



TOWN OF DURHAM
15 NEWMARKET ROAD
DURHAM, NH 03824-2898
Tel: 603/868-5571
Fax: 603/868-5572

AGENDA

DURHAM TOWN COUNCIL
MONDAY, OCTOBER 4, 2010
DURHAM TOWN HALL – COUNCIL CHAMBERS
7:00 PM

NOTE: THE TOWN OF DURHAM NEEDS 48 HOURS NOTICE IF YOU
REQUIRE SPECIAL COMMUNICATION AIDS

- I. Call to Order
- II. Approval of Agenda
- III. Special Announcements
None
- IV. Approval of Minutes
None
- V. Councilor and Town Administrator Roundtable
- VI. Public Comments (NLT 7:45 PM)
- VII. Unanimous Consent Agenda (*Requires unanimous approval. Individual items may be removed by any councilor for separate discussion and vote*)
 - A. Shall the Town Council adopt a schedule of supplemental meeting dates for the purpose of deliberating the proposed FY 2011 Operating Budgets, Capital Budget, and 2011-2020 Capital Improvement Plan and schedule a public hearing for the proposed FY 2011 Operating Budgets for Monday, November 15, 2010?
 - B. Shall the Town Council, in accordance with Section 175-14 (B) of the Durham Zoning Ordinance, refer to the Planning Board for its review and study a Council-initiated zoning change that would amend Article XIX "Conservation Subdivision", Section 175-107(B) "Applicability", to add Office, Research & Light Industry and Multi-Unit Dwelling/Office Research zoning districts to the list of zones to which conservation subdivision regulations apply?
 - C. **FIRST READING ON ORDINANCE #2010-12** amending Chapter 153 "Vehicles and Traffic", Article VI "Schedules", Section 153-43 "Schedule XI: Stop Intersections" by creating a stop intersection at Quad Way

- D. **FIRST READING ON ORDINANCE #2010-13** amending Chapter 153 "Vehicles and Traffic", Article VI "Schedules", Section 153-44 "Schedule XII: Yield Intersections" by creating a yield intersection on Madbury Road at Pettee Brook Lane

VIII. Committee Appointments

None

IX. Presentation Items

- A. Receive annual report of the Durham Energy Committee - Kevin Gardner, Chair
- B. Property Assessed Clean Energy (PACE) Program - Kevin Gardner, Chair, Durham Energy Committee (DEC) and Charles Forcey, DEC member
- C. Update on Durham's Section 401 Water Quality Certificate, Lamprey River Protected Instream Flows, and the status of the Town's and UNH's Water Supply and Demand - David Cedarholm, Town Engineer

X. Unfinished Business

Discussion regarding police enforcement efforts relative to student behavior and stepped-up zoning/trash enforcement efforts in and around Durham's central core

XI. New Business

- A. Discussion regarding the concept of developing a property maintenance code
- B. Other Business

XII. Nonpublic Session (if required)

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

XIV. Adjourn (NLT 10:30 PM)



TOWN OF DURHAM
15 NEWMARKET ROAD
DURHAM, NH 03824-2898
Tel: 603/868-5571
Fax: 603/868-5572

AGENDA ITEM: **#7A**

DATE: October 4, 2010

COUNCIL COMMUNICATION

INITIATED BY: Todd I. Selig, Town Administrator

AGENDA ITEM: SHALL THE TOWN COUNCIL ADOPT A SCHEDULE OF SUPPLEMENTAL MEETING DATES FOR THE PURPOSE OF DELIBERATING THE PROPOSED FY 2011 OPERATING BUDGETS AND 2011-2020 CAPITAL IMPROVEMENT PLAN, AND SCHEDULE A PUBLIC HEARING ON THE PROPOSED FY 2011 OPERATING BUDGETS FOR MONDAY, NOVEMBER 15, 2010?

CC PREPARED BY: Jennie Berry, Administrative Assistant

CC PRESENTED BY: Todd I. Selig, Town Administrator

AGENDA DESCRIPTION:

The proposed FY 2011 Operating Budgets and 2011-2020 Capital Improvement Plan are in the final process of completion and will be ready for presentation to the Town Council for the meeting on Monday, November 1st.

Historically, the Town Council has held meetings every Monday evening throughout the months of November and December until the budget and CIP have been adopted.

LEGAL AUTHORITY:

Section 5.3 "Budget hearings" of the Durham Town Charter:

"The Town Council shall hold in convenient places as many public hearings on the budget as it deems necessary, but at least one (1) public hearing on the budget shall be held at least fourteen (14) days before its final adoption by the Council at such time and place, convenient to the public, as the Council shall direct. Notice of such public hearing, together with a copy of the budget as submitted, shall be posted in two (2) public places and published once at least one (1) week in advance by the Town Clerk."

Section 5.4 "Final date for budget adoption" of the Durham Town Charter:

"The budget shall be adopted not later than the last workday of the preceding fiscal year....Failure by the Council to adopt a budget by the deadline established in this section will establish the budget as recommended by the Administrator as the adopted budget."

Section 5.8 "Capital Improvement Plan" of the Durham Town Charter:

- A. The Town Administrator, after consultation with the Planning Board, shall prepare and submit to the Council a capital improvements plan at least one (1) month prior to the final date for submission of the budget. The capital improvements program shall include:
1. A clear summary of its contents.
 2. A list of all capital improvements, including major replacements, which are proposed to be undertaken during the next six (6) fiscal years, including but not limited to equipment, sewer and water mains or facilities, roads, sidewalks, bicycle paths or lanes, public open spaces and recreation facilities, new police and/or fire stations and other new public facilities and major items of equipment, with appropriate supporting information as to the necessity for such improvements.
 3. Cost estimates methods of financing and a recommended time schedule for each such improvement.
 4. The estimated annual cost of operating and maintaining the facilities to be constructed or acquired.
- B. The capital improvements plan shall be based on a period of not less than six (6) years and shall include reference to or be influenced by, where appropriate, the Town Master/Comprehensive Plan.
- C. The above information may be revised and extended each year with regard to capital improvements still pending or in process of construction or acquisition.

LEGAL OPINION:

N/A

FINANCIAL DETAILS:

N/A

SUGGESTED ACTION OR RECOMMENDATIONS:

MOTION #1:

The Durham Town Council hereby adopts the following schedule of special meeting dates, in addition to its regular legislative meeting dates, to deliberate, discuss, and take action on the proposed FY 2011 Operating Budgets and 2011-2020 Capital Improvement Plan:

Monday, November 8, 2010 7:00 PM

Monday, November 29, 2010 7:00 PM

Monday, December 13, 2010 7:00 PM

MOTION #2:

The Durham Town Council hereby schedules a Public Hearing for the proposed FY 2011 Operating Budgets for Monday, November 15, 2010, in accordance with Section 5.3 "Budget Hearings" of the Durham Town Charter.



TOWN OF DURHAM
15 NEWMARKET ROAD
DURHAM, NH 03824-2898
Tel: 603/868-5571
Fax: 603/868-5572

7B
AGENDA ITEM:

DATE: October 4, 2010

COUNCIL COMMUNICATION

INITIATED BY: Diana Carroll, Council Chair

AGENDA ITEM: SHALL THE TOWN COUNCIL, IN ACCORDANCE WITH SECTION 175-14 (B) OF THE DURHAM ZONING ORDINANCE, REFER TO THE PLANNING BOARD FOR ITS REVIEW AND STUDY A COUNCIL-INITIATED ZONING ORDINANCE CHANGE THAT WOULD AMEND ARTICLE XIX "CONSERVATION SUBDIVISIONS", SECTION 175-107 (B) "APPLICABILITY", TO ADD ORLI AND MUDOR ZONING DISTRICTS TO THE LIST OF ZONES TO WHICH CONSERVATION SUBDIVISION REGULATIONS APPLY?

CC PREPARED BY: Diana Carroll, Council Chair

PRESENTED BY: Diana Carroll, Council Chair
Todd Selig, Town Administrator

AGENDA DESCRIPTION:

Background

On July 12, 2010 the Durham Town Council approved a motion (6 to 2) to amend the Zoning Ordinance to allow single family-homes and duplexes in the Office, Research & Light Industry (ORLI) Zone as a conditional use and to allow single-family homes in the Multi-Unit Dwelling/Office Research (MUDOR) Zone as a conditional use. (The amendment addressed Article XII, Zone Requirements, Section 175-53 "Table of Uses.")

Immediately thereafter, a unanimously approved motion followed, stating that any new single-family homes in the ORLI and MUDOR zones should be subject to Article XIX of the Zoning Ordinance: Conservation Subdivision Regulations. The motion included the recommendation that this change be forwarded to the Planning Board for its consideration.

The Planning Board held discussions and a Public Hearing on this suggestion and on September 15, 2010 voted 5 to 2 not to support the zoning change which would extend the Conservation Subdivision Regulations into the ORLI and MUDOR Districts.

Current Council Proposal and Rationale

As of July 10, 2010, Conservation Subdivision Regulations were applicable only in the Residence A, Residence B, Residence Coastal, and Rural Districts. However, Article XIX 175-107. Conservation Subdivisions begins with the statement: "The Town of Durham's Master Plan 2000 recommends that conservation subdivisions, in which a substantial portion of the site is set aside as permanent, common open space, be the primary form of residential development in the community."

It is clear that the intent of the community is for Conservation Subdivision Regulations to be applicable to residential subdivisions wheresoever they are allowed. Indeed, these regulations have been required in *all* zones where single-family subdivisions were allowed by the zoning ordinance. Now that ORLI and MUDOR allow single-family homes, it is a reasonable conclusion that single-family home subdivisions in these districts, albeit they are commercial districts, should also be subject to Conservation Subdivision Regulations.

Attached for the Council's review and consideration is a proposed Council-initiated ordinance amending Article XIX Conservation Subdivisions, 175-107 (B) Applicability, to add ORLI and MUDOR zoning districts to the list of zones permitted to be developed as conservation subdivisions. Section 175-14 (B) of the Durham Zoning Ordinance states that: **"The Town Council may, upon its own initiative, from time to time, consider changes to the Zoning Ordinance, including its overlay districts. 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 chair of the Town Council. 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."**

LEGAL AUTHORITY:

Section 175-107(B) of the Durham Zoning Ordinance.

LEGAL OPINION:

N/A

SUGGESTED ACTION OR RECOMMENDATIONS:

MOTION:

The Durham Town Council does hereby refer to the Planning Board for its review and study in accordance with Section 175-14 (B) of the Zoning Ordinance a Council-initiated zoning change that would amend Article XIX "Conservation Subdivisions", Section 175-107 (B) "Applicability", to add ORLI and MUDOR zoning districts to the list of zones permitted to be developed as conservation subdivisions.



ORDINANCE #2010-XX OF DURHAM, NEW HAMPSHIRE

A COUNCIL-INITIATED ORDINANCE AMENDING ARTICLE XIX "CONSERVATION SUBDIVISIONS", 175-107 (B) "APPLICABILITY", TO ADD ORLI AND MUDOR ZONING DISTRICTS TO THE LIST OF ZONES TO WHICH CONSERVATION SUBDIVISION REGULATIONS APPLY

WHEREAS, on July 12, 2010 the Durham Town Council approved a motion (6 to 2) to amend the Zoning Ordinance to allow single family-homes and duplexes in the Office, Research & Light Industry (ORLI) zone as a conditional use and to allow single-family homes in the Multi-Unit Dwelling/Office Research (MUDOR) zone as a conditional use. (The amendment addressed Article XII, Zone Requirements, Section 175-53 "Table of Uses."); and

WHEREAS, on July 12, 2010, the Durham Town Council unanimously approved a second motion stating that any new single-family homes in the ORLI and MUDOR zones should be subject to Article XIX of the Zoning Ordinance "Conservation Subdivision Regulations". The motion included the recommendation that this change be forwarded to the Planning Board for action.

WHEREAS, the Planning Board held discussions and a Public Hearing on this suggestion and on September 15, 2010 voted 5 to 2 not to support the zoning change which would extend the Conservation Subdivision Regulations into the ORLI and MUDOR districts; and

WHEREAS, as of July 10, 2010, Conservation Subdivision Regulations were applicable only in the Residence A, Residence B, Residence Coastal, and Rural Districts. However, Article XIX 175-107 "Conservation Subdivisions" begins with the statement: "*The Town of Durham's Master Plan 2000 recommends that conservation subdivisions, in which a substantial portion of the site is set aside as permanent, common open space, be the primary form of residential development in the community.*" and

WHEREAS, it is clear that the intent of the community is for Conservation Subdivision Regulations to be applicable to residential subdivisions wheresoever they are allowed, and indeed, these regulations have been required in *all* zones where single-family subdivisions were allowed by the zoning ordinance; and

WHEREAS, now that ORLI and MUDOR allow single-family homes, it is a reasonable conclusion that single-family home subdivisions in these districts, albeit they are commercial districts, should also be subject to Conservation Subdivision Regulations; and

WHEREAS, it is the desire of the Town Council to add ORLI and MUDOR zoning districts to the list of zones permitted to be developed as residential conservation subdivisions; and

WHEREAS, the Town Council may initiate Zoning Ordinance amendments in accordance with Section 175-14 (B) of the Durham Zoning Ordinance which states: "The Town Council may, upon its own initiative, from time to time, consider changes to the Zoning Ordinance, including its overlay districts. 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 chair of the Town Council. 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."

NOW, THEREFORE BE IT RESOLVED that the Durham Town Council, the governing body of the Town of Durham, New Hampshire does hereby adopt Ordinance #2010-12 amending Article XIX Conservation Subdivisions, 175-107 (B) Applicability, to add ORLI and MUDOR zoning districts to the list of zones to which conservation subdivision regulations apply. Wording to be deleted is annotated with ~~strikeout~~ type. New wording is annotated with underscoring.

ARTICLE XIX CONSERVATION SUBDIVISIONS

175-107. Conservation Subdivisions.

The Town of Durham's Master Plan 2000 recommends that conservation subdivisions, in which a substantial portion of the site is set aside as permanent, common open space, be the primary form of residential development in the community. The provisions of this section govern the design and development of conservation subdivisions. The process for the design of conservation subdivisions, as set forth in the Town's Subdivision Regulations, requires that key natural, historic, archeological, and cultural features on the site be identified for protection and the development planned to protect these resources.

- A. **Purpose.** The purposes of these provisions are to assure that conservation subdivisions developed in the Town of Durham:

1. Preserve those areas of the site that have the highest value for conservation purposes;
2. Preserve identified historic, known archeological and identified cultural features located on the site:
3. Locate the buildings and structures on those portions of the site that are most appropriate for development considering both the development suitability of the site and its conservation value;
4. Create continuous open spaces or “greenways” by linking the common open spaces in adjoining subdivisions wherever possible; and
5. Minimize the impact of residential development on the Town, neighboring properties, and the natural environment.

B. *Applicability.* All residential subdivisions in the Residence A District, Residence B District, Residence Coastal District, ~~and the Rural District,~~ Office Research Light Industry District, and Multiunit Dwelling Office Research District shall be developed as Conservation Subdivisions in accordance with the provisions of this section and the Town’s Subdivision Regulations unless the subdivision is exempt from this requirement based upon subsection C. below.

PASSED AND ADOPTED by the Town Council of the Town of Durham, New Hampshire this ____ day of ____ by ____ affirmative votes, ____ negative votes, and ____ abstentions.

Diana Carroll, Chair
Durham Town Council

ATTEST:

Lorrie Pitt, Town Clerk



TOWN OF DURHAM
15 NEWMARKET ROAD
DURHAM, NH 03824-2898
Tel: 603/868-5571
Fax: 603/868-5572

AGENDA ITEM: # 7C

DATE: October 4, 2010

COUNCIL COMMUNICATION

INITIATED BY: David L. Kurz, Police Chief

AGENDA ITEM: FIRST READING ON ORDINANCE #2010-12 AMENDING CHAPTER 153 "VEHICLES AND TRAFFIC", ARTICLE VI "SCHEDULES", SECTION 153-43 "SCHEDULE XI: STOP INTERSECTIONS" BY CREATING A STOP INTERSECTION AT QUAD WAY AND MAIN STREET

CC PREPARED BY: David L. Kurz, Police Chief

PRESENTED BY: David L. Kurz, Police Chief

AGENDA DESCRIPTION:

This ordinance will install a stop sign at the intersection of Quad Way and Main Street. Until recently, Quad Way was a one-way street. Early this summer, the Administrator authorized the change as a pilot program which has worked successfully to date. The Traffic Safety Committee placed this item on its agenda and invited the University to discuss the ramifications of allowing Quad Way to be a two-way street and the Town authorizing a stop sign to be installed. The desired outcome would address three issues:

1. Decrease traffic that must traverse from Main Street to gain access to portions of UNH.
2. Decrease traffic on Mill Road as traffic could readily access Quad Way that leads to interior UNH roadways.
3. Large delivery vehicles would be able to access the loading docks at Huddleston Hall and conversely return to Main Street without traveling through Durham residential areas.

LEGAL AUTHORITY:

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

Council Communication, 10/4/10

Re: First Reading on Ordinance #2010-12 – Installation of Stop Sign at Quad Way and Main Street

LEGAL OPINION:

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

SUGGESTED ACTION OR RECOMMENDATIONS:

MOTION:

The Durham Town Council does hereby move on First Reading (as presented) (as amended) Ordinance #2010-12 amending Chapter 153 "Vehicles and Traffic", Article VI "Schedules", Section 153-43 "Schedule XI: Stop Intersections" by creating a stop intersection at Quad Way and Main Street, and schedules a Public Hearing to be held on Monday, October 18, 2010.



ORDINANCE #2010-12 OF DURHAM, NEW HAMPSHIRE

CREATING A STOP INTERSECTION AT QUAD WAY AND MAIN STREET

WHEREAS, the University of New Hampshire owns and controls a roadway named Quad Way that intersects with Main Street, and

WHEREAS, after presentation and recommendations by the Durham Traffic Safety Committee that Quad Way should be designated by the University of New Hampshire as a two-way road that accepts traffic entering and exiting from and to Main Street, and

WHEREAS, the University of New Hampshire desires to designate Quad Way as a two-way road allowing vehicles to enter and exit onto Main Street , and

WHEREAS, the Traffic Safety Committee has determined that a stop sign will be required at Quad Way to control traffic exiting onto Main Street;

NOW, THEREFORE BE IT RESOLVED that the Durham Town Council, the governing body of the Town of Durham, New Hampshire does hereby adopt Ordinance #2010-12 amending Chapter 153 "Vehicles and Traffic", Article VI "Schedule", Section 153-43 "Schedule XI: Stop Intersections" of the Durham Town Code by installing a stop intersection on Quad Way, which will allow for a right turn only on to Main Street, as indicated below. Wording to be deleted is annotated with ~~strikeout~~ type. New wording is annotated with underscoring.

PENALTY

Anyone who violates this ordinance/chapter shall be subject to fines in accordance with the provisions of Chapter 1 "General Provisions", Article II "General Penalty", Section 1-16 (B) "Violations and Penalties" of the Durham Town Code.

153-43. Schedule XI: Stop intersections.

In accordance with the provisions of 153-13, the following described intersections are hereby designated as stop intersections, and stop signs shall be installed as follows:

Stop sign on	Direction of travel	At intersection of:
Adams Circle	West	Davis Avenue
Adams Point Road	West	Durham Point Road
Ambler Way	West	Canney Road
Bagdad Road	Both	Canney Road
Bagdad Road	East	Dover Road
Bagdad Road	North	Emerson Road
Bagdad Road	West	Madbury Road
Bartlett Road	East	Woodridge Road
Bartlett Road	North	Mill Road
Bayview Road	South	Dover Road
Beards Landing	North	Coe Drive
Bennett Road	North	Newmarket Road
Bennett Road	West	Packers Falls Road
Bucks Hill Road	South	Bagdad Road
Bucks Hill Road	South	Partridge Berry Lane
Bucks Hill Road	North	Partridge Berry Lane
Bunker Lane	South	Route 4
Burnham Avenue	North	Faculty Road
Burnham Avenue	South	Oyster River Road
Canney Road	Both	Bagdad Road
Canney Road	South	Dover Road
Carriage Way	North	Packers Falls Road
Chesley Drive	South	Mill Pond Road
Church Hill Road	South	Mill Pond Road
Coe Drive	West	Dennison Road
Coe Drive	West	Bagdad Road
Cold Springs Road	North	Bennett Road
Colony Cove Road	West	Durham Point Road
Constable Way	West	Packers Falls Road
Cormorant Circle	West	Shearwater Road
Cowell Drive	West	Madbury Road
Croghan Lane	East	McGrath Road
Croghan Lane	West	Oyster River Road
Cutts Road	East	Longmarsh Road

Stop sign on	Direction of travel	At intersection of:
Dame Road	East	Durham Point Road
Daisy Drive	East	Sumac Lane
Daisy Drive	West	Bucks Hill Road
Davis Avenue	East	Edgewood Road
Davis Court	West	Madbury Road
Deer Meadow Road	East	Fox Hill Road
Deer Meadow Road	South	Durham Point Road
Denbow Road (both)	West	Pinecrest Lane
Dennison Road	South	Woodman Road
Durham Point Road	South	Newmarket Road
Durham Trust lot	West	Main Street
Durham Wastewater Treatment Plant	North	Piscataqua Road
Edgewood Road	Both	Emerson Road
Edgewood Road	Both	Madbury Road
Edgewood Road	South	Main Street
Edgewood Road Ext.	Both	Emerson Road
Emerson Road	West	Madbury Road
Emerson Road	East	Bagdad Road
Emerson Road	West	Bagdad Road
Emerson Road	Both	Edgewood Road
Faculty Road	Southeast	Mill Pond Road
Faculty Road	West	Mill Road
Falls Way	West	Packers Falls Road
Ffrost Drive	East	Longmarsh Road
Ffrost Drive	North	Denbow Road
Fogg Lane	North	Mill Road
Foss Farm Road	North	Mill Road
Garden Lane	North	Faculty Road
Garden Lane	South	Oyster River Road
Garrison Avenue	Both	Madbury Road
Garrison Avenue	South	Main Street
Gerrish Drive	West	Canney Road
Glassford Lane	South	Cowell Drive

Stop sign on	Direction of travel	At intersection of:
Griffiths Drive	East	Packers Falls Road
Griffiths Drive	South	Wednesday Hill Road
Hampshire Avenue	East	Madbury Road
Hampshire Avenue	North	Lundy Lane
Hampshire Avenue	South	Lundy Lane
Hemlock Way	North	Mill Road
Henry Bailey Stevens Way	East	Orchard Drive
Hetzel Way	West	Fairchild Drive
Hoitt Drive	East	Garden Lane
Hoitt Drive	West	Oyster River Road
Jenkins Court	North	Pettee Brook Lane
Johnson Creek	North	Piscataqua Road
Langley Road	West	Durham Point Road
Laurel Lane (both)	East	Newmarket Road
Littlehale Road (both)	West	Emerson Road
Longmarsh Road	East	Durham Point Road
Longmarsh Road	South	Newmarket Road
Lundy Lane	East	Madbury Road
Lundy Lane	West	Hampshire Avenue
Maple Street	East	Madbury Road
Maple Street	West	Meadow Road
Mast Road Extension	Both	Concord Road
Mathes Cove Road	South	Durham Point Road
McGrath Road	North	Garden Lane
McGrath Road	South	Thompson Lane
Meadow Road	North	Edgewood Road
Meserve Road	North	Mill Road
Mill Pond Road	Both	Faculty Road
Mill Pond Road	East	Newmarket Road
Mill Road	South	Packers Falls Road
Mill Road	North	Main Street
Mill Road Plaza	West	Mill Road
Moharimet Way	East	Woodridge Road
Morgan Way	South	Piscataqua Road

Stop sign on	Direction of travel	At intersection of:
Newmarket Road	North	Dover Road
Old Bagdad Road	West	Bagdad Road
Old Landing Road	North	Newmarket Road
Orchard Drive	West	Foss Farm Road
Oyster River Road	West	Thompson Lane
Oyster River Road	East	Thompson Lane
Packers Falls Road	East/West	Wiswall and Packers Falls Road
Palmer Drive	East	Sunnyside Road
Park Court	South	Main Street
Park Court	North	Park Court
Park Court	West	Park Court
Partridge Berry Lane	East	Bucks Hill Road
Pendexter Road	East	Madbury Road
<u>Quad Way (Right turn only)</u>	<u>East</u>	<u>Main Street</u>
Riverview East (both)	North	Piscataqua Road
Ross Road	South	Stagecoach Road
Sauer Terrace	South	Cowell Drive
Schoolhouse Lane	North	Dover Road
Schoolhouse Lane	South	Newmarket Road
Simmons Lane (both)	West	Newmarket Road
Spinney Road	East	Mast Road
Stagecoach Road	West	Newmarket Road
Stagecoach Road	West	Ross Road
Strafford Avenue	South	Garrison Avenue
Strafford Avenue	West	Edgewood Road
Strafford Avenue	East	Edgewood Road Extension
Sullivan Falls Road	West	Packers Falls Road
Sumac Lane	East	Canney Road
Sumac Lane	South	Daisy Drive
Sumac Lane	North	Daisy Drive
Tall Pines Road	South	Lee Hook Road
Technology Drive	South	Old Concord Road
Thompson Lane	South	Oyster River Road
Watson Road	East	Back River Road

Stop sign on	Direction of travel	At intersection of:
Wednesday Hill Road	South	Packers Falls Road
Willey Road	North	Pinecrest Lane
Williams Way	East	Morgan Way
Winecellar Road	West	Longmarsh Road
Wiswall Road	North	Wiswall and Packers Falls Road
Woodman Road	West	Dennison Road
Woodman Road	East	Dennison Road
Woodridge Road	North	Mill Road
Wood Road	East	Madbury Road
Woodside Road	West	Madbury Road
Young Drive	South	Dover Road

PASSED AND ADOPTED by the Town Council of the Town of Durham
this ____ day of _____, 2010 by ____ affirmative and ____ negative
votes.

Diana Carroll, Chairman
Durham Town Council

ATTEST:

Lorrie Pitt, Town Clerk



TOWN OF DURHAM
15 NEWMARKET ROAD
DURHAM, NH 03824-2898
Tel: 603/868-5571
Fax: 603/868-5572

7D
AGENDA ITEM:

DATE: October 4, 2010

COUNCIL COMMUNICATION

INITIATED BY: David L. Kurz, Police Chief

AGENDA ITEM: **FIRST READING ON ORDINANCE #2010-13 AMENDING CHAPTER 153 "VEHICLES AND TRAFFIC", ARTICLE VI "SCHEDULES", SECTION 153-44 "SCHEDULE XII: YIELD INTERSECTIONS" OF THE DURHAM TOWN CODE BY INSTALLING A YIELD SIGN ON MADBURY ROAD AT THE INTERSECTION OF PETTEE BROOK LANE FOR VEHICLES ENTERING THE INTERSECTION FROM THE NORTH**

CC PREPARED BY: David L. Kurz, Police Chief

PRESENTED BY: David L. Kurz, Police Chief

AGENDA DESCRIPTION:

This ordinance will install a yield sign at the intersection of Pettee Brook Lane and Madbury Road. Until recently, Pettee Brook Lane was a one-way, two lane street.

In an effort to move forward aspects of the B. Dennis Strategic Plan involving making downtown Durham more pedestrian-friendly, a test/pilot program along Pettee Brook Lane was implemented in July 2010 that involved narrowing the traveled way from two lanes to one, adding a designated bicycle lane, and including an additional 21 parking spaces to support downtown businesses along the left-hand (south) side of the roadway. A significant addition to this plan was the necessity of placing signage at the intersection of Madbury Road that would consist of a yield for vehicles entering Pettebrook from the north. With a number of adjustments to parking, sight distance and signage, the concept has been positively received. The passage of this ordinance is one of the steps necessary to make this "experiment" permanent until such time as two-way traffic can be further evaluated for Durham's downtown core.

LEGAL AUTHORITY:

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

Council Communication, 10/4/10

Re: First Reading on Ordinance #2010-13 – Installation of Yield Sign at Madbury Road/Pettee Brook Lane

LEGAL OPINION:

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

SUGGESTED ACTION OR RECOMMENDATIONS:

MOTION:

The Durham Town Council does hereby move on First Reading (as presented) (as amended) Ordinance #2010-13 amending Chapter 153 "Vehicles and Traffic", Article VI "Schedules", Section 153-44 "Schedule XII: Yield Intersections" of the Durham Town Code by installing a yield sign on Madbury Road at the intersection of Pettee Brook Lane for vehicles entering the intersection from the north, and schedules a Public Hearing to be held on Monday, October 18, 2010.



DRAFT

ORDINANCE #2010-13 OF DURHAM, NEW HAMPSHIRE

INSTALLING A YIELD SIGN ON MADBURY ROAD AT THE INTERSECTION OF PETTEE BROOK LANE

WHEREAS, in an effort to move forward aspects of the B. Dennis Strategic Plan involving making downtown Durham more pedestrian-friendly, the Town Administrator asked the Public Works Department to develop a test/pilot program for implementation along Pettee Brook Lane involving narrowing the traveled way from two lanes to one, adding a designated bicycle lane, and including an additional 10 - 20 parking spaces to support downtown businesses along the left-hand (south) side of the roadway; and

WHEREAS, on July 1, 2010, the test/pilot program was implemented along Pettee Brook Lane; and

WHEREAS, part of the reconfiguration of Pettee Brook Lane included signage at the intersection of Madbury Road consisting of a yield for vehicles entering Pettee Brook from the north; and

WHEREAS, the Durham Traffic Safety Committee has completed its review of the Pettee Brook Lane pilot program and has determined that a permanent yield sign should be installed at Madbury Road to control northbound traffic entering Pettee Brook from Madbury Road,

NOW, THEREFORE BE IT RESOLVED that the Durham Town Council, the governing body of the Town of Durham, New Hampshire does hereby adopt Ordinance #2010-13 amending Chapter 153 "Vehicles and Traffic", Article VI "Schedules", Section 153-44 "Schedule XII: Yield Intersections" of the Durham Town Code by installing a yield sign on Madbury Road at the intersection of Pettee Brook Lane for vehicles entering the intersection from the north as indicated below. Wording to be deleted is annotated with ~~strikeout~~ type. New wording is annotated with underscoring.

PENALTY

Anyone who violates this ordinance/chapter shall be subject to fines in accordance with the provisions of Chapter 1 "General Provisions", Article II "General Penalty", Section 1-16 (B) "Violations and Penalties" of the Durham Town Code.

153-44. Schedule XII: Yield Intersections.

In accordance with the provisions of 153-14, the following described intersections are hereby designated as yield intersections, and yield signs shall be installed as follows:

Yield sign on:	Direction of travel	At intersection of:
Daisy Drive	East	Sumac Lane
Daisy Drive	West	Bucks Hill Road
Durham Point Road	North	Route 108
Fogg Drive	East	Meserve Road
Fogg Lane	South	Fogg Drive
Hamel Drive	North	York Drive
Langley Road	West	Durham Point Road
Madbury Road	South North	Pettee Brook Lane
Meserve Road	East	Woodridge Road
Mill Road	South	Main Street (right lane of Mill Road to yield)
Moharimet Way	West	Bartlett Road
Palmer Drive	North	York Drive
Partridgeberry Lane	East	Bucks Hill Road
Pinecrest Lane	West	Sunnyside Road
Rosemary Lane	South	Pettee Brook Lane
Scotland Road	South	Hampshire Avenue
Willey Road	North	Sunnyside Drive
Woodridge Road	North	Woodridge Road

PASSED AND ADOPTED by the Town Council of the Town of Durham this ____ day of _____, 2010 by _____ affirmative and _____ negative votes.

Diana Carroll, Chair
Durham Town Council

ATTEST:

Lorrie Pitt, Town Clerk



TOWN OF DURHAM
15 NEWMARKET ROAD
DURHAM, NH 03824-2898
Tel: 603/868-5571
Fax: 603/868-5572

AGENDA ITEM: # **9A**

DATE: October 4, 2010

COUNCIL COMMUNICATION

INITIATED BY: Durham Town Charter

AGENDA ITEM: RECEIVE ANNUAL REPORT FROM DURHAM ENERGY
COMMITTEE – KEVIN GARDNER, CHAIR

CC PREPARED BY: Jennie Berry, Administrative Assistant

PRESENTED BY: Kevin Gardner, Chair, Durham Energy Committee

AGENDA DESCRIPTION:

Section 11.1 (I) of the Durham Town Charter requires that the Town Council meet annually with all Chairpersons of standing Town committees to review significant actions taken by the committees, projects currently under discussion, and anticipated activities for the coming year.

At Monday night's meeting, Durham Energy Committee Chair Kevin Gardner will be present to provide a brief update to the Town Council regarding current activities of the Committee.

LEGAL AUTHORITY:

Section 11.1 (I) of the Durham Town Charter.

LEGAL OPINION:

N/A

FINANCIAL DETAILS:

N/A

SUGGESTED ACTION OR RECOMMENDATIONS:

No formal action is required. Hear presentation by Kevin Gardner regarding the Durham Energy Committee and hold question and answer session if desired.



TOWN OF DURHAM
15 NEWMARKET ROAD
DURHAM, NH 03824-2898
Tel: 603/868-5571
Fax: 603/868-5572

AGENDA ITEM: **# 9B**

DATE: October 4, 2010

COUNCIL COMMUNICATION

INITIATED BY: Robin Mower, Town Council
Kevin Gardner, Chair, Durham Energy Committee

AGENDA ITEM: **PROPERTY ASSESSED CLEAN ENERGY (PACE)
PROGRAM**

CC PREPARED BY: Robin Mower

PRESENTED BY: Kevin Gardner, Durham Energy Committee
Charles Forcey, Durham Energy Committee

AGENDA DESCRIPTION:

Earlier this year, the New Hampshire State Legislature adopted House Bill 1554 (one of whose sponsors was Senator Amanda Merrill), "allowing municipalities to establish energy efficiency and clean energy districts." Among other measures, the Bill authorizes "a procedure for enabling property owners, on a voluntary basis, to finance such improvements and make repayments in the form of special assessments on their property tax bills or municipal service bills." Thus, it enables New Hampshire communities for the first time to consider the Property Assessed Clean Energy Program (PACE) a viable potential public policy. PACE allows property owners to finance energy efficiency and renewable energy improvements, whether retrofits or new technology, using low-interest bonds arranged by the municipality. The bonds are repaid through separate property tax assessments paid over the life of the improvement – 15 to 20 years – by whomever owns the property during that assessment period. (Property tax obligations transfer with property when it is sold.)

On July 9, 2010, via the Town's Friday Updates, the Energy Committee elicited participation interest among Durham property owners for a PACE program. Approximately 70 home and business owners responded. Clean energy improvements mentioned by these would-be participants include energy-efficient boilers, upgraded insulation, new windows, solar installations, photovoltaic

electricity generation, etc. Without such financing, it is likely that many of these projects would not be undertaken, since the upfront cost and lengthy payback of energy-efficiency improvements is often a barrier. As one would-be participant noted, "The cost of taking this on by ourselves is prohibitive. However, the long-term finance option being considered through the town could make this upgrade well within reach."

As of this writing, 23 states have adopted this program. However, in July 2010, the Database of State Incentives for Renewables & Efficiency notes, "The Federal Housing Financing Agency (FHFA) issued a statement in July 2010 concerning the senior lien status associated with most PACE programs. In response to the FHFA statement, most local PACE programs have been suspended until further clarification is provided." Bills to counter the position of FHFA are pending in both the House of Representatives and the U.S. Senate, and both environmental and business coalitions are working to support the program as a means to create jobs and decrease greenhouse gas emissions. The Durham Energy Committee recognizes that both residential property owners who do not have mortgages affiliated with FHFA and business property owners – who would also not be affected by any FHFA financing – could benefit even while we wait for the dust to settle on this controversy and therefore advocates moving forward.

Regarding the objections of FHFA, an article in *GRIST* notes: "The agency objects to the liens that PACE puts on properties, which get paid off ahead of mortgages if a borrower defaults. That adds a theoretical risk into an already jittery credit market...It's an unfounded fear, since well-designed energy retrofits add to a homeowner's financial security, cutting their utility bills and making them a safer bet for lenders. A report commissioned by a major financial institution last year found that energy-efficient homes had default and delinquency rates 11 percent lower than typical homes."(1)

Details on the PACE program may be found in the attachments and websites noted below.

PRECEDENT

PACE is an expansion of traditional land-secured financing.(2) As a recent *Bloomberg Law Reports* states, "...PACE is just another example of using government's taxing power to achieve a public good. Second, a well-designed PACE program will enhance property values, increase cash flows to property owners, and protect lenders."(3)

PROCESS

The first step in moving forward is for the Council to establish an "energy efficiency and clean energy district," which the Energy Committee and the Town Administrator advise should extend to all Town boundaries, and to adopt the PACE program.

If Durham adopts this program, it will become the first town in New Hampshire to do so. The Energy Committee believes that this pioneer move could be the first in a number of initiatives to brand Durham as forward-thinking vis-a-vis energy resources.

At the October 18th Council meeting, the Energy Committee will ask the Council to adopt the PACE program via a resolution on the Unanimous Consent Agenda. At a subsequent meeting, the Council will be asked to authorize the Town to bond in an amount that equals the exact total for which prepared PACE participants estimate the cost of their projects. No funds from the bond shall remain unallocated, and no burden shall fall to the nonparticipant taxpayer. An administrative fee shall be determined and charged to each participant. (Municipalities are allowed by RSA 53-F. VIII. to "Collect charges from participating property owners to cover the cost of administration for the district.").

LEGAL AUTHORITY:

New Hampshire House Bill 1554, "An act allowing municipalities to establish energy efficiency and clean energy districts," was adopted by the New Hampshire House of Representatives on March 18, 2010 and by the New Hampshire Senate on May 12, 2010. Through this measure, chapter RSA 53-F was introduced, "Energy Efficiency and Clean Energy Districts." RSA 53-F provides a roadmap whereby municipalities and their property owners may achieve "the intended purposes of improving the social and economic well-being of New Hampshire communities and reducing greenhouse gas emissions."

LEGAL OPINION:

N/A

FINANCIAL DETAILS:

N/A

SUGGESTED ACTION OR RECOMMENDATIONS:

None required.

Footnotes:

- (1) Hiskes, Jonathan. "Fannie regulator digs in on clean-energy opposition." *Grist*, 27 Aug 2010, Retrieved September 28, 2010 at <<http://www.grist.org/article/2010-08-27-exclusive-fannie-regulator-digs-in-on-clean-energy-opposition/>>
- (2) "Land secured financing districts—variously referred to as assessment districts, public improvement districts and community facilities districts—are a familiar tool of municipal finance. They are used to finance projects which serve a public purpose, including street paving, parks, open space, water and sewer systems, sports arenas and street lighting, among others." From "Strategies for Passing Property Assessed Clean Energy (PACE) Enabling Legislation," March 26, 2010, page 7. Retrieved at September 28, 2010 at <<http://pacenow.org/blog/>>
- (3) *Bloomberg Law Reports'* Sustainable Energy series, "How Cool: Changes to Municipal Finance Law Address Global Warming, Create Green Jobs and Promote Energy Independence." Contributed by: Cisco DeVries, Renewable Funding LLC, and Christopher Lynch, Jones Hall PLC. Retrieved September 28, 2010 at <<http://pacenow.org/documents/Bloomberg%20Law%20Article.pdf>>

Attachments:

1. HB 1554, amending RSA 53-F.
2. PACE Finance Summary Sheet: Energy Efficiency & Renewable Energy Financing for Property Owners. Retrieved September 28, 2010 from <<http://pacenow.org/blog/>> [listed as "PACE Summary for Legislators (7-12-10)"]
3. News article, from *Governing*, September 2010: "Clean Energy Programs Pit Advocates Against Mortgage Lenders"
<<http://www.governing.com/topics/energy-env/Clean-Energy-Programs-Pit-Advocates-Against-Mortgage-Lenders.html>>

Additional online information, including downloadable documents:

1. Map showing states that have adopted PACE from Pew Center on Global Climate Change:
<http://www.pewclimate.org/what_s_being_done/in_the_states/property_assessed_clean_energy>
2. "Guide to energy efficiency and renewable energy financing districts for local governments" from the Renewable and Appropriate Energy Laboratory, University of California, Berkeley (2009); link to downloadable PDF may be found at <<http://rael.berkeley.edu/node/446>>
3. PACE Webinar on State Strategies for Passing Legislation
<pacenow.org/.../PACE%20Benefits,%20Concerns%20&%20Solutions%20Webinar%20Presentation.pdf>
4. Federal Action Grassroots Toolkit, PACENow blog: links to documents and websites on all aspects of PACE, from news, to history, to Municipal Administration of PACE Program:
<<http://pacenow.org/blog/>>

Print version brought to you by:

**PUBLIC
GREAT**

GOVERNING's Public Great

An online community, hosted by Bill Bott and Ken Miller, for change agents dedicated to helping government increase its capacity to do more good.

Clean Energy Programs Pit Advocates Against Mortgage Lenders

Clean energy advocates battle mortgage lenders over the validation of the ever-popular PACE programs.

Russell Nichols | September 2010

In the chaos of a collapsing housing market, a crumbling U.S. economy and an energy crisis, Cisco DeVries saw a perfect storm.

As chief of staff to Berkeley, Calif., Mayor Tom Bates, DeVries had been working on a project to put utility wires underground in a special assessment district. As agreed upon, the city would foot the upfront service, and homeowners would pay off costs over the next 20 to 30 years.

And that's when it hit him -- an idea so simple, it was scary: Why couldn't the city use the same model to reduce greenhouse gas emissions by helping residents generate renewable energy in their homes?

That fall in 2007, Berkeley set up the first such program, where homeowners could borrow money from the city for energy-efficient upgrades and pay it back through their property taxes, amortized over 20 years. Under the financing program, the debt would stay with the property even if it was sold.

"Not only does it help solve the funding problem of how we pay for renewable energy," DeVries says, "but it came along at exactly the right moment when we were focused on how we as a nation, as a state, can get people back to work and help families save money."

In the past few years, Property Assessed Clean Energy (PACE) programs -- based on the Berkeley First program -- have swept across the country at a speedy rate. So far, legislation and pilot programs have popped up in 22 states, from California, Texas and Florida to New York and the New England region. Some local governments also have created their own variations of PACE programs, such as Boulder County, Colo., which recently rolled out a version for commercial property owners -- about 25 businesses have applications in progress. Sonoma County, Calif., which boasts a program that predates the PACE phenomenon, has already financed more than 800 solar and other projects worth more than \$30 million.

Seen as an innovative way to help homeowners retrofit homes with energy-efficient upgrades -- which can cost \$30,000 or more before incentives -- the programs are intended to make it easier and cheaper for homeowners to reduce greenhouse gas emissions, generate renewable energy and ultimately, save money. So far, only a few thousand people have taken advantage of the program. But officials at all levels of government think the \$150 million in stimulus funds allocated for energy efficiency programs like PACE will further encourage homeowners to install solar panels and other energy improvements.

"It's rare when something like that shows up and the solution presents itself in such a simple way that people can get it," DeVries says.

But not everyone gets it. In May, mortgage giants Fannie Mae and Freddie Mac sent out letters stating that

PACE programs violate mortgage instruments by altering lien priorities and put homeowners in default of their mortgages. The Federal Housing Finance Agency (FHFA), which regulates Fannie and Freddie, supported that stance and moved to block programs nationwide.

According to the FHFA, the size and duration of PACE loans exceed typical local tax programs and "pose unusual and difficult risk management challenges for lenders, servicers and mortgage securities investors."

"Homeowners should not be placed at risk by programs that alter lien priorities and fail to operate with sound underwriting guidelines and consumer protections," said FHFA's Acting Director Edward J. DeMarco in a statement. "Mortgage holders should not be forced to absorb new credit risks after they have already purchased or guaranteed a mortgage."

With the housing market still reeling from its collapse and the recession, it makes sense that lending companies would try to protect mortgages at all costs, DeVries argues, but the move challenges the governments' rights to levy tax assessments for a public purpose. Local governments pay for municipal improvements such as sidewalks and sewer upgrades through tax assessments. Energy liens, local and state officials argue, are no different.

In any case, the actions by the FHFA have brought PACE programs to a grinding halt, hampering job creation and slowing energy independence momentum. Consider San Diego, which had a PACE program in the pipeline for this summer, but suffers from delays, which have left more than 100 people trained in energy retrofits without jobs.

As a whole, California has a lot to lose -- nearly half of its counties have developed or plan to start PACE programs. In addition to putting tens of thousands of clean energy jobs on the line, California is at risk of losing more than \$100 million in federal stimulus funds available for such programs, according to gubernatorial candidate and California Attorney General Jerry Brown.

In July, Brown sued the mortgage giants and the federal agency that oversees them for disregarding state law, which classifies costs associated with PACE programs as tax assessments, not loans. In his lawsuit, he demanded that the mortgage lenders back off and let homeowners and businesses install upgrades to make their structures greener, reduce energy waste and shrink utility bills.

"Fannie Mae and Freddie Mac received enormous federal bailouts," Brown said in a release, "but now they're throwing up impermeable barriers to bank lending that creates jobs, stimulates the economy and boosts clean energy."

Supporters, which include the federal government, are also fighting back. In July, California Congressman Mike Thompson introduced the PACE Assessment Protection Act of 2010, which would order lenders to adopt PACE standards rather than stymie green energy efforts.

California Gov. Arnold Schwarzenegger, New York City Mayor Michael Bloomberg, the Obama administration and other officials are pressing the FHFA to revisit its position now that hundreds of millions of dollars in federal stimulus funding and hundreds of millions of dollars in state, local and private funding are in jeopardy. In the meantime, some programs, like the one in Sonoma County, are pushing ahead -- though they expect a drop-off in participation from both lenders and homeowners.

This article was printed from: <http://www.governing.com/topics/energy-env/Clean-Energy-Programs-Pit-Advocates-Against-Mortgage-Lenders.html>

CHAPTER 215

HB 1554 – FINAL VERSION

18Mar2010... 0951h

05/12/10 2040s

2010 SESSION

10-2202

09/10

HOUSE BILL 1554

AN ACT allowing municipalities to establish energy efficiency and clean energy districts.

SPONSORS: Rep. Pastor, Graf 9; Rep. Borden, Rock 18; Rep. F. Holden, Hills 4; Rep. R. Read, Rock 16; Rep. Rappaport, Coos 1; Sen. Fuller Clark, Dist 24; Sen. Merrill, Dist 21; Sen. Houde, Dist 5; Sen. Reynolds, Dist 2

COMMITTEE: Municipal and County Government

ANALYSIS

This bill allows municipalities to establish energy efficiency and clean energy districts.

Explanation: Matter added to current law appears in ***bold italics***.

Matter removed from current law appears [~~in brackets and struckthrough.~~]

Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

18Mar2010... 0951h

05/12/10 2040s

10-2202

09/10

STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Ten

AN ACT allowing municipalities to establish energy efficiency and clean energy districts.

Be it Enacted by the Senate and House of Representatives in General Court convened:

215:1 Findings and Purpose. The general court finds that:

I. Energy conservation and efficiency and clean energy improvements to residential, commercial, industrial, and other buildings and facilities are necessary to:

(a) Protect the economic and social well-being of New Hampshire communities by reducing the cost of fuel oil, electricity, natural gas, propane, and other forms of energy, and the risks associated with future escalation in energy prices;

(b) Protect the economic and social well-being of New Hampshire communities by encouraging investment in the development and implementation of energy conservation and efficiency and clean energy improvements; and

(c) Address the threat of global climate change.

II. The upfront cost of energy conservation and efficiency and clean energy improvements prevents many property owners from making such improvements.

III. To achieve the public benefits of reducing the cost of energy use and the risks associated with future escalation in energy prices, encouraging investment in the development and implementation of energy conservation and efficiency and clean energy improvements, and addressing the threat of global climate change, it is necessary to authorize a procedure for enabling property owners, on a voluntary basis, to finance such improvements and make repayments in the form of special assessments on their property tax bills or municipal service bills.

IV. The purposes of this chapter are to authorize municipalities to establish such a procedure and to set forth requirements to ensure that its use will achieve the intended purposes of improving the social and economic well-being of New Hampshire communities and reducing greenhouse gas emissions.

215:2 New Chapter; Energy Efficiency and Clean Energy Districts. Amend RSA by inserting after chapter 53-E the following new chapter:

CHAPTER 53-F

ENERGY EFFICIENCY AND CLEAN ENERGY DISTRICTS

53-F:1 Definitions. In this chapter:

I. "Clean energy improvement" means the installation of any system on the property for producing electricity for, or meeting heating, cooling, or water heating needs of the property, using either renewable energy sources, combined heat and power systems, or district energy systems using wood biomass (but not construction and demolition waste) or natural gas. Such improvements include but are not limited to solar photovoltaic, solar thermal, wood biomass, wind, and geothermal systems, provided that, to be covered by an agreement with a property owner and financed under this chapter, such improvements shall be qualifying improvements under RSA 53-F:6.

II. "District" means an energy efficiency and clean energy district established under this chapter.

III. "Energy conservation and efficiency improvements" means measures to reduce consumption,

through conservation or more efficient use, of electricity, fuel oil, natural gas, propane, or other forms of energy on the property, including but not limited to air sealing, installation of insulation, installation of heating, cooling, or ventilation systems meeting or exceeding ENERGY STAR standards, building modifications to increase the use of daylighting, replacement of windows with units meeting or exceeding ENERGY STAR standards, installation of energy controls or energy recovery systems, and installation of efficient lighting equipment, provided that, to be covered by an agreement with a property owner and financed under this chapter, all such improvements must be permanently affixed to a building or facility that is part of the property and shall be qualifying improvements under RSA 53-F:6.

IV. "Municipality" means any city, town, or village district.

V. "Property owner" means the owner of record of real property within the boundaries of the district, whether zoned or used for residential, commercial, industrial, or other uses.

VI. "Special assessment" means a special assessment within the meaning and subject to the provisions of RSA 80:19.

53-F:2 Adoption By Municipality. A city, town, or village district may adopt the provisions of this chapter in the following manner:

I. In a town, other than a town that has adopted a charter pursuant to RSA 49-D, the question shall be placed on the warrant of an annual meeting only by the governing body, and not pursuant to RSA 39:3.

II. In a city or a town that has adopted a charter pursuant to RSA 49-C or RSA 49-D, the legislative body may consider and act upon the question in accordance with its normal procedures for passage of resolutions, ordinances, and other legislation. In the alternative, the legislative body of any such municipality may vote to place the question on the official ballot for any regular municipal election.

III. In a village district, the question may be considered and acted upon by any means authorized by RSA 52.

IV. The language of the question shall designate an energy efficiency and clean energy district, which may cover all or a portion of the area within the municipality, or may designate all or a portion of the area within the municipality as part of an energy efficiency and clean energy district that encompasses all or portions of multiple municipalities.

V. A municipality may vote to rescind its action in the same manner as it may vote to adopt, provided that all agreements entered into with property owners and related legal obligations created prior to its vote to rescind shall remain in effect.

53-F:3 Authority. To achieve the public benefits of protecting the economic and social well-being by reducing energy costs in the community and risks to the community associated with future escalation in energy prices, and addressing the threat of global climate change, any municipality which has adopted the provisions of this chapter and established an energy efficiency and clean energy district may, upon a finding by the governing body of the municipality, after notice and hearing, that the energy conservation and efficiency and clean energy improvements the municipality will finance pursuant to this chapter will serve the public purposes as set forth in this chapter and not primarily be for the benefit of private persons or uses even though such private benefits and uses may incidentally result, do the following:

- I. Incur debt for the purpose of providing financing to property owners within the district, including through issuance of municipal bonds, Qualified Energy Conservation Bonds or Clean Renewable Energy Bonds. Any such debt shall constitute a pledge of the municipality's full faith and credit, and except as may be otherwise provided in this chapter, shall be subject to the provisions of RSA 33.
- II. Establish a revolving fund pursuant to RSA 31:95-h using general municipal revenues, bond funds, federal Energy Efficiency and Conservation Block Grant funds, or grant funds from any federal, state, private, or other source, provided that the use of general municipal revenues shall be pursuant to an appropriation by special warrant article in accordance with RSA 32 and the municipality's appropriation procedures.
- III. Provide financing for qualifying improvements to eligible property owners within the district.
- IV. Collect from property owners payments on assessments used to finance qualifying improvements.
- V. Establish reserve accounts, as provided in RSA 53-F:7.
- VI. Participate in state or federal programs providing support for municipal energy efficiency and clean energy finance programs such as those authorized by this chapter, including guarantee, loss reserve, revolving fund, or other state or federal support programs.
- VII. Enter into agreements with property owners in which the property owners consent to make energy conservation and efficiency improvements or clean energy improvements to their property and to have the municipality include a special assessment to pay for such improvements on their property tax bills, their bills for water or sewer service or another municipal service, or separate bills, provided that such agreements shall not affect the tax liability or municipal services charges of other participating or nonparticipating property owners in the district.
- VIII. Collect charges from participating property owners to cover the cost of administration for the district.
- IX. Otherwise administer a program for promoting and financing energy efficiency and clean energy improvements within a district in accordance with this chapter, enter into an agreement with a public or private entity to administer such a program on its behalf in accordance with this chapter, and enter into an agreement with one or more other municipalities to share services and otherwise cooperate in the administration of a district or districts in accordance with this chapter.

53-F:4 Agreements with Property Owners.

- I.(a) A municipality may make an assessment under this chapter only pursuant to an agreement entered into with the free and willing consent of the owner of the property to which the assessment applies. In the case of any property with multiple owners, an agreement under this chapter shall be signed by all owners.
- (b) An agreement with a property owner shall provide that the owner shall contract for qualifying improvements with one or more qualified contractors, purchase materials to be used in making qualified improvements, or both, and that, upon submission of documentation required by the municipality, the municipality shall disburse funds to those contractors and vendors in payment for the qualifying improvements or materials used in making qualified improvements. An

agreement with a property owner shall require that the property owner report post-installation energy use data for program evaluation purposes over a period determined by the municipality.

(c) The agreement shall be in writing and shall include a payment schedule showing the term over which payments will be due on the assessment, the frequency with which payments will be billed and amount of each payment, and the annual amount due on the assessment. Upon full payment of the amount of the assessment, including all outstanding interest and charges and any penalties that may become due, the municipality shall provide the participating property owner with a written statement certifying that the assessment has been paid in full.

II. The municipality shall disclose to participating property owners the risks associated with participating in the program, including risks related to their failure to make payments and the risk of enforcement of property tax or special assessment liens under RSA 80:19.

III. At least 30 days prior to entering into an agreement with a municipality under this chapter, the property owner shall provide to the holders of any existing mortgages on the property notice of his or her intent to enter into the agreement.

IV. The municipality shall file a notice of the assessment under this chapter for recording in the county registry of deeds. The notice shall consist of the following statement or its substantial equivalent: "This property is subject to a special assessment related to the installation of qualifying cost-effective energy conservation and efficiency improvements or clean energy improvements under RSA 53-F."

V. Any personal financial information provided to a municipality or an entity administering a program under this chapter on behalf of a municipality by a participating property owner or potential participating property owner shall be confidential and shall not be disclosed to any person except as required to administer the program and only on a need-to-know basis.

53-F:5 Eligibility of Property Owners.

I. A municipality may enter into an agreement under this chapter only with the legal owner of real property.

II. Prior to entering into an agreement with a property owner, the municipality shall determine that all property taxes and any other assessments levied with property taxes are current and have been current for 3 years or the property owner's period of ownership, whichever is less; that there are no involuntary liens such as mechanic's liens on the property; and that no notices of default or other evidence of property-based debt delinquency have been recorded during the past 3 years or the property owner's period of ownership, whichever is less; and that the property owner is current on all mortgage debt on the property. The municipality shall adopt additional criteria, appropriate to property-assessed clean energy finance programs, for determining the creditworthiness of property owners.

53-F:6 Qualifying Improvements.

I. Improvements financed pursuant to an agreement under this chapter shall be based upon an audit performed by a person who has been certified as a building analyst by the Building Performance Institute or who has obtained other appropriate certification as determined by the public utilities commission or another appropriate New Hampshire-based entity. The audit shall identify recommended energy conservation and efficiency and clean energy improvements;

provide the estimated energy cost savings, useful life, benefit-cost ratio, and simple payback or return on investment for each improvement; and provide the estimated overall difference in annual energy costs with and without recommended improvements. Financed improvements shall be consistent with the audit recommendations. The cost of the audit may be included in the total amount financed under this chapter.

II. Improvements shall be permanently affixed to an existing building or facility that is part of the property. An agreement between a municipality and a qualifying property owner may not cover projects in buildings or facilities under new construction.

III. Improvements shall be made by a contractor or contractors, which may include a cooperative or not-for-profit organization, determined by the municipality to be qualified to make the energy efficiency or clean energy improvements in the agreement. A municipality may accept a designation of contractors as qualified made by an electric or gas utility program or another appropriate New Hampshire-based entity. Any work requiring a license under any applicable law shall be performed by an individual holding such license. A municipality may elect to permit the financing pursuant to an agreement under this chapter of improvements made by the owner of the property, but shall not permit the value of the owner's labor to be included in the amount financed.

IV. A municipality shall require, prior to disbursement of final payments to any contractor or vendor pursuant to an agreement with a property owner, submission by the property owner in a form acceptable to the municipality of:

- (a) A post-installation report, based on an independent inspection acceptable to the municipality, certifying that improvements have been installed properly and verifying that they are performing satisfactorily; and
- (b) Documentation of all costs to be financed and copies of any required permits.

53-F:7 Financing Terms.

I. Improvements shall be financed pursuant to an agreement under this chapter only on terms such that the property owner experiences a positive cash flow impact during the first year and the total energy cost savings realized by the property owner and the property owner's successors during the useful lives of the improvements are expected to exceed the total cost to the property owner and the property owner's successors of the improvements. In determining the amount that may be financed pursuant to an agreement under this chapter, the total amount of all rebates, tax credits, grants, and other financial assistance received by the owner on account of the improvements shall be deducted from the cost of the improvements.

II. A municipality that provides financing to participating property owners shall establish a loss reserve account and maintain funds in such account at a level that meets generally accepted standards for property-assessed clean energy finance programs.

III. The total amount of assessments for a property under this chapter shall not be less than \$5,000 and shall not exceed \$35,000 in the case of a single-family residential property or \$60,000 in the case of a commercial, industrial, or multifamily residential property, or 15 percent of the assessed value of the property multiplied by the municipality's current equalization ratio, whichever is less. The combined amount of assessments under this chapter, any outstanding mortgage obligations for the property, and any other outstanding debt attached to the property

shall not exceed 85 percent of the assessed value of the property multiplied by the municipality's current equalization ratio. A property owner who escrows property taxes with the holder of a mortgage on a property subject to an agreement under this chapter may be required by the holder to escrow amounts due on the assessment under this chapter and the mortgage holder shall remit such amounts to the municipality in the manner that property taxes are escrowed and remitted.

IV. The maximum term of finance provided pursuant to an agreement under this chapter shall be 20 years. The term shall in no case exceed 85 percent of the average expected useful life of all improvements, weighted by cost. Expected useful lives used for all calculations under this chapter shall be consistent with the expected useful lives of energy conservation and efficiency and clean energy measures approved by the public utilities commission for utility or other programs.

53-F:8 Collection and Enforcement. Collection of assessments under this chapter shall be made by the tax collector or other official responsible for property tax or municipal service charge collection. A municipality shall commit bills for amounts due on the assessments, including interest and any charges, to the tax collector with a warrant signed by the appropriate municipal officials requiring the tax collector to collect them. Bills for amounts due on the assessments shall coincide with bills for property taxes or municipal service charges and shall create a lien on the property pursuant to RSA 80:19. Enforcement powers for nonpayment shall be those provided under RSA 80 relative to property tax collection, including RSA 80:19. At the time of enforcement, only the past due balances of the assessment under this chapter, including all interest, charges, and penalties, shall be due for payment. Notwithstanding any other provision of law, in the event of a transfer of property ownership through foreclosure, collection by the municipality shall be limited to any past due balances and future payments shall neither be accelerated nor extinguished by foreclosure. Payment of a past due balance from the loss reserve established under this chapter shall not relieve a participating property owner from the obligation to pay that amount.

215:3 Financing of Energy Conservation and Efficiency and Clean Energy Improvements by Property Owners. Amend RSA 31:95-h, I(d) and (e) to read as follows:

(d) Creating affordable housing and facilitating transactions relative thereto; ~~[e]~~

(e) Providing cable access for public, educational, or governmental use[-]; **or**

(f) Financing of energy conservation and efficiency and clean energy improvements by participating property owners in an energy efficiency and clean energy district established pursuant to RSA 53-F.

215:4 Effective Date. This act shall take effect 60 days after its passage.

Approved: June 28, 2010

Effective Date: August 27, 2010

PACE Finance Summary Sheet

Energy Efficiency & Renewable Energy Financing for Property Owners

What is PACE

Property Assessed Clean Energy (PACE), is a local government program that allows property owners to finance energy efficiency and renewable energy improvements using low-interest bonds that generally have no recourse to the municipality. Interested residential and commercial property owners opt-in to receive long term financing (up to 20 years) for these improvements, which is repaid through an assessment on their property taxes. This arrangement spreads the cost of clean energy improvements – such as energy efficient boilers, upgraded insulation, new windows, solar installations, etc – over the expected life of the measure and allows for the repayment obligation to automatically transfer to the next property owner if the property is sold.

Why is PACE so innovative?

High upfront cost is the single largest barrier to increased adoption of energy efficiency and small-scale renewable energy. The second barrier is the uncertainty as to whether property buyers will pay more for efficiency improved properties. PACE removes the upfront cost barrier and removes the uncertainty barrier as the new buyer inherits the annual tax surcharges.

Historical precedent

PACE is a type of land-secured financing district, which has a 100+ year history in the U.S. to pay for improvements in the public interest. Over 37,000 land secured districts already exist and are a familiar tool of municipal finance. They are used to finance projects which serve a public purpose, including street paving, parks, open space, water and sewer systems, street lighting, and seismic strengthening, among others.

Strong appeal of PACE & early concerns raised and cured

In less than two years, PACE enabling legislation has been adopted in 17 states with strong bipartisan support (see [PACE Endorser List](#) for supporters). Some initial concerns were raised by the mortgage industry about PACE which were addressed late last year with the White House's Best Practice Policy Framework that was announced by Vice President Biden at his Recovery Through Retrofit hearing (this framework was developed as a collaboration between HUD, the Dept of Energy, and the National Economic Council - see [White House Report](#) and [Biden YouTube clip](#)). States and municipalities are now incorporating these best practices into their PACE programs.

What are the benefits to participating property owners?

- No Upfront Cost – Removes the upfront cost barrier of energy efficiency and renewable energy improvements. Most programs only charge a small fee to property owners.
- Improved Cash Flow – Owner's cash flow position is improved as PACE programs are designed to have annual energy savings exceed the annual PACE assessment payments.
- Less Investment Risk - Removes the uncertainty of recovering the cost of improvements if the property is sold, because the financing runs with the property via the tax assessment.

Benefits to Municipalities

- Local Job Growth – PACE has the ability to stimulate local job creation through the installation of efficiency and energy improvements. It is estimated that for every \$1mm spent on clean energy improvements, 10 jobs are created. For every 100,000 homes that are retrofitted, with an average expenditure of \$10,000, more than 10,000 jobs would be created.
- No Credit or General Obligation Risk – PACE bonds are typically not general obligation or appropriation bonds, so the municipality's credit is not placed on the line. The obligation resides exclusively with the property owner.
- Opt-in Assessments – The assessments are only placed on those properties where the owner voluntarily "opts-in" to the financing program.
- Meet Carbon Reduction Goals – Counties, Cities, Towns and Villages can use this tool to move quickly toward achieving their carbon reduction and energy independence goals.

Benefits to Existing Lenders

- Lower Default Risk – Owner's cash flow position is improved as PACE programs are designed to have annual energy savings exceed the annual PACE assessment payments. Owner is now in a better position to make mortgage payments.
- Better Loan-to-Value Ratio – Since PACE improvements have a positive net present value, they increase the lender's collateral which improves the loan-to-value ratio.
- Best Practice Framework Adopted - The White House PACE Best Practice Framework is now being incorporated into PACE programs nationwide to help ensure that PACE programs benefit existing lenders.
- PACE Senior lien status is immaterial (less than \$200 per home) & more than offset by value enhancement– PACE assessments are treated as senior liens which is critical for the success of the programs but the seniority amount is immaterial due to the per property size limits of PACE finance and other best practice measures (PACE Lien Immateriality).

For more information visit www.pacenow.org



DEPARTMENT OF PUBLIC WORKS

TOWN OF DURHAM

100 STONE QUARRY DRIVE

DURHAM, N.H. 03824

603/868-5578 AGENDA ITEM:

FAX 603/868-8063

9C

DATE: October 4, 2010

COUNCIL COMMUNICATION

INITIATED BY: Public Works Department

AGENDA ITEM: UPDATE ON DURHAM'S SECTION 401 WATER QUALITY CERTIFICATE, LAMPREY RIVER PROTECTED INSTREAM FLOWS, AND THE STATUS OF THE TOWN'S AND UNH'S WATER SUPPLY AND DEMAND

CC PREPARED BY: Todd Selig, Town Administrator
David Cedarholm, Town Engineer

PRESENTED BY: Todd Selig, Town Administrator
David Cedarholm, Town Engineer
Paul Currier, Administrator, DES Watershed Management Bureau

AGENDA DESCRIPTION:

Town Engineer David Cedarholm will provide a response to continued concerns involving the Town's Section 401 Water Quality Certification (§401) and give a presentation on the status of the UNH/Durham Water System's (UDWS) drinking water supply and demand and the Lamprey River Protected Instream Flows (PISFs). Paul Currier of the New Hampshire Department of Environmental Services (DES) Watershed Management Bureau will be in attendance to provide details on New Hampshire's §401 program and answer questions about Durham's §401, as well as the PISF.

Section 401 Water Quality Certification

Since the §401 was originally required as part of a wetlands permit associated with the Lamprey River Transmission Main project in 2000, it has continued to generate questions and concerns from Administrator Selig, residents, Board members, and Town Councilors about its legal applicability and appropriateness and its impact on the UDWS. The complex circumstances that originally brought about the §401 and the very confusing federal and state regulations that make it nearly impossible to understand why it was required, are further complicated by 10 years of the seemingly unresolved questions. All these factors have severely clouded the fact that the §401 will very soon expire and none of the apparent controversy surrounding the issue today will matter in

the future. Other than being a source of much angst, the §401 has not resulted in a system water shortage or been the cause of a major inconvenience to UDWS users. The §401 will become null and void when the Lamprey River Protected Instream Flows (PISFs) are finalized in the coming months. Aside from being a sore point that will likely smolder for a few more years, the §401 will have absolutely no bearing on how the UDWS operates in the future. What is most important today is that the Town and UNH remain engaged in the review and comment process involving the PISF Water Management Plan that is actively being developed today. For a better understanding of the §401, background information is provided below.

§401 Background

The §401 was issued as a condition of approval to construct a new water transmission main connecting the original raw water pipeline (built in 1970) between the Lamprey and Oyster River the UNH Water Treatment Plant. This project is commonly referred to as the "hard pipe project". In late 2000 and early 2001 the Town and UNH were anxious to move forward with the hard pipe project and following at least two negotiation meetings between DES and National Park Service officials and an ad hoc committee that included numerous Town and UNH officials, the final §401 conditions were agreed upon. Water resource consulting engineer Michael Metcalf who was the project manager for the hard pipe project also attended the meetings with DES. The conditions included in the final §401 were a significant compromise from what was originally proposed by DES at the start of negotiations in late 2000. The final §401 was issued on April 3, 2001 and is included as Attachment A. The legality and appropriateness of the §401 was an agenda item at the November 19, 2007 Town Council Meeting and the attached council communication from that meeting provides valuable background (See Attachment B). The November 19, 2007 council communication included an excerpt from the August 7, 2006 Town Council meeting minutes which documented a lengthy Town Council discussion about the legal validity of the §401, which sparked a request to obtain a legal opinion from the Town's attorney. The resulting legal opinion from Mitchell & Bates dated October 4, 2006 is included as part of the October 17, 2006 Department of Public Works memorandum on the subject. A copy of the original letter from the Town Engineer requesting the legal opinion of Mitchell & Bates is included as Attachment C. A follow-up memorandum dated October 30, 2006 provided answers to supplementary questions posed by Town Council Chair Neil Niman and is included as Attachment D. Attachment D also includes a summary of the litany of state and federal regulations and that add to complexity behind using the Lamprey River as a water source, and includes copies of the meeting minutes of the §401 negotiation meetings prepared by consulting engineer Michael Metcalf.

The basis of most of the controversy over the has §401 revolved around specific conditions that limited the allowable drawdown of the water in the Wiswall Reservoir to ½-inch per day and a total drawdown of 6-inches. Town and the UDWS has since

amended as part of flow monitoring plan that DES recently approved allowing the UDWS to draw the reservoir down by a total of 18-inches (increased from 6-inches) and up to 1-inch per day (increased from ½-inch per day). See the attached flow monitoring plan (see Attachment E). The amendment allows for more than 35 to 40 days of continuous use of the reservoir during extreme low flow conditions. The UDWS successfully implemented this flow monitoring plan during the withdrawal from the Wiswall Reservoir over the recent drought this year.

It is important to recognize that when the §401 was agreed to in 2001 the Town Council and the general atmosphere in Durham was not nearly as pro-development as today. The ad hoc committee was less concerned about how the proposed conditions might limit future development and more focused on moving forward with the hard pipe project. As is often the case with state and federal permits, there was not much latitude for negotiation with the Protective Instream Flow Rules (Env-Wq 1900) in the process of being established and DES anticipating that the protective instream flows would eventually create equivalent or similar limitations.

At the September 21, 2009 Town Council meeting environmental attorney Dana Bisbee, Esq. of the law firm Devine Millimet and Town Engineer David Cedarholm attended a non-public session to answer questions specific to the legality of the §401 and whether it would be prudent for the Town to initiate a legal challenge. Attorney Bisbee was specifically selected for this task because of his extensive experience on these and other related environmental issues. Attorney Bisbee provided valuable assistance to the Town and UNH in early 2009 in prepare the UNH/Durham Water System's comments on the PISF Report. Attorney Bisbee has provide a letter reiterating the advice he offered to the Town Council on September 21, 2009 (See Attachment F). The following bullet list is an update of the original bullet list provided to the Town Council for the September 21, 2009 non-public session, and provides a status report relative to the goals and pertinent regulations associated with the §401, the Lamprey PISFs, and offered Attorney Bisbee's recommended steps:

Town's Goals

- Reasonable access for public water supply (drinking water for Town and UNH; industry) for present and future.
- Appropriate limits from the government.
- Some confidence level on regulations going forward.

Status of the Town's Work with DES

- PISF comments were prepared by the UDWS in January and February 2009 and submitted in March 2009 (See Attachment G).
- §401 will be rescinded following final adoption of PISF and the associated Lamprey River Water Management Plan.

- A UDWS delegation is actively reviewing and providing comment on the Lamprey River Water Management Plan and meeting with DES to develop a plan that is workable with the UDWS.

§401 Issues

- The two limiting factors are the minimum flow "cutoffs" (45-27-13 CFS) and the maximum reservoir drawdown (6-inches).
- As a result of the Town's efforts over the last 5+ years and including the last week, DES has approved allowing up to an 18" drawdown .
- DES has also confirmed that the PISFs will replace the §401 water quality certificate conditions (September 2010).

Status of PISFs

- The Town/UNH requested that DES delay the official establishment of the Lamprey River PISF.
- Current legislation requires that the PISF and Water Management Plans be finalized by September 1, 2010, but DES agreed to delay the final PISF designation until after the Water Management Plan is finalized.
- The Town and UNH will continue to refine its understanding, analysis, and feedback to DES on the PSIF report that has been developed over the last few years.
- The primary focus now is remain engaged in DES's development of the Water Management Plans for all water users in the Lamprey River watershed, but principally the UDWS.

Recommended Next Steps

1. Continue work on the potential problems with the PISF report and final designation by DES.
2. Be engaged in the development of the Lamprey River Water Management Plan.
3. Preserve the option of challenging both the final PISFs promulgated by DES and the provisions of the Water Management Plans when they are developed by DES.
4. Continue to consider potential legislative fixes, as they may need to be addressed.

Lamprey River Protected Instream Flow (PISF) Pilot Study Update

In 2009, DES completed the Lamprey PISF Study and issued a final report which can be viewed online at the following DES website along with other related documents: <http://des.nh.gov/organization/divisions/water/wmb/rivers/instream/index.htm>. The final report describes in great detail (232 pages worth) the science and procedures used to conduct the study, and the attached summary document (see Attachment H) was produced to more succinctly present the overview of the study, its process, and provide a more easily understood results. Table 23 from the final report (see the final page of Attachment H) includes the proposed instream protected flows for the Lamprey River and breaks them down the 6 bioperiods corresponding to different seasons and 3 degrees of minimum flow protection: common, critical, and rare. There are also allowable and catastrophic durations associated with each bioperiod and degree of flow protection. The bioperiod that will most likely affect the UDWS is from July 5 to October 6 when the minimum common, critical, and rare flows are 104, 18, and 16 cubic feet per second (cfs) respectively, with corresponding catastrophic flow durations of 82, 32 and 15 days. This means that if flows in the river fall below 16 cfs for more than 15 days, then some type of flow management will need to occur. The resulting flow management might be release of water from a dam or multiple dams to supplement the instream flow during the "rare/catastrophic" event. It is also expected that restrictions on water withdrawals by public water systems will be required and water conservation measures implemented during these designated low flow events.

DES is progressing with the final phase of Lamprey River PISF Pilot Program which includes development of a Water Management Plan in accordance with Env-Wq 1904. The Water Management Plan will include water conservation plans and water use plans and for each affected water user, and a dam management plan for each affected dam owner. DES has recently provided the Town and UNH with the sections of the Draft Lamprey River Water Management Plan that are specific to UDWS for review and comment; including a draft Water Use Plan, a draft Water Conservation Plan, and a draft Dam Management Plan. The Durham Water/Wastewater/Stormwater Committee and the UDWS system managers are currently reviewing and providing comments to DES on the draft plans. Three separate water resource consultants that currently work with the Town and UNH are also providing input.

Water Supply and Demand Status

The status of the UDWS Water supply and demand is currently being tested by the drought conditions requiring special attention to monitor the surface water and ground water sources. Attachment I is a Water Supply & Demand Update memorandum recently provided by consulting engineer Michael Metcalf that

evaluates the capacity of water supply sources as they vary relative to the availability of surface and groundwater water sources and compares this to the system demand during periods of peak water usage. The surface water sources include in the evaluation make up the Oyster River and the Lamprey River and the groundwater source is the Lee Well. The maximum system capacity is observed during periods of high flows in the two rivers and capacity decreases as the limitations from the recently amended Lamprey River §401 are applied. The limitations from the Lamprey River PISF are expected to be similar to the recently amended §401, however the water management plan will dictate how they are applied. There are currently no withdrawal limitations on the Oyster River, however with the pending designation of the Oyster River into the New Hampshire River Management and Protection program, PISF withdrawal limitations may eventually apply to Oyster River as some future point.

The UDWS's future demand estimated in the memorandum based on a future build-out scenario that includes completion of all the residential and UNH developments that have been proposed over the last 5 years within a period of 20 years. Under this build-out scenario, which uses a constant rate of development, the future demand is projected to increase by 29%. This build-out scenario does not account for the implementation of water conservation measures (i.e. replacement of inefficient fixtures and appliances with more efficient ones) which could reduce the per capita daily demand well below the current 75gallon per day per capita. The Water Supply & Demand Update makes a strong case for continuing to develop the new well in the Spruce Hole Aquifer.

LEGAL AUTHORITY:

Federal Clean Water Act §401

NH RSA 483

DES Surface Water Administrative Rules (Env-Wq 1700)

DES Protected Instream Flow Administrative Rules (Env-Wq 1900)

LEGAL OPINION:

See Attached letters from Mitchell and Bates dated October 4, 2006 (Attachment B), and Devine Millimet dated September 6, 2010 (Attachment F).

FINANCIAL DETAILS:

N/A

SUGGESTED ACTION OR RECOMMENDATIONS:

No formal action is required. Receive presentation and hold question and answer session as the Town Council deems appropriate.



TOWN OF DURHAM
15 NEWMARKET ROAD
DURHAM, NH 03824-2898

Tel: 603/868-5571

Fax: 603/868-5572

AGENDA ITEM: # 10

DATE: October 4, 2010

COUNCIL COMMUNICATION

INITIATED BY:

Jay Gooze, Councilor
Peter Stanhope, Councilor

AGENDA ITEM:

**DISCUSSION REGARDING POLICE ENFORCEMENT EFFORTS
RELATIVE TO STUDENT BEHAVIOR AND STEPPED-UP
ZONING/TRASH ENFORCEMENT EFFORTS IN AN AROUND
DURHAM'S CENTRAL CORE**

CC PREPARED BY:

Jennie Berry, Administrative Assistant

PRESENTED BY:

David Kurz, Police Chief
Tom Johnson, Zoning and Code Enforcement Officer

AGENDA DESCRIPTION:

Councilor Jay Gooze asked that this item be placed on the September 13th Town Council agenda for the Council's general discussion with regard to the Durham Police Department's efforts in the downtown area relative to student behavior. However, due to the lateness of the hour, this item was moved to the September 27th Council meeting. Subsequent to September 13th, Councilor Stanhope requested the Town Council discuss the Town's efforts at the request of the Rental Housing Commission and Town Council to more actively enforce the zoning and trash regulations presently in place.

This item was placed on the Town Council agenda for the September 27, 2010 meeting, however, due to the lateness of the hour, it was postponed to the October 4, 2010 Town Council meeting.

LEGAL AUTHORITY:

N/A

LEGAL OPINION:

N/A

FINANCIAL DETAILS:

N/A

SUGGESTED ACTION OR RECOMMENDATIONS:

No formal action required at this time. Hold discussion concerning the Durham Police Department's efforts relative to student behavior as well as the stepped-up zoning/trash efforts in the downtown area.





TOWN OF DURHAM
15 NEWMARKET ROAD
DURHAM, NH 03824-2888
Tel: 603/868-5571
Fax: 603/868-5572

AGENDA ITEM: # **11A**

DATE: October 4, 2010

COUNCIL COMMUNICATION

INITIATED BY: Rental Housing Commission
Jay Gooze, Council Representative to the RHC

AGENDA ITEM: DISCUSSION REGARDING THE CONCEPT OF DEVELOPING A
PROPERTY MAINTENANCE CODE

CC PREPARED BY: Jennie Berry, Administrative Assistant

PRESENTED BY: Jay Gooze, Council Representative to the RHC

AGENDA DESCRIPTION:

At a recent Rental Housing Commission meeting, members of the Commission discussed the idea of developing a property maintenance code to address neglected/deteriorated properties throughout the community. It was agreed that discussion for such an ordinance would be more appropriate at the Town Council level.

Jay Gooze, Council representative to the Rental Housing Commission, asked that this item be placed on the September 13th Town Council agenda for discussion and consideration. This item has been postponed twice due to the lateness of the hour, and was moved out to the October 4th meeting.

The Town Administrator does not recommend moving forward with this type of ordinance in Durham.

LEGAL AUTHORITY:

N/A

LEGAL OPINION:

N/A

FINANCIAL DETAILS:

N/A

SUGGESTED ACTION OR RECOMMENDATIONS:

No formal action required at this time. Hold discussion concerning the possible development of a formal property management ordinance.