

**This set of minutes was approved at the June 20, 2011 Town Council meeting**

**Durham Town Council  
Monday May 16, 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:** Business Manager Gail Jablonski (sat at the Council table in place of Administrator Todd Selig who left at 7:14 PM due to illness); Police Chief David Kurz; Public Works Director Mike Lynch; Town Engineer David Cedarholm

**I. Call to Order**

Chair Carroll called the meeting to order at 7:05 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**

April 4, 2011

Page 6, 4<sup>th</sup> paragraph from bottom, should read “..a possible pilot bike route project...”

Page 14, under Rental Housing Commission category, should read “...about joining the RHC.”

Page 17, 2<sup>nd</sup> paragraph, should read “...and other non-arms-length transactions.”

*Councilor Mower MOVED to approve the April 4, 2011 Minutes, as amended. Councilor Cote SECONDED the motion, and it PASSED unanimously 9-0.*

**V. Councilor and Town Administrator Roundtable**

Councilor Gooze said he was away for the Planning Board meeting, but watched it on DCAT. He deferred to Councilor Smith.

Councilor Mower noted that there were some challenges viewing meetings on DCAT on demand, if one had a Macintosh platform, and said she had asked the DCAT administrator about this.

Councilor Smith said the Planning Board postponed the election of officers because there weren't enough board members present. He said members were appointed to other boards, and said he would continue the Conservation Commission, Richard Ozenich would serve on the HDC, Peter Wolfe would serve as the first Planning Board representative to the Energy Committee, and Susan Fuller would continue on the EDC.

He said there was a public hearing on Dick Gsottschneider's site plan application and Conditional Use permit application, and said the site plan was approved, but the Conditional Use Permit application wasn't voted on because there weren't enough members present for a supermajority, so deliberation on that application would take place at the next meeting.

Councilor Smith said there was also a Conditional Use permit application to construct a deck and a garage at a property on Cedar Point Road. He said the deliberation on that application as well would be continued to the next meeting.

He said there was a request for the Technical Review committee to review a proposal to put a Mexican take-out restaurant in the basement of the building that formerly housed Hayden Sports.

Councilor Mower said at the Wednesday Traffic Safety Committee meeting, the first item on the Agenda would be continued discussion of the joint work being done by the Energy Committee and the DPW on the pilot bike lane proposal.

Administrator Selig left the meeting at this point (7:14 PM).

She also said noted that the Council should anticipate a discussion on a potential conservation easement for the Beaudette Farm. She said the Conservation Commission had been asked to contribute \$50,000 toward the easement, and said there had been initial discussion by the Commission on the project with former Chair Duane Hyde.

Councilor Smith said the proposal from Great Bay Partnership was to buy most of the fields, and said the house and six acres would remain with the estate. He said there was no interest on the part of the heirs in restoring the land to fields and agriculture, and said he hoped the part of the property to be sold would remain in agriculture.

Councilor Mower said the Master Plan survey postcard had been sent out, and she provided details on this.

She noted that University planner Doug Bencks had recently brought a plan for the new Business School to the Planning Board, and as part of this, there was discussion about infrastructure improvements along Garrison Ave. She said it would be a good idea to get some formal agreement, in writing, about this.

Councilor Stanhope said the Historic District Commission hadn't met, because there wasn't a quorum.

Councilor Marple noted the upcoming event to honor Swap Shop volunteers for their service to the Town. She also said there would be a Rental Housing Committee meeting at 4 pm on Wednesday.

Councilor Mower asked if Administrator Selig should be asked about the idea of a formal agreement with UNH concerning infrastructure issues on Garrison Ave., and other Councilors agreed this was a good idea.

Councilor Gooze said the Rental Housing Commission had asked the owner of the property at 5 Bagdad Road to come to their upcoming meeting to discuss some significant problems with a neighboring property.

He also noted that he's sent an email to Councilors about someone he had spoken to who lived near William and Mary College and was working with other residents to deal with some student housing problems there. He said Durham was not alone concerning these kinds of problems.

Councilor Cote said he had been distressed to hear that the person living at 5 Bagdad Road was moving out, and clearly because of the neighbors. He said this person had been driven out because of student behavior. He said he hoped that person did attend the RHC meeting, because something had to be done about this problem.

There was discussion about the fact that the University had been contacted about this problem. It was noted that Ann Lawing of UNH had spoken to three of the tenants at the house that was causing the problem.

Councilor Mower asked if there was a sense that this had been passed up along the line at the University.

Chair Carroll thanked Councilor Cote for bringing up this issue. She said she had noticed in talking to residents that they didn't want to call the police. She said there needed to be more investigation of where the breakdown was and what the Council could do about it. She said the Council and the Rental Housing Commission could perhaps make some suggestions to residents.

Councilor Cote said the problem was the persistence of particular properties having good times Wednesday through Saturday.

Chair Carroll said it would be interesting to address that issue if it came out of the discussions.

Councilor Gooze said he, Councilor Stanhope, Mr. Johnson and Administrator Selig would be getting together to work on the proposed ordinance concerning trash violations.

Chair Carroll said the Council would most likely hear from Administrator Selig during the extended Roundtable discussion.

Business Manager Gail Jablonski joined the table in Administrator Selig's place.

**VI. Public Comments (NLT 7:45 PM)**

**Phyllis Heilbronner, Mill Pond Road**, noted that she had worked for Professor Henry Davis, and said he was a wonderful person who had done wonderful things for the Town and the University. She said having the Grange named in his honor was fitting, and said she hoped the name would remain. She said this would be especially appropriate because the building was situated in the heart of Durham, where Mr. Davis's heart had been.

She expressed some concerns about moving the building, and said she hoped it wouldn't be damaged, and that its essential character wouldn't change. She said she understood that the uses of the building would change, but said she liked the green spaces on Main Street, and questioned whether every building on Main St had to hug the sidewalk. She also said she was concerned about having more housing for students, especially at the back of the building. She said student life, values, and habits had changed, and noted the large student complex in works adjacent to the cemetery. She questioned the need for more student housing, and asked the Council to move with caution concerning this.

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

**Councilor Smith MOVED the following items:**

- A. Shall the Town Council, upon recommendation of the Administrator, approve a road closure request submitted by the Durham Parks & Recreation Department/Committee to conduct the Town of Durham's annual Memorial Day Parade to be held on Monday, May 30, 2011?
- B. Shall the Town Council, upon recommendation of the Administrator, approve a road closure request submitted by the Oyster River Alumni Association, the Bobcat Bolt, and the Oyster River Festival to conduct a 5k and 10k road race and community music/art festival fund-raising event to be held on Saturday, June 25, 2011?
- C. Shall the Town Council, upon recommendation of the Administrator, approve a road closure request submitted by the Durham Fire Department to conduct a fire apparatus parade to be held on Saturday, July 23, 2011?
- D. Shall the Town Council authorize the Administrator to sign the Town of Durham's 2011 tax warrant (1<sup>st</sup> half) and direct the Town Clerk-Tax Collector to collect partial payment of property taxes assessed on April 1, 2011?
- E. Shall the Town Council, upon recommendation of the Administrator, award a bid to Reed & Reed, Inc. in the amount of \$1,420,700.00 for construction of the Wiswall Dam Fish Ladder project and authorize the Administrator to sign associated documents?
- F. Shall the Town Council, upon recommendation of the Administrator, award a bid to CUES, Inc. of Amherst, NH and authorize the purchase of a new 2011 utility body and aerial lift with attachments in the amount of \$39,895.00 for the Department of Public Works?
- G. Shall the Town Council, upon recommendation of the Administrator, authorize the purchase of Draeger self-contained breathing apparatus in the amount of \$193,555 from Northeast Rescue Systems of Boston, MA for the Durham Fire Department?
- H. Shall the Town Council, upon recommendation of the Administrator, award a bid to Northeastern Fire of Chesire, CT and authorize the purchase of a custom Marion pumper tanker in the amount of \$464,989.00 for the Durham Fire Department?

- I. Shall the Town Council, upon recommendation of the Administrator, review and readopt the Town of Durham's Investment Policy as required by New Hampshire Revised Statutes Annotated (RSA) 41:9?

Councilor Mower suggested that in the future when there was a permit application involving not just the closing of roads that the site of amplified music be noted as well.

***Councilor Stanhope SECONDED the motion, and it PASSED unanimously 9-0.***

**VIII. Committee Appointments - None**

**IX. Presentation Items - None**

**X. Unfinished Business**

- A. **PUBLIC HEARING** and discussion on next steps regarding the sale of the Town-owned H.A. Davis (Grange) building located at 37 Main Street to Peter Murphy for the productive reuse/redevelopment of the parcel and structure

***Councilor Smith MOVED to open the Public Hearing. Councilor Cote SECONDED the motion, and it PASSED unanimously 9-0.***

There were no members of the public who wished to speak.

***Councilor Smith MOVED to close the Public Hearing. Councilor Cote SECONDED the motion, and it PASSED unanimously 9-0.***

Councilor Stanhope read an email from HDC Chair Leslie Schwartz concerning the proposal:

*I regret not being available to join you in the flesh this evening and therefore request that you present this statement on my behalf and that of the Historic District Commission (hereafter HDC and/or Commission) as a whole.*

*Since our site-walk at the Durham Grange this past winter, I have been an advocate of the proposed resurrection of the property and the potentialities engendered therein. Mr. Murphy has appeared before the HDC, and various iterations of his proposal have been reviewed. While further adjustments may be yet to come if the Town enters into a final agreement with Mr. Murphy (who would thereafter reappear before the HDC), the evolution of his proposal accurately and directly reflects recommendations made by the Commission thus far.*

*The present state of the Grange is one that detracts from the town on a number of levels. It is the perspective of the HDC that the proposed repurposing will rectify much, if not all of this situation. Renovating and reusing the building will at once function to preserve an essential historic structure in the heart of Durham AND to improve the aesthetics and balance of the business / historic districts by bringing a well -maintained, productive edifice to the street line. This in turn will help draw focus away from some of the less enchanting structures situated within the same optical landscape, and perhaps inspire abutters and other proximate owners to improve their respective properties in like-kind.*

*The renovation and repurposing of the Grange will mean the preservation and worth-while reengagement of a sizable, centrally located historic property, a property which has too long lain fallow.*

Chair Carroll said that after hearing from Mr. Murphy, the Council could discuss whether to go forward with the Purchase and Sale agreement.

Mr. Murphy said the proposal hadn't changed much since the last time he had met with the Council. He also said he appreciated the points made by Ms. Heilbrunner.

Councilor Gooze suggested re-opening the Public Hearing so there could be further discussion with members of the public.

***Councilor Smith MOVED to reconsider the vote to close the Public Hearing. Councilor Cote SECONDED the motion, and it PASSED unanimously 9-0.***

***Councilor Smith MOVED to close the Public Hearing. Councilor Cote SECONDED the motion, and it FAILED unanimously 0-9.***

Mr. Murphy said that regarding the idea of naming the Grange, he would be happy with whatever name was chosen, and said he would be glad to name it in honor of Professor Davis.

Ms. Heilbrunner said that would be great.

Mr. Murphy provided details on green space that would be provided on the property, including on the areas on both sides of the path on the side of the building. He said the whole lot was about 8,000 sf, and less than half would be developed, so the rest of the lot except for the path would be green. He provided details on the design for the path and surrounding greenery.

Ms. Heilbrunner noted that there were buildings nearby on Main Street that had green space in front, and she suggested leaving a little green space at the front of the Grange property as well, and not having the building come right up to the sidewalk.

Mr. Murphy said he would be glad to provide a bit of green space in front as well, by removing one or more of the benches.

Ms. Heilbrunner thanked Mr. Murphy for agreeing to name the building after Mr. Davis.

Mr. Murphy said he would be glad to do this if there were no major objections. He then reviewed in some detail the design for the project.

Ms. Heilbrunner questioned the need for more student housing, as well as the idea of students and adults living near each other as part of this project.

Mr. Murphy said he did believe there was a need for the student housing he proposed, which would be new, improved housing located in the center of Town and also close to the University. He noted that there was a lot of demand for the housing he had provided at his new building on Rosemary Lane, because students living there could walk to the University and to downtown. He also said the students liked the fact that the spaces were bigger and had more bathrooms. He said he was confident that he could put out a product for which there would be good demand.

Concerning having workforce housing along with student housing, Mr. Murphy said the plan he thought would work best was to put the student housing in a separate building from the workforce housing so that they wouldn't share common walls and would have separate entrances. He acknowledged that it was a challenge to mix the two, and also said the workforce housing would lend itself to a single person or young couple who were used to hearing noise, but not to a family.

He said spray foam insulation and insulated windows would be used to address possible noise issues, and also said property management would be used in order to try to make the workforce housing effort a success. There was discussion about the property management service Mr. Murphy currently used at his property on Rosemary Lane, which was what he would use at the Grange property. He said it seemed to work pretty well. He also said that outdoor space for gathering on the property would be limited, noting that this was a main concern because of the location and profile of the buildings. He also spoke about the care that would be taken to maintain the walkway on the property.

Councilor Gooze suggested the possible need for trash receptacles there. There was discussion that there was concern about people in the building making noise that would disturb people at the Plaza, but that there was also the opposite concern, that people at the Plaza might disturb residents at the Grange.

Councilor Gooze asked how the workforce housing portion of the development would be administered, and Mr. Murphy said he would pay for this, and said he had discussed the documentation that would be needed with workforce housing consultant Jack Mettee.

Councilor Smith said that right now, the walkway to the west of the building began as a wide paved space, was marked as a fire lane, and was used by the people next door. He said there were frequently vehicles parked there, and he asked Mr. Murphy if he would be able to keep people from driving in and parking there.

Mr. Murphy said he didn't think that would happen, noting that a survey of the property would be done, and the area would then be designed to include the walking path, shrubbery, retaining wall, and fence, so everything would be marked out.

Councilor Smith said because the Grange hadn't been used by the Town for some time now that fire lanes had become convenient parking for people.

Councilor Marple asked how people moving into and out of the apartments on the site would be able to get close enough access to the building.

Architect Nick Isaak suggested that there could be a gate, and it could be opened for move in day and move out day.

Councilor Smith asked if the Fire Department had signed off on the fire lane issue, and Mr. Murphy said he would be addressing this issue with them.

Councilor Mower asked what the width of the sidewalk along Main St in front of the Grange would be relative to Libby's sidewalk, and Mr. Isaak said one of the reasons for the survey was

to work this out. Councilor Mower noted that she had had some concerns about sidewalk width for the building that replaced Houghton's Hardware.

She also asked if there had been discussion yet concerning the extension of the pathway on the Grange property beyond that property onto the Mill Plaza property.

Mr. Murphy said this hadn't been discussed yet, but said it would be if his project gained some momentum.

There was further discussion about the issue of sidewalk width. Councilor Mower confirmed that Mr. Murphy's most recent plans had been discussed with Administrator Selig.

There was discussion on the Offer Statement presented by Mr. Murphy. He explained that there was now just a single option, rather than two, and said he had gone with the smaller of the two in order to be able to provide more green space. He said this brought the number of students from 38 down to 30. He spoke in detail on how the \$240,000 sales price was arrived at between himself, Administrator Selig and Councilor Stanhope. As part of this he explained how the potential tax savings was factored into the analysis.

Councilor Mower asked when the annual loan payment to be made to the Town was proposed to start, and Mr. Murphy said this hadn't been determined yet.

There was discussion on this between Mr. Murphy and Councilor Stanhope, with Councilor Stanhope stating that it was likely that there would be an annual loan payment that would be paid at the end of each calendar year.

Chair Carroll said the taxes on the property would be paid as they came due. It was noted that the current assessment for the property was \$207,300, and that this would be the basis for the taxes to be paid in 2011.

Mr. Murphy said he was shooting for June 2012 to complete the project.

Councilor Stanhope said the buildings would effectively be completed as of 2012, and tax revenues for the Town would come in by the end of that year.

Chair Carroll spoke about the fact that the workforce housing aspect of the project was a pilot project for the Town and Mr. Murphy, and asked how it would be determined if it was working.

Mr. Murphy provided details on this, and there was discussion that if hypothetically student rents were flat over the next decade and the demand for workforce housing rose to the level where it exceeded the demand for student housing, Mr. Murphy would adjust the occupants in order to fit with the market.

There was further discussion on the financial figures that had been provided by Mr. Murphy. He explained that the \$58,000, annual payment to the Town to pay off the loan would come out of any profits from the buildings, and said if someone can up short, it would be him and not the Town. He said profits would be a little thin for the first few years, but said that as with past



projects he had done, there was always a safety net factored in. He said he would provide a revised schedule to the Town.

Councilor Gooze said he was comfortable with the proposal, based on what he had heard that evening.

Councilor Cote said he was comfortable with it as well. He said the project would preserve an historic structure, would provide pedestrian access to Mill Plaza, would provide a presence on Main Street, and would make efficient use of the property.

Councilor Lawson said his own analysis of the financial figures had yielded a number that was similar to what was proposed, so he was comfortable with the sales price.

Councilor Marple said it was a good project, and said she appreciated the fact that Mr. Murphy had been willing to work with everyone in order to make it so.

Councilor Cote said this was an opportunity to improve a building that had not been getting any better with age. He said the proposed development would greatly enhance the Main Street corridor, which was an entryway to Durham.

Councilor Niman said this was hopefully the last time the proposal would be discussed, so the papers could be signed and Mr. Murphy could proceed with construction at all haste.

Councilor Gooze said he was fine with the proposal. He noted that people did ask about how much student housing could be supported, but said the recent market study done for the Town indicated that it could be supported. He said he believed that if a good project was done, and was within walking distance to the University and to Town, it would be filled. He said there would have to be a decision about whether they wanted every building to be like it, but said they weren't there yet.

Councilor Stanhope said that as a member of the HDC, he realized that it was critically important that the Grange building be preserved. He said if the Town wasn't going to dispose of it, it would need to invest some capital into it, but said the Town didn't have this capital. He said the HDC was very happy with the proposal. He also said this project would turn the property into one that would provide significant tax revenues for the Town while also addressing the issues of workforce housing.

He also noted that the project would represent smart growth, by concentrating development in the community core within walking distance of a full range of services, thus counteracting sprawl. He said the project represented a win for history and good planning, and also said the sales price was a fair number.

Councilor Mower said she agreed with what other Councilors had said. She said the concern about whether non students could live with students was one she had shared. But she noted a comment made during the Mill Plaza study process that mixed housing had often resulted in mitigating the behaviors they were concerned about, and said this was worth the gamble. She said she would like to see this project provide an incentive for surrounding property owners to upgrade their properties.

Councilor Smith said he agreed with what Councilor Stanhope and Councilor Mower had said. He noted that he had been on the Mill Plaza Study Committee, so was glad to see some things going on in that area. He said he thought the proposed development fit with what was happening at the Plaza and in the downtown, and said he was ready to go forward.

Councilor Mower noted that there had been some concerns about whether the Grange building was structurally sound enough to survive being moved.

Mr. Murphy said the company that would do the work had experience moving historic buildings, and had looked at the foundation, etc. He said they were comfortable that the building could be lifted onto the new foundation.

Mike Sievert, the engineer for the project, said the assessment on this indicated that the bottom floor of the first floor could be removed, and the building could be put on new slab with a new floor for the first floor. He provided further details on this, and said the plan was to start construction before July. He said the original stone foundation wouldn't be needed, and a new foundation would be put in. He said the stones would be reused as part of the retaining walls on the property.

Chair Carroll said she was very comfortable with the project. She noted that this Council and previous Town Councils were interested in increasing the vitality of the downtown, and said they were seeing new buildings and new businesses. She said what was proposed would be a great project, and noted that it would be a public/private partnership. She said it would be a model that could be used in redeveloping the downtown, for the betterment of Durham. She thanked Mr. Murphy for working with the Council on some things it was interested in seeing for the downtown, and making them a reality.

Chair Carroll said the Council would ask Administrator Selig to move ahead with the Purchase and Sales Agreement.

***Councilor Smith MOVED to close the Public Hearing. Councilor Cote SECONDED the motion, and it PASSED unanimously 9-0.***

The Council stood in recess from 8:44 to 8:55 PM.

- B. PUBLIC HEARING AND ACTION ON ORDINANCE #2011-03** amending Chapter 153 “Vehicles and Traffic”, Article IV “Metered Parking” of the Durham Town Code by creating a new section, Section 153-29-D “Petite Brook Lane (Southerly Side)” and initiating several wording changes therein, and providing Council “advice and consent” for approval of proposed changes to the Master Fee Schedule as recommended by the Administrator

***Councilor Mower MOVED to open the Public Hearing. Councilor Gooze SECONDED the motion, and it PASSED unanimously 9-0.***

There were no members of the public who spoke at the hearing.

***Councilor Smith MOVED to close the Public Hearing. Councilor Mower SECONDED the motion, and it PASSED unanimously 9-0.***

Chief Kurz explained that what was proposed was a result of some recommendations from the B Dennis report. He said now that it had been determined that the experiment to provide parking spaces on the left side of Pettee Brook Lane had worked, this parking would be formalized by creating an ordinance that required people to pay in order to park there. He said this would be married with the existing provisions in Article IV of the Town Code.

There was detailed discussion about the wording in Section 153-29 D.1: “There shall be no parking on the southerly side of Pettee Brook Lane commencing at the egress of the "Tedeschi" parking lot and continuing westerly for three (3) designated parking spaces until to the intersection of, Jenkins Court continuing westerly for four (4) parking spaces until to the entrance of the permit parking area continuing westerly for nine (9) parking spaces until to the egress of Ocean National Bank and continuing westerly five (5) designated parking spaces.”

Chief Kurz said there had been a lot of discussion about the wording on parking between Jenkins Court and the Tedeschi lot, and said this could be worked on further.

Councilor Stanhope said he could not support 153-29 D 1 if it maintained the three spaces there. He said he thought there was a serious safety issue, and said if the Council wasn't willing to amend this, he couldn't support the proposed Ordinance.

He also said that regarding 153-29 D 6, he had thought that if he parked more than two hours in a space, he could be subject to a ticket, but not towing.

Chief Kurz said this was standard verbiage, and said towing could occur but had not occurred.

Councilor Smith asked if there was anything in the Ordinance that mentioned ticketing, and Chief Kurz said this was addressed elsewhere in the code.

There was detailed discussion on 153-29 D.4: “The fees for parking in these designated meter controlled slots-spaces shall be established in the Master Fee Schedule as amended on occasion, with a two (2) hour maximum time limit. This fee shall be-apply between 6:00 a.m. and 9:00 p.m., Monday through Friday, and 6:00 a.m. and 5:00 p.m. on Saturday, holidays excepted.”

Chief Kurz said the idea had been to make the Town more business-friendly on Saturday, but noted that there was inconsistency between the provisions for the four parking areas addressed in the Ordinance.

Councilor Gooze suggested that for 153-29 D.1, it would be simpler to say there would be no parking except in designated parking spaces.

Councilor Marple said she hated on-street parking, stating that because of the cars she couldn't see down the street. She asked if people had complained about this.

Chief Kurz noted that there had actually been more spaces there and this had been scaled back somewhat. He said he was ok with the on-street parking because it made people more cautious, and they had to pay more attention. But he said there had been some complaints about the parking.

Councilor Lawson said during the pilot last summer, there was feedback from members of the community about the challenges of pulling out onto Pettee Brook Lane. He said a parking space near the exit from Jenkin's Court was taken out and this had increased the sight distance. He said there were no further complaints from those who had previously complained.

Councilor Smith said there were a number of references about spaces controlled by meters, and he asked for details on this.

Chief Kurz said whichever method was used, it would be controlled parking.

Councilor Smith said he thought what this meant was that people would have to pay for the parking.

Councilor Mower asked Chief Kurz to explain why according to 153-29 A.4, no parking was allowed in the Pettee Brook Parking lot between 1 am and 6 am.

Chief Kurz said this was a Town owned parking lot and the Town didn't want people to park their overnight.

Councilor Mower noted that 153-30 indicated that Pettee Brook Lane parking was on the East/West side of the road, and said she thought this should instead say the North/South side. There was discussion.

Chief Kurz said he agreed, and said these kinds of mistakes could be addressed. He also said he liked the wording Councilor Gooze had suggested for 153-29 D.1. He said the important thing was that it was understood that a parking control system was being put in place.

There was further discussion.

Councilor Lawson suggested that they first address parking on Pettee Brook Lane, and as part of this keep the narrative consistent with the Ordinance for now. He said there could then be a second effort to clean up Chapter 153, Article IV and make the wording read more clearly.

Chief Kurz suggested that he could have a work study student tackle that second effort.

Councilor Mower agreed that Councilor Gooze's suggestion for 153-29 D.1 might be appropriate to do now. There was further discussion.

Chief Kurz said he would make that change now assuming that the Council didn't think it was a substantive change. But he stressed that it was important to move now on the proposed changes to the Ordinance specifically concerning Pettee Brook Lane. He said they needed to some experimenting concerning metering there. He also noted that there would be a lot of construction going on in that area this summer.

Councilor Stanhope asked if parking was policed in the summer, and Chief Kurz said this was done on a random basis. He provided details on this. Councilor Stanhope noted that the parking space he had expressed concern about was marked for a compact car. He asked if someone driving a bigger car was ticketed if they parked there, and noted that this kind of situation made it hard to see.

***Councilor Smith MOVED to adopt as presented, Ordinance #2011-03 amending Chapter 153 “Vehicles and Traffic”, Article IV “Metered Parking” of the Durham Town Code by creating a new section, Section 153-2-D “Pettee Brook Lane (Southerly Side)” and initiating several wording changes therein, and providing Council “advice and consent” for approval of proposed changes to the Master Fee Schedule as recommended by the Administrator. Councilor Lawson SECONDED the motion.***

Councilor Smith said he was very uncomfortable with some of the wording in the Ordinance, but said he didn’t mind being uncomfortable, and said if this motion passed, somewhere down the line someone would have to do the work of revising this whole section on parking.

Councilor Mower proposed a friendly amendment to 153-29 D.1 to read “There shall be no parking except within designated parking spaces.”; and to 153-30 to read, under Side of Pettee Brook Lane parking lots “North/South”, and under Location read “to include the metered north lot”.

Chief Kurz asked that wording for all four metered parking areas be consistent to allow free parking on holidays and Saturdays. There was discussion that the wording should say weekends, not just Saturdays. There was further discussion on what holidays were included under the word “holidays”.

Chair Carroll suggested that the wording would remain has “holidays” for now, and could be worked on later.

Chief Kurz summarized that the Ordinance would indicate that for all 4 metered parking areas, the parking fee would not apply on holidays and weekends, and would say “weekends and holidays excepted”.

***The motion PASSED 7-2, with Councilor Stanhope and Councilor Cote voting against it.***

Chair Carroll asked if each time there was a violation, this would be considered a separate violation, and Chief Kurz said that legally, each two hour block could be considered a separate violation. Chair Carroll said a merchant on Main Street had said he had occasionally seen someone leaving a car parked in a space for a number of hours, but there was only one ticket issued. Chief Kurz said if there was a problem like this, police staff could pay attention to it.

- C. Continued discussion and approval of Findings of Fact and Conditions of Approval and covenants relative to 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 9:26 pm.

Chair Carroll noted that Administrator Selig had to leave, so wasn’t present to provide the Council with the update he had been prepared to give. She said Business Manger Gail Jablonski would fill in for him. She asked Mr. Crape if there was any new information that he wanted to bring forward to the Council.

Mr. Crape said he and Administrator Selig had met on Wednesday, and said he had put together a 4 and 5 year option. He said he had wanted Administrator Selig to review it first to see if was acceptable to bring forward, so he could then bring it back to the investors.

He said he made some progress with the investors, but said he had hoped to make more progress than he did. He said some people were ok with what was proposed and some had some hesitancy. He said he thought that what would happen was that the Council would vote however it thought was acceptable, and he would have to bring that decision back to the investors and get approval or not.

Chair Carroll asked if Mr. Crape was there without a definite direction from the investors, and Mr. Crape explained the sequencing of the communications the previous week.

Councilor Mower asked Mr. Crape if in his opinion, more time for discussion between himself and Administrator Selig, and between him and the investors would be an option.

Mr. Crape said he appreciated the offer, but said he was under the direction that this process had gone on long enough.

Chair Carroll said the Council could decide to offer the 4 year option, and the investors could then say they were counting on 5 years, but she said the Council had to do what it had to do.

Mr. Crape agreed. He said he had hoped to have more confirmation, but said there was a difference of opinion among the group of investors. He said they were all committed to providing all of the items on the list, if the 5 years of tax relief was granted and there was a 10 year covenant.

Councilor Gooze asked whether, if the Council decided that 5 years was too much, that meant Mr. Crape would create a building that would be ugly, and that wouldn't rent well. He asked if the good finishes, windows, etc., would not be done.

Mr. Crape said he was in the middle right now. He said the investors were not local, and said this was an investment property to them. He said they felt the student market was there, and that by default this project would be better than other rental properties provided downtown.

Councilor Lawson said he had received the list of 5 year relief and 4 year relief, and said his incorrect assumption was that either would be acceptable, noting that the 4 year relief removed some items from the list. He said he was disappointed that the Council could choose the 4 year relief and then find that this was not acceptable.

He asked whether, if the application wasn't approved and the Christie-style building was to be done, this would have to go back to the Planning Board. He said he had gone through the Planning Board files, and saw the management plan, which had a lot of these things in it. He spoke further on this.

Councilor Smith said he wasn't certain, but said he didn't think the architectural style of the building was an issue in the application, unless it was specified in the conditions of approval.

Mr. Crape said the size of the windows, the siding, the interior products were not part of the conditions of approval, and said they had more to do with the height of the building and the fact that the first floor would be commercial and the fourth floor would be commercial. He said the site plan application addressed stormwater issues, the building footprint and wetland setbacks.

Councilor Mower noted that the amended site plan said there would be two phases, with the second phase involving construction of a fourth floor.

Mr. Crape said there was the opportunity, with the amended site plan, to allow for a three story or four story building to be built.

Councilor Gooze said he had read the Minutes for this. He said the proposal included certain architectural windows, as proposed. He said typically something was presented to the Planning Board, and an application was approved based on the plans that were shown to them. He said he wasn't sure if that didn't need to go back to the Planning Board, if the applicant wasn't doing the conditions of approval

Councilor Smith said if there was any proposed change that contradicted what was in the conditions of approval or the site plan, then the Planning Board would get involved again.

There was discussion about the graphic that was provided to the Planning Board on the project. Councilor Lawson said it showed the Certainteed siding and the windows that they were talking about. There was discussion.

Councilor Mower asked if it was a reasonable conclusion that this was therefore not an added benefit.

Chair Carroll said it sounded like the investors might be working under a misassumption that the building could be built inexpensively, and could look like Tom Christie's building, while the Planning Board had seen graphics which lead it to expect a different kind of building would be built.

Councilor Smith said there was discussion by the Planning Board that Nick Isaak had created a good design, and that the building would look good. He said he didn't know the extent to which the building must look exactly like what was in the packet.

Councilor Mower said she would assume the Planning Board made a ruling based on the materials submitted to it.

Chair Carroll said she was hoping that Council members would say what their opinion was at this point. She said she believed Councilors were operating under the assumption, as they prepared for the meeting, that a 4 year or 5 year relief would be acceptable.

Councilor Lawson said he had reviewed the information that was provided. He said he didn't think the interior features had a public benefit, and also noted that those features were included as part of the management plan that was approved. He said he thought there was the possibility of moving forward with the 4 year plan, but said if there wasn't the support of the investors for this, he wouldn't be pushed to go to the five year plan because of that. He said he had started with the 4 year plan, but said he wasn't sure now whether he was willing to proceed.

Councilor Marple asked Mr. Crape if they wouldn't build the building if the Council didn't agreed to 5 years.

Mr. Crape said the building would be built, but said the question would be whether the 4<sup>th</sup> floor or the finishes would be included.

Councilor Marple asked if it was arguable that the building was more valuable with 4 stories than with 3 stories.

Mr. Crape said the value was there for increased tax revenue over the life of the building. He said as far as the public benefit was concerned, the EDC and other members of the community had been trying to promote a more mixed use building. He said allowing for the Town to help push the project in that direction by subsidizing the opportunity for 4<sup>th</sup> floor office space would have value.

He said the reception on Jenkins Court for 4<sup>th</sup> floor office space had not been strong. He said half of that 4<sup>th</sup> floor had been empty and said without Tom Elliot beating the drum, there would be nothing.

Councilor Marple said the recent town-wide market survey had said there was a market for office space in Durham, and said Mr. Crape was contradicting what this survey said.

Mr. Crape said if there was a tenant, he would take him.

Councilor Lawson said this was also dependent on how effective a property owner was at marketing a space. He said he believed there was a market.

Councilor Marple said she was willing to go the extra mile for the 5 years at this point.

There was discussion that the line items for the 4 year and 5-year approaches were not set in stone, and that there was flexibility.

Mr. Crape said it was up to the Council to make its decision, and said he would bring this to the investors. He said he wouldn't say no to anything.

Councilor Cote said he wasn't comfortable with some of the interior items on the list, and said some of them were required by code anyway. He said he failed to see a public benefit in some of them, and also said he couldn't make a decision on this that evening as to which way to proceed.

Councilor Niman said he was in favor of no tax relief, stating that he hadn't realized they were playing a game until he had gotten the email from Administrator Selig on the 4 year vs. the 5 year relief. He said this had left a bad taste in his mouth, and said this had been the case since the beginning, when the Council was told it had to do this because it had granted the tax relief for the fraternity and if not, there would be a building like Tom Christie's building.

He said he was concerned about the bigger picture, which was that every developer would come to the Council and say they were going to build an ugly building unless they got the maximum amount of tax relief, and the Council would have to acquiesce because it didn't want ugly buildings downtown. He questioned whether this was good public policy, and if this would then distort natural economic incentives while costing the taxpayers money.



Councilor Niman said a question was what else they could do with \$400,000, and he provided details on this, saying among other things that it could be used to give Town employees a raise, promote energy programs, etc. He said if the Council decided that security cameras were a good idea, they could buy them.

Regarding the 4<sup>th</sup> floor issue, he noted that Administrator Selig was advocating a Zoning change to allow commercial uses on the first floor and three floors above it as residential uses. He said by the time this building was built, residential would perhaps be allowed on the 4<sup>th</sup> floor, which would make the Council look like fools in granting this tax break.

Councilor Niman said the Town might also choose not to make this Zoning change, and he also noted that there had been discussion about whether 4 story buildings should be built in that part of the Town. He pointed out that the B Dennis plan talked about a more gradual height increase in the downtown. He said he wasn't sure they all wanted 4 stories there, and said they could give a tax break for 4 stories that everyone then hated.

He repeated that he was very reluctant to sanction this present process by giving tax relief, and said he worried about what it meant for the next protect. He said when RSA 79-E first passed, he was eager to support it because there were some projects that couldn't be done without it. But he said here was someone who bought the building permits from the owner of the property, and fully intended to go forward with the project. He said the tax relief wasn't needed in order to get the building, and said he therefore felt very uncomfortable about funding upgraded cabinets with tax dollars.

Mr. Crape said he was very sorry if this had come across this way, because it was not his intent.

Councilor Niman said it was the Council's responsibility to safekeep the Town's money, and said it was unfortunate the way that things had unfolded.

Councilor Gooze said everything had unintended consequences, and said that was the case with RSA 79-E, because unfortunately the Council had not planned out ahead what it would mean. He said it would important for the Council to discuss further possible enhancements to the provisions.

He said this whole process also spoke to the need for the Planning Board to move ahead significantly concerning the development of design standards/guidelines. He said he had started out in favor of this application, but said he had been listening to Councilor Niman and others. He also said he felt this project was presented to the Planning Board in a certain way, and they approved it based on what they saw. He said if it wasn't built at least somewhat like this, it would be said that the conditions of approval were not met.

Councilor Gooze said until the Council got things straightened out with RSA 79-E, he was against doing anything, and particularly in this instance when he didn't think the public benefit was good enough.

Councilor Mower said some people might argue that the reason the Planning Board had permitted large student housing buildings was to a certain extent to get the expanded tax base, so was giving away tax benefits without very clear public benefits. She said while it might be true that there wasn't gaming going on, it did seem that when one looked at the list of suggested

public benefits that there were some questionable items. She said when one eliminated those that didn't fall under the public benefit, and those that were already incorporated into the management plan or site plan, one wasn't left with much.

She also said a 4<sup>th</sup> floor in this location was very tricky, and said she wasn't particularly in favor of it. She said if there was going to be a 4<sup>th</sup> floor, the decision had to be made by the owner about the economic advantage.

Councilor Smith said he had nothing new to add to what others had said.

Chair Carroll said there were certain things that would be expected in terms of this building, even if nothing happened concerning 79-E.

Councilor Lawson said the materials were included in some of the diagrams provided to the Planning Board as part of the project application.

Chair Carroll said these materials showed the Planning Board what would be built, so they could expect that this was what would be built.

Mr. Crape said it was new to him that those items were included, and said he didn't know that there were any specifications.

Councilor Lawson said the original application under RSA 79-E included two handwritten pages, and said the Council was also told in the application that more information had been submitted as part of the Planning Board process. He said his assumption was that the diagrams and management plan were part of the Planning Board documents. He said the Minutes of the Board's discussions were also included in the folder.

Chair Carroll asked if the management plan spoke about security cameras, and Councilor Lawson said yes. He said that he recalled it also included the concept about upgrades to the apartments to encourage better student behavior.

Matt Crape said he would have to go back and read this.

Chair Carroll said if it was in the management plan, that meant that was what the developer was going to do.

Councilor Smith said that was what the developer said he was going to do, and was part of what encouraged a Planning Board to have a positive reaction to a project. But he said he didn't think there was anything in the conditions of approval that specified architectural details. He reviewed the site plan conditions of approval for the application and amended application, and said all it said was that it was a 3 story mixed use building. He also said the amended application proposed a 4<sup>th</sup> floor.

There was discussion about whether this was how someone typically interpreted something like this.

Councilor Smith said the Planning Board went forward with a lot of hope and trust that things would play out as described by the applicant, but said he couldn't remember ever having language that said the building would have to look exactly like what was in the architectural renderings.

Ms. Jablonski said she believed that if it said as proposed, it was as was presented. She said there could be small changes, but it couldn't go from being a brick building to a vinyl sided building without going back for changes.

Councilor Mower said there would then be a difference between the as built plan and the site plan, and said she thought there would be consequences as a result of that.

Councilor Lawson said in the interest of moving this forward, he agreed that the interior features proposed did not provide a public benefit. He said based on previous discussion, he did believe some of the exterior features had a public benefit, especially because this was a gateway building into the community. He asked if it would be possible to look at the 5 year list.

He said he had come up with a cost value that was around \$300,000, and said this didn't include the solar heating. He asked if it would be reasonable to say that this was what the Council thought was the public benefit, and that it would approve it over 4 years. He said if Mr. Crape and the investors didn't want to proceed, then so be it.

Councilor Mower said she liked that idea. She also said they wouldn't have the \$320,000 to do something else with, if this wasn't built this way. Councilor Lawson said if a Christie style building was built, the value wouldn't be as great, but it would still have some value. Councilor Mower said the value to the Town would probably be greater if there was a higher aesthetic at that location.

It was noted that the Council could choose which items had a public benefit. There was further discussion.

Councilor Lawson said if the solar collector was taken off the list, the total cost would be a little less than the benefit, at 4 years. He said he didn't have a problem with this because this might help Mr. Crape with his investors because it would help with cash flow for the 4<sup>th</sup> floor while they were trying to market and fill it. He noted that he wasn't optimistic, because the Council had been told the investors expected 5 years. He said what he was saying was a 5 year plan with a 4 year tax incentive.

He said with this proposal, all the interior items should be taken off this list, along with the solar collectors.

There was discussion that tax incentives were available for the solar collectors, with Mr. Crape noting that he had looked at this for the Jenkins Court project, but it was still cost prohibitive.

Councilor Lawson said he was comfortable with the 4 years but not requiring that. He also said he was very comfortable with everything that Councilor Niman had said.

There was discussion about the 3<sup>rd</sup> floor finished usable and occupiable rooftop deck for tenants.

Mr. Crape said if the 4<sup>th</sup> floor was built, it would have to be set back. He spoke about the issue of access and usability of that space. There was discussion that this was the first time the Council had seen information on this.

Councilor Lawson said excluding the solar panels and excluding the 4<sup>th</sup> floor, the cost would be \$241,850. There was discussion that considering \$80,000 per year, this would bring down the tax benefit to 3 years.

Councilor Lawson said one of the intents of RSA 79-E was to assist for a shorter period of time with cash flow. He said if they did 4 years, this would allow Mr. Crape to go back to his investors and say the Town had offered assistance with cash flow oriented toward the 4<sup>th</sup> floor in these economic times, when it took 6 months to a year to lease a space. He said that was why he was comfortable with the 4 years, but said the total was actually 3 years.

Councilor Gooze noted that this whole project was originally presented without RSA 79-E. He asked if there were Councilors who didn't want to use RSA 79-E for this project, and he, Councilors Niman, Cote, and Smith raised their hands. He said someone therefore needed to provide a proposal that people would be comfortable with.

Councilor Mower said she was on the fence about this. She said she had focused on the aesthetics as being the public benefit in this instance, and said she could see room for improvement in terms of materials used in some other buildings that had been built in Town. She said she didn't know whether with this project, they would see what they already had in Town without some kind of incentive.

Councilor Gooze said he thought they would see something like the Rosemary Lane property or the Jenkins Court property, but not something like the Christie building.

Councilor Niman said they didn't know. He said what Councilor Lawson had said about how to get to the 4 years was very reasonable, and made good sense, but he said he didn't think they could afford it. He said he had suggested the exterior features for 3 years at the last meeting, but that didn't go very far. He said the reason he wasn't coming back to that now was his concern that in the future, other developers would put a gun to the Council's head, and say unless they got the tax breaks, they would build an ugly building.

He said the Council would wind up having to give up future tax benefits for every building in Town. He said if the way they were going to expand the tax base was with the downtown, and they gave away the tax benefits, the question was what they would be left with.

It was noted that this was why design standards/guidelines were needed.

Councilor Marple asked for an example of a project that could use RSA 79-E.

Councilor Niman noted that when they had first discussed the statute, there was discussion about the potential for a hotel project downtown, but the economics didn't work for this use because the land values were very high since student housing could be built there and was considered the highest and best use.

He said with RSA 79-E, the thought was that tax benefits could perhaps change the economics so something like a hotel could be built but he said with this current situation, the economics were already very good in that the building would primarily be used for student housing. He said the only reason there was a commercial component to the project was because the Zoning Ordinance forced the developer to do this. He said even though they were forcing this, the economics were already so favorable that the developer was going to do this anyway.

Councilor Niman said where the Council was at now was where Councilor Mower was at, in that they should have had more regulations in place to control the look of things. He said if those were in place, they probably wouldn't be talking about a tax break right now for this project. He said the issue now was whether they had some control in terms of the Planning Board process, and said this was unclear. He said when the owner went forward originally, certain representations were made concerning the pictures and how the building would look. He said the question was whether they were bound by that.

He said if they were, then the question was why they were talking about tax breaks, unless they wanted to encourage the 4<sup>th</sup> floor. He said he agreed with Councilor Lawson that the commercial market would be there at some point but wasn't there right now. He said if they wanted to encourage the construction of a 4<sup>th</sup> floor, RSA 79-E made sense, presuming they wanted a 4<sup>th</sup> floor. He said they would then need to figure out what the value of that subsidy should be.

Councilor Mower said she would say no to RSA 79-E.

Councilor Gooze said another way to do it would be to say 3 years, and leave it up to Mr. Crape and his investors to decide if they wanted to do it. He said this way, the Council wouldn't have to worry about what the Planning Board did or didn't do. He said from that standpoint, he would go with what Councilor Lawson had said, for 3 years.

Councilor Mower asked whether if they voted for 3 years, and 3 x \$80,000, they could designate specific features, and the investors would be committed to delivering those features.

Councilor Gooze said yes, and said it would be part of the covenant.

Councilor Mower said she was under the impression at the last meeting that there was some discomfort with specifying the features, as compared to a dollar amount.

Councilor Gooze said he would be willing to keep it to the exterior. He and others discussed the importance of doing the design standards/guidelines, and he also said they would get better with the RSA 79-E process, with each application.

Councilor Niman said it would be important to send the message that the Council wouldn't roll over and give people what they wanted because of the threat of an ugly building.

After detailed discussion, ***Councilor Gooze MOVED that the Durham Town Council does hereby grant tax relief for a three year period pursuant to RSA 79-E to 9 Madbury Road, LLC, for the property at 9-11 Madbury Road and authorizes the Town Administrator to sign a covenant to ensure that the public benefits outlined in the following list taken from the email sent by the Town Administrator dated Thursday, May 12, 2011 at 4:23 pm shall be preserved***

*pursuant to RSA 79-E:8, said covenant to be for a period of six years.*

- *4<sup>th</sup> floor construction (additional structural components, framing, finishes, etc.)*
- *First floor real brick exterior building finish*
- *Second/third/fourth floor larger profile (7") Certaineed exterior building siding*
- *Large architectural cornice roof detail and building trim*
- *Underground PSNH utilities(Contingent upon additional approvals as necessary)*
- *3<sup>rd</sup> floor finished usable and occupiable roof top deck for commercial tenants*
- *Stone patio pavers with cast stone patio exterior wall finish*
- *Architectural residential bay windows with large profile*
- *Large profile commercial windows on first and fourth floor with arch over fourth floor windows*

There was discussion that the Findings of Fact and Conditions of Approval would have to be redone to reflect this list, before the Council voted on it.

***Councilor Mower SECONDED the motion, and it PASSED 7-1-0, with Councilor Smith voting against it.***

Councilor Smith said he voted against the motion because of the potential for confusion in the motion.

Councilor Mower asked when the Council could expect to get a reply, and Mr. Crape said he would work on this immediately.

***Councilor Mower MOVED to extend the meeting past 10:30 pm. Councilor Smith SECONDED the motion, and it PASSED 8-1, with Councilor Stanhope voting against it.***

Chair Carroll said the Council wanted to see the downtown developed with a lot of vitality, and she noted that Mr. Crape was not new to this. She said she hoped that anyone who invested in this project would take pride in what they were building, because it was serving a community, and the people of Durham. She said they would be the people who would be looking at that building every day, and said it would mean a lot to them.

She said the Council respected the investors' need to look carefully at their figures, and said she hoped the investors would respect the Town with the decisions that were made about something that would be virtually permanent in the community.

- D. RESOLUTION #2011-11** implementing enhanced guidelines for use by the Town Council in weighing applications under NH Revised Statutes Annotated (RSA) 79-E "Community Revitalization Tax Relief Incentive" enabling municipalities to provide for short-term property assessment tax relief

Councilor Stanhope returned to the table at 10:31 pm.

Councilor Marple said based on the discussion with Mr. Crape, it seemed that the guidelines should say that the way the Council wanted buildings to look needed to be a mandatory item, and perhaps needed a separate paragraph.

Councilor Mower said if the Planning Board adopted design standards, they would be mandatory. She said if it was design guidelines that were instead adopted, she thought the RSA 79-E guidelines should still say that design provisions should be mandatory.

Councilor Marple agreed.

Councilor Smith said the draft language for these guidelines did address some design issues, and he referred to this wording. He said he didn't know that they needed new language.

There was discussion that saying that if an applicant met two or more criteria, he would essentially get the tax benefit taken away from some of the discretionary authority of the Council.

Councilor Mower agreed that it was a tricky threshold, and there was further discussion.

Councilor Gooze noted that for a particular project, the two criteria an applicant focused on might not be what the Council particularly wanted to see.

Councilor Niman said it could also be a situation where an applicant invested a lot in meeting one criterion, and the Council could then let the others slide. He said requiring that two criteria would be met might take away some of that discretion.

Councilor Stanhope said watching the previous discussion, he had seen that it wouldn't be easy for anyone else to come forward with an application under RSA 79-E. He also said the criteria were somewhat vague, and said it would rest on the Council to determine what these criteria actually meant, and how they were met. He said when he originally supported the adoption of RSA 79-E, he saw it as being for a property like the Grange, or the Red Tower, for something like condominiums where the pricing wouldn't otherwise work on its own.

He said the demolition and redevelopment applications were far more complex in terms of using RSA 79-E. He said he thought with Mr. Crape's development, the application was something that happened after the fact. He said Councilors made a reasonable decision, but it took a lot of time. He said he didn't know how to efficiently correct that situation, other than having the applicant say what they were asking for and what they would do. He said the Council that evening had been negotiating with a single party, who now had to negotiate with his investors. He said this wasn't an efficient way to run a government.

Councilor Lawson said a challenge he had was situations, especially those involving student housing, where an economic incentive really wasn't needed. He said he would like the discretion of applying RSA 79-E in situations where there was a benefit to the Town, and the economic incentive was needed to make it viable, and not applying it when there was a student housing component and the developer hadn't demonstrated that something was really required.

He said with student housing, the tax benefit was more like a reward rather than a partnership with the Town to make a project work. He said if there wasn't a metric in the criteria associated with the economics and detailed financials, they would always be at risk of being in that position. Councilor Niman asked if that was perhaps all they really needed. He said he would be comfortable having that as the only criterion, and said it was really the only way he wanted to do RSA 79-E. He said that evening he had felt that the idea was that there was free money, and said he thought they should avoid this.

Councilor Stanhope said the application should also meet something that the Council wanted.

Councilor Niman said the application should reflect something that the Town wanted in a situation where the economics didn't otherwise work.

Councilor Stanhope said that was how he had understood RSA 79-E should work when it was initially proposed. He said the project that evening was a big student housing project that would go forward there anyway, and said a question was whether the Council even wanted it there.

Councilor Gooze suggested the following wording "should ensure that said project shall take the following objectives into consideration." He said this would keep things discretionary. He also said he didn't think the next application would be difficult for this Council, having gone through the current process.

Councilor Lawson suggested that an applicant would have to meet the criteria Council Niman spoke about, and would also have to meet all of the criteria on the list unless the Council specifically waived each of them.

Councilor Cote said that would make for long meetings, and also said it might preclude something that they hadn't even thought of.

Councilor Mower said it could say: "...accomplishes local objectives, such as....". She also said she liked the first step of saying it wouldn't happen without the economic aspect.

There was further discussion about possible wording at the bottom of page 2, and the following was developed:

"WHEREAS, because of the unique economic conditions, community character, and local planning and development goals of the Town of Durham, if a proposed substantial rehabilitation or replacement meets the basic threshold criteria outlined pursuant to RSA 79-E:7, the Town Council shall at its discretion ensure that said project also accomplishes local objectives such as those outlined in the document titled "Town of Durham Public Benefit Determinations Relative to RSA 79-E 'COMMUNITY REVITALIZATION TAX RELIEF INCENTIVE':"

Ms. Jablonski also noted that there would be the following wording at the beginning of the second document:

If a proposed substantial rehabilitation or replacement meets the basic threshold criteria outlined pursuant to RSA 79-E:7, the Town Council shall ensure said project also accomplishes local objectives such as :

Councilor Mower suggested that the last Whereas paragraph could be taken out of that document and put in as the introduction to the second document.

Councilor Gooze suggested that the Council should give the document to Administrator Selig, who could discuss it further with Councilors who volunteered to help him. He said it could then be brought back on the Unanimous Consent Agenda at the next meeting.



Councilor Niman said there needed to be something in there such as “...but for the tax relief, a proposed substantial rehabilitation or replacement would not be economically viable, and it accomplishes local objectives such as those outlined...”.

Chair Carroll said she agreed with this, but said she didn’t know how the Council would know they couldn’t do a project without the tax relief.

Councilor Lawson said as part of an application, a developer would have to provide substantive, verifiable financial data and projections, just as they would provide to a bank. He said members of the Council would have the expertise to determine that this was reasonable.

Councilor Niman said what Peter Murphy had done was what the Council should expect.

Councilor Mower and Councilor Stanhope both said that presumably the Council would be seeing this financial information earlier on with a development proposal, rather than when it was essentially shovel ready.

Councilor Niman said he would work further with Administrator Selig on the RSA 79-E guidelines.

**XI. New Business - None**

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

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

Councilor Cote and Councilor Mower spoke briefly about the importance of having a formal agreement between the DPW and UNH regarding infrastructure issues on Garrison Ave.

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

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

Adjournment at 10:53 pm.

Victoria Parmele, Minutes Taker