

This set of minutes was approved at the September 13, 2010 Town Council meeting

**Durham Town Council
Monday, July 26, 2010
Durham Town Hall – Council Chambers
7:00 PM
MINUTES**

MEMBERS PRESENT: Chair Diana Carroll; Councilor Neil Niman; Councilor Julian Smith; Councilor Doug Clark; Councilor Peter Stanhope Councilor Mike Sievert; Councilor Robin Mower; Councilor Bill Cote

MEMBERS ABSENT: Councilor Jay Gooze

OTHERS PRESENT: Administrator Todd Selig; Business Manager Gail Jablonski; Public Works Director Mike Lynch; Town Planner Jim Campbell

I. Call to Order

Chair Carroll called the meeting to order at 7:05 pm.

II. Approval of Agenda

Councilor Mower MOVED to approve the Agenda. Councilor Cote SECONED the motion, and it PASSED unanimously 8-0.

III. Special Announcements

IV. Approval of Minutes

June 21, 2010

Page 3, 3rd paragraph from bottom, should read “He said a ribbon cutting ceremony would take place on Friday, June 25th at 2 pm at the Jackson’s Landing playground..”

Page 4, 3rd paragraph from bottom, should read “...the Town planned to be equally vigilant in the fall...”

Page 5, 1st paragraph, should read “...and asked why there wouldn’t be a dedication ceremony for the Veterans’ memorial garden on Main Street.”

Page 17, 4th paragraph, “...had Councilor Gooze had made a persuasive...”

Councilor Smith MOVED to approve the June 21, 2010 Minutes as amended. Councilor Sievert SECONDED the motion, and it PASSED unanimously 8-0.

June 22, 2010

Page 12, 4th paragraph from bottom, should read “There was discussion that the area of concern was where the central pier had been as well as the upstream side of the bridge.”

Page 14 , 3rd to last paragraph, should read "...would encourage them as long as they were couched..."

Councilor Smith MOVED to approve the June 22, 2010 Minutes as amended. Councilor Mower SECONDED the motion, and it PASSED unanimously 8-0.

V. Councilor and Town Administrator Roundtable

said the business visitation surveys were underway, and said people had claimed 100 of the 125 interviews. He said the goal was to get them all done before the end of August, and to have the report done by Thanksgiving.

Councilor Mower Councilor Smith said on Wednesday, the Planning Board would continue the public hearing on the combined site plan application, Conditional Use permit application and boundary line adjustment application for the proposed project on the former Don Thompson property, which involved putting in a new 4 story mixed use building.

He also said there would be a public hearing on an application for Conditional Use permit to expand the Tecce Farm business to include a mobile kitchen on site where baked goods, subs, and meals would be prepared.

Councilor Smith said in response to discussion by the Town Council at its last meeting before the vote was taken to make single family homes and duplexes a conditional use in the ORLI and MUDOR districts, the Planning Board would be discussing a proposed amendment to the Zoning Ordinance to require that residential subdivisions be developed as conservation subdivisions. He noted that this was not what the Capstone project would be. He said the Board would also consider a proposed amendment to the Table of Uses to prohibit gasoline sales with convenience store in the ORLI district.

In addition, he said the Board would discuss the commercial core strategic plan prepared by B. Dennis Town Design.

Councilor Smith said a matter of broader discussion he would like to take up was concerning Mr. Campbell's use of the phrase "...it was discovered that the ORLI district didn't allow single family and duplex dwellings in those districts". He said he had sent an email to Administrator Selig regarding his concerns about the use of that phrase. He said this wording in the Council Communication and the Friday Update suggested that the prohibition in the Table of Uses was a mere oversight. He said they should avoid this dismissive phrase, and also said they should have all known the prohibition was there.

Councilor Stanhope said it was his understanding that an engineer might have brought this to Mr. Campbell's attention.

There was further discussion.

Councilor Smith said the more interesting question was when they all knew, and why they didn't start the process earlier.

Councilor Niman said what he cared about was how they moved forward with addressing residential subdivisions in the ORLI district. He noted Mr. Roberts' suggestion that they simply ban residential subdivisions in the ORLI and MUDOR districts. He said he found this idea interesting, and said he potentially would support it if it came before the Council.

He also said it was important to communicate to the Planning Board that the Council had reached a resolution concerning the Zoning change by making a commitment to have conservation subdivision included in the MUDOR and ORLI Districts. He encouraged the Planning Board to think of any adjustments they wanted to make and bring forward, but said he wanted to see, and hoped the Council as well would like to see, the minor change to the conservation subdivision regulations.

He said if the Planning Board decided not to do this, he would like to bring this Zoning change forward as a Council initiated change. He said he understood that if they banned residential subdivisions altogether, the subject was moot. But he said the Council had made a commitment to follow through with the conservation subdivision change.

Councilor Smith said as the Council representative, he had explained to the Planning Board why this was coming to them. He said they would be discussing this issue on Wednesday, and hopefully would be setting the public hearing.

Administrator Selig said he had had several communications with Councilor Gooze, who also felt strongly that what the Council had asked for concerning the conservation subdivision change should be brought forward. He said he wasn't certain all Councilors were on board with banning single family subdivisions altogether in this zone.

Councilor Niman said if the Planning Board wanted to bring forward something like that, the Council would consider it. But he said at a minimum, the Council would like to see the conservation subdivision wording change.

Councilor Clark noted that the Economic Development Committee was meeting that evening. He said it sounded like the preferred vendor for the market analysis, DCI, had been found. He also said the Energy Committee had begun discussions with Administrator Selig about developing a PACE funding program for retrofits for energy efficient measures in homes. She said nine members of the community had expressed interest in the program, and said others who were interested could contact the Energy Committee or Jenny Berry.

She noted that Mr. Campbell had hired an unpaid intern to help develop design guidelines, and asked that Administrator Selig provide the Council with some details on the work this person would be doing.

Councilor Mower said the Council had received several letters from residents about the historic value of the old Pump house building at Jackson's Landing. She suggested that people go see the property. She noted that the 1966 Town Report indicated that the Parks and Recreation Committee had acquired it and had planned at the time to put in restrooms as well

as the headquarters for the Committee. She said the area had been graded and seeded at that time, and also said the windows had been repaired and painted.

Councilor Mower noted that at the ZBA meeting on July 13th, there was a variance application to permit more than 3 unrelated occupants, and said it was one of at least two such applications that was recently denied. She said with the most recent application, the applicant claimed that a realtor had misled them when they were purchasing the property. She said this case highlighted the economics of rental housing, in that it was generally not possible to purchase a property for rental purposes and comply with the 3 unrelated rule.

She said the Board's ruling emphasized that buyers were responsible for due diligence, including checking with town officials on the legal status of a property. She also said it was clear that realtors in Durham didn't always have their facts straight, or disclose the 3 unrelated rule to their clients. She said it was important for buyers and sellers to talk with the Code Enforcement officer.

Councilor Stanhope said at its next meeting, the Historic District Commission would be reviewing design standards from a number of communities.

Councilor Mower asked if they would in fact be looking at design standards as well as design guidelines, and Councilor Stanhope said they would get there when they finished the process.

Administrator Selig said the Rental Housing Commission had been discussing the idea of putting a letter together for Seacoast realtors about the local rental housing regulations in place, and urging that they become familiar with the 3 unrelated provision. He said a draft of this letter had already been put together, and would be worked on over the next few days.

Administrator Selig noted that the Library Board of Trustees had engaged architect Nick Isaac to do due diligence concerning the DiMambro property.

He said there was nothing planned regarding the Pump station, and explained that the issue had come up because there was significant deferred maintenance needed for the building. He explained that the Trustees of the Trust Funds had asked for feedback from residents on this. He said a number of emails had been received, and were somewhat evenly split between those who saw the architectural value of the building, and those who thought it was an eyesore that blocked the view of the river. He said the Town wasn't planning to do anything soon with it, and said he hoped the discussion could continue as they moved into the Budget season.

Councilor Mower asked if it was a WPA-era building, and Administrator Selig said he had been told that it probably was, but didn't know for sure.

Administrator Selig said Durham Day would be coming up in September and said a question was what role the Council would play. He noted that the Parks and Recreation Committee would be organizing the event again, and said he would keep Councilors up to date on it.

He said there was continuing discussion on the boat landing at Jackson's Landing, and the fact that some residents had expressed concern about the length of time it was possible to

launch a boat there because of the remaking of the ramp, done as part of the extensive improvements made to the site. He said Dori Wiggin of NHDES would be speaking with the DPW about what possibly could be done.

Administrator Selig noted that C lot was being looked at as a possible location for a fire station, structured parking and some other use. He said he had amended the contract with the company that had previously done specs on a variety of possible fire station sites in Durham, to include a preliminary analysis of C lot.

He said the EDC subcommittee looking at the economic analysis for Durham had chosen DCI, which included UNH's Ross Gittell. He said it looked like this would cost about \$30,000, and said the contract would be brought forward for the Council to authorize.

Administrator Selig noted that a recent planning graduate had volunteered to do some work for the Town, and said Mr. Campbell had hired her to work on the design guidelines. He said she would be working with the Historic District Commission.

VI. Public Comments

William Hall, Smith Park Lane, said it was clear that people didn't understand what was involved with the recent water restriction, and said not being able to take water from the Lamprey River was a ludicrous situation. He spoke about the good water quality of the Lamprey River, as compared to the Oyster River. He said the numbers for the 401 restriction were pulled out of the air, without a formula, and said there was no reason that with 10 million gallons going over the dam at the Lamprey, the Town couldn't take out half a million.

He spoke about the procedures that were involved in putting in place a 401 restriction, and said many of the steps required were not followed. He provided details on this, and said the 401 restriction could be refuted both technically and procedurally. He said the way to deal with this was to get an injunction against the 401 in court, and make NHDES prove there was a reason for it and that the procedures were followed. He said he hoped the Town would do this before Durham got involved with the new in-stream flow regulations, at which time he feared the 401 restriction would get folded into them.

Councilor Stanhope said Mr. Hall had come before the Council a number of times on this issue, and also noted that legal counsel was retained at some point regarding it. He said he would like to see some resolution concerning this issue, and said either the 401 restriction was a fact they had to live with, or there were procedural and technical issues with it that would allow Durham to protect its rights.

Administrator Selig said over the years, other Councilors had made that same statement, and legal counsel had been engaged at various times. He said most recently, legal counsel had provided an update to the Council that in essence said the 401 was a fact, regardless of how it came to be.

He said the Town had recently been quite successful in making headway regarding some of

the restrictions. He also said that in the near future, the 401 restriction would cease to be, and the in-stream flow regulations would govern what the 401 had governed. He noted that Councilor Mower had asked that the Town Engineer update the Council on water and wastewater capacity issues, and said this was planned for September. He suggested that Mr. Cedarholm could address the 401 restriction at that time.

Administrator Selig said the Town had been advised by legal counsel that while the Council might agree with Mr. Hall's perspective, this would not carry the day.

Councilor Stanhope asked if the legal advice had been formalized in a written transmission.

There was discussion on whether a summary of the legal opinion was available.

Administrator Selig said this could be provided to the Council, but said he did not feel that dealing with it would be a constructive use of the Council's time or resources. He noted that it was Dana Bisbee, the former NHDES commissioner, who had provided this legal opinion to the Town.

There was discussion that the Council had heard from Attorney Bisbee the previous year, and Administrator Selig said he thought this had put the matter to rest. He said he respected the logic behind Mr. Hall's perspective, but said the Town was faced with the situation it was faced with.

Councilor Cote said he was perplexed that there was a situation with low water flows where they had to shut down the Lamprey, which was a much better source of water, and use the Oyster River instead. He said it was hard to deal with that, and asked if there was a way the 401 could be further explored, or instead was cast in concrete.

Administrator Selig said one of several requirements with the 401 was water monitoring, and said there had been great difficulty setting up monitoring meters, because of property access issues. He then provided details on concessions gained over the past year concerning drawdown, as a result of negotiations with NHDES by Attorney Bisbee on the Town's behalf. He said there was also discussion with NHDES about a monitoring plan.

Administrator Selig said all of this was taking place within the context of upcoming in-stream flow regulations for the Lamprey. He also said it was important to keep in mind that it had not been a traditional 401 process that had taken place in Durham. He said when the decision was made to connect the Lamprey River impoundment with the water treatment plant, the hard pipe had to cross the Oyster River, which triggered a wetland permit process.

He said this process had allowed NHDES to leverage certain concessions from Durham. He said those concessions were discussed at great length by the Water/Wastewater Committee, and he noted that there had been three Council representatives on that committee. He said Mr. Hall was correct that there was no scientific basis on which the 401 restriction was established.

He provided some history on considerations at that time that had resulted in the specific restrictions, and said Mr. Cedarholm could speak in more detail on what was involved. He said he wasn't sure if Attorney Bisbee had actually done a written summary, but would find out.

Councilor Clark asked if someone from NHDES could provide the Council with its perspective.

Administrator Selig said he wasn't sure how productive this would be, or if NHDES would agree to do this. It was noted that Mr. Hall and Mr. Kelley had spoken with the NHDES commissioner about this issue.

Mr. Hall said the administration couldn't tell them a thing. He also said the Town administration had gone off the tracks on this issue, and said he didn't think a friendly meeting with NHDES would get anywhere.

Chair Carroll said there seemed to be some consensus that the Council would like more information on this issue.

Councilor Clark said he didn't understand why the State seemed to prioritize taking care of the Lamprey River over taking care of the Oyster River.

Administrator Selig said the Lamprey was a federal Wild and Scenic river. He noted that a designation of the Oyster River as a State protected river was being developed, which would likely include future restrictions on drawdown.

Councilor Clark said they should go into that process with their eyes wide open, since it was the source of most of the problems.

Administrator Selig said the Council should ask Mr. Cedarholm what the status of the monitoring of the Lamprey was, and whether if it was not in place, that was a reason for the restriction on drawdown right now. He said another question was operationally, what choices the UNH water treatment plant was making in terms of where they were drawing from, and how this impacted things.

Councilor Mower said the second question was very important.

Administrator Selig said the Lamprey River was ten times the river that the Oyster River was, and said it logically made sense to draw more heavily from the Lamprey. He said he agreed completely with Mr. Hall on this.

Councilor Mower said it was true that if there was a State injunction, the Town was facing something more difficult.

Mr. Hall said there were 30 million gallons of water going over the Lamprey River dam. He said Durham had the only 401 restriction in the State that required it to take bad water. He

said it cost more to pump the water from the Lamprey than from the Oyster River, but said a whole boat load of chemicals had to be put in Oyster River water. He said this went against the creed of the water operators.

Councilor Stanhope said Mr. Hall had a good point, but said apparently the Administrator and DPW had drawn their wagons into a circle.

Administrator Selig said he respectfully disagreed. He said he and the DPW had worked tirelessly on behalf of the Town on this issue. He said Mr. Hall disagreed with the opinion of legal counsel, which disagreed with NHDES. He said tremendous progress had been made over time on this issue. He said the legal summaries done so far had not satisfied Mr. Hall.

Councilor Stanhope said he was concerned about why the Town wasn't drawing from the Lamprey River when that amount of water was available.

Administrator Selig said this had been addressed the previous year when the Council met with Attorney Bisbee.

There was discussion that there were probably no minutes of the meeting with Attorney Bisbee, because it was not a public meeting.

Administrator Selig said he would check to see if something in writing had been provided by Attorney Bisbee.

Mr. Hall said there were 7 dams upstream that were opened in October. He said if only a small piece was taken out of one of them to create a calibrated leak of a cubic foot per second, the issue was over.

Administrator Selig said he agreed with Mr. Hall, but said the State said no.

Chair Carroll said Councilors had some additional information on this issue now, and said the Council would look forward to hearing more from Mr. Cedarholm in September.

Paul Schlie, 95 Mill Road, said his initial reason for coming was to ask the Council to be more conservative financially, and increase financial prudence. He said the Town continued to hire consultants, and look at doing structural changes to Durham. He said the Town's obligation was to hear developers, and not to play developers themselves.

He said he was surprised to hear that procedures weren't followed concerning the 401 restriction. He said spending money to abide by it, when there was no requirement to do so seem odd. He also said it sounded like legal counsel had been contacted in a number of instances, yet there were no definitive results. He said this was representative of spending money and not getting results. He asked again that the Council try to be more fiscally conservative for the benefit of the Town's residents.

Chair Carroll noted that there were two agenda items that evening having to do with the

Budget. She also said the 2009 Budget and CIP were available for residents to look at, at any time. In addition, she noted that the Town's portion of the tax bill virtually did not increase last year, and the year before was kept at absolute zero. She also said Town department heads had not taken a raise in pay in two years. She said Mr. Schlie's words were well taken, especially during the recession, but said the Council and staff were trying.

Mr. Schlie said he understood, as Chair Carroll had also indicated, that the School system represented the majority of the tax obligation. He said that budget needed to be put under control as well.

Chair Carroll noted that there was also the county and the State to consider. But she said it was really important for residents to come out and speak, so the Council would better understand what they were thinking about.

Mr. Schlie said he appreciated the Council's efforts. He then said that with respect to the issue of the public library, he had lamented the years when there was a lack of a library that the Town was deserving of. But he said at the same time, technology was changing the situation, and he questioned putting money into bricks and mortar to house books. He said it didn't seem to be the most prudent use of funds at this time.

VII. Unanimous Consent Agenda

- A. **RESOLUTION #2010-17** formally "sun-setting" the Churchill Rink at Jackson's Landing Advisory Committee, thanking its members for their service to the Town of Durham, and rescinding Resolution #2009-09 dated April 20, 2009 and 2010-08 dated April 5, 2010
- B. Shall the Town Council, upon recommendation of the Town Administrator, award the engineering services contract in the amount of \$129,500 for the update of the Wastewater Facilities Plan and authorize the Town Administrator to sign said contract with Wright-Pierce Engineering?
- C. Shall the Town Council, upon recommendation of the Town Administrator, approve a non-industrial wastewater discharge permit for 9-11 Madbury Road redevelopment?
- D. Shall the Town Council, upon recommendation of the Town Administrator, **DENY** the 2009 property tax abatement applications for the following properties that are presently pending before the Board of Land and Tax Appeals or Superior Court for 2008 abatement appeals: Gamma Mu Alumni Association, 6 Strafford Avenue; Varsity Durham II, LLC (42 Garrison Avenue, 9 Woodman Road, 8 Main Street and 10 Main Street); Three Chimneys Inn, LLC, 17 Newmarket Road; PREFCO XXV Limited Partnership (Beech Hill Road and 121 Technology Drive)?
- E. Shall the Town Council, upon recommendation of the Town Administrator, **DENY** the 2009 property tax abatement application for property owned by Olympia Equity Investors XVII, LCC located at 2 Main Street and authorize the Town Administrator to sign said application?
- F. Shall the Town Council, upon recommendation of the Town Administrator, reduce the assessment for property owned by Donna Blumenthal Revocable Trust located at 19 Deer Meadow Road from \$663,500 to \$655,400, grant a property tax abatement for 2009 in the amount \$8,100 of assessed valuation to the Donna Blumenthal Revocable Trust,

- and authorize the Town Administrator to sign said abatement application?
- G. Shall the Town Council, upon recommendation of the Town Administrator, reduce the assessment for property owned by Mark & Tracey Sternberger located at 21 Ross Road from \$358,300 to \$355,600, grant a property tax abatement for 2009 in the amount of \$2,700 of assessed valuation to Mark & Tracey Sternberger, and authorize the Town Administrator to sign said abatement application as well as grant an overpayment amount of \$622.60 for tax year 2008?
 - H. Shall the Town Council, upon recommendation of the Town Administrator, reduce the assessment for property owned by David B. Hopkins located at 221 Newmarket Road from \$228,100 to \$224,200, grant a property tax abatement for 2009 in the amount of \$3,900 of assessed valuation to David B. Hopkins, and authorize the Town Administrator to sign said abatement application?
 - I. Shall the Town Council, upon recommendation of the Town Administrator, reduce the assessment for property owned by Alexander and Alexandra Bakman located at 118 Piscataqua Road from \$948,200 to \$945,900, grant a property tax abatement for 2009 in the amount of \$2,300 of assessed valuation to Alexander and Alexandra Bakman, and authorize the Town Administrator to sign said abatement application?
 - J. Shall the Town Council, upon recommendation of the Town Administrator, reduce the assessment for property owned by John L. Hart located at 13 Mill Road #12 from \$134,300 to \$130,200, grant a property tax abatement for 2009 in the amount of \$4,100 of assessed valuation to John L. Hart, and authorize the Town Administrator to sign said abatement application?

Councilor Stanhope asked that Agenda items D through J be taken off of the Unanimous Consent Agenda.

Item C was also taken off the Unanimous Consent Agenda.

Councilor Smith MOVED to approve Unanimous Consent Agenda item A and B. Councilor Sievert SECONDED the motion, and it PASSED unanimously 8-0.

Councilor Sievert recused himself concerning Item C.

Councilor Niman MOVED to approve a non-industrial wastewater discharge permit for the 9-11 Madbury Road parcel referred to as Tax Map 4, Lot 12-0 as recommended by the Durham Department of Public Works. Councilor Smith SECONDED the motion.

There was discussion that the additional 9,000 gallons would not make any difference in terms of the capacity of the wastewater treatment plant.

The motion PASSED unanimously 7-0.

Councilor Stanhope said he had concerns about each of the items D through J, for a variety of reasons. He said it might be appropriate for the Council to hear the upcoming presentation from the Assessor and have a discussion on what the process was, and what the logic was of bringing this recommendations forward, without speaking to them

individually. He said if the Council then thought it was appropriate, it could come back to the items at a subsequent meeting.

He noted that he didn't think it was appropriate to debate the merits of the recommendations right now, but also said he didn't think there was an issue of timeliness, because the deadline hadn't been met in the first place. He said he would rather get the process correct and get documentation before the Council by which they could get an informed decision, which was not included in their packets.

Councilor Stanhope said he would leave it up to the Council whether it would like to go through these individually now, or do as he had suggested.

Councilor Mower said she recalled that this suggestion had come up at the Agenda setting meeting, and asked why things had been set up in this way.

Administrator Selig said the majority of the requests were fairly consistent with those brought forward over the past several weeks concerning the 2008 appeals to the Board of Tax and Land Appeals (BTLA) which the Assessor had recommended settlement on. He said rather than listening to the presentation and then going through these, it had seemed better to continue with the pattern that had been followed at previous meetings. He said the workup had seemed reasonable to him, and he provided details on this. But he said there was nothing that would detract from the process if the items were tabled, the Council heard from the Assessor, and it then discussed how to proceed.

Councilor Smith asked Councilor Stanhope if he wanted to discuss each one of these items after the presentation.

Councilor Stanhope said when the Cross County Appraisal group was interviewed, a question asked of them was whether they would put forward specific documentation and argument that was based on market data, in supporting their recommendations. He said he didn't want to vote to deny something when he was being told that a decision hadn't been reached yet on the validity of someone's application.

Administrator Selig said the denials were recommended for the 2009 abatements received, and said typically what was determined for valuation would carry forward from 2008 until a new revaluation was done. He said it therefore didn't seem to make sense to grant a 2009 appeal when there were still deliberations on whether it made sense to settle or go to the Board of Tax and Land Appeals to fight these items.

He said Mr. Rice was gathering additional data on the multi-unit parcels, which were primarily at issue. He noted that the issue with the residential properties was for the most part physical discrepancies on the cards, and said the amounts were minimal. He said with the multi-unit properties, they had reached out to Steve Traub, an expert on commercial appraisals to help guide the analysis of these properties.

Administrator Selig said he didn't recommend granting the appeals for 2009 until it was determined what the position would be on the 2008 appeals. He said by default, these were really denied because the deadline had been missed, for reasons already discussed. But he said there was nothing to prevent the Council from revisiting these and granting the appeals.

Councilor Stanhope asked if the residential figures were agreed upon figures with the property owner, or simply an independent decision by the assessor.

There was discussion that Mr. Rice could be asked this question.

Mr. Rice spoke before the Board. He said when he came on board in November of 2009, he was appalled that the Town had 5 2007 appeals pending, 59 2009 appeals pending, and 2 Superior Court appeals pending. He said of the 2007 cases, 3 had been settled, and 2 were still in negotiations. He said of the 2008 appeals, 18 were residential, and 41 were commercial. He said there were 9 owners of these 41 commercial properties, and said these appeals had not been settled yet.

He said for 2009, there were 95 abatement applications, 59 were carried over from the past two years, and 36 were new, with 23 residential and 13 commercial properties. He said most of the commercial properties were multifamily units.

Mr. Rice said he had settled 15 of the 18 2008 residential appeals. He said 17 of them had been written up, although not presented to the Council yet.

He said the biggest concern was that in talking to the property owners, he had found that there had been poor public relations between the Assessing office and the individuals. He said in many instances with the appeals, the properties were never inspected, which was why there were adjustments on the assessment cards for those errors.

He said only 3% of the properties in Town had been appealed, but noted that Durham was not a large community and was primarily residential. He said he was in the process of reviewing the residential appeals, and said he and Mr. Traub would then review the commercial properties.

Mr. Rice said one thing they wanted to do was to gather more income and expense information so an income and expense analysis could be done for each property. He said the concern was whether these were consistently and equitably assessed throughout the Town. He said if they were and the values were reasonable, the Town would defend the assessments to the Board of Tax and Land Appeal. He said if they were not, the Town would enter into settlement negotiations.

He also spoke about some concerns he had discovered pertaining to assessment of properties in current use. He said for the 2008 valuation, the value ranges for farmland and forest land were never entered into the computer software, and said that instead the middle value was used, for each of the current use properties. He described how the fact

that this was not implemented correctly had impacted the assessments, and said this had now been adjusted.

Mr. Rice also said the 2008-2009 value ranges had changed, and said this had not been implemented in the software. But he said this too had now been adjusted. In addition, he said there was data missing from the current use information for each property in current use. He said the State required that this data be updated periodically, and said in many cases, it hadn't been updated since 1977.

He said when someone was appealing something based on his current use assessment, or whether he had land in or out of current use, there were no records to fall back on. He said he would be recommending that prior to the 2013 valuation, the Town also budget funds for updating the current use information.

Mr. Rice said a reason his work had been taking so long was that he was inspecting properties, and was updating himself as to the methodology used for the 2008 revaluation, to make sure the assessments were consistent and equitable for everyone in the community. He said if they were not, it was his responsibility to make the adjustments. He said this was what his recommendations to the Council represented.

Chair Carroll asked Councilors how they wished to proceed with items D-J.

Councilor Niman said items D-F seemed to represent minor errors on a data card. He noted that he had an error on his own data card because it didn't seem worth pursuing.

Councilor Stanhope noted that Mr. Rice had said there had been settlement concerning some residential abatement requests. He asked if this had happened after meeting with the property owners and if there was agreement with the owner on the numbers.

Mr. Rice said no, and said this only happened with appeals. He said typically a number wasn't agreed on as part of the abatement process.

Councilor Stanhope said even if the Council approved the recommendations, there was the possibility that a property owner would appeal.

Mr. Rice said that could happen, and said there was nothing in the RSA that said he had to negotiate a settlement amount at the local level.

Councilor Stanhope noted that he had spoken about this issue before. He said the Council was elected by the people of Durham to act in their best interest. He said when someone felt they weren't being treated fairly, he felt there was the fiduciary responsibility to sit down with them and give them a fair hearing locally. He also said if an abatement request was denied, there should be something more in the packet to the Council than what had been represented. He said there was no data to support the denial. He asked how the Council was supposed to make a decision without such data.

Mr. Rice said based on the information researched pertaining to hotels in the area, and based on the sales history, it appeared that it was equitably assessed. He said if they wanted to appeal that further, they could, and he would then ask for additional information.

Councilor Stanhope said he hadn't been provided with any basis for the denial other than an opinion.

Mr. Rice said that was what an appraisal was, an opinion of value.

Councilor Stanhope said it was based on a series of facts. He asked where the facts were.

Mr. Rice said he didn't typically present all that information to the Council.

Councilor Niman said he was hearing from Mr. Rice that he was trying to come up with a system that was fair for everyone, and that he was inspecting the cards, properties, becoming familiar with the Town, and felt that the value of these properties after the minor adjustment reflected a fair and equitable evaluation, when the entire Town was taken into consideration.

Mr. Rice said that was correct.

Councilor Niman said most of these people would probably not be happy with the denial. But he said there had to be some consistency. He said his concern with the process was that the squeaky wheel shouldn't get the abatement, and the squeakiest wheel shouldn't get the biggest abatement. He said he was very comfortable with the process Mr. Rice was following. He said these people could appeal to the BTLA, and said if it determined that Mr. Rice didn't have it right, he assumed there would be an adjustment one way or the other.

Councilor Stanhope said he was being asked to vote on a recommendation he had no basis for.

Chair Carroll clarified that they were dealing with F - J, which were residential properties. She summarized that Councilor Niman had said he agreed with the process being used because it was equitable across the Town, and Councilor Stanhope disagreed because he didn't see enough facts or information.

Councilor Mower asked if an unstated question was what made this process different than the previous Assessor's process.

Mr. Rice said he inspected the properties, and the previous inspector did not.

Councilor Stanhope first noted that it wasn't that Mr. Dix never looked at properties. He said only one of the three bases for appeal, physical errors, had been addressed in the recommendations. He said the other two, not being treated consistently and market data that supported a different number, had not been addressed.

Mr. Rice said in reviewing the assessment compared to neighboring properties, he always checked to make sure they were consistent, and if they were not, he would let the Town know this.

Councilor Stanhope asked if there was a database of sales that would support the new number.

Mr. Rice said he had this, but didn't typically provide it at the local level. He said he presented it at the State level, which was required. But he said the burden was on the taxpayer, not the Town.

Councilor Stanhope said assessors loved to hide behind that law, but said he was elected by the people of the Town.

Mr. Rice said he was not hiding behind anything, and was adhering to the State statutes regarding assessing. He said he had written a lengthy recommendation for each of the properties. He said they weren't in-depth appraisals, but said that was not what assessing was all about, especially when he was trying to take care of 95 appeals, part time.

There was further discussion on the information that had been provided.

Mr. Rice said the denials concerning the apartment properties was nothing more than a formality at this point.

Chair Carroll asked if there were any more questions about the residential appeals.

Councilor Mower asked Councilor Stanhope if he had less information than he had had in past years.

Councilor Stanhope said yes, and also said he had less information than he had received in other municipalities.

Administrator Selig said that information wouldn't be here with the multi-units properties because they were all in process for 2008.

There was discussion that the Olympia abatement request was still being reviewed.

Councilor Stanhope said he would vote no, so they didn't need to belabor this.

Councilor Clark said the procedure being used here concerning abatement requests was no different than was the case for the past several meetings.

Councilor Niman suggested voting on all of the residential abatement requests together.

Councilor Niman MOVED to approve the abatement requests under Unanimous Consent Agenda items F-J. Councilor Cote SECONDED the motion, and it PASSED

7-1, with Councilor Stanhope voting against it.

Chair Carroll said there would now be discussion on Items D and E. She noted that these appeals were in essence denied after July 1st.

Mr. Rice said he hadn't been able to make the July 1st deadline, and wrote to all the property owners extending the abatement process to the end of the July. He said because most of the commercial properties were under appeal from 2008 already, the process right now with the 2009 appeals was a formality, indicating the denial but also that it was still in the process of being reviewed, and that the Town would enter negotiations for settlement purposes, which would include 2008 and 2009.

Chair Carroll summarized that Mr. Rice didn't have time to address these at the present time so they were denied, but he would have the chance to look at them, visit the properties, and the process would move forward.

There was discussion that technically the appeals had already been denied, and it wasn't clear why the Town also had to deny them.

Administrator Selig said it was a formality, but said that technically, the Council didn't need to take action on them.

Councilor Mower asked if the fact that they were under appeal for 2008 might have some influence on the 2009 appeal.

Mr. Rice said yes, and provided details on this.

Councilor Mower asked if it was ill advised for the Council to make a decision on something that did have a pending appeal.

Mr. Rice said the Council didn't have to grant or deny the appeal right now.

Councilor Niman spoke specifically about the Olympia appeal, and said he didn't realize one got tax abatements based on a best guess about what would happen in the future. He said they left out the closing of the New England Center, or meetings with the Whittemore School, regarding impacts on future cash flows. He said that was a rational basis for denying this.

He also said it wasn't fair to the taxpayers to say the Assessor should spend time looking at the cash flows of other hotels and evaluate the competitive market. He said that kind of analysis would be expensive and time consuming. He said he agreed with Mr. Rice that it was up to the property owner to provide information, and said he wouldn't grant an abatement request based on the information that had been received. He said it wasn't the Town's responsibility to provide its own analysis on this.

Councilor Niman said the information provided by Mr. Rice made perfect sense to him,

and said he supported the logic and work he had put into evaluating it.

Councilor Smith agreed.

Councilor Smith MOVED to approve Unanimous Consent Agenda Items D and E. Councilor Mower SECONDED the motion.

There was discussion that 2009 was the first year that Olympia had appealed.

Mr. Rice noted that the other commercial properties he had not yet inspected were scheduled already for hearings, but not until next February or March. He said he therefore had time to settle some of them, or to make his presentation to the BTLA. He said they would all be inspected, and said many had been inspected already. He said income and expense information would be requested, to determine if a property was over or under assessed.

Administrator Selig said a procedural change at the BTLA now mandated a local meeting to try to reach settlement, and if this was not successful, it then went on to the BTLA. He said with a lot of the 2008 appeals, historically they would not have come back to the Council because the BTLA would have issued a decision.

Mr. Rice said he had asked the Board for an extension on the settlement hearings. He said because of the number of appeals Durham had, they granted the request to June 1st. He said he settled as many as he could up to that date. But he said he still had the opportunity from now and when the others had been scheduled to settle them as well.

Chair Carroll said her vote and the vote of the entire Council was a formality in this instance, and said she didn't see a necessity to vote. She asked if other Councilors thought there was one.

Mr. Rice said he thought it was good public relations to provide a response concerning the abatement requests, and as part of it to explain that it was being denied until there was the opportunity to do a settlement or move forward to the BTLA.

Chair Carroll said she saw it the opposite way, that this was something being denied, when the property owners knew they had to wait. But she said she was pleased that Mr. Rice had sent letters to the property owners explaining the situation. She said they all looked forward to these matters being settled.

Administrator Selig recommended that the Council deny these abatement requests.

The motion PASSED 6-2, with Chair Carroll and Councilor Stanhope voting against it.

Mr. Rice told the Council that he had been in communication with the BTLA, and with the director of the Department of Revenue Administration, concerning some of the

findings he had not discussed yet with the Council. He said they both recommended waiting until the 2013 revaluation to adjust some of the findings.

Administrator Selig said something he and Mr. Rice had spoken about was the amount of time allocated for the Assessing office. He said right now 2 days a week had been allocated, and he asked Mr. Rice to provide his perspective on this.

Mr. Rice said the Town needed something more than having an Assessor 2 days a week, not even considering the appeals work, because of the level of assessing needed in Durham, and because of the need to bring the standards of assessing up to those of the BTLA and the Department of Revenue Administration. He said this was a 4-5 day a week job, and said there was a great deal of work that needed to be done. He said just updating the current use information would take a year. He also said he was only half done with the appeals, and said it would take 10-11 months to negotiate settlements.

Councilor Clark asked Mr. Rice if 4 days a week was needed for the short term.

Mr. Rice said it was needed forever. He said Durham was a complicated community. He noted that he was also the assessor for Plymouth, NH, and said the presence of the University of NH created a lot more work for an assessor. He said exempt properties, the types of properties, things like flowage rights that could have value, and other issues needed to be looked into and addressed.

He also noted that he had been approached by property owners in areas of Town deemed low and moderate income that weren't assessed that way and were assessed at market value. He said he needed to know if any paperwork had been put in place for that type of property. He said there was a lot of work to be done to clean up some things, and then maintain them at the level of standard required by the State.

Councilor Stanhope said what Mr. Rice was facing with these more complex properties was going to consume a significant amount of time. He said if all of those property owners went to the BTLA or Superior Court, the other side would be providing a significant amount of documentation. He said the Council would therefore have to decide at some point what monies would need to be expended to defend the assessments, beyond sending the Assessor to the State.

Mr. Rice said he would provide more information than he had provided that evening, if he went before the BTLA, and Councilor Stanhope said he was pretty confident of that.

There was further discussion, and Administrator Selig explained that Mr. Rice had recommended hiring someone full time, and not contracting out this work.

Chair Carroll thanked Mr. Rice for speaking with the Council, and said he had come to Durham at a difficult time, because of the abatement requests and the economy. She said the Town and the Council appreciated his efforts

The Council stood in recess from 8:56 to 9:05 pm.

VIII. Committee Appointments - None

IX. Presentation Items

- A. Overview of 2008 property tax appeals and 2009 property tax abatement process - Jim Rice, Town Assessor

(This agenda item was addressed under the Unanimous Consent Agenda for items VII C-J)

- B. Quarterly Financial Report - Gail Jablonski, Business Manager

Ms. Jablonski said things weren't looking too bad. She said while the report said revenues were only at about 33%, a lot of the tax bills didn't come in until July 1st or after. She said a recalculation done that day indicated that revenues were at 44%. She noted that State and federal revenues didn't come in until the end of the year.

She said that regarding UNH revenue, the quarterly payments had been received for the Fire Department. She also said the first billing had been done for the school allocation for students living on University property going to the OR schools. She noted that enrollment had dropped from 20 students last year to 8 students this year, and said they would have to see what came in the fall. She said the Town's recreation programs were doing very well, and said 75% of what Mr. Mengers had projected for revenues had been received.

Ms. Jablonski said that regarding Expenses, about 47% of the Budget had been spent. She said most areas were running on target. She said two part time employees had been brought on board to assist the Code enforcement officer concerning rental housing issues and plumbing and electrical inspections. She also said there was a part time MIS employee who had come back to finish working on upgrading the Town website.

She said the Town had overspent on drainage and vegetation work by over 200%, due to the ice storm. She said they were waiting for the final numbers from FEMA as to what the Town could get back. She said she would then ask the Council for the funding, which would later be reimbursed by the FEMA money.

Ms. Jablonski said all of the other funds were running under budget, and said she didn't see any problems coming up with any of them.

Councilor Mower asked about some items running significantly below budget, such as the engineering line for the DPW.

Ms. Jablonski said the engineering assistance employee didn't come on board until April so there was three months' savings in salary. She also said DCAT had budgeted for some capital equipment that hadn't been purchased yet.

Councilor Sievert said on behalf of Mr. Mengers and the Parks and Recreation Department that the position that had been created had been a great investment for the Town. He said hopefully the Council would think about this for the next Budget.

Administrator Selig said the part-time plumbing and electrical position was a temporary position. He said the person was brought on to help out because of the increase in commercial construction going on in the summer months, including the Bryant, Crape, Christie and other developments. He said he expected that the position would end in the fall. But he said the employee who had been monitoring student rental properties would be coming back in the fall.

Chair Carroll said that several meetings ago, the Council had voted for a TAN of \$1.9 million. She said if the Town had had to take it out, it would have paid up to \$5,000 in interest. She said the Council Communication indicated that by delaying the Oyster River School district payments until after Town tax payments started to arrive, the need for the TAN was avoided. She said this was a good example of cooperation between the School District and the Town.

Ms. Jablonski said during tax time, the Town was in touch with the School District on a regular basis to see what their cash flow needs were. She said they were willing to help the Town in any way they could.

Administrator Selig noted that there had been a slight lag in the rate of tax collection this year, but said 94% of taxes had been collected two weeks after the due date.

X. Unfinished Business

- A. **PUBLIC HEARING AND ACTION ON ORDINANCE # 2010-09** amending Article XII, Zone Requirements, Section 175-41(F)(7) “Development Standards in the Central Business District,” to change the requirements for the maximum height of mixed-use buildings in the Central Business Zoning District

Councilor Smith MOVED to open the Public Hearing on Ordinance # 2010-09 amending Article XII, Zone Requirements, Section 175-41(F)(7) “Development Standards in the Central Business District,” to change the requirements for the maximum height of mixed-use buildings in the Central Business Zoning District. Councilor Mower SECONDED the motion, and it PASSED unanimously 8-0.

Bill Hall, Durham, said he had been concerned about the height of buildings for some time, and was also concerned about the cost of ladder trucks. He said a Town the size of Durham needed to limit the liability of its Fire Department. He said he didn’t believe what the Town would need to pay for fire trucks and additional personnel would be gotten back.

He also said having 4 story buildings with no parking would force the Town to get a multimillion dollar parking structure with the University, and said the Town wouldn’t get its money back on that either. He said it was a serious mistake to allow 4 stories, and said the tax liabilities would be shouldered by all the two story residential houses in Town.

Chair Carroll noted that the public hearing was about the use of the building, and that 4 stories were already allowed in the Central Business District.

Administrator Selig explained that this Zoning change proposal would allow 4 stories, as long as 2 of the stories were non-residential.

Mr. Hall said 4 stories was a financial mistake.

Tom Elliot, Economic Development Committee Chair, noted that this proposal had originated with the EDC. He said they were fully in support of it, and thought it was a good near term opportunity to give some flexibility to the Zoning Ordinance, until the Town went through the Master Plan process. He said he had spoken with some people who were thinking of redeveloping their properties or had already done so, who would like this flexibility. He said perhaps something like a roof top restaurant would be allowed, if this Zoning amendment passed.

Councilor Smith MOVED to close the Public Hearing. Councilor Mower SECONDED the motion, and it PASSED unanimously 8-0

Councilor Smith MOVED that the Town Council adopt, as presented, Ordinance # 2010-09 amending Article XII, Zone Requirements, Section 175-41(F)(7) “Development Standards in the Central Business District,” to change the requirements for the maximum height of mixed-use buildings in the Central Business Zoning District. Councilor Niman SECONDED the motion.

Councilor Mower explained for members of the public that this Zoning change would mean that non residential use would be required on the first floor, and if it was a 4 story building, one of the remaining 3 floors must be nonresidential as well.

Administrator Selig said he thought this was a good change, and recommended that the Council move forward with it.

Councilor Smith said the first “Whereas” in the draft of the Ordinance should read “Whereas the current ordinance requires the first two floors in a four story building to be commercial and the third and fourth floor to be residential, and”. He said it cleaned up the imprecise language.

It was agreed that this was a non substantive change that would clarify what the Ordinance would do.

The motion PASSED unanimously 8-0.

- B. Discussion and action on an application submitted by the Sigma Beta Alumni Association for 26 Madbury Road for short-term property tax relief under the Community Revitalization Tax Relief Incentive Program (RSA 79-E) adopted by the Town Council on May 4, 2009

Councilor Clark recused himself.

Administrator Selig said this was the Town's first application under RSA 79-E. He said some feedback had been received from the public, and said based on this, he had drafted Findings of Fact and Conditions of Approval as a starting point for the Council. He said the Council needed to decide if the various criteria for granting the exemption had been met, the duration of the exemption, and the duration of the covenant if the Council decided to grant the exemption.

Councilor Mower asked how the occupants would have a vested interest in the property, as Mr. Clark had indicated at the June 21st meeting, when it was the alumni who had made all the changes and had invested the money.

Councilor Clark said the students understood that there was a short term financial challenge for a few years. But he said as the fraternity was re-colonized, the vested interest would come from going through a pretty significant process to become part of an organization. He said the culture being created revolved around the house, and lead to a different level of respect for where they lived.

Councilor Mower noted that the likely assessment of the improved property related to the number of beds.

Administrator Selig said there would be a \$444,700 increase in the assessed value of the property, which would equate to \$12,006 dollars per year of exemption, and approximately \$60,000 over 5 years.

Chair Carroll said since this was the first application of this kind to come before the Council, it would be good for Councilors to let residents know why they would be voting a certain way.

Administrator Selig said it was also important for the Minutes to reflect the Findings of Fact, so that if this was appealed, the Court would see that the Council had done its due diligence.

He read through the Findings of Fact and Conditions of Approval.

1. Whether the structure is a qualifying structure.

***Findings of Fact:** The structure at 49 Madbury Road is a qualifying structure pursuant to RSA 79-E. The subject parcel is within the Professional Office (PO) zoning district of Durham which is in fact integral to and a part of Durham's downtown/retail-commercial core.*

2. Whether the proposed rehabilitation qualifies as a substantial rehabilitation.

***Findings of Fact:** The Sigma Beta Alumni Association which owns 49 Madbury Road has invested \$780,000 in the property along Madbury Road to substantially rehabilitate an historic fraternity building constructed in 1921 in the Colonial Revival style. The substantial rehabilitation exceeds \$75,000 as outlined in RSA 79-*

E2 (II) and therefore qualifies as a substantial rehabilitation.

3. Whether there is a public benefit to granting the requested tax relief and, if so, for what duration.

Findings of Fact: *A public benefit does exist pursuant to RSA 79-E:7. The substantial rehabilitation of 49 Madbury Road:*

a) enhances and improves an historic 1921 era fraternity structure built in the Colonial Revival style which is culturally and historically important on a local level along the Madbury Road “fraternity row” corridor;

b) promotes development of municipal town centers, providing for efficiency in energy design, safety including strict adherence to modern-era fire and building codes for occupants and visitors to the structure and the general community, a greater sense of community associated with improved living conditions and on-site management within the structure, and a project which is consistent with the definition of “smart growth” such that enhancement of land uses are conducted in such a manner that their physical, visual, or audible consequences are appropriate to the traditional and historic New Hampshire landscape within the affected zoning district;

c) improves the quality of student housing stock in Durham’s town center;

d) enhances the economic vitality of the downtown by preserving the prominent visual aesthetics of the 1921 Colonial Revival structure and encouraging productive, civic-focused activities and behavior through active fraternity management, modern design, present-day fire/building code adherence, and on-site live-in management.

Tax Relief Granted for five (5) year period: *The tax relief granted shall pertain only to assessment increases attributable to the substantial rehabilitation performed and approved for a period of five (5) years commencing upon the completion of the substantial rehabilitation pursuant to RSA 79-E.*

Estimated Tax Relief Value: *It is estimated that the 2009 pre-substantial rehabilitation value of the parcel was \$1,204,900 and the post-substantial rehabilitation value of the parcel will be approximately \$1,649,600, a difference of \$444,700 of assessed valuation. ($\$444,700 \times 2009 \text{ tax rate of } \$27.00 = \$12,006 \text{ per year}$)*

The substantial redevelopment of this parcel remains consistent with Durham's master plan and development regulations.

a) Section 3.2 of the Durham 2000 Master Plan states, in part: “One of the characteristics of this section of Madbury Road is the existence of a group of handsome fraternity/sorority buildings set back from the road with large front lawns. The scale of these and other buildings provides a desirable transition between the Central Business [Zoning] District and the residential neighborhoods further down Madbury Road. It is

important to preserve both the handsome buildings and their setting in the landscape, although it is envisioned that the buildings could also serve other uses.”

b) The continued fraternity use in this location is a grandfathered use which predates the present zoning regulations. Durham Zoning Ordinance Section 175-53, Table of Land Uses, lists “fraternity/sorority house” as a permitted Conditional Use-Adaptive Reuse of existing buildings within the Professional Office (PO) zone.

Covenant required. The public benefits outlined herein shall be preserved through a covenant developed pursuant to RSA 79-E:8, said document to be included within the July 12, 2010 Town Council Packet. The covenant shall be coextensive with the tax relief period.

Applicant to pay reasonable expenses associated with application. The applicant shall pay any reasonable expenses incurred by the municipality in the drafting, review, and/or execution of the covenant. The applicant also shall be responsible for the cost of recording the covenant.

Councilor Stanhope said the program was designed to draw capital into the Town core. But he said with his math, the Town would grant slightly less than 8% of what they had invested in the property, over 5 years. He said he wished the Town could attract the same kind of interest in this program with a number of buildings in the Town core. He said he believed the applicants had met all the criteria, and said there would be substantial improvement to an individual property. He said he hoped other properties would take advantage of the program

Councilor Cote said the backup material indicated that there a significant amount of oversight of the residents, and said he was therefore quite confident that the building would remain somewhat in the state it was in now.

Councilor Sievert spoke about the historic value of this building, and also agreed that bringing more value to the property would result in a more cohesive group of residents. He said this was a good thing, and was exactly what the program was put in place to do.

Councilor Niman said he agreed with what others had been said. He said the Council heard on a regular basis how various groups in Town were disenchanted with the status quo. He said the only way to make Durham a better place was by trying new things. He said his hat was off to Doug Clark and other members of the Alumni board for putting up the money, and creating a different business model. He said he hoped it would revolutionize Greek housing in Durham, which would benefit everyone.

He said another reason he thought this was important was that he thought the only way to get better student housing, and better student behavior, was through competition. He said his hat was off to Sigma Beta for a first class project that had set an example. He said rewarding these kinds of efforts would have many benefits for the Town. He said setting this example and increasing the level of competition would perhaps prompt others to

reinvest in their properties, and with that, he said he thought they would see some very significant changes in the Town.

Councilor Sievert asked if there was an inspection process concerning upholding the covenant.

Administrator Selig said the covenant mostly dealt with making sure the property owner had insurance. He also noted that the Town would be listed on the policy, and would be notified annually. He said the purpose of this was to make sure that if the property burned down, it would be rebuilt to replace the public benefit.

There was discussion on the wording regarding the covenant.

Councilor Sievert asked if management on site would be part of the covenant, to uphold the value of the property.

Administrator Selig said he interpreted the language of the covenant to mean that the Town could, with the owner's consent, inspect the property.

Councilor Sievert asked who would pay for this, and Councilor Smith said the wording of the Findings of Fact and Conditions of Approval said the applicant would pay any reasonable expenses.

There was further discussion. Administrator Selig said his interpretation of the statute was that it had envisioned the work being done to approve the application, and not the subsequent inspection process. He also noted that there wasn't much history yet in the State on how the program was being administrated. He said the Town would check on the property regularly, through either Code Enforcement or the Fire Department, as part of their routine work.

Councilor Mower said several members of the public had expressed extreme reservations about this, and had questioned what made this different from a homeowner investing in his property in a way that improved the Town's aesthetics. She said to a certain extent, the draft findings stretched it in some places. She said this was a good thing for the Town, and had no quibble with the rationale for it.

But she said she was concerned about being clear on how the application met the criteria. She said it was the first time the program was being used in Durham, and said the improvements had already been done. She said the Council was only required to find that there was one public benefit, and said she felt pretty comfortable that this could be met. But she said it wasn't typical of what other towns would come across

She said it wasn't an historic building in terms of being on the National Register. She also said the issue of contributing to the revitalization of the downtown was somewhat questionable. She said overall, this was a good thing, and said they were hoping to encourage others to be involved with the program.

Councilor Niman said there was an expectation that people would keep their properties up to a community standard. He said a homeowner with a house that embodied the Town and was a showpiece had more significance, and more people would benefit from it. He said 79-E was warranted for that kind of situation. He said what the fraternity was trying to do could have a significant impact on the rest of the community.

Councilor Mower said the town of Blacksburg, Virginia was facing many of the same challenges as Durham. She said in their master plan, they noted that the perceived economic vitality of the downtown was the perceived economic health of the town. She said to the extent that aesthetic impact did spread to benefit the entire Town that was a reasonable argument.

Councilor Niman noted that CWC Properties had just gotten a wastewater permit, and said someone could ask if the company should get a tax break if it asked for it. He said if they were just doing student apartments with some nondescript commercial activity on the first floor, he would question why a tax break was needed. But he said if they came to the Council and said they wanted to bring in something that residents could get excited about, with affordable housing as well as a commercial enterprises, there would be a public benefit.

He said it was a case by case thing, and said for him, there had to be something new and special for the community. He said in that sense, Sigma Beta had met that criterion. He commended them again for doing something great for the Town.

Councilor Mower said particularly since it was hoped that what Sigma Beta had done would influence the whole Greek community.

Councilor Stanhope said it was a blighted building before, and said blighted buildings had a negative impact on their surroundings. He said a change had been made in that immediate neighborhood. He said there were other buildings in Town that would benefit from the tax break, and said the improvement to their neighborhoods would attract good commerce. He also said this application was insignificant in terms of dollars.

Councilor Mower said there was leeway in defining the public benefit.

Administrator Selig read the language from the RSA, and said this application accomplished both economic benefit and social vitality. He also said there was the public benefit of the increased safety of the building.

Councilor Mower asked if there would be discussion on the length of the covenant.

Administrator Selig said Councilor Gooze had indicated that he was in support of the application, but asked that the Council discuss the duration of the covenant.

Chair Carroll noted that the covenant was written as 5 years, but said this could be changed.

Todd said he had suggested 5 years because the items envisioned in the Statute were very basic. He said he thought that with the investment the applicant had made, whether or not there was a covenant, the property owner would ensure that there was active management. He said he therefore hadn't seen the need to extend the covenant beyond 5 years.

Councilors agreed with this.

Chair Carroll said she had attended an open house at Sigma Beta recently, and took a tour of the facility. She said she was very impressed with what had been done to the building. She noted the good quality of the materials used, and said it was hoped that the behavior of the residents would rise to the level of quality.

She said at that event, she spoke to several alumni of Sigma Beta who had made this project work. She said they were trying to revive a fraternity that 30 years ago had had very positive effects on its members. She spoke in some detail on this, and said their goal now was to make this happen again. She noted that this social component wasn't included under RSA 79-E, but said she thought the Sigma Beta Alumni Association needed to be commended for this goal.

She said if they achieved it, the people in Durham would be very happy. She noted that there were some people in Durham who would gladly see their taxes raised if fraternities could be eliminated. She said it was very commendable that Sigma Beta wanted to change the fraternity culture, and said the Council wished them luck, and hoped their investment would pay off in many ways for the community.

Mr. Campbell noted that the street address in the Draft needed to be corrected.

Councilor Niman MOVED that the Durham Town Council hereby approves the attached Findings of Fact and Conditions of Approval dated July 12, 2010, as amended to correct the street address to read 26 Madbury Road and grants tax relief for a five year period pursuant to RSA 79-E to Sigma Beta Alumni Association for its property at 26 Madbury Road and authorizes the Town Administrator to sign a covenant to ensure that the public benefits outlined shall be preserved pursuant to RSA 79-E:8; said covenant to be co-extensive with the tax relief period. Councilor Stanhope SECONDED the motion.

There was discussion regarding Councilor Gooze's comment concerning yearly inspections of the property.

Administrator Selig said the Fire Department would typically do an inspection twice a year.

The motion PASSED unanimously 7-0.

Councilor Clark returned to the table.

B. Budget Discussion

Administrator Selig said the Council could discuss this now or at the meeting the following week, given the hour. He also suggested pushing off the B Dennis discussion to the second meeting in August, so feedback from the Planning Board and the EDC would be available.

Chair Carroll suggested taking 15-20 Minutes to discuss the Budget.

There was discussion that there would not be a quorum for the meeting next week, so there would not be a Council meeting at that time.

Councilor Stanhope said the Council Communication indicated that department heads had been asked to bring forth 3 separate scenarios. He said a number of department budgets were heavily weighted in personnel costs, some of which were fixed. He asked if there should be a request that department heads look at making percentage cuts to the non-personnel costs. He provided details on this, and said he didn't know if it was realistic to ask them to cut 3%.

Administrator Selig said he agreed that it wasn't possible to cut 3% without eliminating people, in most cases. But he also said he wanted to see what choices the department heads would make if they needed to cut people. He said he wanted to see what they valued most and why. He said it would also be explored what they would cut if they didn't cut personnel. He noted that it might be a program, and provided the curb side collection program as an example of this.

Councilor Niman said the department head could also look at their overtime budgets. But he said his primary concern wasn't the spending side, and was the revenue side. He asked if there were any projections yet regarding the fact that there would be less revenue coming from the State and other sources. He said he imagined that that side of the Budget wouldn't look very good.

Ms. Jablonski said the Rooms and Meals tax money and highway money was unchanged for this budget. But she noted that the State's fiscal year was different, and said by next June-July that might change. She provided details on the fact that there ultimately was no change regarding the State's support of retirement contributions, so it would stay at the rate it was at right now.

Councilor Niman noted that there were still the outstanding tax abatement requests, and asked if an analysis had been done as to the potential damage from this to the property tax base and how that could potentially impact revenues.

Administrator Selig said this affected the Town in several ways. He said about \$30,000 had been spent of the \$125,000 overlay account that was budgeted for abatements. He said the Assessing office was feeling fairly comfortable that the assessments for the multi-units would hold, but said more data was being gathered on this.

He said the other big appeal was from Goss International. He said the company that actually owned the facility had had an appraisal done, and said the divergence was about \$4 million. He said there had been discussion on a possible settlement, and said \$80,000 for 2008 and another \$80,000 for 2009 would wipe out the rest of the overlay account. He said there could be discussion about delaying the second payment and taking it as a credit in next year's tax bill. He said this would lower the value in the out year, which affected the tax rate. He said if the Town needed to pay out more than the \$125,000 budgeted in 2010 that would likely impact the tax rate projection for 2010.

Administrator Selig said it also became very challenging to project the increase in the tax base, when there were a number of properties tied up as part of the Board of and Tax Appeals process. He also said that while there had been a lot of investment in new development in Town, there wasn't a number yet on what the value of this would be.

Councilor Clark said he would be fine if there were only two scenarios. He also encouraged the Council to make sure that there wouldn't be cuts put in that ended up costing residents more, such as elimination of the curbside pickup program.

DPW Director Mike Lynch said his suggestion had been regarding the recycling program. He suggested that people could perhaps take their recyclables to the transfer station.

There was discussion about the option of contracting that service out. Chair Carroll said the Integrated Waste Management Advisory Committee had looked at this in the past, and said it didn't end up saving the Town money. She also said this approach had created disruptions in many communities, and said Durham residents wouldn't put up with this.

She said Dover, Newmarket, Barrington and Concord had implemented pay as you throw programs, and said this was something to think about for Durham. She said trash removal could be thought of as a utility that the homeowner paid for separately. She said pay as you throw gave people a certain amount of control.

Councilor Clark said his larger point was that he didn't think they should make a decision on cuts that lowered the tax bill without assessing whether they ended up raising expenses some place else.

Chair Carroll agreed that different scenarios should be looked at, but said she hoped they wouldn't start with these as a bottom line. She said they needed to look at other scenarios, in terms of what programs were critical to the Town, and which could wait. She noted that they had gone through two years of not investing in the infrastructure. She said they wanted to see that the investment in infrastructure would continue, so should take a qualitative approach as well in looking at the Budget.

Councilor Mower said it was also important to consider opportunities to save money in the long term, even if it raised taxes in the short term.

Chair Carroll said the Council should give some direction concerning this. She noted that last year, some Councilors saw what the Fire Department had done, and said perhaps this could be done in other departments. She noted that they should only ask for this if they were planning to do something about it.

Councilor Sievert said he liked the three scenario proposal. He also said what he had liked last year was that Mr. Lynch had brought forward issues that were costing the Town more money in being put off. He said that would be good to see again.

Councilor Mower said she had found it very interesting to hear what worked well in the process of developing the Budget last year.

Ms. Jablonski provided details on this, and Administrator Selig said they were trying to take a holistic approach at the micro level to make sure the process was working efficiently for department heads, and at the macro level to see if it was working efficiently for the Council and the community. He said his personal philosophy with the Budget was that it ultimately was a definition of what a community felt was most valuable.

He said in some communities, the budget process took months and the result wasn't necessarily any better than if it had been shorter. He also said this lengthy process could be distracting for staff. He said the goal here was to make sure there was an efficient process and to provide the Council with a draft Budget that was in pretty good shape, at which point the policy aspects could be debated. He said town staff checked with everyone each year to see if the process could be refined, and if it was meeting peoples' needs.

He noted that sustainability would weigh more heavily in Budget discussions, which would get at things where spending money now would mean that the Town wouldn't have to spend more money later on. He said discussions on sustainability would include looking at alternative technologies for transportation and buildings that might ultimately cost more, but would be better for the environment, create a more holistic lifestyle and set a better example for Durham.

Councilor Mower said it could also include things like lawn maintenance that was better for the environment.

Administrator Selig said Durham had been very aggressive in terms of the way the Budget had been approached in the recessionary environment. He said spending was cut two years ago, and said it was about even the past year. He said the Town had moved into that conservative mind set a full budget cycle ahead of most other communities. He said it had been expected that other towns would follow suit, but said they hadn't been as aggressive as Durham had been about this. He said they were therefore seeing that wages in Durham were falling a bit behind, and said this was something to be aware of.

Ms. Jablonski said a quick calculation on salaries and benefits, based on contracts settled and possibly settled, indicated that there would be an additional \$270,000 increase to the Budget, which was a 2.6% increase.

There was discussion about the fact that the Town was falling behind in terms of salaries.

Administrator Selig said he envisioned that whatever Budget was brought forward would provide a list of where cuts could be made. He said a lot of this would come out of the suggestions that department heads made. He said they would also try to do things more efficiently with the staff they had.

There was discussion about setting another date for the next Council meeting, since there wouldn't be a quorum the following week. It was agreed that the next meeting would be held on August 16th, and if another meeting was needed, it could be fit in.

Administrator Selig noted that Councilors were welcome to attend meetings with department heads on the Budget.

XI. New Business

Councilor Smith MOVED to adjourn the meeting. Councilor Mower SECONDED the motion, and it PASSED unanimously 8-0.

Adjournment at 10:31 pm

Victoria Parmele. Minutes taker