

This set of minutes was approved at the June 6, 2011 Town Council meeting

**Durham Town Council
Monday May 2, 2011
Durham Town Hall - Council Chambers
7:00P.M.
MINUTES**

MEMBERS PRESENT: Council Chair Diana Carroll; Council Chair Pro Tem Jay Gooze; Councilor Neil Niman; Councilor Julian Smith; Councilor Peter Stanhope; Councilor Robin Mower; Councilor Bill Cote; Councilor Kitty Marple; Councilor Jim Lawson

MEMBERS ABSENT: None

OTHERS PRESENT: Administrator Todd Selig, Town Engineer Dave Cedarholm

I. Call to Order

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

II. Approval of Agenda

Councilor Smith MOVED to approve the Agenda. Councilor Mower SECONDED the motion, and it PASSED unanimously 9-0.

III. Special Announcements

IV. Approval of Minutes

March 21, 2011

Councilor Gooze MOVED to approve the March 21, 2011 Minutes as presented. Councilor Cote SECONDED the motion, and it PASSED unanimously 9-0.

V. Councilor and Town Administrator Roundtable

Councilor Mower said the Energy Committee was moving forward with the DPW to improve bike and pedestrian safety on Madbury Road between the Post Office and Garrison Ave, with a pilot project that had been developed. She said there would be further discussion on the project at the next Traffic and Safety Committee meeting, and noted that there was some additional data collected by students that might help with the decision of what option to choose.

She said the Conservation Commission was grateful for the recent help it had received from volunteers the past weekend in removing buckthorn from the Doe Farm. She read a thank you letter from Commission member Malin Clyde, who had organized the event.

Councilor Gooze said the next Rental Housing Commission meeting would be held on May 18th.

Councilor Smith said the Capstone applications had passed with flying colors the previous week, and noted that he alone had voted against them. He said at the Extended Roundtable, he could explain why he had thought this was necessary, noting that it had been clear at the time that the applications were going to pass. He also said he would speak more about Capstone that evening in regard to its sewer permit application.

Councilor Gooze noted that the Planning Board had accepted a Site Plan application and Conditional Use Permit application submitted by Dick Gsottschneider to add an apartment to an existing duplex building, which would make it a multi-unit property.

He said the Planning Board had also discussed the draft Master Plan survey, and added a few things on to it. There was discussion that a post card would be sent to every resident telling them about the survey, and that residents could fill out a hard copy or an electronic online copy of it.

Councilor Mower noted that there were two questions in the Master Plan survey on what people thought were the most dangerous intersections in Durham for bicyclists and pedestrians.

Councilor Lawson said he had participated in the recent work done at the Doe Farm, and said the rumor was that the swim team had outpaced residents. He challenged them to try to beat the residents again in 2012.

Councilor Mower said she had received some comments about Durham's official position concerning proposed State budget cuts that would cut support for the NH Lakes and Rivers Management and Protection Program as well as the Volunteer Lake and River Assessment Programs.

She noted that before the last Council meeting, she had asked Administrator Selig to discuss with the Council the possibility of the Town writing to the Senate Finance Committee to express support for these two programs, which were slated for what amounted to obliteration under the current proposed state budget.

Councilor Mower pointed out that 3 separate rivers designation bills were expected to receive approval by the Legislature on Wednesday, yet these designations required program support, which the House had voted to delete. She said this was essentially unfunded mandates.

She quoted from a recent email written by the President of the New Hampshire Rivers Council, which among other things indicated that the proposed 33-38% in budget cuts included eliminating the DES Rivers Coordinator, Lakes Coordinator, the one full-time planner, and the one part-time shared position for both the Rivers and Lakes Management and Protection Programs. The email noted that the programs had already been cut by 23% in the Governor's budget, and with what the House was asking for, both of the programs would be completely eliminated.

The email said this would mean cuts in support to municipalities, local river management advisory committees, and other watershed organizations, and noted that these entities had been providing planning, review, water quality monitoring, and other essential services and functions to the state and municipalities.

Councilor Mower said the Rivers Management and Protection Program provides Durham with a voice in working with communities upstream, while the Volunteer River Assessment Program provided low-cost assessment of water quality upstream of the Town's intake points. She said these two programs were absolutely beneficial to Durham, and said she would like the Town to take an official position that supported the continuation of the programs, and that was opposed to the budget cuts.

Administrator Selig agreed that they were valuable programs, and that Durham should support them. He said his sense at the last Council meeting was that the Council did support them, but he said a more formal consensus was needed.

Councilor Gooze said there were a number of things happening that could hurt the State for years to come. He acknowledged that there were financial constraints, but said cutting these programs was penny wise and pound foolish. He said he supported the idea of sending a letter to the Legislature.

Councilor Cote noted that Durham's drinking water supply came from upstream, and said what the Legislature was doing would leave nothing but unintended consequences. He said he fully supported sending the letter.

Councilor Mower said southeastern NH had been growing rapidly, and towns were more and more dependent on groundwater supplies. But she said surface water supplies were also still important.

Chair Carroll said it sounded like there was consensus among Councilors on this.

Councilor Mower provided Administrator Selig with a copy of a letter written by the Chair of the Rivers Management Advisory Committee to the Chair of the Senate Finance Committee. She said this could provide enough information to craft a brief letter from the Town. She said she had heard that it was preferable to use snail mail or faxes because some members of committees had said they didn't get emails. She said Senator Merrill had said there might be enough time to submit a letter by mail.

Councilor Mower MOVED to direct the Town Administrator to write a letter of support for continued funding of the NH Lakes & Rivers Management and Protection Program as well as the Volunteer Lake & River Assessment Program, in opposition to the proposed cuts under HB 1. Councilor Marple SECONDED the motion, and it PASSED 8-0-1, with Councilor Stanhope abstaining.

Councilor Stanhope said he had abstained because there were so many valuable programs being cut, many involving children, the poor, and the handicapped people in the State. He said he wasn't in a position to advocate for one program over another. He said it troubled him that these hard choices had to be made, but said the Senate was well within its capacity to make the right decisions.

Councilor Mower said this raised another question, of whether the Council wanted to take a position in general on the State budget cuts.

Councilor Stanhope said cuts would be necessary, and said he didn't think he was in a position to judge which programs should or should not be cut.

Councilor Mower noted that there had been a great deal in the news recently about the bill proposed by Congressman Guinta for the EPA to hold off on issuing draft discharge permits for wastewater treatment plants. She said she was dismayed that the Council hadn't taken a stronger position to suggest steps that could be taken on the second of the two pronged approach to address the nitrogen problem.

She said it was one thing to protest that the EPA's upgrade requirements were more than towns could bear and might not solve the problems. But she said until steps were actually taken to address non-point source issues, they weren't fully representing the options. She said they needed to take a proactive role, concerning land use regulations, regulation of septic systems, etc, and also said she would like to see town engineers come up with some options. She said she didn't like being in the position of essentially arguing against the environmental benefits of addressing the nitrogen problem from every angle they could.

Councilor Marple asked about the idea of restricting the use of fertilizers on lawns.

Councilor Mower said this was restricted for shoreland protections areas, but said there wasn't necessarily enforcement. She said it was known that septic systems near water bodies weren't handling nitrogen the way many people thought they did. She also said while Durham now had some wonderful stormwater regulations, there were some additional possible steps to take, including the possibility of having a stormwater utility fee to address runoff from impervious surfaces. She said she would like to hear about things like this in addition to hearing about the approach of delaying meeting the EPA requirements.

She said it was important to have conversations and do outreach on the nitrogen issue, but said to delay meeting the requirements by 5 years would result in increased degradation of Great Bay, and higher costs for mitigation. She said she was not in favor of such a delay, and said she didn't think the Council had taken a vote on this. She suggested that this issue, and the need to address the nitrogen problem with two prongs, should be on a future Council agenda.

Councilor Lawson said he thought the case made for the delay was to allow further study and get a better understanding of the point and nonpoint nitrogen sources. He asked if perhaps the position Councilor Mower was suggesting the Council take was therefore premature. He also said part of the problem was that the current EPA requirements were at the limits of technology, so came at a high price, but down the road might have entirely different costs.

Councilor Mower said it was already known that Great Bay was impaired, and said there had been peer review on this.

Chair Carroll said there were many scientists at UNH who had been studying this issue for a long time, and there were a lot of findings. She said this information was accessible, and she questioned the need to spend another five years of study. She said these scientists were saying that Great Bay was in trouble, and that the numbers were getting worse. She noted the deterioration that had occurred elsewhere in places like the Chesapeake Bay and Narragansett Sound, and said the Council would need to decide if it wanted to weigh in on this issue.

Councilor Lawson said he wasn't questioning that nitrogen was a problem on Great Bay, noting that he lived along it, and that he had also lived for many years along the Chesapeake Bay. He said his concern was about going in this direction right now, with everything that the Town and the Council had on the table, and with limited Town staff. He said at some point the Town would get some good guidance on the issue, and said he didn't know that it was a good use of Town resources to determine things like the right shoreland setbacks for septic systems.

Councilor Gooze said his impression was that the real problem was coming from stormwater runoff, and said he thought the studies should be dealing with this. He said he thought the delay would allow those studies to get done, but agreed that five years was a long time. He said he wasn't sure when the studies would be done, but said they were needed.

Councilor Niman said he agreed with Councilor Lawson, and said he had no interest in seeing this come to the Council as a Council Communication. But he said if it did, he would like it to address whether Durham wanted to pull out of the multi-town coalition. He said if the Council didn't support the coalition's policy position, he wasn't sure what the point would be of being part of it.

He said Durham was perfectly capable of upgrading its wastewater treatment plant any time it wanted to do so, and said if the Council thought it was vital that Durham make more of a contribution, he would like to see a proposal to spend \$15-20 million to upgrade the plant.

Councilor Stanhope said based on what he had heard in past presentations on this issue, they were talking about committing significant resources to a very small part of the risk to the Bay. He said he agreed with Councilor Mower that there were a lot of ways that were far more cost effective to address the real degradation issues. He said it would be far more prudent for the Town to look at how to address these things, through ordinances, enforcement, etc.

He said the likelihood that the Town could absorb the cost of correcting deficiencies in the wastewater treatment system to bring it into compliance would be a budget breaker. He said he hoped that there would be technological solutions over the five year period that would make it more cost effective, but said in the mean time, he didn't think the choice was either to do it or do nothing.

Councilor Mower said roughly 70% of the problem came from nonpoint sources, and said if a certain amount of staff time was put toward that, there would be some leverage in going against a treatment plan upgrade. She said this wasn't something to be taken lightly, and said they shouldn't be throwing around the idea of trying to come up with money for the wastewater treatment plant when there were other alternatives that simply took a different approach.

Administrator Selig said nobody should think that Durham was not already doing its part, noting that the Town had the cleanest wastewater treatment plant on Great Bay, and had some of the most stringent non-point source regulations as well. But he said the challenge was that the State and the EPA were focusing all of their guns on wastewater treatment plant discharges, which placed a tremendous financial burden on Durham and the other communities on Great Bay.

He said the blame for the challenge they were facing should be put on DES and the EPA for not being willing to work cooperatively with the towns to allow them to leverage scarce resources to

get the biggest bang for the buck. He said this was the reaction from the communities in the coalition, which had joined together to oppose what was conservatively estimated by DES as a \$250 million cost.

Administrator Selig stressed that Durham should not be put in the same basket as the other communities, noting that the Town was at 8 ppm of nitrogen, while Newmarket was at 30 ppm. But he said this was happening, and said the challenge was that once the draft permit was issued, 3 ppm would be the new standard, and all the communities would be subject to it.

He noted that Durham had received some criticism about the idea of a possible 5 year delay being recommended by Congressman Guinta, but said the Town had been interacting with all of its federal representatives concerning this issue. He noted that Senator Shaheen had also asked for a delay.

He said the coalition had offered some alternative solutions, noting that it had offered to plant eel grass and to contribute a host of other improvements, including studying and funding additional peer review. He explained that while there had been what DES called peer review, the communities viewed this as a less than an objective process.

Administrator Selig said if the EPA was moving ahead with the 3 ppm standard regardless of peer review, the coalition had no interest in paying for the studies. But he said there had been recent discussions with DES representatives, and said hopefully a Councilor Communication would come forward over the next few weeks to recommend that \$60,000-70,000 be spent by Durham toward additional study as well as efforts to make some improvements right now while additional review was ongoing.

He said there was a lot of misunderstanding out there, and said the emphasis on the discharges from the wastewater treatment plants had allowed all of the other communities in Great Bay, which were contributing to the 70-80% of the nitrogen problem but didn't have wastewater treatment plants, to not have to talk about any kind of solution. He said the towns with wastewater treatment plants were saying if there was \$250 million to be spent, they would rather spend it in different areas than upgrading their wastewater treatment plants.

On another issue, Administrator Selig said there had been a break in at the Town Offices on Friday night, and said the Town Clerk's office was accessed. He said it didn't appear that anything had been removed, and said the Police Department would follow up on this incident.

He made note of the fact that the DCI market analysis results were now available, and said he would be thinking about the best way to share the results of the analysis with Durham property owners.

Administrator Selig told Councilors that he'd been approached by Perry Bryant, who owned a parcel adjacent to Mill Plaza, and wanted to know if the Town might be interested in acquiring it.

Administrator Selig noted that a joint appraisal was done of the property in 2008. He said he wanted to see if the Council thought this was a parcel that it might be worthwhile for the Town to own. He said in the past, there had been discussion about purchasing the property for cash or exchanging it for parking at the Depot Road parking lot.

There was discussion that the property was located along College Brook, was in the RA district, and is not Brookside Commons.

Councilor Smith suggested that there could be further discussion on this during the Extended Roundtable.

Administrator Selig said the thought in 2008 was that obtaining the property would give the Town additional leverage with the owner of Mill Plaza owner, and there was also the thought that it could be a buffer area or could be part of a library site.

Councilor Gooze said the parcel was located in the RA district, so not a lot would happen there, especially if there were wetland constraints.

Councilor Marple said she was concerned about the fact that there were wetlands on the property.

Chair Carroll said this was a buffer area, visually, and also might help in terms of buffering the nearby neighborhood from noise problems. She said she wasn't suggesting that the Town purchase the parcel, but said she thought this was worth looking into. She also said if Mr. Bryant was able to build something there, this could be problematic for the neighborhood.

Administrator Selig asked Councilors to let him know if they had any further thoughts on this idea.

Councilor Gooze said he would like to see the actual land itself, and said perhaps the wetland itself was the buffer. He said someone certainly had the right to build on the property if there was land available.

Administrator Selig said Barrett Billotta was interested in selling his property next to the new library site to Scott Mitchell, the owner of the Irving station, and said Mr. Mitchell was interested in buying the Town Hall property and as part of that arrangement transferring ownership to the Town of the Billotta parcel. He said the intended use of the Town Hall site would be a pharmacy, and said Mr. Mitchell would be willing to work with the Town to get the look it wanted. He said Mr. Mitchell also asked if the Town might be open to moving the historic building on the corner, and said he had responded that he didn't think that was the direction in which the Town should move.

Councilor Mower asked if there was discussion with Mr. Mitchell about the availability of the property north of the Billotta property. She said the site owned by Mr. Billotta was rather small.

Administrator Selig said he had not discussed that other property with Mr. Mitchell, and also said there had been no feasibility analysis done of the Billotta site.

Administrator Selig said Tim Elliot from Sora Holdings had recently visited Durham, and said the company was interested in doing a major redevelopment in Durham, such as a hotel, performing arts center, and/or senior housing/adult housing project. He said while here, Mr. Elliot had met with himself, Chair Carroll, Chair pro tem Gooze, Councilor Lawson, Councilor Niman, EDC Chair Tom Elliot, and some University officials. He said when Mr. Elliot left town, it appeared that he thought there were some good opportunities in Durham.

Administrator Selig noted that there would be a public hearing on the Lamprey River Water Management Plan and in-stream flow regulations on May 11th at the NH Fish and Game office in Durham.

VI. Public Comments (NLT 7:45 PM)

Eva Haney, 4 Tirrell Place, reviewed the history of accidents and requests for improvements concerning the Morgan Way intersection. She said she had heard that some were now questioning the wisdom of pursuing this project given other pressing needs of the Town. She asked the Council to consider what town needs were more important than safety issues, and said the photos she had provided to them were just from one of the 26 accidents that had occurred at that intersection.

Patricia White, 18 Williams Way, said the residents of the Morgan Way neighborhood were hopeful that the intersection project would continue to go forward. She said it was becoming much busier on Route 4, and noted that when a neighbor had initially asked the State about this project, she was told that until there was a death, there wouldn't be much action. She said she appreciated the hard work done by the Town so far to get this much needed project done, and asked the Council to allow Administrator Selig to sign the agreement to go forward with it.

Phillip Noury, 1 Morgan Way, said he supported what his neighbors had said. He asked new Council members to visit the neighborhood, and said it wouldn't take long to understand the neighbors' perspective. He said he had witnessed accidents at the intersection, and said this problem really needed to be addressed.

VII. Unanimous Consent Agenda (*Requires unanimous approval. Individual items may be removed by any councilor for separate discussion and vote*)

- A. Shall the Town Council, upon recommendation of the Administrator, accept a non-industrial Wastewater Discharge Permit application submitted by Appledore Engineering, a division of Tighe & Bond, on behalf of Capstone Development Corp. for the proposed Cottages of Durham located on Technology Drive (Tax Map 9, Lot 10-3) and refer said application to the Durham Water/Wastewater/Stormwater Committee for detailed review and approval?
- B. Shall the Town Council approve the State Aid Highway Program Municipal Agreement for the Route 4 /Morgan Way intersection improvement project and authorize the Administrator to sign said agreement on behalf of the Town of Durham?
- C. **RESOLUTION #2011-12** amending membership of the Durham Energy Committee to replace one community member with a Planning Board representative

Chair Carroll noted that there were requests to take Items A and B off the Unanimous Consent Agenda.

Councilor Smith MOVED to approve Unanimous Consent Agenda item C. Councilor Mower SECONDED the motion, and it PASSED unanimously 9-0.

Councilor Niman MOVED to accept upon recommendation of the Administrator, a non-industrial Wastewater Discharge Permit application submitted by Appledore Engineering, a division of Tighe & Bond, on behalf of Capstone Development Corp. for the proposed

Cottages of Durham located on Technology Drive (Tax Map 9, Lot 10-3) and refer said application to the Durham Water/Wastewater/Stormwater Committee for detailed review and approval. Councilor Mower SECONDED the motion.

Councilor Smith said he had asked to pull this off the Unanimous Consent Agenda because the Town Engineer had said he would be at the Council meeting, and because he thought it would be useful to discuss some of implications of the sewer ordinance regarding this application. He said he would like to know what Capstone would be required to do, and said one of the things he was concerned about was that there would be 619 private bathrooms, plus a clubhouse, garbage disposals, washers and dryers, so a lot of water would go into the wastewater stream.

He asked if the DPW had considered having any kind of requirement for a large holding tank/screening area, so things that shouldn't be there could be pulled out of the waste stream. He noted that this process also occurred at the wastewater treatment plant. He said his own experience with student tenants was that no matter what was in the lease, and despite signs, etc., a lot of stuff went into the waste stream that shouldn't go there. He asked if, when the DPW issued the permit, there would be any way to require or encourage Capstone to be really diligent about keeping stuff out of the waste stream.

Town Engineer Dave Cedarholm said that was an excellent question, and was not one that many people brought up. He said it would be easy to highlight this issue for Capstone, and to potentially require that the lease for each resident include a description of things that should not go into the sewer. He said the DPW hadn't done this in the past, but said the Council was now responsible for defining what the conditions were.

Councilor Smith said there would be 140 garbage disposals, and said it would be good if tenants were encouraged to compost, or at least to put food wastes in the garbage. He said it would be good if garbage disposals were not installed.

Mr. Cedarholm explained that food wastes were the least of the problems in the waste stream, and he provided details on this. He also noted that garbage disposals would help to liquefy food wastes so they didn't clog the lines.

Councilor Smith asked Mr. Cedarholm if he was confident that he would get cooperation from Capstone on this issue.

Mr. Cedarholm said he could discuss this issue with them, and said a condition could be included in the discharge permit if the Council chose to do this.

Councilor Smith noted that the Sewer Ordinance in the Town Code said among other things that any garbage not properly shredded was prohibited from being discharged into the wastewater system. He asked if this applied to the Capstone application, and Mr. Cedarholm said yes. Mr. Cedarholm also said the sewer ordinance needed to be updated, and said he'd been working on it.

Councilor Smith said he was sure that the Town Engineer would be diligent on this issue, and Mr. Cedarholm told Councilor Smith he was welcome to come to the next Water/Wastewater Committee meeting, when the sewer permit application would be on the agenda.

Councilor Stanhope said he thought these discussions should take place before that committee, and also said if the standard was going to be applied to Capstone, it should be applied to everyone. He questioned whether Councilor Smith was trying to come up with some ways to slow down the Capstone development, and Councilor Smith said he didn't want to slow it down, or defeat it.

Administrator Selig said he appreciated Councilor Smith's feedback concerning the garbage disposal and pre-treatment issues, but also said he didn't want staff to bring forward anything that in their professional opinion wasn't warranted.

Councilor Gooze said he was comfortable with the Water/Wastewater committee doing the approval, and said if someone wanted to provide an opinion concerning the permit, he thought it should done there.

The motion PASSED unanimously 9-0.

Councilor Stanhope MOVED to approve the State Aid Highway Program Municipal Agreement for the Route 4 /Morgan Way intersection improvement project and authorize the Administrator to sign said agreement on behalf of the Town of Durham. Councilor Smith SECONDED the motion.

Councilor Cote said he had raised this issue previously, regarding the contract with the State. He noted that some Councilors were not on the Council when the initial steps were taken to improve the intersection. He said his greatest concern was that the State would leave the Town on the hook for \$500,000.

He said he was sensitive to the needs of the residents in this area, but said he wanted citizens to be aware that this potential existed. He said the agreement looked iron clad, until the last sentence, and said he was uncomfortable, from an economic standpoint, about moving forward. He also said he was not confident that a turning lane would solve everything, unless other improvement were also made. He said he thought there would be an improvement, but said he wanted there to be discussion about what could happen, going forward.

Councilor Stanhope said he was on the Council for the initial presentation on this project, and said the Council was fully cognizant at the time that the State might not reimburse the Town. He said it would be a very bad precedent to commit to a particular neighborhood that the Town would address a serious safety concern and then later pull back on it. He spoke about the fact that the date the Town would get its money back was uncertain, but said the Council's concerns about safety had overcome any economic concerns.

Councilor Lawson said he realized that it was difficult to assess the safety and economic risks. He said he had experience with the fact that the accidents at that intersection resulted in cars all over the place, and some very serious trauma to those in the cars. He also said the Council hadn't discussed the fact that Route 4 heading west was heavily traveled by trucks carrying hazardous materials, so there was also a risk to a larger area. He said accidents he had seen at the intersection generally involved vehicles making a left turn at night, when it was raining

Councilor Mower said she had met with DPW Director Mike Lynch, and he mentioned a letter concerning the project from NHDOT.

Administrator Selig said the project manager for the State had indicated that DOT had budgeted funding to reimburse the Town as part of the 2012-2013 fiscal years. He said funding was available right now, and said upon awarding the bid, the Town would be reimbursed half of the State's 2/3 portion. But he said this was dependent on whether DOT's funding was challenged, and he provided details on this.

He said the Town knew from the outset that funding was not guaranteed, but said it was considered a hazardous situation because of the high speeds cars traveled in that area, and the project was therefore recommended at that time.

Councilor Mower said she recalled that Mr. Lynch had said the estimated cost for the project was lower than he had anticipated.

Administrator Selig said the estimated pricing had in fact come down, but said this wouldn't really be known until the bids came in.

Mr. Cedarholm explained that the lower cost was based on the fact that the cost of moving utility poles had gone down. He said DPW was about two weeks away from being able to bid out the project, and said they were ready to move forward.

Councilor Smith said he agreed with Councilor Cote that the turning lane would not solve all of the problems. But he said over the last year, he had made a point of trying to get into Morgan Way at various times, and said it was a dangerous maneuver if traffic was stacking up behind the car that was turning. He said the Town was responsible for having permitted the intersection at Morgan Way, and said the layout could have been done differently. He said decades ago, the Planning Board, Board of Selectmen and DPW had signed off on where the intersection was placed. He said he would vote in favor of this project.

Councilor Cote said he had pulled this item off the Unanimous Consent Agenda for his own edification, and appreciated the historical perspective that had been provided.

Chair Carroll said this had been a worthwhile discussion.

The motion PASSED unanimously 9-0.

The Council stood in recess from 8:21 to 8:32 PM.

VIII. Committee Appointment - None

IX. Presentation Items – None

X. Unfinished Business

- A. Continued discussion and action regarding the development of covenants on an application for the Community Revitalization Tax Relief Incentive Program (RSA 79-E) submitted by Bosen & Springer, PLLC, on behalf of Matthew Crape, for property located at 9-11 Madbury Road

Councilor Stanhope recused himself at 8:33 pm.

Administrator Selig said he had had further discussions with the applicant since the last Council meeting. He said he had now provided a draft Findings of Fact and Conditions of Approval that would grant tax relief for a period of 5 years, and that would lay out specific public benefits that would be guaranteed through a covenant. He said the duration of the covenant would extend for 10 years, which meant that the use of the 4th floor would be restricted during that time.

He noted that a series of other questions had been raised and addressed as part of the FOF and COA. He said one was how much value they were talking about, and said the pre- replacement value of the property was estimated at \$574,000, while the estimated value of the new structure was \$3,565,000. He said that was almost a \$3 million difference, and said if the 2010 tax rate was used to estimate what the annual relief would be, this came to about \$81,600 per year. He also said the applicant had identified a public benefit that totaled \$1.6 million, and provided an itemized list concerning that.

Administrator Selig noted that he had spoken with Rochester's Economic Development director about RSA 79-E. He said Rochester had adopted and utilized the statute on some projects, and said he had asked the director how Rochester dealt with the issue of whether the tax relief granted was an equitable amount to provide given the financials of the project. He said the director had said that Rochester didn't really focus on that issue, because the city was so eager to see any kind of investment that if took 5 years of incentive, they were ready to do this.

He said she also had indicated that they weren't eager to include extra criteria, so that if an application basically met the State criteria, the city was pleased to grant the relief in order to spur investment in the Town. He said she had found that this was what it took to get some development. He said Durham was in a somewhat different situation, where there were active applicants who would like to move a project forward, and this placed the Town in a negotiating position to get as much as it could on the public benefit side.

He said the Council could either approve the Findings of Facts and Conditions of Approval and authorize him to sign the covenant document, or it could modify specific items on the list that had been provided.

The Council reviewed the list:

Public Benefit	Net Difference Building Cost
• 4th floor construction (additional structural components, framing, finishes, etc.)	\$680,000
• Architectural pavers for patio construction with cast stone patio retaining wall	\$45,200
• First floor real brick exterior building finish	\$58,450
• second/third/fourth floor 7" profile Certainteed exterior building siding	\$15,700
• 8 roof mounted Apricus AP30 or equivalent evacuated tube solar collectors'	\$67,500
• Large architectural cornice roof detail and building trim	\$48,000
• Architectural residential bay windows w/ large profile(incl constr of windows)	\$43,500
• large profile commercial windows on 1 st & 4 th flr with arch over 4 th flr windows	\$31,000
• 16 camera security system with trilogy locks	\$32,600
• 9 foot interior finished ceiling height on each above grade floor	\$38,000
• 2 pound spray foam insulation on all exterior walls and roof	\$65,000
• High efficiency forced hot water boilers (3 Boilers)	\$10,500
• Upgraded Cabinets, low flow fixtures, countertops, appliances, flooring	\$107,000
Total Additional Cost for Public Benefit	\$1,242,450

Councilor Mower asked Councilors who had participated in Planning Board meetings for the Site Plan and Conditional Use permit applications for this project about the waiver granted concerning burying of utilities, because of some particular issues. She said to her, burying the utilities was a public benefit, and said there hadn't been discussion on this.

Applicant Matt Crape said he believed that the core issue was that there was a sewer main along Pettee Brook Lane, and that if the utilities were buried and this area then had to be dug up, it would impact the service to the building. He said it was a logistical and practical issue, not a financial issue.

Councilor Marple noted that she had spoken with Jason Lenk, an abutter, and said he wanted access to his property by Mr. Crape's tenants to be restricted.

Mr. Crape said he had agreed to provide a solid fence bordering the property line, that got returned to Madbury Road, and said there would be two gates along the back side of the building that would be locked. He noted that there would be no benefit to him to allow such access.

Councilor Gooze asked what percent of the 4th floor would be used as a laundry, and Mr. Crape said it would be about 200 sf.

Administrator Selig said the covenant covered this, and there was discussion.

Chair Carroll asked how large the office space on the fourth floor would be, and Mr. Crape said there was flexibility, in that the area could be easily subdivided, so could be tailored to the market.

Councilor Mower said she was concerned about having a laundry on the 4th floor because it would be restricted to residents, and this wouldn't meet the purpose and intent of the Ordinance. She asked if there was any likelihood that there wouldn't be a laundry, but if there was going to be a laundry, if there were plans to make it so soundproof that it wouldn't disturb other tenants.

Mr. Crape said he'd had the same concern, and noted that his property on Jenkins Court had a thicker wall system, including extra insulation, as well as an acoustical ceiling. He also said the washer and dryers there were on isolation pads to minimize vibration. He also noted that Mr. Johnson had made it clear that this was a commercial laundry, from an access perspective.

Councilor Mower noted that there was the issue of whether there was a public benefit, when there was a 4th floor that was not entirely commercial.

Councilor Smith asked if the tenants were required to use that laundry, and Mr. Crape said no. He noted that it was a card operated system. Councilor Smith said this was not a residential use, and was a commercial laundry facility. Mr. Crape said the commercial tenants would also use the laundry.

Councilor Marple said the percentage of floor space the laundry would take up was insignificant.

Chair Carroll said Mr. Crape had done a wonderful job with the Jenkins Court project in putting utilities underground, including burying some existing wires that had previously been above

ground. She said the results were excellent in terms of improving the view. She said she had been sad to hear that the utilities for this project would not be put underground, but said she realized that there were technical issues involved.

Mr. Crape agreed that the underground wiring looked better.

Councilor Niman said he didn't feel comfortable voting for a tax break of this magnitude. He said there were certain things on the list that he didn't think were public benefits, and also some things that Mr. Crape would do regardless. He said he would only be in favor of providing a tax incentive up to \$241,850, for 5 years at \$48,370 per year. He said he had come up with this by only including the public benefit items that improved the exterior aesthetics of the building.

He said he didn't include the 4th floor as a public benefit, stating that this would happen if it was in Mr. Crape's economic interest to do so. He said he didn't think town government should providing incentives for things that might not turn out to be economically viable.

He also said he didn't think the solar arrays should be considered a public benefit, stating that there were other tax incentive programs that would make solar economically viable for Mr. Crape. He said the security cameras shouldn't get a tax benefit. He also reviewed the interior features proposed as having a public benefit, and explained why they should not receive a tax break.

Councilor Gooze said he saw a possible public benefit from the solar collectors, but said there were tax credits available for this. He said a video security camera system could be useful in that area in deterring unwanted activity. He said he agreed with Councilor Niman on everything but the camera.

Administrator Selig said the cameras would allow the owner to keep an eye on the property, and also noted that footage from the cameras at the Jenkins Court property had been used to pursue perpetrators of crimes in that area.

Councilor Mower said Mr. Crape might be planning to install cameras anyway, noting that they were installed on Jenkins' Court. She said the public derived an ancillary benefit from this. There was discussion, and it was noted that there was a residential property abutting the Pettee Brook Lane property.

Councilor Marple said the use of high quality materials in the building was a good thing, but said she wasn't sure about whether this was a public benefit. She said she wasn't sure why they wouldn't consider the solar array a positive for the Town, noting that the Town was trying to support this kind of thing.

Administrator Selig said the applicant had evaluated the solar array cost, and had ruled it out in terms of the return. He said it had been added back in at the Town's request.

Councilor Smith suggested that they should drop the 4th floor construction and the interior cabinets, fixtures, etc. and keep the rest. He said this would come to \$455,450.

Administrator Selig noted that if they did what Councilor Smith suggested, the public benefit would outweigh the relief provided.

Councilor Mower said the HDC had said that in their opinion, there was no historic value to the existing buildings on the site. But she said she had also heard that the property was part of the first residential subdivision in Durham.

Attorney Mulligan said as part of the inventory prepared for the property, it had been concluded that it was part of the original 4 Square development, but that the property had gone through so much redevelopment that it had retained no historical value.

Chair Carroll said there were some diverse ideas on this list, and suggested that they go through it again.

Administrator Selig said his goal was to try to capture the Council's prior discussion, and find a middle point that the applicant and the Council would be comfortable with. He said if there was a need to modify this current list, they could have that conversation.

Councilor Gooze said he was okay with Councilor Niman's suggestions, plus the camera security system, as well as the solar array if the applicant wasn't otherwise going to do it.

There was discussion on where the figure for the solar array came from, and Mr. Crape provided details on this. Councilor Lawson said the figures the applicant had provided on the solar array were right on. He said a fairly small solar array was proposed, but said he thought it might provide 15% of the energy to the building, which was not an insignificant amount of energy.

Councilor Gooze asked if the Council had the ability to strike out things from the list.

Administrator Selig explained further the process used in developing the public benefits and the covenants. He said the Council could drop something like the 4th floor from the list and the covenants, but said he wasn't sure they would want to do this, because including it would mean that the applicant couldn't go for a variance to transform the 4th floor to student housing during the period of the covenant.

He also said if the Councilor was only going to provide 4 years or relief, the applicant would have to look at things that he might drop from the list. He said it was a negotiation process back and forth.

There was detailed discussion about the 4th floor as a possible public benefit, or not.

Councilor Cote said an issue before the Planning Board had been the view of the building as one was coming down the hill, and he asked if the solar panels could be hidden.

Administrator Selig said they might also want the panels to be overtly visible, to highlight the fact that they were endorsing the use of solar energy.

Councilor Mower said the view issue related to the question of whether there should be a 4th floor in that view. She said she appreciated Councilor Niman's focus on the exterior aesthetic elements of the building, since this was an entrance to Town, and that they wouldn't necessarily see the aesthetic quality they would like to see without some incentive to provide those features.

Mr. Crape said he appreciated the Council going down the list. He said the reason why the overall number was substantially higher than the public benefit was that although there was some expectation that the 4th floor commercial space would be rented, the concern about vacancies was there. He also said the money was invested up front, but the tax relief was given over a period of years. He said taking an item off the list would mean that money would have to come from out of pocket, and said a question was whether that would happen.

Councilor Cote said he was still unconvinced that there was a public benefit to the interior fixtures, etc. He said he would like to see these things swapped out, and in their place they should explore how to bring power in, in a way so that the utilities could be buried.

Mr. Crape said the thought process concerning the indoor features was that better quality fixtures, etc. would result in better student behavior. He also said he could go back to talk with the engineers and the Town to see if the underground utilities could work, if the Council thought this could then be included as a public benefit. He said the current package was already over the 4 year tax relief period, but said he would be happy to take a look at it.

Councilor Mower read from the minutes for the Planning Board meeting where the underground utility issue had been addressed, and then said perhaps there was an option to bury the utilities. There was further discussion, and Chair Carroll said it seemed that there was enough of a consensus that burying the utilities would be a service to the public. She said she wasn't sure they were ready to vote on the application now, and asked if the negotiations could continue.

Administrator Selig said yes, and noted that there hadn't been any negotiations on the underground utilities. He said the next meeting would be the end of the 45 day period, but said the time period could be extended by mutual agreement.

Councilor Niman said he wasn't sure there was a consensus regarding the utilities. He also said this wasn't Rochester. He said there was a strong student market, and said while he appreciated that Mr. Crape would have to put up the cash up front, the project would generate instant cash flow from student rentals.

He said he was looking at what the Town could afford. He said there were big dreams for the downtown, and said it would take money to realize those dreams. He said he was trying to identify those things that they should care the most about, to the exclusion of others, to make sure this was affordable. He noted that the larger the tax incentive provided, the less tax revenue there would be to spend on other things that might create a greater public benefit. He spoke further on this.

Councilor Mower asked Councilor Niman if he thought the solar array or the underground utilities had the greater public benefit, and Councilor Niman said it was the underground utilities.

Councilor Cote spoke about the fact that with a property like this, the applicant had the chance to get tremendous tax relief because of the disparity between the original property value and the property value when the project was done.

Mr. Crape said the increased value also had a continuing benefit to the Town, in terms of tax revenues over the coming decades.

Chair Carroll said the exterior of the building would help the building to hold its value.

Mr. Crape said he thought an assessment would look more at the cash flow and would consider the 4th floor.

Councilor Niman said he thought what Chair Carroll meant was that an aesthetically pleasing building would have value to the community.

Councilor Mower said it was important to remember that the aesthetic quality of the building could also serve as a good will ambassador to the Town, in inviting more development.

Chair Carroll asked if the Council was willing to do anything to spur office development.

Councilor Niman said a question was what would do more to spur the development of high quality office space in town, a 4th floor on this building, or a parking garage. He said there was no parking associated with this building. He said there were things that needed to be done to spur office development, including parking, a place to eat something other than pizza, and other services. He said he wasn't sure that throwing more office space on the market right now when this infrastructure wasn't in place was a smart move on the Council's part.

Chair Carroll said those things involved millions of dollars, and said she was thinking in terms of providing lesser amounts of money through tax relief.

Councilor Niman said they were talking about paying a lot of money to get 8500 sf of office space, and said he wasn't sure it was worth it.

Administrator Selig said Councilor Niman was right when he asked the question of what amount of tax relief the Council was willing to provide to encourage this project. He said the decision was completely discretionary. He provided details on this, and suggested that the Council should determine what they could afford, and then back into that number.

Councilor Niman provided further details on how he had come up with the figure he had quoted.

There was further discussion on whether the 4th floor should be included as part of the public benefits. Councilor Lawson received confirmation that the \$680,000 included structural components as well as finish work for the office space.

Councilor Mower said the Council might also want to consider what other projects might be coming to the Council regarding RSA 79-E. Administrator Selig provided details on other property owners who had been coming to speak to him about this.

Councilor Marple verified that after the period of tax relief, there would be a considerable increase in tax revenue to the Town compared to the current use of the property.

Councilor Lawson asked if there would be discussion with Mr. Crape about building the 4th floor, and not necessarily doing the build out for the offices but saying it would be available for office space if in the future the market demonstrated that this was a good decision. He said the covenant wouldn't require that it be office space, but would require that the 4th story be built and be suitable for offices.

Mr. Crape said that wasn't a bad idea, and said this would mean the exterior would look like it was fully functional. He said there would be the incentive for him to provide the opportunity to take it to the next level, if the market was there for it.

Mr. Lawson said he was trying to work out something that was in line with Councilor Niman's concerns and ideas regarding the exterior, but provided the opportunity for the 4th floor, and showed that the Council would be looking closely at the public benefit. He said he was sold on the benefit in terms of the improved exterior of the building, and realized that this didn't need to be provided in order to have student housing.

There was further discussion on this with Mr. Crape.

Administrator Selig said the property currently paid \$15,000 in taxes, and said the new building would pay about \$96,000 in taxes.

Chair Carroll said if the agreement as stated that evening was put in place, the applicant would pay \$15,000 until the covenant was finished.

Councilor Mower asked whether the Council should consider what size pool of money they wanted to work with over the next 10 years, in terms of tax relief.

After further discussion, Chair Carroll summarized that the Council agreed to go along with what Councilor Niman had proposed, but there were some Councilors who would like to see the solar array included, and some who would like to see the security cameras included. She said the 4th floor was also still on the table for consideration, as was the idea of underground utilities.

Councilor Mower said she would choose the utilities over the cameras because it was possible the cameras would be included anyway. She said she thought they should consider Councilor Niman's suggestion of working within a constraint, but also said she thought Councilor Lawson's approach concerning the 4th floor was very interesting.

Administrator Selig said it would be most helpful to him to find out how many years of relief the Council would be interested in providing.

Councilor Gooze said he would like to go for 4 years, and said he would like to see the project go forward.

Chair Carroll said she would be disheartened if Mr. Crape walked away from RSA 79-E, because the building that was built would be there for a long time. She said they didn't want to lose the progress that had been made with this process.

Councilor Mower said she found the idea of a solar array attractive, but said building a 4th floor could potentially be of greater public benefit at this point in time. She said it was possible that the benefit of solar technology would become apparent to the owner and more feasible as prices dropped, and also said the office space could potentially add revenues and make it possible to have solar. She said she thought a 3-4 year tax exemption made sense, but said she might be willing to go with 5 years if the 4th floor was included. She said she wanted to see the numbers.

Councilor Cote said they had to be concerned about the future as well regarding RSA 79-E, in terms of other projects like the Kostis project that would be asking for relief. He said a question was what the total impact of granting the tax relief would be, and said that was a hard thing to weigh when they were looking at a project that had a lot of merits. He said a question was whether it should be first come first served, or if they should turn off the spigot at a certain point. He said for this application, if they were looking at \$80,000, he would be comfortable with 3-4 years, but not 5 years.

Councilor Lawson said he was flexible, in that if the 4th floor was build-out capable, he would be willing to do the 4 years. But he said if it wasn't, he thought 3 years was appropriate.

Councilor Niman said he would think about it.

Chair Carroll said she would be willing to go with 4 years, with some of the good things included now, including looking at the 4th floor build-out and possible utilities underground.

Councilor Stanhope returned to the table at 9:51 pm

- B. Continued discussion regarding draft terms and conditions between the Town of Durham and Mr. Peter Murphy for the redevelopment of H.A. Davis (Grange) building located at 37 Main Street and scheduling a Public Hearing on the sale of the parcel for May 16, 2011

Administrator Selig said he and Councilor Stanhope had determined what a fair price for the Grange might be, and worked up an initial set of financials and proposals. He said they were able to come to terms with Mr. Murphy, and said the proposed sale price was \$240,000, to be secured over a 5 year period by a subordinate 7% mortgage. He said there would be an annual loan payment to the Town of \$58,533.77, and said the Town would receive approximately \$45,000 annually in property taxes, based upon an assessed value of about \$1.7 million.

He said they arrived at the \$240,000 in a number in a variety of ways, and he provided details on this:

Income

Potential rent	\$ 268,800
Vacancy/ <u>CL@5%</u> \$	\$(13A40)
<u>Management@6%</u> \$	\$(16,128)
<u>Reserves@3%</u> \$	\$ (8,064)
Taxes	\$(45,000)
<u>Other</u>	\$(59,000)
Net income	\$127,168

Value @Ro of 7.5*\$1,695,573

Cost to build:

Grange	\$ (357,500)
New Bld	\$ (850,000)
<u>Soft</u>	<u>\$ (150,000)</u>
Residual to land	\$ 338,073

*Ro based on review of 10 Ro data reports

Subject lot area on tax card .18 acres (43560 x .18 = 7841 sq ft)

GHL land unit value \$65.00 per sq ft x 7841 sq ft = \$509,652.

Mean of two \$423,862 (338,073+ 509,652/2=423,862)

Potential tax savings under RSA 79-E program over 9 years at \$30,000 per year has a net present value of \$160,000, if rounded.

\$423,862- \$160,000 = \$263,862

Current assessment: \$207,300

Mean of two: \$235,581 (207,300+ 263,862 = 471,162/2 = 235,581)

Proposed sale price \$240,000

Administrator Selig said the transaction would include a number of benefits:

1. Moving the Grange building forward to the sidewalk
2. Three workforce housing units in the Grange or in addition (to be determined) w/ associated covenants
3. Retail/commercial use on first floor front part of Grange w/ associated covenants
4. Restore and preserve outside historical look and materials of Grange w/ associated covenants
5. Pedestrian enhancements along side of bldg with ROW access for general public with maintenance and upkeep the responsibility of the new property owner
6. Student housing to rear of Grange structure that is convertible to adult housing when the market permits
7. Universal access apartment

He said if this arrangement was satisfactory to the Council, he recommended scheduling the public hearing. He said at the hearing, he could provide the Purchase and Sale agreement for the Council to act upon, which would be contingent upon Mr. Murphy receiving approvals.

Councilor Gooze MOVED to schedule a public hearing for May 16, 2011 for the potential sale of the Grange parcel to Mr. Peter Murphy for a sale price of \$240,000 paid over 5 years secured by a subordinate 7% mortgage to primary debt with an annual estimated loan payment of \$58,533.77 and an estimated additional \$45,000 in property taxes annually based upon an assessed value in the \$1,700,000 range. Councilor Smith SECONDED the motion.

Councilor Mower noted #5 on the list, and asked if there was discussion on bicycle use of the path, and a possible ordinance change needed for that.

Administrator Selig said this was not discussed, but said he didn't think it would be problematic, since it would be would not be a Town sidewalk, and would be a privately owned property that would guarantee public access. He said the challenge was that the Town didn't allow bicycles on sidewalks.

Councilor Mower said this might be something that was addressed in the narrative. There was discussion about current traffic on that path.

Administrator Selig noted that the Plaza owner would need to be agreeable to upgrade his portion of the path, and said Mr. Murphy would speak with him about this.

Councilor Lawson said what had been put together was a very equitable business arrangement, including taking RSA 79-E out of the equation. He said he was comfortable with the price that was arrived at, but said he was uncomfortable with the Town taking on the subordinate debt. He said he thought doing this had some risks, and asked if this had been assessed. He also asked why this was needed.

Administrator Selig said his impression was that Mr. Murphy would rely on the bank to up front most of the investment, and also noted that banks were very reluctant to take a secondary position behind the Town, unless it was for a tax deed.

Councilor Stanhope said this was a building that was deteriorating, and said if they didn't do this deal as structured, they would deny themselves \$100,000 per year in revenues, and more over time. He noted that if they didn't do the deal, they would be out \$200,000 after a couple of years, which was effectively what the mortgage was. He said he was trying to put revenue streams in place as fast as possible, and also wanted to see this building preserved.

He said the longer they waited, the greater the probability was that no one would take the building off their hands. He said there was some risk, but said they were taking less risk by doing the deal than by not doing it. He said he would prefer not to be in a subordinate position, but said he didn't know of any lender in this environment who would subordinate to the Town.

Councilor Lawson said he understood that and agreed, and said he realized that if they changed their position, financing would be hard to get. He asked why Mr. Murphy didn't finance the whole thing, and not finance part of it through the Town in a subordinate fashion.

Councilor Stanhope said he didn't think he could get that financing out there today, but said Mr. Murphy must be pretty bankable to get any financing.

The motion PASSED unanimously 9-0.

The Council stood in recess from 10:06 to 10:12 PM.

C. Continued discussion and action regarding the development of Town Council goals for 2011/12

Chair Carroll thanked Councilor Mower for editing the goals down to one page.

Councilor Smith MOVED to adopt the draft goals list dated 4/26/11, establishing the goals of the Town Council for 2011-2012. Councilor Marple SECONDED the motion.

Councilor Gooze proposed adding an addition to #1, "...investigating/ exploring the possibility of an agricultural commission.." He said he knew there were people waiting in the wings to bring this forward to the Council for consideration, and said this showed them that the Council was willing to listen to see if this was appropriate for the Town.

There was discussion that this idea had been explored a few years ago, but that it was a different Council at a different time.

Councilor Mower said that regarding #5, which included the Master Plan update, there should perhaps be a very brief chapter on issues of regional concern, or this should at least be addressed in some way in the update. She noted the Strafford Regional Planning Commission's recent letter to DOT provided numerous issues of regional concern.

There was discussion, and Councilor Mower asked Councilors how they could ensure that these issues were talked about. She said this could perhaps be addressed in several chapters. She suggested that wording could be added to #5 that said "...including reference to issues of regional concern where appropriate."

Councilor Niman said he wasn't opposed to the idea in concept, but said he didn't think it fit there.

Councilor Mower said it could be argued that awareness of issues of regional concern should inform the other Master Plan chapters, just as energy issues would.

Administrator Selig said he thought the Town had been and was engaged regionally, and he questioned the need for an additional chapter, stating that they would be lucky to get through the other chapter updates.

Councilor Mower said a separate chapter wasn't necessarily needed.

Councilor Gooze suggested that wording could fit in under #1, as part of the wording on sustainability: "...by embracing the concept of sustainability in its broadest terms, including regional concerns, implementation of...".

Councilor Mower and others said they could accept that.

Chair Carroll said this was now a good working document.

The motion PASSED unanimously 9-0.

Chair Carroll said the Council would touch base with this goals list throughout the year.

Administrator Selig said he would send out the updated goals list to Councilors, Town staff, and boards and committees, and would also put it on the Town web site.

XI. New Business

- A. Discussion on proposed changes to trash violation notice; specifically altering the fine structure – Councilors K. Marple & J. Lawson

Councilor Marple said there had recently been an increase in calls concerning garbage in yards and open areas in Town. She said Councilor Lawson had done a detailed drive around concerning this, and agreed there was a problem. She said with the current fine structure, people were given an opportunity to clean up before getting fined. She said the problem was that some of the yards continued to have trash on them after that, and were given another warning.

He said the hope with this was that there would be one warning, and if the property owner then didn't clean up the yard, there would be a fine. She said if the yard became a problem again, the property owner would then be fined without a warning.

Councilor Lawson said this was about enforcement of the existing code, and not changing the fine, and said a lot of this was based on discussion with Code Officer Tom Johnson. He provided details on this, and said his role was almost like that of a property manager. He said for the people living in the neighborhood, they wound up seeing a repetitive problem, and said it could take 3-4 days for the trash to be cleaned up.

He repeated what was proposed, and said if the violation then wasn't cleaned up, it went into the escalating scale, which was already in the code. He said the hope was that there would be better compliance.

Councilor Gooze said somebody who had property and didn't live there had the obligation to tell those who did live there that they should pick up their garbage. He said he was comfortable with what was proposed, but was interested to hear what property owners would have to say about it.

Councilor Mower MOVED to extend the meeting beyond 10:30 pm. Councilor Smith SECONDED the motion, and it PASSED unanimously 9-0.

Councilor Stanhope said his lease was very clear, that if he got fined, it came out of the security deposit. He said his concern was that Mr. Johnson was a zero tolerance person, and asked whether there would be selective enforcement. He said he didn't like supporting something where that happened, and also asked at what hour the inspection would take place, and how much trash would be considered a problem.

He said he could see the Town getting involved in litigation. He said the question was how to get problem properties into conformity and yet not cause problems for property owners who didn't have students living there but wound up with trash on their properties.

Councilor Gooze said there was a trash violation ordinance now that was subjective. He said he understood what Councilor Stanhope was saying, but also said it was part of community living to clean up trash at times.

Councilor Stanhope said laws had to be uniformly enforced. He said whatever they did, he would like to see that happen.

Councilor Gooze said some discretion still had to be used, or they would never get anything done.

Councilor Niman said he agreed concerning the idea of community, but said the question was how they could get there. He said he wasn't against moving in the direction of what was proposed, but asked how they could teach young people that the nice thing to do was to pick up the trash. He said he would like to see an additional component that included this, but said perhaps that wasn't possible.

He also said he would like the Council to be sensitive to Councilor Stanhope's point about what hour of the day an inspection would occur. He suggested that it should be after noon, which adapted to the students' hours.

Chair Carroll said some students might get tired of cleaning up after other students, and said perhaps this whole thing might evolve into putting out trash cans.

Administrator Selig provided some history on the trash issue, and said when the ordinance first came forward, the fine schedule was much more aggressive than it was now. He said they were toned down a bit, and said it then had to be determined who would enforce the ordinance and how this would be done. He said it was felt there needed to be a systematic approach, and that a warning was an equitable way to proceed before any fines came into play.

He said the act of enforcement was a discretionary act on the part of staff, unless the Council wanted to get very specific on this in the ordinance. He said he wanted to ensure that the Council did this in an equitable way. He said he wasn't comfortable with the proposed form, and said they would be better served with a completely separate warning form that had more proactive language in it about the ordinance and the reason for it.

He said the challenge was that Durham was a town where there would be innocent bystanders in terms of trash on a property. He said the question was whether it was equitable that they should be cited, and said without the warning, the Town started to become overly aggressive. He said if the Council did want to take a more aggressive posture, he was open to revisiting this. But he noted that the present approach could also be quite effective.

Councilor Lawson said ultimately he wanted to solve the problem for properties in the neighborhood that repetitively were looking at the same house with trash for several days. He said he wanted the approach to be equitable, and said he didn't want to see innocent bystanders impacted. He said the repetitive warnings were just putting Durham in the role of being the property manager.

Administrator Selig said inherent in that approach would be some discretion, and he provided details on this. He said more often than not, it would be the rental properties that would be causing the trash problems and so would be focused on. Councilor Stanhope challenged this with a hypothetical situation. There was further discussion.

Chair Carroll said she thought that Mr. Johnson would handle particular situations well.

Administrator Selig also noted that it was often the landowner who challenged whether Mr. Johnson was looking at all properties the same way. He provided an example of where this had recently happened.

Councilor Marple said it just didn't happen that often that there were trash problems in normal households.

Councilor Stanhope said he disagreed with Chair Carroll, and there was further discussion. Chair Carroll said she had seen both sides of Mr. Johnson, and described a situation where he had gotten some kids to clean up the trash in a vacant lot. She said the kids probably felt better about themselves and the community by doing this.

Councilor Cote said any code enforcement officer had discretion, and also said personality affected how much discretion was used. He said they couldn't legislate behavior, but said there needed to be more community spirit involved with this. He said perhaps they could publicize students who took some responsibility for cleaning up trash.

Councilor Gooze said he agreed with the idea of first providing a friendly letter, and said then the warning letter that was proposed could be given to the property owner.

Councilor Stanhope asked if there was some threshold of trash abuse in the neighborhood.

Councilor Lawson said that was an interesting idea, and said he was confident that Administrator Selig and the staff could come up with guidelines to use, which would get at the really egregious properties.

Chair Carroll said Mr. Johnson was a very busy man, and said most of the trash complaints were called in by neighbors. She said from what she had heard, most neighbors were too patient, and didn't complain until the third day or so after a party.

Councilor Stanhope said perhaps this could be complaint driven, and he spoke further on this.

Chair Carroll said she wasn't sure she wanted to stop Mr. Johnson from enforcement if this was needed in a particular circumstance. She said they needed to find a way to clean up the Town as well as possible, while hurting the least amount of people. She said there definitely was a desire in Town to take care of the trash issue.

There was further discussion. Councilor Lawson said he was satisfied that Administrator Selig had heard what he and Councilor Marple had to say and would make some decisions about what could or could not be done differently.

It was noted that there would be a discussion on this issue at the Rental Housing commission meeting.

Councilor Cote asked if a DPW employee could be on call on the weekend to clean up trash at a property, which could then be charged to the property owner. It was noted that the Town would have to pay overtime for this work, and also could not go on private property. There was discussion that DPW did clean up trash in the public way in front of properties.

Chair Carroll said this had been a good discussion, and said they would find a way forward.

Councilor Gooze and Councilor Stanhope said they would work with Administrator Selig on this issue.

B. Other business – There was no other business to come before the Council.

XII. Nonpublic Session (if required)

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

Councilor Smith noted that at the last meeting, he had objected to the DPW customer service survey. He said the Police Department also used this phrase (“customer service”), and said he objected to this concept of customers because he grew up in the south at a time when wealthy white people could afford the best police and sheriffs they could buy. He said there was a lot of inequity, and said it was a bad model for the police department to use.

He said he had gone to the public comment portion of the CALEA process that day, and said while there he had asked the CALEA representative if their standards referenced customer service. He asked if any Councilors would agree that they should not think of their citizens as customers of the town, and that they should not allow the Police Department to keep making reference to the customer service model.

Councilor Stanhope said he respectfully disagreed, as did Councilor Cote and Councilor Gooze. Councilor Lawson said on the three occasions that the police had been at his house, he had found that they provided excellent service, and seemed to value him as a taxpayer, and as a member of the community. He said if this could be called something other than customer service, that was fine with him.

Councilor Smith said that was appropriate, but said there was a difference between serving the public and thinking of the public as a customer. He said the word customer implied that one could buy something from the police department, such as paying \$1,000 to get off the hook for a drunk driving arrest. He said that was what happened when one thought of citizens as customers.

XIV. Adjourn (NLT 10:30 PM)

Councilor Niman MOVE to adjourn. Councilor Cote SECONDED the motion, and it PASSED unanimously 9-0.

Adjournment at 11:08 pm

Victoria Parmele, Minutes taker