Exeter went.

He also said that while the Town's integrated approach was unique in the context of the Great Bay watershed, it wasn't that unique in that it was a replication of what municipalities in other watersheds around the country had done, especially the Chesapeake Bay watershed. He said given that what Durham would be doing wasn't that unique, getting grants might therefore be questionable.

Councilor Mower said Durham's approach might be unique in New England. Councilor Howland said that was a different narrative than had been discussed around the Council

table. He said what had been proposed was an innovative approach, which was part of its appeal. Councilor Lawson said it was unique for the Great Bay watershed, but the things they proposed to do to address nonpoint sources and point source pollution from stormwater were not unique. As an example, he said septic system inspections and credits were done on the Chesapeake Bay 15 years ago.

Mr. Cedarholm agreed that they were borrowing ideas from other communities concerning nonpoint pollution, and said what was really unique was what Durham was trying to do with the three permits. He said Durham would be the first municipality to combine two MS4 permits and one NPDES permit, and particularly in the way it was trying to do this. He said from a financial standpoint, it would be a pretty good deal because of the upgrades to the wastewater treatment plant that had been made already. He noted that Newmarket would need to pay \$45 million for a new wastewater treatment plant in order to get to 8 mg/liter.

Councilor Howland said if the science wasn't complicated and the techniques weren't new, this became a discussion about sound fiscal policy, and the need for some written assurances that where the Town was headed would save money and not lose money. Councilor Lawson said the Town had to go on this venture one way or the other, and he spoke in some detail on the options the Town had.

Chair Gooze said Durham wanted the EPA to acknowledge where the Town was in terms of nitrogen reductions at the wastewater treatment plant, and wanted some assurances that it was doing a great job. Councilor Lawson said the EPA was acknowledging this, because if Durham went the Exeter route, it wouldn't get an order that it needed to be at 8 mg/liter in two years because it was already there.

Mr. Cedarholm noted that the wastewater plant needed an upgrade to regain some capacity, but said that would cost \$10-12 million at the very most. He said the \$10 million or so invested in the plant over the last 15 years was money well spent. He said with the next grade, there would be a \$45 million wastewater treatment plant.

Chair Gooze asked if Durham could get the things Councilor Howland and Councilor Welsh wanted from the EPA.

Mr. Arcieri reviewed in detail the handout he had developed, which contained a comparison of the regulatory programs for Durham and NH using the conventional permitting approach vs the integrated permitting approach. He noted that with the Exeter permit, this was the first time in this region that the nonpoint part was added into the wastewater permit.

He noted the MS4 permits that both the Town and UNH were subject to, and said much of the focus with these permits was on impervious cover, but said there were overlaps between the MS4 permits and nonpoint permitting. He spoke in some detail on this. He said the ideal situation was integrating the 3 programs into one permit. He said it was believed that there would be cost savings in addressing the overlaps.

Mr. Arcieri said there were still some uncertainties with the EPA and whether they would accept the integration into one permit. He said an alternative might be for the NPDES permit to stand alone, but to integrate the nonpoint and MS4 permits. He said at the very least, the MS4 permits should be allowed to be combined.

He reviewed the advantages of doing an integrated approach, and said this would allow Durham and UNH to set the framework of the permit, its timeline, actions and commitments as part of the permit. He said this wouldn't be allowed if they followed the conventional permitting approach. He said another benefit of this integrated approach was that they were looking beyond what was looked at with a typical MS4 permit, and were considering agriculture, lawn fertilizers, septic systems, etc. He said they would look for the best combination of cost effective measure, as part of the integrated permit.

Councilor Welsh said his understanding was that the integrated approach would save about \$4-8 million. Mr. Cedarholm said money would be saved on the wastewater side, and said they would also save money from not having to do duplicative tasks with the MS4 permits. He said it made sense to pool resources.

There was discussion that the standard approach, without the combined permit, would involve managing 3 pollution sources. Councilor Lawson said the only way the 3 mg/liter requirement would go away with this approach would be if the wastewater treatment plant was upgraded. Administrator Selig noted that combining the two MS4 permits would save money.

Councilor Burton asked if the science allowed a determination of which towns were contributing to the pollution of Great Bay. He said there were all these orders for the municipalities, but said there was no guarantee that the Bay would get clean because they were only as strong as the weakest town in the watershed. He said Durham could do all of this work and not make a difference. He spoke about having a regional approach instead. Councilor Lawson said the question was also what municipalities 30 miles up in the watershed were doing. There was discussion.

Councilor Howland said there was really little to argue about concerning the integrated approach, which was creative, intuitive and could save money. But he said the nitty-gritty, was that they were going to be asked to sign off this year on the \$400,000 installment. He said using the analogy of building a space suit, they didn't know what kind of atmosphere it was going to have to go in, and could build it but didn't know how to measure the success of the product. He also said they didn't know at what point, as investors, to back out of the venture.

He said he realized that the CIP spreadsheet was preliminary, but said there was a lot of spending proposed over the next several years, and the bulk of it wasn't related to reducing nitrogen. He said this all might work, but said there was no way to back out if it didn't. He said he worried about the nightmare scenario where Durham invested the money, demonstrated good faith to the EPA but then had to throw more money in. He said now was the time to try to avoid this.

Chair Gooze asked Councilor Howland what he would recommend as an alternative. Councilor Howland said the memo he and Councilor Welsh recommended a calculated, strategic way to get a return on their investment, and he provided details on this. He said they needed to have assurances that there was a set of parameters that they could meet. He noted that one of his concerns was the political sustainability of this program over time.

Chair Gooze said the EPA wasn't providing these parameters, and asked if the alternative was to not spend the money now. Councilor Lawson said Councilor Howland was making some good points. He said this was a dynamic environment they were all operating in concerning the integrated approach, and said at times it was difficult to follow the dollars and cents of it and reconcile things. He said there was some more work that needed to get done, but said there was always going to be some risk. He spoke further on this, and said they needed some way to reasonably pull things together concerning the price.

Councilor Welsh said he agreed with Councilor Lawson. He said he and Councilor Howland weren't saying there was a better approach to take, and were just trying to save some money. He said there was a lot of money involved, and said they were just saying that they didn't know enough yet about something that was very important to the future of the Town. Councilor Marple said they had to start somewhere, allot a certain amount of money, and adapt things as they went along. There was further discussion.

Councilor Mower said it appeared that the EPA was volunteering to help communities comply with an integrated approach and develop a roadmap. She asked if the Town was getting any technical assistance on this from EPA Region 1. She also asked if there had been discussion about a mitigation/intervention credit system so a roadmap could be developed.

Mr. Arcieri said at a meeting with EPA last year, it was understood that the Town first needed to develop a baseline of information. He said that process was needed in order to set goals on what they thought could be accomplished. He said the goal was getting to 1.5 tons of nitrogen, which was the difference between 5 and 3 mg/liter at the wastewater treatment plant. He said the Town believed it could do this over a 5 year time frame, and said this was built into the CIP.

He said they would meet with EPA in March to start developing the framework based on the main goals. He said they also needed to develop an implementation plan in March and April, included estimating costs for the tasks involved. Councilor Mower asked if the EPA would give the Town points for doing this. Mr. Arcieri said those concepts had played out in other watersheds. He said there wasn't a defined credit system, and said this needed to be worked out with the EPA. He said the Town needed to define the terms and what it hoped to get credit for, and said there would need to be some back and forth on this. Councilor Mower asked how much the EPA would help with developing this.

Mr. Cedarholm said the Town was trying to get away from talking about mg/liter of nitrogen, and instead talk about lbs of nitrogen (discharge rate x mg/liter = lbs), which would allow a direct correlation between nitrogen removed from the watershed and nitrogen removed from the wastewater treatment plant, and thus was a simpler accounting system. He said the EPA had literature on removal of lbs of nitrogen, and said doing this would be an innovative approach for New England.

Councilor Burton said there was a direct economic consequence presented to residents from not doing the second reactor at Seabrook and not putting the oil refinery on Great Bay. But he said there wasn't an economic disincentive to the public to cause them to apply creative solutions to the challenges to Great Bay. He said the integrated approach was great, and said if there was an educational component, it could spread beyond Durham. But he asked if there was an economic reason why the public should care about the condition of Great Bay.

Mr. Cedarholm said the cleaner they could make Great Bay, the more valuable it would be in terms of recreation, fishing, property values, etc. to everyone in the region. Councilor Burton said part of the public relations campaign here was to educate the public on the deleterious results of not doing what was planned. Mr. Cedarholm said this would be a lot cheaper than pouring \$500,000 worth of ethanol into the treatment plant every year. There was discussion about whether peoples' behavior could be changed. Mr. Cedarholm said this would be a social experiment.

Administrator Selig said in 2011, the Town received an order from the EPA, and it was working with the other towns to sue the EPA. He said he attended a Lean conference in MA around that time, and some people from the EPA were there. He said he challenged them that Durham felt there was a better way to approach the nitrogen problem, by addressing stormwater and wastewater together. He said this was a concept the EPA hadn't looked at yet, and said shortly after, for whatever reason EPA came out with a memo allowing this approach.

He said the Town was in a good position relative to the others around the Bay with the exception of Somersworth, which had upgraded its wastewater treatment plant a few years ago. He said there was no order for Durham and said it wasn't on the intended list of communities because it had done so much already. He said the Town had already been spending a lot of money fixing the problem in Durham while other nearby communities had not done this. He said he therefore wasn't worried about not doing things over the first few years now. He said Durham had leverage, noting they could choose to go the Exeter route, or could do the integrated approach, which the EPA really wanted the Town to do.

Administrator Selig said the question he still had was regarding the costs. He said intuitively, he thought the integrated approach had synergies and dynamics that would save money, but said he still didn't have the financial plan to demonstrate this. He said Paul Chamberlin had the same question, and said everyone would want a better sense of



this before they dove into the next phase of this project. He said he shared Councilor Howland's concerns as to whether the integrated approach would save money.

He said he didn't think they should spend any of the 2014 money yet, and noted that the work being done right now used 2013 money. Chair Gooze asked if the Town would hold off on spending 2014 money until they saw what was going on, and Administrator Selig said yes. He said he hoped the work being done now with 2013 money would allow them to come back to the Council with more of a business plan as to whether moving forward made sense.

He said if they decided that the integrated plan made sense, it would be good for some Councilors to look at the financials in some detail. He also said it might be that the Exeter order was the way to go, which gave them the definitive number they needed and kicked the can down the road for a few years. But he said the information on this wasn't available yet.

Administrator Selig noted that an issue that needed to be addressed was the lost capacity at the wastewater treatment plant in exchange for water quality improvements that had been made. He said there was a cost to regaining that capacity. Councilor Lawson noted there was an investment at the end of phase 3 that got that capacity back.

Councilor Howland said what he had heard was reassuring, and was a fiscally responsible approach. He said once there was some word from the EPA on what they needed to do, they could see whether the integrated approach made sense. He said it would be wonderful if it could work, but said if Durham was the guinea pig for an approach the EPA would like the Town to try, there should be some financial assistance through grants or direct assistance, and an insurance policy that covered the Town for no less than the cost of doing things the old fashioned way.

Councilor Lawson said he liked that, but said if the metric of success in proceeding was an insurance policy, he didn't think that would happen. He said the Council needed to think about whether some of the expectations were realistic, given the constraints the EPA was under and the Town was under. Councilor Howland said he was proposing to hedge the bet as much as possible. Councilor Lawson said they could also limit the bet or exposure, noting that if they went with plan A but then had to go to plan B, being able to carry over some things from plan A was a way of reducing the bet.

Chair Gooze said he liked that idea. He also said the CIP wasn't written in stone. He said each time they went to spend money from the CIP they needed to decide if this would be useful. Councilor Howland said there were some points of no return with this project, and said that reality was the reason he was discussing this topic now. He said hopefully what Councilor Lawson had discussed could be done if needed. There was further discussion. Councilor Lawson said this project was different than others in the CIP because the Council needed to make a decision this year about how the CIP would look several years out.

Administrator Selig said when they got to the point where there was interest in spending 2014 money on the project, Mr. Cedarholm and Mr. Arcieri would come back to the Council and discuss the plan and the costs in some detail.

There was discussion that the suit the other Great Bay communities had brought against NHDES went to the Supreme Court, and they lost. Mr. Cedarholm said each community lost about \$500,000 as part of this legal process. He said the communities sued the state concerning the draft nutrient criteria, which were supplied to the EPA. He said the EPA wrote the permit based on the criteria. He said he agreed that the criteria were flawed, but said EPA said the permit was based on the limit of technology, not the science.

He said before the next meeting, he and Mr. Arcieri would provide answers in writing to the remaining questions in the memo from Councilor Howland and Councilor Welsh.

B. Discussion regarding the Administrator's annual evaluation in accordance with the Employment Agreement between Mr. Selig and the Town

Chair Gooze said he, Councilor Smith and Councilor Burton would get together to word the matrix better next time.

Councilor Mower noted that Administrator Selig had been invaluable at the Scenic Byways public hearing the other evening.

Chair Gooze said the evaluation for Administrator Selig was lower this year but was still very good. He noted that Administrator Selig had to spend an enormous amount of time this year on issues like the UNH pool. He also said he didn't think many town administrators in the state would allow such a transparent evaluation process.

Administrator Selig read a detailed response he had written in response to the evaluation.

Because there is never a slow period in the life and times of a NH community, the evaluation of the Administrator for towns and cities is often not done. But if ignored for too long, problems can develop that could have otherwise been easily addressed through more active communication. My overt goal is for problems not to develop ... so when I was hired in Durham in 2001, it was I who insisted that an evaluation be done annually ... and we have done one each year since that time. I would like to thank members of the Council for taking the time to participate as part of this year's evaluation of my performance. I really appreciate it.

A takeaway from the evaluation is that most Councilors realize that the experience in Durham over the last year has not only been active, it has been frenetic. Durham has experienced more development activity over the last three or four years than it did in the 40 years that came before. We have built a new Public Library. We have designed and are now building a new Town Hall. We have been active in Cable Contract negotiations, collective bargaining, the spruce hole well development, wastewater improvements to the sludge dewatering facility, the development of plans to address Durham's nitrogen discharges to the great bay, solar projects, a civil disturbance, and a number of zoning changes intended to help Durham to better achieve its long-term goals in the face of development pressure.

Implementation of the new housing standards ordinance has been under constant threat of litigation from the Durham Landlords Association over the last twelve months which included a substantial right to know law request; and litigation in 2013 was undertaken by the Town against the LGC to recoup Durham health insurance contributions.

Finally, many, many cycles have been devoted to the issue of the UNH Outdoor Pool. And these are just some of the issues with which we dealt in 2013.

The reality is that without the Council ever meeting, it is a full time job running the daily affairs of this energetic and complex, academically-focused community. At the same time, it is essential for the Council to meet, and to engage, and to set goals and priorities and to work collaboratively with the Administrator to carry them out. There are Council packets to prepare, meetings to attend, and initiatives to follow up upon after each Town Council meeting.

The intensity and breath of the issues which we have had to deal over the last year has been quite simply off the charts, but we have successfully weathered this storm of activity and have done so thoughtfully, strategically, and with civility.

Amidst this pace of activity, I have had to change the way I operate, focusing more attention on big picture issues and acting as a facilitator/problem solver/ombudsman to keep projects/initiatives moving forward but at a pace Durham and its residents can manage and absorb. This has meant delegating some tasks to departments that I have previously had the luxury to take on myself. For example, I had to rely much more on our excellent Business Manager Gail Jablonski during the Budget process this year because I simply did not have the cycles available in my own schedule to do what I have historically done. The result was still a solid budget, but one with somewhat less of my stamp on it. With limited time, we must make strategic choices and I have. I accept the consequences, and some of those were pointed out in the evaluation – the pool funding issue, library wages, CIP Churchill Rink item lacking detail, and lack of focus on potential revenue possibilities.

This year my evaluation score has fallen from a 4.5 (between Very Good and Excellent) to a 4 (Very Good). In terms of specific written comments from Councilors, I wanted to make note of a few.

In my effort to carry out the goals and priorities of the Council and the community, I have sacrificed some areas of performance, but the result is we have been able to progress as a community in new and far reaching ways. I believe this will have a big payoff in terms of expanded tax base, a downtown with increased vitality, an expanded mix of goods and services, and a slow transition to a more technology focused professional activity downtown that is tied to research taking place on campus.

The intense development we are experiencing is in some ways my fault in response to Council goals. I worked with past Councils and departments to change our processes to be more development friendly. I worked to extend/repair infrastructure so Durham would be ready for new demand when development came. I worked with Councilors to change zoning to allow economically viable uses in identified zones. I worked to leverage the presence of UNH here in Durham vis-à-vis new development. I have worked as a matchmaker behind the scenes to introduce prospective developers with land owners, advised developers on what uses would be most viable/beneficial for the Town, helped where possible to marry

developers with high quality professional services (engineering, attorneys, etc.) and when things go awry for development projects, as they regularly do through the approval process, I problem solve with residents, developers and staff to help get the project back on track for the benefit of the public, our boards, and the developers themselves. It is clear to me that one area in which I have failed to communicate well with the Council is the extent to which I am at the very center of the development activity we are experiencing.

When I came to Durham, I tried hard to mete out information as needed to specific Councilors but it was a disaster. Those Councilors who did not receive the information felt excluded or betrayed that they were not included. It is for this reason that when I send an email or a memo to one Councilor, I send it to all. When an email being forwarded is simply to adhere with this policy, containing no information I actually want the full Council to read, I include an “asterisk” before the subject line. I am sorry if I have forwarded along too much personal information to Councilors. In my effort to be transparent, sometimes I go too far.

Usually there are comments in my evaluation that I am too “nice” but this year one Councilor mentioned that I can be “stubborn!” Thank you! I AM stubborn in ensuring that we have an EXCELLENT Town providing EXCELLENT services. It is this dogged perseverance, along with the many hard working staff and volunteers that we have with us for the ride, that we are doing so well in Durham in so many areas.

Responding quickly to Councilors or members of the public is one area that I have had to sacrifice this past year. I do follow up as soon as I can but it is challenging with so many people trying to get a piece of my time on one issue or another, combined with the need for me to get things done.

Big Data. One area that I would like to comment on is the data goal. We have done much more with better using data over the last two years to support our decision making as a town in looking at things from whether traffic changes are effective to arrest statistics. Our entire integrated wastewater/MS4 plan is built around use of data and it was overtly the data goal which led me to believe the approach would be a good fit for Durham. I also made a concerted effort to have the Business Office develop a benchmarking analysis as part of the budget process for 2013 with staff spending several cycles selecting areas where we could compare Durham departments to peer communities. But when we discussed the issue with the Council in 2013, the sense of the board was that the effort would not be helpful for the Council so we did not pursue it further. This was our overt data initiative for 2013 and the Council was not interested in it. I should have made this clear to the Council but did not. Moving into 2014, I suggest we revisit this issue and if the Council desires to make significant progress, we talk further about how that will look.

I think in some cases, the evaluation points to the need to improve direction to me to identify projects the Council wants me to put on the back burner in order to free up my time to address the ones most valued.

In conclusion, it is my absolute pleasure to server the Council and the citizens of Durham. Although the Councilors around the table and I don’t always agree with one another on every topic, we can discuss issues openly, honestly, and with civility and work to find solutions. What more can a citizenry ask of its form of government? I tremendously respect all of you and appreciate your individual and group efforts to be supportive of me in my role as

Administrator and the many, many hours you put into the betterment of the Town. It is my honor to serve you. Thank you.

As he was reading his letter, Administrator Selig spoke about his perception of some of his scores in the matrix, and there was discussion with the Council on this.

Chair Gooze said despite some of the tough narratives written by Councilors as part of the evaluation, they said they wanted to keep Administrator Selig.

Councilor Burton said Administrator Selig was one of the best town administrators in the State, and said the ranking this year was grossly unfair and stupid. He said he thought the Council should throw it out or do it over, and he asked what grades Councilors would give themselves. He noted that when he was evaluated as a CEO, he had a chance before the evaluation came out to react to it and provide his side. He said a scale like this wasn't used. He said he had strong reservations about the grading system used for the evaluation. He said for someone who did so much work for this Council and the Town to end up with this documentation was unfair, and said something should be done about this.

Councilor Smith said it was the matrix and not Administrator Selig that was at fault.

Administrator Selig said he respected Councilors as people, enjoyed working with them and thanked them for the opportunity to work with them.

Councilor Lawson said he agreed with Councilor Burton's comments, because he didn't believe that there was another town administrator in NH, NE, or perhaps the country who could come to Durham and do this job. He said a person who did that job and did it well deserved an A, but he said the challenge for the Council was that if there was a trend they didn't like, it was probably the resources Administrator Selig had or the expectations that were the problem. He said at some point the best people couldn't do an A quality job if there weren't the resources available to do this. He said he believed this was how to characterize this year, when there wasn't enough time in Administrator Selig's week to do the A expectation that no one else could do.

Councilor Mower said she took that point seriously, but also said it would be very unusual to find any one person with all of the skills at the top level. She said they had a terrific package in Administrator Selig, but said there was an opportunity to provide suggestions for improvement or better use of his strengths.

Chair Gooze said it was important to keep in mind that beyond the Council there were individual Councilors who had their own goals, and if they didn't get what they wanted, this might affect the grading in some way.

Councilor Burton said an advantage of his own evaluation as a CEO was that it looked at the goals the whole organization was trying to accomplish as well as the goals that he as a CEO could be held responsible for. He said that was much more helpful to him, and said that approach wouldn't hold Administrator Selig responsible for something the Council could have done something about.

Councilor Lawson said there was some value to a more thoughtful quantitative analysis, but also said the Town Administrator should be able to do a matrix of the Council. He said Administrator Selig was the most important asset the Council had, and he asked if Councilors asked themselves regularly if they were doing everything possible to use this asset as carefully and wisely as possible. He said his own answer to that question was absolutely not, and said this frustrated him.

Councilor Welsh noted that there was a somewhat different set of evaluators on the Council from year to year, and said he was new to this process and graded tougher than the average Councilor, so these things were reflected in the fact that Administrator Selig was rated a 4 instead of a 4.5 this year. He also said Administrator Selig was the CEO of the Town, and it was a tough job. He said Administrator Selig was well compensated, and said the fact that it was a tough year didn't mean the Council should grade him just as well as the year before. He said when CEOs had tough years, their ratings went down. He said he thought this was a very fair overall assessment, and said the evaluation was intended to make Administrator Selig a better Town Administrator over time.

Councilor Howland said he agreed with Councilor Welsh. He said the Council showed Administrator Selig respect by being straightforward with him. He said they realized it was difficult to have nine bosses, and said reading through everyone's comments, this also felt like an evaluation of the Council. He said they were a tough crowd, and said it was a good process for everyone. He said Administrator Selig had their respect and got a very good grade in a very tough time. He said he shared some of the frustration about the matrix as a tool, and said it could be a lot better.

Councilor Howland said he disagreed with Administrator Selig concerning the data goal, and said he thought they were talking past each other. He said this goal stood out because it sat on the wall for two years.

Councilor Smith said most of the narrative statements in the evaluation were useful, but said he thought the Council should do away with the matrix entirely. He said they needed to evaluate Administrator Selig using some basic guidelines. Councilor Burton said he agreed, and spoke in some detail on this.

Councilor Lawson stressed that Administrator Selig was not subordinate to the Councilors, and was accountable to the Town Council. Councilor Howland noted that the Council didn't always speak with one voice.

Councilor Mower said she thought this was the first year since she'd been on the Council that there was this much narrative. Councilor Smith said he'd like to see more.

Councilor Carroll noted Councilor Mower's reference to the recent meeting at the Library that Administrator Selig had facilitated, and said the word "invaluable" Councilor Mower had used in describing him at that meeting was the word she (Councilor Carroll) would choose to describe Administrator Selig. She said they all knew that Councilors, residents, committees, etc. sought him out, because he was absolutely invaluable. She said he had a

great ability to listen, problem solve, negotiate and work with people, and said they were fortunate to have him.

Councilor Lawson noted that Councilor Gooze was two meetings away from not having missed a meeting in 3 years.

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

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

**XIV. Adjourn**

*Councilor Mower MOVED to adjourn the meeting. Councilor Howland SECONDED the motion and it PASSED unanimously 9-0.*