



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

## **AGENDA**

### **DURHAM TOWN COUNCIL**

MONDAY, OCTOBER 3, 2011

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
- 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*)
  - FIRST READING ON ORDINANCE #2011-07 amending Chapter 153 "Vehicles and Traffic", Section 153-49 "Schedule XVII: parking prohibited certain hours and Section 153-46 "Schedule XIV: Parking prohibited at all times" of the Durham Town Code by prohibiting parking at anytime on a section of Woodman Road
- VIII. Committee Appointments - None
- IX. Presentation Items
  - A. Annual report of the Conservation Commission - James Houle
  - B. Update on the status of the Lamprey River Water Management Plan and the 401 Water Quality Certificate - Dave Cedarholm, Town Engineer and Attorney George Dana Bisbee of Divine, Millimet, & Branch law firm
  - C. Update regarding Durham police activity and calls for service during the opening weeks of the academic year - David Kurz, Police Chief

**X. Unfinished Business**

- A. **PUBLIC HEARING AND ACTION ON ORDINANCE #2011-06** amending Chapter 175 "Zoning", Article XIX "Conservation Subdivisions" of the Durham Town Code by adding a new Section 175-107-II Titled "Workforce Housing Option"
- B. **ACTION ON ORDINANCE #2011-05**, a Council-initiated ordinance, in accordance with Section 175-14 (B) of the Durham Zoning Ordinance, that would amend Article XII, Zone Requirements, Section 175-53 (A), the "Table of Uses", of the Durham Town Code, to allow single-family residences as a permitted use in the Professional Office District

**XI. New Business**

Discussion with Durham's legislative delegation on various issues of interest to the Town

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

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

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



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AGENDA ITEM: **# 7**


DATE: October 3, 2011

## COUNCIL COMMUNICATION

INITIATED BY: David L. Kurz, Police Chief

AGENDA ITEM: **FIRST READING ON ORDINANCE #2011-07 AMENDING CHAPTER 153 "VEHICLES AND TRAFFIC", SECTION 153-49 "SCHEDULE XVII: PARKING PROHIBITED CERTAIN HOURS AND SECTION 153-46 "SCHEDULE XIV: PARKING PROHIBITED AT ALL TIMES OF THE DURHAM TOWN CODE BY PROHIBITING PARKING AT ANYTIME ON A SECTION OF WOODMAN**

CC PREPARED BY: David L. Kurz, Police Chief

PRESENTED BY: David L. Kurz, Police Chief 

AGENDA DESCRIPTION:

Attached for the Council's consideration is a draft ordinance recommended by the Police Department that would enact changes to certain sections of Chapter 153 "Vehicles and Traffic" of the Durham Town Code.

This ordinance will prohibit parking on a section of Woodman Road. The high volume of traffic utilizing Woodman Road to gain access to the Middle School and High School at all hours of the day and evening as well as the addition of a bicycle lane in combination with the narrow width of Woodman prompts this ordinance. The proposed ordinance change will affect the southerly side of Woodman Road between Madbury and Dennison Roads where currently parking is allowed only between the hours of 6PM to 1AM.

The Traffic Safety Committee reviewed this proposal during its August 31, 2011 meeting, concurred with the conclusions presented by the Public Works Director, and recommended action to the Town Administrator who concurs.

LEGAL AUTHORITY:

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

**LEGAL OPINION:**

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

**FINANCIAL DETAILS:**

Several signs will be required advising of "No Parking" in this area at an approximately cost of \$100 each.

**SUGGESTED ACTION OR RECOMMENDATIONS:**

**MOTION:**

*The Durham Town Council does hereby move on First Reading (as presented) (as amended) Ordinance #2011-07 amending Chapter 153 "Vehicles and Traffic", Section 153-49 "Schedule XVII: parking prohibited certain hours and Section 153-46 "Schedule XIV: Parking prohibited at all times of the Durham Town Code by prohibiting parking at anytime on a section of Woodman Road and schedules a Public Hearing for Monday, October 17, 2011.*



**DRAFT**

## **ORDINANCE #2011-07 OF DURHAM, NEW HAMPSHIRE**

**AMENDING CHAPTER 153 "VEHICLES AND TRAFFIC", SECTION 153-49 "SCHEDULE XVII: PARKING PROHIBITED CERTAIN HOURS AND SECTION 153-46 "SCHEDULE XIV: PARKING PROHIBITED AT ALL TIMES" OF THE DURHAM TOWN CODE BY PROHIBITING PARKING AT ANYTIME ON A SECTION OF WOODMAN ROAD**

**WHEREAS**, Woodman Road is a major connector roadway from the downtown business area to the Oyster River Schools, and

**WHEREAS**, events at the Middle School and High School occur with great frequency, and

**WHEREAS**, with the addition of a bicycle lane on the southerly side of Woodman Road in conjunction with the Safe Routes to School initiative, and

**WHEREAS**, the roadway is not of sufficient width to safely accommodate parking on either side, and

**WHEREAS**, the Traffic Safety Committee reviewed this proposal during its August 31, 2011 meeting, concurred with the conclusions presented by the Public Works Director, and recommended the action to the Town Administrator who concurs; and

**WHEREAS**, anyone who violates this ordinance shall be subjected to fines in accordance with the provisions of the Durham Town Code Article V:153-32, Penalties as amended;

**NOW, THEREFORE BE IT RESOLVED** that the Durham Town Council, the governing body of the Town of Durham, New Hampshire does hereby adopt Ordinance #2011-07 amending Chapter 153 "Vehicles and Traffic", Sections 153-49 and 153-46 of Chapter 153 "Vehicles and Traffic" of the Code of the Town of Durham by removing the listing of Woodman Road (between Madbury Road and Dennison Road) from its current location in Section 153-49 with hourly parking restrictions and placing it in Section 153-46 to prohibit parking at anytime on this section of Woodman Road as indicated below. Wording to be omitted is annotated with ~~strikeout~~ type. New wording is annotated with underscoring.

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**153-49. Schedule XVII: Parking prohibited certain hours.**

In accordance with the provisions of 153-20, no person shall park a vehicle between the hours listed upon any of the following described streets or parts of streets, with the exception of Durham resident parking permits where indicated with an asterisk (\*) and Oyster River High School parking permits where indicated with two asterisks (\*\*).

Name of street	Side	Hours/Days	Parking prohibited
Woodman Road	Both	7:00 a.m. to 6:00 p.m.	<del>From Madbury Road to Dennison Road</del>

**153-46. Schedule XIV: Parking prohibited at all times.**

In accordance with the provisions of 153-17, no person shall park a vehicle at any time upon any of the following described streets or parts of streets:

Name of street	Side	Location of Prohibited Parking
<u>Woodman Road</u>	<u>Both</u>	<u>From Madbury Road to Dennison Road</u>

**PASSED AND ADOPTED** by the Town Council of the Town of Durham this day of \_\_\_\_ October 2011 by \_\_\_\_\_ affirmative votes and \_\_\_\_ negative votes.

\_\_\_\_\_  
Diana Carroll, Chair  
Durham Town Council

**ATTEST:**

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



TOWN OF DURHAM  
15 NEWMARKET ROAD  
DURHAM, NH 03824-2898  
Tel: 603/868-5571  
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AGENDA ITEM: **# 9A**

DATE: October 3, 2011

## COUNCIL COMMUNICATION

**INITIATED BY:** Durham Town Charter

**AGENDA ITEM:** RECEIVE ANNUAL REPORT ON THE CONSERVATION  
COMMISSION – JAMIE HOULE, DCC MEMBER

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

**PRESENTED BY:** Jamie House, Conservation Commission member

### **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, Conservation Commission member Jamie Houle will be present to provide a brief update to the Town Council regarding current activities of the Commission. A written report is currently being prepared by Mr. Houle and will either be forwarded to Council under separate cover or handed out to Council members at the meeting.

### **LEGAL AUTHORITY:**

Section 11.1 (I) of the Durham Town Charter.

### **LEGAL OPINION:**

N/A

### **FINANCIAL DETAILS:**

N/A

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

Hear presentation by Jamie Houle regarding the Conservation Commission and hold question and answer session if desired.

**2011 Annual Report of the  
Durham Conservation Commission**  
Jamie Houle, Former Chair (2009-2011)

The Durham Conservation Commission (DCC) has a state legislative mandate to inventory, manage, and protect the natural resources of the Town, and to make recommendations to the New Hampshire Department of Environmental Services' Wetlands Bureau on all wetlands applications. The DCC acts as an advocate for natural resource protection in Town and regional affairs and is a source of information for Town boards and residents.

**Accomplishments for 2011**

**Protection of Drinking Water Resources** - Pursuing its strategic priorities, the DCC worked extensively with the Planning Board to update the Town's Site Plan Review Regulations with respect to stormwater management and to identify and propose updates to the Town's Aquifer Protection Overlay regulations.

**Land Conservation** - The DCC authorized the disbursement of funds from the Conservation Fund toward the appraisal of a conservation easement on the Thompson property on the Lamprey River, site of the Town's drinking water intake. This easement project is not active but remains a high priority. In April, the DCC unanimously voted also to offer financial support with the Conservation Fund (for an amount not to exceed \$400,000) to work with the Trust for Public Land (TPL) and the NH Fish and Game Department to purchase and conserve a 170+acre Durham parcel with regionally-recognized high conservation values (the "Sprucewood Forest project"). As of October 2011, both projects are still pending, with efforts continuing toward their completion.

**Site Plan Review Process** - The DCC, and Planning Board reviewed several development proposals involving wetlands or conservation subdivisions, including advising two applicants at the Conceptual Review stage.

**Town Land-Use/Trails Subcommittee** - The DCC hired Ellen Snyder of Ibis Wildlife Consulting to prepare stewardship plans for Wagon Hill Farm, Longmarsh Preserve, Doe Farm, and the Weeks property. The plans were completed in November 2009, presented to the Town Council, and made available on the Town's website in February 2010. They are now being used to manage Town-owned lands for the benefit of the Durham community.

**Review of Wetland Applications** - The DCC reviewed and commented on several wetland applications for the New Hampshire Department of Environmental Services.

**Jackson Landing Improvements** – At the Town’s request, the DCC voted to allocate an additional \$36,056.82 from the Conservation Fund to cover outstanding project expenditures. This brought the DCC’s total expenditure for the project, including the initial Fund allocation of \$127,000 on March 13, 2008, to \$163, 056.82. The entire improvement project was funded through a combination of in-kind service from Public Works (materials, project management, etc.), National Resource Conservation Service (NRCS) grant monies, and allocations from the Conservation Fund, with a total cost of \$317,686.

**Guidance on Town Regulations** – The DCC allocated up to \$8,000 (up to \$4,000 for each project) from the Conservation Fund to (1) hire a hydrogeologist to review and suggest amendments to Durham’s Zoning Ordinance for the Aquifer Protection Overlay District (APOD) and (2) hire a professional planner to review and suggest amendments to Zoning Ordinance Section 175-55 (F), Calculation of Usable Area.

**Forestry Management of Town-Owned Lands** – The DCC reviewed and approved a forestry management plan on Town-owned lands, including a timber harvest on “Spruce Hole” parcels (13-13-1 and 13-13-5) conducted by Charles Moreno, Licensed Professional Forester.

**Designated River Program** – The DCC supported the nominations of the Oyster River and additional segments of the Lamprey River for designation into the Rivers Management and Protection Program. Both designations were approved by the State in the summer of 2011.

**Master Plan Update** – In addition to providing questions for the Master Plan Survey itself, a representative from the DCC participated on the Survey Subcommittee. Coordinating with the DCC’s strategic focus, questions for the Survey primarily addressed residents’ attitudes concerning local water resources,

**Conservation easement for Beaudette Farm, Durham NH** - The Durham Conservation Commission approved a request made by The Nature Conservancy, working on behalf of the Great Bay Resource Protection Partnership, for funding in the amount of \$45,000 from the conservation fund for the conservation of a 66 acre portion of the Beaudette farm. The property is located along Bennett Road, and is shown as Map 15, Lot 6 on the Durham tax maps. The expenditure along with an additional allocation \$5,000 that had been authorized several years ago was ultimately passed by the town council and the purchase was closed on August 24th at 10:00 am at the Durham Town Hall for \$490,000. The town’s portion represented 10.2% of the final purchase price leveraging over 89% outside funds for the permanent protection of the property.

## **Goals for 2012**

The DCC will continue to:

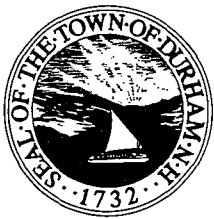
- Advocate for the protection of the Town's drinking water sources, including the Spruce Hole aquifer, Oyster River, and Lamprey River.
- Endorse the conservation of undeveloped land determined to contain other natural resources of long-term value to the community.
- Review all wetland applications.
- Address the recommendations in the stewardship plans for Wagon Hill Farm, Longmarsh Preserve, Doe Farm and the Weeks property.
- Conduct additional assessments of the Town's permanently protected lands and guiding regulations as needed.

The DCC's Land Stewardship sub-committee will continue its efforts to:

- Provide an Internet-accessible inventory of Town conservation lands.
- Fulfill conservation easement monitoring responsibilities.
- Plan stewardship volunteer opportunities (e.g., invasive plant removal).

In addition, the DCC will seek opportunities to:

- Coordinate with the Parks and Recreation Committee to promote the responsible enjoyment of Town conservation lands that have public access.
- Enhance its section of the Town website to better inform the community.
- Support and coordinate public education and outreach about the importance and value of protecting the town's water resources.



DEPARTMENT OF PUBLIC WORKS

TOWN OF DURHAM

100 STONE QUARRY DRIVE

DURHAM, N.H. 03824

603/868-5578 AGENDA ITEM:

FAX 603/868-8063

# **9B**

DATE: October 3, 2011

## COUNCIL COMMUNICATION

**INITIATED BY:** Public Works Department

**AGENDA ITEM:** Provide an Update on the Status of the Lamprey River Water Management Plan and the 401 Water Quality Certificate

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

**PRESENTED BY:** Todd Selig, Town Administrator  
David Cedarholm, Town Engineer  
Dana Bisbee, Esq., Devine Millimet & Branch

**AGENDA DESCRIPTION:**

Town Engineer David Cedarholm and Attorney Dana Bisbee will give a presentation to update the Town Council on the Status of the Lamprey River Water Management Plan (WMP) and the Town's Section 401 Water Quality Certification (§401). The primary goal of this presentation is to ensure the discussion of Lamprey River WMP remains an open public forum, and specifically engage the Town Council on its opinions and comments relative to the Lamprey River WMP and the §401.

**Lamprey River Water Management Plan**

The Lamprey River Water Management Plan represents the final step in the Protected Instream Flow (PISF) Pilot Program and describes how the final PISF Report would be implemented. The Lamprey Water Management Plan (WMP) contains individual water use plans and water conservation plans for affected water suppliers as well as dam management plans for affected dam owners. The Draft Lamprey River Water Management Plan dated April 11, 2011 is available for review on the New Hampshire Department of Environmental Services (NHDES) website at the following link:

<http://des.nh.gov/organization/divisions/water/wmb/rivers/instream/lamprey/documents/20110411-prop-lwmp-rept.pdf>

The UNH/Durham Water System (UDWS) commented on the WMP in a letter dated June 24, 2011 (See Attachment A). NHDES responded to UDWS's comments in a letter dated August 26, 2011 (See Attachment B).

On September 21, 2009 and again on September 13, 2010 the Town Council held a consultation with legal counsel in accordance with RSA 91-A:2 (I) (c) with environmental attorney Dana Bisbee, Esq. of the law firm Devine Millimet in which Attorney Bisbee provided legal advice and representation on the Protected Instream Flow Pilot Program and issues related to the §401. Mr. Bisbee also provided valuable assistance to Town Engineer David Cedarholm early in 2009 helping prepare the UNH/Durham Water System's comments on the PISF Report while working for the firm Peirce-Atwood.

The following goals and recommendations were presented to the Town Council in previous updates in 2009 and 2010:

Town's Goals

- *Reasonable access for public water supply (drinking water for Town and UNH for present and future.*
- *Some confidence level on regulations going forward.*

Recommended Steps

1. *Continue work on the issues with the PISF report and final determination by DES; not focus on the 401 Certificate..*
2. *Participate in 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.*

On October 4, 2010, NHDES Watershed Management Bureau Administrator Paul Currier met with the Town Council at which time Mr. Currier reported that NHDES would replace the §401 with the WMP upon final adoption. The nullification of the §401 following adoption of the WMP has been anticipated for 3 or 4 years. Mr. Currier has since retired, and now NHDES has indicated that they do not have the authority to rescind or nullify a §401 because it is effectively a Federal permit. David Cedarholm and Dana Bisbee have been in communication with NHDES on this matter and other issues outlined in the attached comment letters.

**LEGAL AUTHORITY:**

Federal Clean Water Act §401  
NH RSA 483

NHDES Surface Water Administrative Rules (Env-Wq 1700)  
NHDES Protected Instream Flow Administrative Rules (Env-Wq 1900)

**LEGAL OPINION:**

N/A

**FINANCIAL DETAILS:**

N/A

**SUGGESTED ACTION OR RECOMMENDATIONS:**

No formal action required at this time. Receive presentation, consider options presented, and give direction on the strategy moving forward with the Lamprey River Water Management Plan and the Section 401 Water Quality Certificate and ask questions as the Town Council deems appropriate.

UNIVERSITY of NEW HAMPSHIRE



UNH – Water Utilities  
Tel: (603) 862-1390  
Fax: (603) 862-0143

**UNH/DURHAM WATER SYSTEM**  
100 STONE QUARRY DRIVE  
DURHAM, NH 03824



Town of Durham Public Works  
Tel: (603) 868-5578  
Fax: (603) 868-8063

June 24, 2011

Mr. Wayne Ives, P.G.  
NHDES – Watershed Management Bureau  
P.O. Box 95  
Concord, NH 03302-0095

**RE: Comments from UNH/Durham Water System on the  
Draft Lamprey River Water Management Plan**

Dear Mr. Ives:

The University of New Hampshire/Durham Water System (UDWS) is pleased to provide the below comments relative to the Draft Lamprey River Water Management Plan provided by NHDES in PDF form and dated April 11, 2011, and earlier versions in MS Word format of specific sections pertaining to the UDWS which are attached. The UDWS has been in discussion with NHDES regarding specific language in the proposed UDWS Water Use Plan, the Wiswall Dam Management Plan, and the UDWS Water Conservation Plan. A public meeting between representatives of the UDWS, NHDES, and NHDES's contractors was held on April 6, 2011 to discuss this specific language and the operational realities of complying with the draft plans. It is understood that at least one more meeting will be held to revise and finalize the language.

The following are general comments:

1. Originally, drafts of the proposed UDWS Water Use Plan, the Wiswall Dam Management Plan, and the UDWS Water Conservation Plan were provided in MS Word format for UNH's and the Town of Durham's comments and as mentioned above we have been in discussion with NHDES for some time now regarding specific language. In April 2011, the bulk of the three draft plans were then incorporated into the body of the Draft Lamprey River Water Management Plan, which was provided in PDF format only, and the individual draft Plans were included in separate appendices in the PDF. This has unnecessarily complicated the comment process since now the same information exists in essentially three places with potentially three different versions making proofing of the final information very difficult. Hence, the reason most of the below comments contain three references. Does NHDES plan to maintain the format of having the bulk of the information from the three plans in the body of the Water Management Plan and entirety of the individual plans included in separate appendices? The UDWS does not feel this makes practical sense since

it will make revising the information moving forward even more complicated than it already is. It is our recommendation that the body of the Water Management Plan not contain so much redundant information and instead refer to the individual plans which would be contained entirely in their own appendices.

2. The title of Table 3 on page 19 is "Affected Dam Owners", however it is a list dams not the actual owners. A column should be added that list the owner of the respective dams.
3. The discussion about manageability of instream flows and the need for it is based on a comparison of statistical analyses that were used developed the flow duration curve of the Lamprey River, projections of population increase, and assumptions about water demand. It is important to bear in mind that neither regional population projections nor per capita water use can be expected to follow current trends with a great deal of confidence. Per capita water use has been in decline since the 1970s, which is why the UDWS's water demand is only at 25% of what was projected in 1970.
4. Page 25, first paragraph in the PDF. This paragraph exaggerates the per capita use of users in the watershed (150 gallons per person per day is about 50-100% greater than the per capita use in most area Towns) and therefore exaggerates its impact on the Lamprey River. There is lack of source references to support this discussion. In addition, the last sentence states: "So on average, there is plenty of water, however often demand exceeds supply". The use of the word "often" in this statement is contrary to the lengthy preceding discussion which makes the case that demand exceeds supply infrequently.
5. Page 26, 2<sup>nd</sup> paragraph in the PDF incorrectly refers to a Newmarket gage. There is no stream gage in Newmarket. The Packers Falls gage is located in the Town of Durham, however for some reason the USGS refers to it as "near" Newmarket.
6. Page 39, 3<sup>rd</sup> paragraph in the PDF states "prior to obtaining approval for the proposed new source, but no later than June 1, 2012, UDWS will finalize it proposed Water Conservation Plan in accordance with Env-Wq 2101". A deadline of June 1, 2012 may be unrealistic; however, UDWS will commit to making a reasonable effort to finalize the proposed Water Conservation Plan prior to this deadline.

The following comments are provided primarily to prevent an unreasonable burden from being placed on the operations of the UDWS, and to ensure that basic operational constraints do not result in an accidental violation of the **UDWS Water Use Plan**. The first page reference refers to the MS Word document of UDWS Water Use Plan (see attachment) followed by the page reference(s) in the complete PDF Water Management Plan document.

7. Page 6, paragraph following bullet list (pages 54 and 224 in the PDF): The ability to base the 1 inch per day drawdown on a weekly average is needed in order to manage the reservoir outflow by removing 1 stop log at a time which would result in a release of "slugs" of water much like a relief pulse. This is also essential if for some reason outflow is managed with a

low level gate in which case it is extremely tricky to maintain a steady drop in pool elevations.

8. Page 6, last paragraph (Page 55, 2<sup>nd</sup> paragraph and page 225, 3<sup>rd</sup> paragraph in the PDF): The notification requiring the UDWS to acknowledge within 24 hours is workable, unless the notification is received on a Friday or a weekend in which case acknowledgment will be provide on the following Monday.
9. Page 7, 1<sup>st</sup> paragraph (page 55, 2<sup>nd</sup> paragraph and page 225, 3<sup>rd</sup> paragraph in the PDF): All the language regarding DES plan to create relief flows, the estimated timing of the pulse arrive, and the estimated volume of the flow expected to arrive at the Wiswall Dam are only estimates since the operation of creating a relief flow on the Lamprey River is completely untested the UDWS is extremely uncomfortable with the prescriptive requirements prior to actual trials being conducted. The language suggests that the owner of the Wiswall Dam could create a relief flow “equal to the current bioperiod’s 90<sup>th</sup> percentile event volume, but without the volume of the 20% buffer released to compensate for losses” has great potential failing and cause the UDWS to violate the conditions if the volume that arrives at the Wiswall Reservoir is inadequate. Because the concept of creating a relief flow is untested, the UDWS has little confidence that the 20% buffer released from the upstream sources will provide enough of a buffer to allow the UDWS to maintain compliance without losing a significant amount of stored water that would otherwise be available to meet public drinking water requirements. It may also require the Wiswall Reservoir be drawn down more than 18 inches total. The following language should be inserted: “Provided that an adequate volume of water is released from upstream sources arrives at the Wiswall Dam, UDWS will make a reasonable effort to create a relief flow that is equal to the current bioperiod’s 90<sup>th</sup> percentile event volume, but without the volume of the 20 percent buffer released to compensate for losses”.
10. Page 7, 2<sup>nd</sup> paragraph (page 55, 3<sup>rd</sup> paragraph and page 225, 4<sup>th</sup> paragraph in the PDF): The text currently states: “When stream flows in the Lamprey are below 18 cfs, the system’s water sources will comprise the Lee Well, the Oyster River surface water withdrawal and the remaining storage within the drawdown limits of Wiswall Reservoir”. This apparently implies UDWS will be required to maintain inflow equal to outflow at Wiswall, however the designated critical flow of 18 cfs has an associated allowable duration of 15 day. UDWS proposes to use this 15 day allowable duration to begin scaling down the operations at the UNH Water Treatment Plant, and requests the ability to withdraw 0.8 cfs from the Lamprey River instream flow when flows fall below 18 cfs for a period of plus 7 days, and the ability to withdraw 0.4 cfs from 7 days to 15 days. This is necessary for the UNH Water Treatment Plant to more reasonably transition from a high to lower operational level, and to preserve the capacity in the Lee Well until absolutely necessary as prescribed on page 9, 4<sup>th</sup> paragraph (page 57, 5<sup>th</sup> paragraph and 227, 6<sup>th</sup> paragraph of the PDF).

11. Page 9, 1<sup>st</sup> paragraph (page 57, 2<sup>nd</sup> paragraph and 227, 3<sup>rd</sup> paragraph in the PDF): In order for the UDWS to impose mandatory water use restrictions, the Durham Town Council would need to adopt an ordinance to require such actions and impose penalties. UDWS shall work with the Town and UNH to establish procedures to implement mandatory water use restrictions and water conservation measures consistent with this water use plan. Discuss procedure and schedule for adopting water use restrictions as part of a new or updated Town Water Ordinance.
12. Page 9: Cost considerations (page 57 and 228 of the PDF): The following language more accurately reflect the UDWS's true costs and should be inserted: "The management activities would be performed by UNH and Town staff and/or a consultant and the annual costs to implement and maintain the water use plan is expected to range from \$10,000 to \$30,000. The reduced water withdrawal capacity imposed by the protected instream flow program may trigger the permitting, engineering, and installation of associated infrastructure for a new water source and ranges from \$4 million to \$6 million".

The following comments are provided primarily to prevent an unreasonable burden from being placed on the operations of the UDWS and the Town of Durham, and to ensure that basic operational constraints do not result in an accidental violation of the **Wiswall Dam Management Plan**. The first page reference refers to the MS Word document of Wiswall Dam Management Plan (see attachment) followed by the page reference(s) in the complete PDF Water Management Plan document.

13. Page 2, 3<sup>rd</sup> paragraph (page 46, introductory paragraph and page 191 of the PDF): Chapter 332 from 1965 referenced both the Town of Durham and UNH.
14. Page 3, 3<sup>rd</sup> paragraph (page 192 in the PDF) – The estimated volume of the impoundment of the top 12" is 12,142,211 gal or 1,623,290 CF or, 37.3 ac-ft per 8-25-10 email correspondence with Wayne Ives.
15. Page 3, 5<sup>th</sup> paragraph (page 193 in the PDF) – The primary purpose for reservoir is clearly for water supply storage and recreation is secondary. This was the conclusion of the 2003 Dufresne-Henry study. The NH Dams Data Sheet 071.04 referenced in the paragraph needs to indicate "water supply storage" as the primary purpose. The UDWS requests that NHDES revise NH Dams Data Sheet 071.04 accordingly.
16. Page 3, 3<sup>rd</sup> to last paragraph (page 193 in the PDF) – The last sentence of this paragraph is confusing.
17. Page 3, 2<sup>nd</sup> to last paragraph (page 193 in the PDF) – There may be approximately 3 miles of river downstream of Wiswall Dam, but the vast majority of this stretch of river is impounded. This should be acknowledged here.
18. Page 3, last Paragraph – (page 46 last paragraph and page 194, 1<sup>st</sup> paragraph in the PDF): As evident in Table 6, the volume of the Wiswall Reservoir is not "large" as stated in this paragraph, and for this reason it does not provide a significant potential to attenuate the

relief flow. The soon to be installed outflow notch/weir will be self regulating which will help to reduce the potential for attenuation. In addition, for the reason stated in the previous paragraph it does not provide a great potential to provide significant relief flow for the mostly impounded downstream reach. DES is imposing requirements based on assumed behavior the system. They also have practical problems in that no one knows or can measure how much attenuation occurs between the Pawtuckaway dams and our reservoir since the upstream gage is on a side branch of the Lamprey. It is reasonable to assume that some degree of attenuation will occur upstream of the Wiswall Reservoir, but how much? The statewide drawdown in 2009, which was used to assess the relief flow volume needed, was conducted in mid October. The antecedent moisture conditions during this time would typically have been very different from what would be expected during a drought when an actual relief flow would be considered.

19. Page 4, starting with the 3<sup>rd</sup> Paragraph (pages 47 and 194 in the PDF) – Regarding relief flows: Without conducting some actual relief flow tests that would provide NHDES and the UDWS with some real data of what flows to expect and when, and to what degree the new notch/weir of the dam might actually have on flow attenuation, it is unreasonable to insist that the UDWS come up with a plan to “ensure the relief flows are conveyed” without some amount of attenuation. Pulling stop logs in anticipation of an untested relief flow increases the UDWS’s liability of loosing drinking water storage during a potentially critical period of demand. Depending on when it happens, it could result in prematurely declaring Stage 4 (Water Emergency). What is a “controlled release”? The UDWS has proposed the accuracy as being what can be obtained by pulling a 4” stop log. What degree of control is expected? This is a natural system with natural variability. The degree of precision implied is inconsistent with the system being controlled, and this is all based on untested hypothetical information. The high degree precision of dam outflow controls will not exist to manage small changes in pool elevation. There needs to be a reasonable range of pool elevation variability by which the UDWs will be required to operate the dam.
20. Page 4 (Page 194 in the PDF): Delete the first bullet list. It is redundant with the following bullet list.
21. Page 4, bullet Item #1 (page 47 and 194, 1st bullet item in the PDF): This paragraph is confusing and it is not clear what the final phrase “whichever is less” is referring to.
22. Page 4, bullet Item #2 (page 47 and 194, 2<sup>nd</sup> bullet item in the PDF): The requirement to confirm receipt of DES’s notification within 24 hours is unrealistic for a municipality where the responsible staff may not be available, particularly if the notification arrives on a Friday or weekend . The planning involved in a relief flow release would happen at least a week before the actual release, and as such it seems reasonable that an “Affected” dam owner could be given more than 48 to 72 hrs notice.

23. Page 4, bullet Item #3 (pages 47 and 194, 3<sup>rd</sup> bullet item in the PDF): Maintaining inflow equal to inflow on an “instantaneous” basis would require a staff person to continually reside at the dam and is simply unrealistic. The alternative approach proposed in the Water Use plan, and as suggested above, the following language should be considered here: “Provided that an adequate volume of water is released from upstream sources arrives at the Wiswall Dam, UDWS will make a reasonable effort to create a relief flow that is equal to the current bioperiod’s 90<sup>th</sup> percentile event volume, but without the volume of the 20 percent buffer released to compensate for losses”. However, UDWS would prefer to simply agree to cooperate with NHDES to develop reasonable relief flow protocols based on experience from actual relief flow trials.
24. Page 5, bullet Item #4 (pages 47 and 195, 4<sup>th</sup> bullet item in the PDF): The outflow weir will be self-regulating, and if the UDWS is not withdrawing then we do not plan to pull additional stop logs.
25. Page 5, bullet Item #5 (pages 47 and 195, 4<sup>th</sup> bullet item in the PDF): The water level drop is proposed to be based on a 7 day average of 1 inch per day.
26. Page 6, bullet Item #6 (pages 47 and 195, 5<sup>th</sup> bullet item in the PDF): Again, this level of monitoring will require a staff person to reside continuously at the dam. Automated measurements will consist of pool elevation at the Pump Station and flow at the Packers Fall USGS gage.
27. Page 6, 2<sup>nd</sup> paragraph (page 48 and 196 in the PDF): The paragraph regarding cost needs to be revised to more accurately reflect the Town of Durham’s true cost with the following language “The estimated annual costs associated with this work will be dependent upon the number of personnel involved, and either the degree of automation of the system or the number of site visits required to perform the necessary flow management actions and the travel time and mileage, and is expected to range from \$200,000 to \$400,000 in infrastructure improvements (dam outflow controls) and \$10,000 to \$100,000 for operation and maintenance”.

NHDES recently informed the UDWS that they have changed its plan to nullify or supersede Durham’s §401 Water Quality Certificate upon adoption of the Lamprey River Water Management Plan, and instead has suggested that they would prefer to modify to the Certificate’s language to simply refer to the Lamprey River Water Management Plan. As recently as October 2010, the Administrator of the Watershed Bureau, Paul Currier, informed the Durham Town Council that the §401 Water Quality Certificate would become null and void upon adoption of the Lamprey River Water Management Plan. The basis of nullifying the Certificate is because ALL the conditions included in the current Certificate will be updated and incorporated into the Water Management Plan. Once the Water Management Plan is adopted, the Certificate will serve no practical purpose and would only perpetuate unnecessary bureaucracy and redundancy regulatory oversight if maintained in some modified form. The UDWS insists that NHDES proceed with nullifying

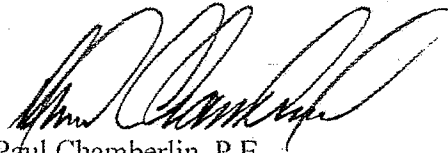
Durham's §401 Water Quality Certificate upon adoption of the Lamprey River Water Management Plan as was promised to the Durham Town Council.

We look forward to receiving NHDES's responses to the above comments, and working through the final language of the Lamprey River Water Management Plan in the near future. Please contact us with question and/or to schedule a follow-up meeting.

Sincerely,



David Cedarholm, P.E.  
Durham Town Engineer



Paul Chamberlin, P.E.  
UNH Assistant Vice President of Energy and  
Campus Development

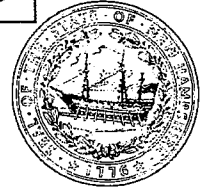
cc: Todd Selig, Town Administrator  
Michael Lynch, Director of Public Works  
James Dombrosk, UNH Director of Energy & Utilities  
Michael Metcalf, P.E., Underwood Engineers  
Dana Bisbee, Esq., Devine, Millimet & Branch



The State of New Hampshire

Attachment B

DEPARTMENT OF ENVIRONMENTAL SERVICES



Thomas S. Burack, Commissioner

August 26, 2011

David Cedarholm, P.E., Durham Town Engineer  
Paul Chamberlin, Assistant VP Energy and Campus  
Development  
UNH/Durham Water System  
100 Stone Quarry Drive  
Durham, NH 03824

**RE: Response to certain comments from UNH/Durham Water System on the  
Draft Lamprey River Water Management Plan**

Dear Messrs. Cedarholm and Chamberlin:

Thank you for your comments on the Lamprey River Water Management Plan (WMP) dated June 24, 2011 from the University of New Hampshire/Durham Water System (UDWS). The comments were well thought out and have helped to improve the WMP. Most of your comments have been or will be integrated into the WMP.

The purpose of this letter is to respond to several of the comments and proposed changes that are still outstanding or that we cannot directly integrate into the WMP. Fortunately, this is a short list. I have described our responses to those comments below in the hopes that we can arrange a meeting soon to discuss these issues.

There are three issues that I will address below:

1. 401 Water Quality Certificate
2. Request to maintain 0.8 cfs of withdrawal below the protected instream flow
3. Various issues related to the ability/practicality of dam management

1) The final comment of your June 24, 2011 letter pertains to Durham's §401 Water Quality Certificate (WQC #2001-001). WQC #2001-001 required releases from Wiswall Dam during pump operation at low river flows, and specified a limit of fluctuation of the Wiswall Reservoir pool of 6" at a rate of no more than ½" per day, as well as monitoring of inflow to the reservoir. Further discussions between UDWS and DES between 2004 and 2009 allowed UDWS to increase that drawdown to 18" at 1" per day, with a stipulated flow monitoring plan.

In your WMP comment letter you write, "The UDWS insists that NHDES proceed with nullifying Durham's §401 Water Quality Certificate upon adoption of the Lamprey River Water Management Plan as was promised to the Durham Town Council." DES is unable to nullify the existing certificate because there is no statutory authority for DES to retroactively abandon a federal Clean Water Act Section 401 water quality certificate issued by the state relative to a federal permit, in this case a federal Clean Water Act Section 404 wetlands permit. However, DES is able to amend or supersede conditions in an original 401 WQC based on new information and analyses. In this case, DES intends to revise WQC #2001-001 to include only one operating condition (to implement the Water Management Plan) which will supersede

DES Web site: [www.des.nh.gov](http://www.des.nh.gov)

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the original operating conditions contained in WQC #2001-001. We believe that this practical approach is consistent with both our previous commitments to the UDWS and the federal Clean Water Act. It also clearly provides UDWS with one set of operating standards for the Wiswall Dam by fully aligning WQC #2001-001 conditions with the WMP requirements.

2) In comment #10, UDWS "requests the ability to withdraw 0.8 cfs from the Lamprey River instream flow when flows fall below 18 cfs for a period of plus 7 days, and the ability to withdraw 0.4 cfs from 7 days to 15 days." This is an increase of 0.4 cfs from the withdrawal amounts previously requested at the Durham Town Hall in April 2011. Our understanding is that UDWS has made this request to avoid withdrawals from reservoir storage as much as possible and to mitigate the water quality and treatment issues associated with transitions from one reservoir to another.

This request cannot be directly accommodated because DES does not have the statutory authority to grant an allocation of water to a specific user. However, I believe that the underlying need can be accommodated without an allocation. Six possible different sources of water are available to UDWS to meet requirements during critical periods:

- Approximately 0.20 cfs would be available to UDWS under the *de minimis* withdrawal under any river flow because the calculated *de minimis* withdrawal for the Lamprey River is 0.21 cfs and Scenic Nursery, the only other water user directly accessing the river, uses a small amount of water.
- The Water Management Plan will formally expand the usable storage in the Wiswall Reservoir that is available to UDWS. The Wiswall Reservoir can support an estimated withdrawal of 500,000 gpd for 34 days and the Oyster River Reservoir has about 18 days of storage at that same use. Except for very rare events, it is highly unlikely that a low flow condition would last so long as to exhaust the storage of these two reservoirs, especially given the *de minimis* withdrawal and the capacity of the Lee Well.
- About 0.3 cfs is potentially available from the Lee Well above its average use for short periods of time while still staying below the well's sustainable yield. The average use of the well is about 400,000 gpd and the sustainable yield is about 540,000 gpd. An additional 0.3 cfs could be available if the Lee Well were to be pumped above the sustainable yield but below the short-term pump capacity (about 700,000 gpd).
- UDWS has a new well under development (the Spruce Hole Well) with a proven yield of at least 0.6 cfs. Additional water supply capacity, estimated at 0.3 cfs, may also be available from this well if an artificial recharge system is developed using Lamprey River water (during high flow periods). This concept has been developed by UDWS.
- Conservation and water use practices have the potential to reduce maximum water use by 0.3 cfs. This is the difference between the maximum use and the 75<sup>th</sup> percentile of historical use. Based on conversations with UDWS staff, high water usage during September can be attributed to a number of different operational practices that could potentially be altered or delayed if flow conditions warrant them.
- An additional 6 inches of storage could be made available from the Wiswall impoundment during rare events (ie. Stage 3 declarations) with other conditions. This would lower the Wiswall Reservoir water level from 18" to 24" below the spillway elevation, providing about 0.71 cfs at 1 inch of drawdown per day for six days. DES would likely require wetlands monitoring to assess upstream

wetlands systems for detrimental effects if this provision were included in the WMP. DES would be happy to discuss this concept further with UDWS.

Finally, DES is also committed to work with UDWS to more fully define the conditions under which a "water supply emergency" might be declared by the Commissioner, under RSA 483:9-C, to provide greater clarity as to when emergency conditions might exist during extreme low water or drought events.

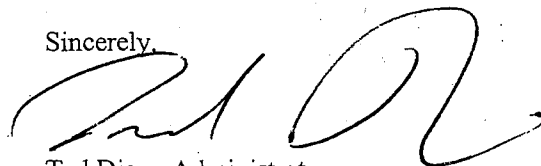
3) Several of your comments especially numbers 7, 9, 19, 23, 24 and 26 pertain to management of impoundment levels. It is clear that managing the Wiswall Dam impoundment level has been challenging in the past. The reasons for the difficulties include inadequate control structures and the absence of flow monitoring tools.

The gate structure and flow level controls are being improved as part of the ongoing fish passage construction project. These improvements will give operators much more control over flow levels. We believe that UDWS will need to create a viable dam operations plan to optimize operations with the new structures. We are available to help you with this effort and to provide as much flexibility as possible in the implementation of the WMP. We believe that it is possible that UDWS can manage water levels to the nearest 1 inch, with the new structures and improved practices. Adaptive management is part of the final WMP as are trials of the actual volumes and timing of relief pulse flows arriving at the Wiswall impoundment, so there be opportunity to adjust operational practices based on experience over time.

As part of the 401 WQC #2001-001, a draft Lamprey River Monitoring Plan was created. The August 25, 2008 version of that Monitoring Plan called for the installation of an upstream staff gage to assist in flow characterization and monitoring. Installation of this gage has proved difficult due to the morphology of the river upstream. Thus, the current proposal is to define inflow by calculations using changes in storage behind Wiswall Dam, the pumping rate of the Lamprey withdrawal, and flow at the USGS gage downstream. Implementation of this monitoring concept will be evaluated and adjusted as appropriate. DES will work closely with UDWS during the implementation period (12-18 months after the adoption of the WMP) to ensure that the approaches used for flow measurements are timely, accurate and practical.

If you would like to discuss these issues, please call at 271-3289 or email [ted.diers@des.nh.gov](mailto:ted.diers@des.nh.gov) and I will set up a meeting.

Sincerely,



Ted Diers, Administrator  
Watershed Management Bureau

CC. Wayne Ives  
Harry Stewart  
Tom Selig  
Michael Lynch  
James Dombrosk  
Dana Bisbee  
Mike Metcalf  
Allen Brooks



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Tel: 603/868-5571  
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AGENDA ITEM: # **9C**

DATE: October 3, 2011

## COUNCIL COMMUNICATION

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

**AGENDA ITEM:** UPDATE REGARDING DURHAM POLICE ACTIVITY AND CALLS FOR SERVICE DURING THE OPENING WEEKS OF THE ACADEMIC YEAR – DAVID KURZ, POLICE CHIEF

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

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

**AGENDA DESCRIPTION:**

Durham Police Chief David Kurz will be present at Monday night's Council meeting to provide Councilors with a report regarding Durham's police activity and calls for service during the opening weeks of the 2011 academic year.

**LEGAL AUTHORITY:**

N/A

**LEGAL OPINION:**

N/A

**FINANCIAL DETAILS:**

N/A

**SUGGESTED ACTION OR RECOMMENDATIONS:**

No formal action is required. Receive update from Police Chief David Kurz and hold question and answer session if desired.

# MEMORANDUM

September 26, 2011

**TO:** Todd Selig, Town Administrator  
**FROM:** Dave Kurz, Chief of Police  
**RE:** Activity for first five-weeks of UNH academic year

The weather finally cooperated with us on Friday evening with heavy rain allowing the shift supervisor to cancel Strafford County's transportation services as well as booking room support with Jen Johnson and Ed Cilley. Officers on overtime status were released early when it was clear that activity would not be as challenging as in prior days. However Saturday night was another challenging evening for the officers as calls for noise complaints, fights and even a man with a gun were responded to by the officers. Within minutes of receiving the man with a gun call, the officers stopped the suspect vehicle and arrested one of the three occupants, all non-students from Portsmouth. While no weapon was located in the vehicle, the victims and witnesses are insistent that a gun was displayed. Witnesses and video from several downtown businesses are being reviewed as this case continues.

	Calls for Service		Arrests	
	2010	2011	2010	2011
<b>August 26<sup>th</sup> – 29<sup>th</sup></b>	226	330	23	27
<b>September 2<sup>nd</sup> – 5<sup>th</sup></b>	235	316	54	66
<b>September 8<sup>th</sup> – 11<sup>th</sup></b>	326	488	49	59
<b>September 15<sup>th</sup> – 18<sup>th</sup></b>	184	250	25	49
<b>September 22<sup>nd</sup> – 25<sup>th</sup></b>	317	386	31	29
<b>Totals</b>	1,288	1770 (27%)	180	230 (22%)

I will continue to monitor this coming weekend's activity with the goal to lessen overtime expenses, but with activity still 27% higher than last year's data and 22% more physical arrests than during the same period last year, I am hesitant to curtail status quo staffing levels.

In the interim, if you have any questions, please feel free to contact me



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# **10A**

DATE: October 3, 2011

## COUNCIL COMMUNICATION

**INITIATED BY:** Planning Board

**AGENDA ITEM:** PUBLIC HEARING AND ACTION ON ORDINANCE # 2011-06  
AMENDING CHAPTER 175 "ZONING", ARTICLE XIX  
"CONSERVATION SUBDIVISIONS" OF THE DURHAM TOWN  
CODE BY ADDING A NEW SECTION 175-107-II TITLED  
"WORKFORCE HOUSING OPTION"

**PREPARED BY:** Jim Campbell, Director of Planning & Community  
Development

**PRESENTED BY:** Jim Campbell, Director of Planning & Community  
Development

### **AGENDA DESCRIPTION:**

In 2010 the Town of Durham received a \$9,000 grant through the NH Housing Finance Authority (HFA) to hire a pre-qualified consultant through the Inclusionary Zoning Implementation Program (IZIP). The Consultant was Jack Mettee of Mettee Planning Consultants. This program was created in response to a change in NH State law (RSA 674:58-61) that requires municipalities to provide for "reasonable and realistic" opportunities for the development of workforce housing, including owner occupied and rental workforce housing. The law requires that the municipality allow workforce housing to be located in a majority, but not necessarily all, of the land area is zoned to permit residential uses. I have provided you with some material that will help further explain RSA 674:58-61 and IZIP.

Over the past several months with the help of the consultant paid for by the grant from the HFA, the Workforce Housing Committee (WHC) and Planning Board (PB) have considered the issue of workforce housing in Durham and an approach to include amendments to the Zoning Ordinance (ZO) for providing incentives to develop such housing. As part of this discussion, they addressed the following issues:

- Durham's current housing situation with respect to providing a "reasonable and realistic" opportunity for workforce housing both from a local and regional perspective;
- Impact of potential student demand for workforce housing;
- The suitability of Durham's existing ZO to provide opportunity for workforce housing; and
- Potential locations within Durham for such housing.

Through these discussions the WHC and Planning Board discovered that Durham's housing was not meeting either the local or regional needs for workforce housing, that dependent students would not likely be an issue since they could not meet income qualifications for workforce housing, that Durham's ZO did not provide opportunity for workforce housing, and there were limited zones for such housing to be logically considered, especially for owner-occupied workforce housing. While Durham does allow for multi-unit housing in some districts and also allows accessory apartments/dwelling units, it is the opinion of Mr. Mettee and the WHC that these existing provisions are not enough for Durham to meet its regional share for workforce housing or the mandate from the State of NH of providing "reasonable and realistic opportunity" for workforce housing.

In response to the above, the WHC focused on inclusionary zoning and drafted the "Workforce Housing Option for Conservation Subdivision". Anyone applying for a workforce housing development must do so under the proposed amendment to the Conservation Subdivision section of the Zoning Ordinance. In addition, the developer must provide for an assurance of affordability through a covenant that will be placed on the workforce housing as well as a certification process for income levels. The proposed language allows for a density bonus for both market rate housing and workforce housing and also allows for variations in lot sizes and dimensional requirements as an incentive to construct workforce housing.

The WHC also drafted a "Developer's Guidance Document for Workforce Housing" as well as a sample Restrictive Covenant. The "Developer's Guidance Document for Workforce Housing" was created to provide further information to the developer on the application procedures for the developer and Planning Board, the rules and requirements for ensuring affordability, compliance and monitoring, and housing design.

While not part of the work paid for by the grant, the WHC has also made a recommendation to review the Conservation Subdivision and Wetland Conservation Overlay due to the relatively restrictive language that currently exists in the Ordinance. This existing language makes it difficult to construct a market rate

subdivision without the consideration of workforce housing. In addition, the WHC discussed the possibility of establishing a "Durham Housing Commission" as per 673:4-c to assist in the development of a broad range of housing and to address housing issues in Durham.

On September 12, 2011, the Town Council moved this ordinance on First Reading, as presented, and scheduled a Public Hearing for its meeting on Monday, October 3, 2011. A Public Hearing notice was published in *Foster's Daily Democrat* on Thursday, September 22, 2011. The notice was also posted on the public bulletin board located outside the Town Hall, as well as at the Durham Public Library and the Department of Public Works.

**LEGAL AUTHORITY:**

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

**LEGAL OPINION:**

N/A

**FINANCIAL DETAILS:**

N/A

**SUGGESTED ACTION OR RECOMMENDATIONS:**

**MOTION 1:**

*The Durham Town Council does hereby OPEN the Public Hearing on Ordinance #2011-06 amending Chapter 175 "Zoning", Article XIX "Conservation Subdivisions" of the Durham Town Code by adding a new Section 175-107-II titled "Workforce Housing Option".*

**MOTION 2:**

*The Durham Town Council does hereby CLOSE the Public Hearing on Ordinance #2011-06 amending Chapter 175 "Zoning", Article XIX "Conservation Subdivisions" of the Durham Town Code by adding a new Section 175-107-II titled "Workforce Housing Option".*

**MOTION**

*The Durham Town Council does hereby ADOPT (as presented) (as amended) Ordinance #2011-06 amending Chapter 175 "Zoning", Article XIX "Conservation Subdivisions" of the Durham Town Code by adding a new Section 175-107-II titled "Workforce Housing Option".*



**DRAFT**

## **ORDINANCE #2011-06 OF DURHAM, NEW HAMPSHIRE**

**AN ORDINANCE AMENDING CHAPTER 175 "ZONING", ARTICLE XIX "CONSERVATION SUBDIVISIONS" OF THE DURHAM TOWN CODE BY ADDING A NEW SECTION 175-107-II TITLED "WORKFORCE HOUSING OPTION"**

**WHEREAS**, the State of New Hampshire Legislature passed legislation in 2008 creating RSA 674:58, Workforce Housing, that requires municipalities to provide for "reasonable and realistic" opportunities for the development of workforce housing, including owner occupied and rental workforce housing; and

**WHEREAS**, the statute requires that municipalities allow workforce housing to be located in a majority, but not necessarily all, of the land area is zoned to permit residential uses; and

**WHEREAS**, the New Hampshire Housing Finance Authority created a grant program call the Inclusionary Zoning Implementation Program (IZIP) that would provide grants of \$9,000 to municipalities to hire consultants from a prequalified list to help draft Zoning Amendments to help municipalities conform to the new State Law for Workforce Housing; and

**WHEREAS**, the Town of Durham's Planning and Community Development Department applied for and was awarded an IZIP grant in 2008/2009; and

**WHEREAS**, the Town of Durham hired Jack Mettee, Mettee Planning Consultants, in 2010 to work with the Workforce Housing Committee (WHC) to draft amendments to the Durham Zoning Ordinance for inclusionary zoning to meet the State Law for Workforce Housing; and

**WHEREAS**, Mr. Mettee worked with the WHC in 2010/2011 and drafted several documents addressing workforce housing including a new section to the Durham Zoning Ordinance, Section 175-107-II; and

**WHEREAS**, the WHC sent the draft amendment to the Planning Board for discussion at their May 25, 2011 and June 22, 2011 meetings; and

**WHEREAS**, the Planning Board held a public hearing on the draft amendments on July 13, 2011 and recommended the amendments to the Town Council; and

**WHEREAS**, on September 12, 2011 the Durham Town Council conducted a First Reading on Ordinance #2011-06 regarding the amendment to the Durham Zoning Ordinance that was forwarded by the Durham Planning Board; and

WHEREAS, on October 3, 2011, the Durham Town Council held a public hearing on Ordinance #2011-06 regarding the amendments to the Durham Zoning Ordinance that were forwarded by the Durham Planning Board.

NOW, THEREFORE BE IT RESOLVED that the Durham Town Council, the governing body of the Town of Durham, does hereby adopt Ordinance #2011-06 amending Chapter 175 "Zoning", Article XIX "Conservation Subdivisions" of the Durham Town Code by adding a new Section 175-107-II titled "Workforce Housing Option". Wording to be deleted is annotated with strikeout type. New wording is annotated with underscoring.

---

### 175-107-II Workforce Housing Option

#### A. Purpose

The purpose of this Section is to provide an option for including workforce housing in Conservation Subdivisions that is consistent with the requirements of RSA 674:58-61 and will:

1. provide reasonable and realistic opportunity for the development of workforce housing;
2. ensure the continued availability of a diverse supply of home ownership and rental opportunities;
3. meet the goal of providing an adequate supply of affordable housing in Durham as set forth in the town's Master Plan; and
4. address the regional need for workforce housing as documented in the Strafford Regional Planning Commission's Housing Needs Assessment, as updated.

#### B. Authority

This section is adopted under the authority of RSA 674:21, Innovative Land Use Controls, and is intended as an "Inclusionary Zoning" provision as defined in RSA 674:21(I)(k) and 674:21(IV)(a), as well as RSA 672:1, III-e.

#### C. Applicability

1. Development in accordance with the provisions of this Section is permitted as a Conditional Use in the Rural (R), Residential A (RA), Residential B (RB) and Office Research/Light Industry (ORLI) Districts as an option to Article XIX, Conservation Subdivision.

#### 2. Permitted Uses

Single family, duplexes, multi-units not to exceed four (4) units, accessory apartments, and accessory dwelling units. A mix of housing types within the same subdivision is permitted within an application under this Section. Any housing type that exceeds more than two (2) units shall be designated as workforce housing.

**D. Procedural Requirements**

Any applicant, who applies to the Planning Board for approval of a development that is intended to qualify as workforce housing under this section, shall follow the same procedure as outlined in the Town of Durham Subdivision Regulations and as provided for in the *Developer's Guidance Document for Affordable Housing*, January, 2011 as updated. Any such applicant shall also file a written statement of such intent as part of the application as per RSA 674:60.

**E. Definitions: The following terms as used in this section shall have the following definitions:**

- 1. Reasonable and Realistic Opportunities for the development of Workforce Housing:**  
Opportunities to develop economically viable workforce housing within the framework of Durham's municipal ordinances and regulations adopted pursuant to this chapter and consistent with RSA 672:1, III-e.
- 2. Workforce Conservation Subdivision: A Conservation Subdivision that provides rental or ownership housing opportunities to households based on the following standards: (1) workforce rental housing is defined as a housing unit that has a monthly rent not exceeding 30 percent of the gross income of a household earning no more than 60 percent of the Area Median Income for a 3-person household for the Portsmouth-Rochester Fair Market Rent Area as published annually by the United States Department of Housing and Urban Development consistent with RSA 674:58 II; (2) workforce ownership housing is defined as housing that can be purchased at a price, including the combination of mortgage loan debt service, property taxes and insurance, that does not exceed 30 percent of the gross income of a household earning no more than 100 percent of the Area Median Income for a 4-person household for the Portsmouth-Rochester Fair Market Rent Area as published annually by the United States Department of Housing and Urban Development consistent with RSA 674:58 II.**
- 3. Area Median Income (AMI): the median income of the greater region, the HUD Fair Market Rent Area to which Durham belongs, as is established and updated annually by the US Department of Housing and Urban Development. Income considers both wage income and assets.**

F. Density Incentive

Any Conservation Subdivision that seeks to include workforce housing shall be permitted to increase the number of market units by 20% above the Maximum Development Density as calculated per Section 175-107 E (2) and that will guarantee an additional 20% of units above the Maximum Development Density to be designated as workforce housing.

G. General Requirements of Workforce Housing Units

1. The workforce housing units should be interspersed to the greatest extent possible throughout the overall development and not concentrated in a separate area of the Subdivision.
2. Phasing – The phasing plan for the development shall provide for the construction of workforce housing units concurrently with the market-rate units.
3. More than fifty percent of the workforce housing units in the development shall contain two or more bedrooms.
4. The subdivision plan must also adhere to the standards outlined in Section H and satisfactorily meet the following criteria:
  - a. The dwellings qualifying as workforce housing shall be compatible in exterior appearance and reasonably consistent with the market rate dwellings in the proposed Subdivision.
  - b. Incorporate the equivalent of the Energy Star rating in all building designs.
5. Alternative Lot Sizing: The Planning Board may authorize variations from the minimum lot sizes and lot dimensions specified by standards of the underlying zone through the Conditional Use Permit, provided the Planning Board determines that the following conditions are met:
  - a. All lots comply with the New Hampshire Department of Environmental Services requirements (RSA 485: A) for subsurface wastewater management (developments may utilize individual or community wells and/or septic systems) and private water wells within the decreased lot size; and
  - b. The objectives and standards of this article and the Subdivision Regulations are otherwise achieved.

H. Assurance of Affordability

1. Certification of Income Levels

All of the workforce housing units gained under this provision must meet the affordability requirements for workforce housing in Paragraph E (2) of this Section.

2. Assurance of Continued Affordability

Workforce ownership housing units must retain the development criteria and affordability standards herein for a minimum period of thirty (30) years through a suitable deed restriction, easement and/or mortgage deed instrument deemed acceptable to the Durham Planning Board and as monitored through reports provided to the Durham Planning Board by a selected third-party agent prior to the time of unit sale or resale.

I. Administration

This Section shall be administered by the Planning Board in cooperation with a third party property management entity that will be responsible for income verification and ongoing affordability compliance.

J. Conflict

If any provision of this Section is in conflict with the provisions of any other provisions of this ordinance, the more restrictive provision shall apply, except for any provision relating to reductions in standards for lot size, setbacks, or density, in which case the provisions of this Section shall apply.

PASSED AND ADOPTED by the Town Council of the Town of Durham, New Hampshire this \_\_\_\_ day of \_\_\_\_\_, 2011 by \_\_\_\_ affirmative votes, \_\_\_\_ negative votes and \_\_\_\_ abstentions.

\_\_\_\_\_  
Diana Carroll, Chairman  
Durham Town Council

**ATTEST:**

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



TOWN OF DURHAM  
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# **10B**

AGENDA ITEM:

DATE: October 3, 2011

## COUNCIL COMMUNICATION

**INITIATED BY:** Councilor Julian Smith

**AGENDA ITEM:** ACTION ON ORDINANCE #2011-05, A COUNCIL-INITIATED ORDINANCE IN ACCORDANCE WITH SECTION 175-14 (B) OF THE DURHAM ZONING ORDINANCE, THAT WOULD AMEND ARTICLE XII, ZONE REQUIREMENTS, SECTION 175-53 (A), THE "TABLE OF USES", OF THE DURHAM TOWN CODE, TO ALLOW SINGLE-FAMILY RESIDENCES AS A PERMITTED USE IN THE PROFESSIONAL OFFICE DISTRICT

**CC PREPARED BY:** Councilor Julian Smith

**PRESENTED BY:** Councilor Julian Smith

### **AGENDA DESCRIPTION:**

**Background:** On February 20th, 2006, after a public hearing at which no member of the public spoke, the Council adopted by unanimous vote Ordinance 2005-06, which created the Professional Office District out of part of the Residence A District. In the Table of Uses for this new district, Single-Family Residences were no longer permitted, which meant that Single-Family Residences were prohibited unless that use was grandfathered.

At the time the PO District was established, there were only three properties used for professional offices in that new district: The medical offices at 36 Madbury Road, the Xemed building at 16 Strafford Avenue, and the real estate and insurance office at 39 Madbury Road. Since then, no new professional offices have opened in this district--and the former single-family residence at 39 Madbury Road has been vacant for more than a year.

According to 175-43 (A), "The purpose of the Professional Office District is to provide an area for the growth of professional services and offices adjacent to the Downtown." That purpose would not be compromised or endangered by amending the table of uses in the way I am proposing.

Let us remember that last year the Council amended the table of uses for the ORLI and MUDOR Districts to allow single-family residences and duplexes as a Conditional Use.

On August 1, 2011, the Town Council moved this ordinance on First Reading, as presented, and scheduled a Public Hearing for its meeting on Monday, August 15, 2011. A Public Hearing notice was published in *Foster's Daily Democrat* on Thursday, August 4, 2011. The notice was also posted on the public bulletin board located outside the Town Hall, as well as at the Durham Public Library and the Department of Public Works.

The Council held a Public Hearing on this proposed ordinance on August 15, 2011. No members of the public spoke to this issue, however, two letters supporting the ordinance were read. After holding the Public Hearing, the Council voted to refer the proposed ordinance to the Planning Board for its review and study.

At its September 14, 2011 meeting, the Planning Board held a Public Hearing on this ordinance and then voted, 6-1, to recommend that the Town Council approve Ordinance #2011-05.

This item was placed on the Town Council meeting agenda of September 26, 2011, but due to the lateness of the hour was postponed until October 3, 2011.

Attached for the Council's information and consideration is draft Ordinance #2011-05 regarding a proposed change to the Zoning Ordinance that would allow single-family residences as a permitted use in the Professional Office district.

**LEGAL AUTHORITY:**

Section 175-14 (B) of the Durham Zoning Ordinance

**LEGAL OPINION:**

N/A

**FINANCIAL DETAILS:**

N/A

**SUGGESTED ACTION:**

**MOTION:**

*The Durham Town Council does hereby, in accordance with Section 175-14 (B) of the Durham Zoning Ordinance, ADOPT (as presented) (as amended) Ordinance 2011-05, a Council-initiated Ordinance that would amend Article XII, Zone Requirements, Section 175-53 (A), the "Table of Uses", of the Durham Town Code, to allow Single-Family Residences as a Permitted Use in the Professional Office District.*



## **ORDINANCE #2011-05 OF DURHAM, NEW HAMPSHIRE**

**A COUNCIL-INITIATED ORDINANCE AMENDING CHAPTER 175 "ZONING", ARTICLE XII, ZONE REQUIREMENTS, SECTION 175-53 "TABLE OF USES" III RESIDENTIAL USES" OF THE DURHAM TOWN CODE TO ALLOW SINGLE-FAMILY RESIDENCES IN THE PROFESSIONAL OFFICE DISTRICT AS A PERMITTED USE**

**WHEREAS**, on February 20, 2006 the Professional Office District was established by the Durham Town Council when it voted unanimously to adopt Ordinance #2005-06; and

**WHEREAS**, the Table of Uses for the Professional Office District currently prohibits single-family residences; and

**WHEREAS**, all of the properties currently in the Professional Office District were formerly part of the Residence A District, which allows single-family residences as a permitted use; and

**WHEREAS**, it is the desire of the Town Council to encourage single-family residences near the downtown and campus area; 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"; and

**WHEREAS**, on August 1, 2011 the Durham Town Council conducted a first reading on Ordinance #2011-05; and

**WHEREAS**, on August 15, 2011 the Durham Town Council held a Public Hearing on Ordinance #2011-05 and voted to refer this ordinance to the Durham Planning Board for its review and study; and

**WHEREAS**, on September 14, 2011, the Durham Planning Board held a Public Hearing on this ordinance and afterward voted to recommend that the Town Council approve Ordinance #2011-05.;

**NOW, THEREFORE BE IT RESOLVED** that the Durham Town Council, the governing body of the Town of Durham, does hereby adopt Ordinance #2011-05 amending Chapter 175 "Zoning", Article XII, Zone Requirements, Section 175-53 "Table of Uses", "III Residential Uses" of the Durham Town Code to allow Single-family Residences in the Professional Office District as a Permitted Use. This section, in its approved form, is attached to this ordinance as a matter of final record. Wording to be deleted is annotated with ~~strikeout~~ type. New wording is annotated with underscoring.

**PASSED AND ADOPTED** by the Town Council of the Town of Durham, New Hampshire this \_\_\_\_\_ day of \_\_\_\_\_, **2011** by \_\_\_\_\_ affirmative votes, \_\_\_\_\_ negative votes, and \_\_\_\_\_ abstentions.

\_\_\_\_\_  
Diana Carroll, Chair  
Durham Town Council

**ATTEST:**

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



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AGENDA ITEM: # 11

DATE: October 3, 2011

## COUNCIL COMMUNICATION

**INITIATED BY:** Durham Town Council

**AGENDA ITEM:** DISCUSSION WITH MEMBERS OF DURHAM'S LEGISLATIVE DELEGATION ON VARIOUS ISSUES OF INTEREST TO THE DURHAM COMMUNITY AND THE REGION

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

**PRESENTED BY:** Durham's Legislative Delegation  
Todd Selig, Town Administrator

**AGENDA DESCRIPTION:**

Members of Durham's legislative delegation have been invited to attend Monday evening's meeting to discuss issues and exchange information with the Durham Town Council on items of interest to the Durham community and the region. Councilors may desire to receive an update on the status of legislation which passed during last year's session, and briefly describe any legislation being considered which may be of particular interest to Durham or the surrounding area.

**LEGAL AUTHORITY:**

N/A

**LEGAL OPINION:**

N/A

**FINANCIAL DETAILS:**

N/A

**SUGGESTED ACTION OR RECOMMENDATIONS:**

Hold discussion with members of Durham's legislative delegation regarding issues of interest to the Durham community and the region.