

This set of minutes was approved at the September 12, 2011

**Durham Town Council
Monday August 1, 2011
Durham Town Hall - Council Chambers
7:00 P.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 Jim Lawson

MEMBERS ABSENT: Councilor Kitty Marple

OTHERS PRESENT: Administrator Todd Selig; DPW Director Mike Lynch; Business Manager Gail Jablonski; Fire Chief Corey Landry; DPW Director of Operations Douglas Bullen

I. Call to Order

Chair Carroll called the meeting to order at 7:04 pm.

II. Approval of Agenda

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

III. Special Announcements - None

IV. Approval of Minutes - None

V. Councilor and Town Administrator Roundtable

Councilor Gooze said the Planning Board had a public hearing last Wednesday on the Scorpions site plan application to put a deck on the back of the building, and it was subsequently approved. He said there were some suggestions provided to the applicant regarding lighting, since what was proposed was close to the Grange building. He said there was also a good discussion about addressing possible noise coming from the deck.

He provided details on this, and noted that while these things couldn't be required, the applicant had accepted the ideas, including the idea of having a person on the deck to make sure there was no access directly to it from outside unless there was an emergency. He said this person would also be responsible for keeping the noise down.

Councilor Gooze said there was a hearing on an amendment to a previously approved site plan and CUP re burying electric utilities underground at 9-11 Madbury Road. He said this was approved, and said there was agreement that there would be concrete encasement of a portion of the conduit.

Councilor Gooze said there was a public hearing on the Grange site plan application, as well as discussion with the applicant on bike storage, and on drainage issues and how this related to the abutter (Mill Plaza). He also said there was discussion on the issue of school impacts fees. He said the hearing would be continued to the August 10th Planning Board meeting.

He said there was a public hearing on the Beaudette subdivision application, which was approved after discussion.

Councilor Smith noted that this application had to do with carving off an approximately 5 acre lot with a house on it, near the corner of Bennett Road and Route 108. He said the house had been unoccupied for several years. He said as part of this project, more than 60 acres of the farmland had been conveyed to the Nature Conservancy, and said it would subsequently be conveyed to NH Fish and Game.

Councilor Mower said on behalf of the Energy Committee, she wanted to thank the DPW for improving the bike route on Madbury Road. She noted that this was an experiment, and said there might be some tweaks to it.

Councilor Gooze said he had realized in riding his bike that there were now some visible bike lanes in the downtown area, and there were people using them. He said it was fantastic to see this coming to fruition in Durham, and he thanked those who were pushing for this.

Councilor Cote said he'd received a complaint from a resident about the confusing yellow striping as one went up Madbury Road.

Chair Carroll said the DPW director was present, and said she was sure he would look into this.

Councilor Stanhope said as someone who biked every day, he found pleasure in using the new bike lanes. He said the only issue he saw was that there were a number of large potholes in the bike lanes, as well as sewer grates, which presented a hazard to bikers. He said there was some responsibility to make these lanes safe.

Chair Carroll thanked Councilor Stanhope for bringing that issue forward. She said it was clear that the Town had taken a big step forward to offer bike lanes that separated the bikes from cars, but she said it wasn't the last step. She encouraged others with observations to bring them forward.

Councilor Mower said the Energy Committee was aware that not everyone was familiar with NH State law regarding cars vs. bikes. She said some outreach concerning this was needed, and said she'd asked that this issue be put on the Traffic Safety Committee's agenda. She said notice on this could be put on the Friday Update and DCAT.

Councilor Gooze said when cars coming from Main Street made the left by the Post Office, there was a tendency to think they was free and clear, while those coming in from the traffic light had to stop. But he said as a car came around that corner, there might be someone backing into one of the new parking spaces on the left. He said he thought this could be a problem at some point, and said the Traffic Safety Committee needed to take a look at it.

Councilor Cote said there might also be someone pulling out of the Post Office lot.

Councilor Mower asked Councilor Niman what his experience had been with the bike lanes.

Councilor Niman said he still felt very uncomfortable riding his bike downtown. He said making that turn onto Madbury Road and having to then get into the bike lane wasn't very safe. He also said he would like to see the State put a finish coat on Route 108 heading to Newmarket.

Councilor Mower said she had called NHDOT on this, and was told they were done with their work and weren't even going to sweep up the excess material that had been left behind.

Councilor Lawson said the Economic Development Committee met in July, and said the focus of the meeting was on the need for and benefits of a downtown TIF (Tax Incremental Financing) district. He said several members were continuing to work on this in advance of the August meeting, and said the idea was to bring forward some recommendations to the Council in the fall.

He said in August, there would also be a briefing on the results of the Master Plan survey. He said the EDC hoped to look at the survey as it related to business and the tax base, along with the business visitation results and the market study. He said he hoped that the EDC would bring forward recommendations deriving from that work.

Councilor Lawson said the Strafford Regional Planning Commission was putting together a broadband stakeholders group, and said he'd been invited to participate in it. He explained that the goal was to determine and prioritize the need for broadband services; develop solutions to barriers for deployment; and foster collaborative efforts among the various stakeholders. He said based on his own professional background, he was very excited about this initiative, and said it was important to economic development. He said he would report back to the Council on this.

Councilor Lawson noted that at the last Council meeting, he had expressed some frustration about limitations with enforcing the proposed trash ordinance, especially concerning leeway given to property owners on the weekends. He noted that he had suggested that perhaps police officers could enforce the ordinance on weekends, when they weren't as busy.

He said he had since realized that this suggestion was as inappropriate as saying the Code Officer should do traffic enforcement. He apologized to the Council as well as the Police Department for his suggestion, stating that he should not have commented on the workload of police officers on weekends, because he knew nothing about this.

Councilor Mower said businesses and others responsible for large amounts of trash that wasn't contained over the weekend should be accountable for that trash. She said the Council should look into a possible code change regarding this, or something should be incorporated into the solid waste ordinance. She said in light of the revelation last week about downtown rodents, the Council shouldn't let a public health issue like this not be acted upon.

Administrator Selig said on the other side of that issue, he'd received an angry phone call that day from a landlord who was cited early that morning for putting large amounts of trash out on the curb, several days before collection day. He said the landlord had not been sympathetic to the issues the Town was trying to deal with.

Councilor Mower said at a recent nonpoint source advisory committee meeting, the issue was brought up that when trash was left out for too long, animals got into it and dragged it near water bodies, which contributed to nonpoint pollution. She said it was a public health issue, and said the Council should urge the Code Officer to continue to do what he was doing concerning enforcement.

Administrator Selig said the Durham Police Department had recently received its national accreditation rating, which was the sixth time this had happened. He said the department had a lot to be proud of, and said his Friday Update would provide a link to information on the kinds of things that were looked at as part of the accreditation process.

He said he and Business Manager Gail Jablonski had a very productive meeting the previous week with Leon Levesque, the interim Oyster River School District Superintendent and ORSD Business Manager Sue Caswell.

Concerning Agenda Items VII A and B, Councilor Mower asked if there was any additional rationale provided by the Town Assessor to explain why he didn't agree with Mr. Garvey's evaluation of the property. She said she would have expected that there would be some kind of comparables provided.

Administrator Selig said what was in the packet was the information the Assessor had provided. He also said the Assessor's rationale regarding these properties seemed to be sound.

Councilor Stanhope said it was up to the taxpayer to prove the case, and it wasn't up to the Town to do this.

Chair Carroll said one of the new, more recent businesses in town, What a Crock, located on Jenkins Court had closed during July because the students were gone. She said they had moved the business to the Farmers Market and had apparently done very well with this. She said the business would return to Jenkins Court on Monday, and said they were a great addition to Durham's downtown.

She noted that the Strafford County Conservation District (SCCD) had sent her a letter, as Chair of the Town Council, which she'd brought to Administrator Selig's attention. She said because of a reduction in the budget, the programs they provided had been pretty much zeroed out. She said the letter described the services they had offered, and noted what each

town in the County had contributed in the past. She said Durham had contributed just over \$6,000 per year.

She said the letter asked that towns still might like to contribute, and said this seemed to be something the Council could talk about. She said it was a difficult and delicate situation, noting that the SCCD had provided services that probably paid for themselves. But she said on the other hand, if towns decided to provide this money directly to the SCCD, the State might say that it no longer had to think about providing funds to them. She said these were the times they were living in.

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

John Kraus, 7 Cutts Road, said there was a dichotomy in Durham, and said he would provide photos to demonstrate what the special interest elite got and what the rest of the citizens lived with. He said one photo showed the pre-existing Faculty neighborhood sign on Mill Pond Road, as well as the newly installed sign. He said a third photo showed the condition of Sunnyside Road in his Wedgewood neighborhood, which he called an outlands neighborhood.

He said something was wrong, and said this special signage cost probably cost \$3,000-4,000. He asked why in a time of budgetary constraint there was money for this. He said that same money would patch potholes in his development. He asked what was wrong with the priorities of the Council and the Town Administrator. He said there were barely passable roads in the Wedgewood neighborhood, and asked why one neighborhood got special treatment.

Mr. Kraus noted that on the Agenda, there would be discussion on possible alternatives for trash collection, when this was perhaps the last service in value they got for tax dollars. He said meanwhile, there was money for unnecessary signs and Smith Chapel in the Faculty neighborhood.

He noted that some Unanimous Consent Agenda items denied abatements to Rockingham Properties, and he questioned why everyone wasn't putting in for an abatement, when the Town was selling the Grange for 14% of its assessed value (\$240,000 vs. \$1.7 million). He said this sounded like a good deal for someone, but not the Town taxpayer.

Mr. Kraus asked the Council not to be disingenuous by cutting services and crying poverty, when it displayed blatant favoritism and bad financial management.

Councilor Niman asked where Mr. Kraus had gotten the \$1.7 million number, and Mr. Kraus said it was on the Friday Update.

There was discussion. Councilor Lawson said \$1.7 million was the estimated value of the property after the redevelopment of the Grange property. Councilor Gooze provided details on this.

Councilor Mower read the wording in the Friday Update, and said there had been a misinterpretation.

Mr. Kraus said this information was helpful, and said more clarity in the Update would also have been helpful.

Administrator Selig said that regarding the “welcome to the neighborhood” signs, this came out of the Rental Housing Commission. He also noted that the University had offered to share the cost for the signs, and said the cost to the Town would be about \$1,200.

Councilor Gooze said the signs would be installed in a number of neighborhoods that directly abutted the University and had a lot of problems in terms of students walking through them. He said the Commission had looked carefully at what neighborhoods to target.

Administrator Selig said the idea was to remind young people, in a collaborative way, that there were families in the neighborhoods and to behave responsibly.

Councilor Gooze said this was a quality of life issue for Durham, and Councilor Mower said it also had an economic impact on the entire Town. She said if property values were negatively impacted by student behavior, the property value gap would have to be picked up by the rest of the Town.

Councilor Stanhope said there were so many good ideas to pursue, with so few dollars. He said the point was well taken that this was a good idea, but said at the same time, the Town was faced with prioritizing what was an appropriate use of much diminished tax dollars and greater increases in costs for employees.

He said roads throughout the Town were in disrepair, and said he had been concerned about the cost of maintaining a staffing commitment to plant, weed and water flowers downtown when the DPW could be filling potholes in the neighborhoods. He said the Council needed to enforce the discipline of where it used scarce tax dollars.

Bill Hall, Smith Park Lane, said the Town Council voted to have the State put bike lanes from this corner to Newmarket. He said the Town Administrator at the time had incorrectly stated that the Town had only voted to have the State widen the road from Bennett Road to Newmarket. He provided details on this.

Mr. Hall said there had not been competent representation from the Town concerning the 401 certificate issue, and he spoke in detail on this. He said he had a large file on this issue, and said he hoped the Council would read the information that was available. He said the Council was a problem to the Town’s water users.

Armita Geiger, 13 Davis Ave, first noted that she and another parent were there with 3 eighth graders, who were working on their Boy Scout merit badges for communication. She then said there was one stretch of road, from the intersection of Davis Ave and Edgewood Road to where it met Strafford Ave, where the sidewalk was badly worn down and needed work.

Councilor Gooze said he walked that area a lot, and agreed that it was a challenge and that the DPW should look into this.

Councilor Mower said the DPW Director had been hearing from numerous citizens and Councilors about different parts of Town where there were problems.

Administrator Selig said this area had been scheduled for improvement for many years, but the DPW was constrained financially.

Leon Levesque, interim Superintendent of the Oyster River School District, said it was their desire was to keep the lines of communication open with the Town. He said if the Council needed to meet with him on school or municipal issues, he would be happy to do so. He said he would visit all of the municipalities, and said he'd already met with about 50 people who had shared a lot of information on the School District. He said there was a great deal of work ahead of them, and said it would take collaboration to achieve something that was good for the children as well as local taxpayers.

Chair Carroll thanked Mr. Levesque for his presence at the Council meeting.

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, deny the 2010 property tax abatement application for property owned by Rockingham Properties 1 LP located at 56 Dover Road?

Councilor Smith MOVED that the Durham Town Council does hereby, upon recommendation of the Administrator, deny the 2010 property tax abatement application for property owned by Rockingham Properties 1 LP, Inc. for property located at 56 Dover Road. Councilor Mower SECONDED the motion, and it PASSED unanimously 8-0.

- B. Shall the Town Council, upon recommendation of the Administrator, deny the 2010 property tax abatement application for property owned by Rockingham Properties 1 LP located at Stone Quarry Drive & Valbeth Drive?

Councilor Smith MOVED that the Durham Town Council does hereby, upon recommendation of the Administrator, deny the 2010 property tax abatement application for property owned by Rockingham Properties 1 LP, Inc. for property located at Stone Quarry Drive and Valbeth Drive. Councilor Mower SECONDED the motion, and it PASSED unanimously 8-0.

- C. Shall the Town Council, upon recommendation of the Administrator, award the construction contract for the Morgan Way/Route 4 intersection improvements project to G.W. Brooks & Son, Inc. in the amount of \$281,234.00 and authorize the Administrator to sign associated documents?

Councilor Smith MOVED that the Durham Town Council does hereby, upon recommendation of the Administrator, approve the construction contract for the Morgan Way/US Route 4 Intersection Improvements Project to G.W. Brooks & Son, Inc. in the amount of \$281,234 and authorizes the Town Administrator to sign said contract with the

monies coming from Accounts #07-1014-801-36-000 and #07-1114-801-36-000. Councilor Mower SECONDED the motion, and it PASSED unanimously 8-0.

VIII. Committee Appointment

Shall the Town Council appoint Dork Sahagian, 4 Briarwood Lane, to the Durham Energy Committee?

Councilor MOWER MOVED to appoint Dork Sahagian, 4 Briarwood Lane, to the Durham Energy Committee. Councilor Smith SECONDED the motion.

Mr. Sahagian spoke before the Council. He said he was a professor at Lehigh University, and was on sabbatical for the next year, when he would be focusing on doing research. He noted that for the last 16 years, he'd been involved with academic administration. He said he would very much like to help promote the mission of the Energy Committee, which appeared to be to reduce energy consumption and cost to the Town, as well as to reduce emissions and other environmental impacts. He noted that he'd led a Lehigh University program that addressed these issues.

Councilor Mower said the Energy Committee had relatively short, two hour meetings, and said there were a number of projects on the burner. She suggested that Mr. Sahagian look at the Minutes to get filled in on this. She said they had a meeting scheduled for Monday. She said there was some expectation that committee members would do some research, writing, and talking to people about energy issues. She said Mr. Sahagian had a background that the Energy Committee thought was a good fit.

Councilor Smith asked if the sabbatical would be done in Durham, and Mr. Sahagian said yes, and that he would be there most of the time. He noted that he had previously been at UNH for 10 years.

Administrator Selig explained that the Energy Committee had transcended looking at what could be done with Town infrastructure, and had reached out to residents in terms of what they could do to reduce their carbon footprint.

Mr. Sahagian said that was very wise.

Councilor Mower said there were a lot of irons in the fire, including looking at building codes, and the site plan review process. She said the most far reaching initiative was providing renewable energy for municipal services, and said this was in the works.

The motion PASSED unanimously 8-0.

Chair Carroll thanked Mr. Sahagian for stepping forward. She said it appeared to be a wonderful fit, and said he had much to contribute. She said Durham was ready for this.

IX. Presentation Items - None

X. Unfinished Business

Shall the Town Council approve the sale of the Town-owned H.A. Davis (Grange) building

located at 37 Main Street (Tax Map 5, Lot 1-5) and authorize the Administrator to sign an agreement of sale between the Town of Durham and GHD, LLC, a New Hampshire Limited Liability Company, for the productive reuse/ redevelopment of the parcel and structure? Administrator Selig said this sale was taking place as part of efforts to revitalize the downtown core. He said in September of 2010, an RFP was put out to look for potential partners with the Town to revitalize the Grange building, which was an historic building in Durham. He said because of budget constraints and uncertainty about its future, the Town hadn't been investing in the building, and it had remained empty for the past few years.

He noted that the Town had received one proposal, from Peter Murphy, to redevelop the property. He said at the April 4, 2011 Town Council meeting Mr. Murphy gave a presentation to Council members regarding his revised proposal. He said on April 25, 2011, the Council discussed Mr. Murphy's proposal and scheduled a public hearing, which was held on May 16th.

Administrator Selig said the proposal was to move the Grange from its present location forward to the sidewalk in order to showcase the historic nature of the building. He noted that the Historic District Commission/Heritage Commission had come up with this idea. He said the project would include 3 workforce housing units in the Grange and/or the addition to the Grange structure, and covenants would ensure that this housing would occur on the site. He noted that a goal of the Council was to encourage workforce housing in the community.

He said there would be retail/commercial use on the front part of the first floor of the Grange, and a restriction on the property that this would remain. He said there was a requirement that Mr. Murphy would restore and preserve the outside historical look and materials of the Grange, with associated covenants. He also said the project would create pedestrian enhancements along side of the building, with right of way access for the general public. He said Mr. Murphy would be responsible for the maintenance of this area.

Administrator Selig said a new structure would be built to the rear of the property, primarily focused on student housing at the present time, but convertible to non-student housing in the future if the market demand for this existed. He said there would also be one handicap accessible unit in the apartment building.

He said the purchase price for the Grange was \$280,000, which would be paid over a period of 5 years, at a 7% interest rate. He said the annual loan payment to the Town was \$58,533.77. He also said it was estimated that the Town would receive approximately \$45,000 per year in property taxes, based upon an assessed value of the renovated structure in the \$1.7 million range. He noted that the Town received no property taxes for the Grange now.

Administrator Selig said since the public hearing, the Council had indicated it was interested in moving forward with this arrangement, and said the Purchase and Sale Agreement was then finalized. He noted that section 3.01 of the agreement said there would be 2550 sf of residential units in the new three story building, and said this only referred to the footprint, so the correct number was 7650 sf.

He also pointed out that while the agreement encompassed the major points outlined, he, Mr. Murphy and legal counsel would still need to work through the specific language of the various covenants involved with the project. He noted that section 12.09 referenced this, and said he wanted it to be clear that if the Purchase and Sale agreement was approved, additional documents would be negotiated with Mr. Murphy in a way that was consistent with the agreement.

Councilor Mower confirmed that the Council could provide advice and direction now concerning those covenants.

Administrator Selig asked that the wording in section 12.09 be included in the Minutes, so there would be no question on this at a future date.

12.09. The parties recognize that many details of the restrictive covenants, deed restrictions, and financing remain to be negotiated between the parties. In the event the parties are unable to agree on those details, either party may cancel this contract upon thirty days notice to the other of the impasse without penalty. The Durham Town Council, upon approval of this Agreement, authorizes the Town Administrator to negotiate and reach agreements regarding these details and to execute all necessary documents regarding these details on behalf of the Seller without further approval by the Town Council. Such agreements shall be fully binding upon the Seller as if each was negotiated and specifically approved by the Durham Town Council.

Chair Carroll thanked Mr. Murphy for being present.

Administrator Selig noted that Mr. Murphy had provided some confidential financial information disclosures and credit analysis to the Council for its review.

Councilor Gooze asked what time frame was agreed upon as to the attempt to get workforce housing. He asked how the Council would know the attempt was being made, and what the time frame was before the Council would be told it wasn't working. He said the Council really wanted this experiment with workforce housing to work.

Mr. Murphy said workforce housing consultant Jack Mettee had worked with him to create a packet of information on this issue. He said a third party would manage the whole process, and said there were guidelines in terms of where the units would be advertised, who was eligible, etc. He said the hope was that as they were advertised, possible renters would come forward.

He explained that if three months later, no one wanted to rent it as a workforce housing unit, he was allowed to rent it at a market rate for a year. He said when that person moved out, the unit would always come back to the workforce housing status, and the process would repeat. He said it was a built in mechanism to keep trying, but also protected him if for some reason he couldn't rent it as workforce housing. He said three months prior to the person moving out, he would start the advertising and rental process again.

Councilor Gooze asked if there would be a limit to the lease period of a workforce housing unit that was rented at the market rate.

Mr. Murphy said he was glad to entertain language on this, and said he didn't see that it would go longer than two years.

There was discussion about whether it was important when the advertising for a workforce housing unit would begin.

Councilor Gooze said he just wanted to make sure there was maximum effort to get workforce housing, and said they were relying completely on a third party to do this.

Chair Carroll said it wasn't so much when advertising began, but when someone would sign a lease.

Mr. Murphy said if someone was in there at market rate, the advertising for workforce housing would begin in the three month period before the lease was up.

Councilor Smith said he hoped that the granite foundation stones that couldn't be used in landscaping on the site would revert back to the Town, and said the DPW could haul them away. He said he hoped Mr. Murphy found a way to use it on site.

Mr. Murphy said that was pretty fair, and said he had no problem with it. He said they would use as much of the granite stones as they could, and provided details on this.

Councilor Gooze asked if there would be review of the rental situation by someone in the Town at the end of a year, to make sure that the third party manager was doing a good job.

Administrator Selig said they should ask for some annual reporting, so they were aware of what was happening.

Mr. Murphy said there had been discussion about having a quasi committee that included Mr. Mettee to evaluate how things had gone.

Chair Carroll said this information would be very helpful.

Councilor Mower said this should be in writing. She then asked how the down payment of \$1,000 was determined, and Administrator Selig said that amount had sounded reasonable.

Councilor Smith MOVED that the Durham Town Council does hereby approve the sale of the Town-owned H.A. Davis (Grange) building located at 37 Main Street (Tax Map 5, Lot 1-5) and authorizes the Administrator to sign an agreement of sale between the Town of Durham and GHD, LLC, a New Hampshire Limited Liability Company, for the productive reuse/redevelopment of the parcel and structure. Councilor Gooze SECONDED the motion.

Councilor Mower noted that she had raised the issue before the Planning Board that there should be secure and sheltered bike storage on the Grange property for some portion of the tenants. She said she'd like to see a covenant on this, as well as an explicit statement that the

sidewalk and easement to the west of the building should be designed to accommodate bicycles. She said she had provided some research that showed that providing shelter for bikes encouraged greater bike use, which was something the Town was trying to encourage. Mr. Murphy showed a landscaped area in front where there could be an unsheltered bike rack. He said at the back of the site, where the fenced-in trash area was, there would be another area for bikes, whether they were against the fence or were hanging from it. He also said where the old Grange met the new building, there might be a three season bike storage area. In addition, he said under the stairwell, there would be additional space for winter storage if it wasn't in the way of accessing utilities. He summarized that there were four locations on the property allocated for bikes, with two of them possibly covered.

Councilor Mower said she remained concerned. She said security was an issue, and said it was important to make it as easy and accessible as possible for tenants to use bikes. She noted that the Chair of the Energy Committee had worked with his students at UNH on issues around bike transportation, and asked if perhaps something could be worked out to his satisfaction, in a covenant.

Councilor Stanhope asked what the Planning Board's reaction was to Councilor Mower's request.

Councilor Gooze said it was favorable, but said they couldn't figure out where to put a covered area that was secure and safe. He said nothing was decided. It was noted that the public hearing was still open.

Councilor Mower said Mr. Murphy had been amenable to working something out.

Councilor Lawson asked if anything in the lease would prevent tenants from storing bikes in their apartments, and Mr. Murphy said no. Councilor Lawson said students liked to store bikes in their apartments, for security purposes. He said he thought this was where most students would opt to store them.

Mr. Murphy said the units were bigger than the average unit for student housing, so there would be room for bike storage.

Councilor Mower asked what the access would be regarding stairs, for someone carrying a bike, and Mr. Murphy provided details on this. She then said she was hearing that this issue was manageable. She said young people these days were gravitating to cities, where there were bike amenities, and said to the extent the Town wanted to encourage newly graduated people and young professionals to live in Durham, keeping these things in mind was important. She urged that the Planning Board keep this in mind as well, with applications.

Councilor Gooze asked if the things being suggested, like the length of a lease and the evaluation committee, would fall into place under section 12.09, and Administrator Selig said yes.

Chair Carroll said her understanding was that the whole pathway was not Mr. Murphy's property. She asked if it would be correct that Mr. Murphy's section of the path would be ADA compliant.

Mr. Murphy said yes. He said right now it was about 6 ft wide, and said at the narrowest point, the new path would be 8 ft. He also said the grade would change to 5% in order to be ADA compliant, up to the point where the property ended.

Chair Carroll asked if there had been discussions with the Plaza owner, and Mr. Murphy said a meeting was being set up to go over the drainage from the redeveloped site, the completion of the path, and access from the back during construction. He said hopefully these issues would resolve themselves in the next week or so.

Chair Carroll confirmed that this would be a multi-use path. She then asked if there was a schedule for construction of the whole project.

Mr. Murphy said the hope was that by mid August into September, the Grange building would be raised, the foundation in front would be poured and it would be moved onto the new foundation. He noted that very little environmental remediation of the property was needed. He said by November-December, the plan was that both buildings would be weather tight, and said occupancy would be in June of 2012. He said he was comfortable with the schedule.

Councilor Gooze said perhaps in the future, there would be a more streamlined way for a project like this to be reviewed by the various boards. He commended Mr. Murphy for going through the review process.

Mr. Murphy said it had been a good team effort, and said he was grateful that the process had gone very smoothly.

Councilor Mower said moving the Grange forward would be an unusual event, and one that members of the community might like to watch. She suggested that Mr. Murphy might think of providing an area where people could watch safely.

Mr. Murphy said it would be great to do that.

Administrator Selig asked Councilors if they were comfortable with the name “H.A. Davis Grange Building.”

There was discussion, and Councilor Lawson noted that this was consistent with the public comments received.

Mr. Murphy thanked Administrator Selig for his patience over these months. He said there might be some ambiguity right now in terms of what was going to be on the beautiful sign he would put out front, but he said he would make sure it was something that would work for everyone.

The motion PASSED unanimously 8-0.

Chair Carroll said they would look forward to taking a tour of the Grange property next spring, and Mr. Murphy said he would look forward to this as well.

The Council stood in recess from 8:32 to 8:42 pm.

XI. New Business

A. Discussion regarding potential alternatives for the Town's solid waste collection as a possible cost savings measure for the community

Administrator Selig said DPW Director Mike Lynch, DPW Assistant Director of Operations Doug Bullen, and Business Manager Gail Jablonski were present to discuss options for the solid waste and recycling program that might help to save the Town money.

Mr. Lynch said this was the fifth time the Town had gone through this process of looking at the cost of contracting out collection of curbside solid waste and recycling, as compared to doing it in house. He reviewed the variables included in determining the costs, which resulted in a per ton price, and said the following totals were arrived at:

- Waste Management: \$149.10/ton for Solid Waste; \$148.75/ton Recycle
- Pinard Waste Systems: \$179.00/ton for Solid Waste; \$232.00/ton for Recycle
- Best Way Disposal \$180.00/ton for Solid Waste; \$229.00/ton for Recycle

He said the results now, as in the past, indicated that the Town was able to provide the service with much better quality, and at a lower cost. He provided details on the factors included in calculating the costs.

Councilor Stanhope said he'd been disappointed that the Council didn't get the breakdown of the DPW's costs. He determined from speaking with Mr. Lynch that in looking at salaries, DPW looked at the total cost per employee per hour, including benefits, etc. Mr. Lynch said they used the last two positions, with the least seniority.

Councilor Stanhope asked if the physical condition of the equipment and its lifespan had been considered, and Mr. Lynch said they included fuel, tires, wear and tear, insurance, as well as bonding costs over 10 years. He said they included all of the expenses. He said they typically replaced trucks at the end of the bond, although noting that they currently needed to replace a truck before that.

Councilor Stanhope asked if it would be possible to see the breakdown numbers.

Mr. Lynch said Ms. Jablonski had done all these numbers, and could provide this information.

Administrator Selig said they also factored in what they could market the recyclables for. He noted that if the recycling was contracted out, the contractor would market them.

Councilor Stanhope asked if labor costs were looked at historically, or were looked at in terms of the new retirement cost burden.

Administrator Selig said they had looked forward in determining labor costs. He said he had hypothesized that the retirement costs would make the private sector approach more cost advantageous to the Town, but he was incorrect. He said the numbers showed they would save about \$55,000 per year by continuing to do this in house.

Councilor Gooze said he had read that when the retirement cost rating was actually done, it wouldn't be that much different.

Administrator Selig said based on the best available data, the number was now \$80,000 for this year, and said it would be double that next year. He said on the Board of Trustees of the NH Retirement System, members representing labor were currently in the majority. He said his understanding was that the labor controlled Board had passed along the rates without taking into account the innovations made in the last Legislative session.

But he said labor positions were being eliminated from the Board, and there were new appointments, so a majority of Board members now would not represent labor, and the Board would be more balanced. He said that Board would re-certify the rates. But he said there would still be additional costs to towns.

Administrator Selig said there were two other ideas concerning trash and recyclables, and said one was to see if it made sense to explore the idea of eliminating curbside collection totally, in order to save money. He said the other idea was to implement "pay as you throw", and said this approach would create an economic incentive for people to recycle more, based on the amount of solid waste they were generating.

Councilor Smith asked whether, if the Town went with "pay as you throw", residents could bring their garbage to the transfer station, rather than putting it at the curbside.

Mr. Bullen said most towns implemented both, and said the bag would be the same.

Councilor Smith noted that someone bringing the bag to the transfer station would be saving the town money, and Mr. Bullen said that was a valid point.

Councilor Smith asked if they were serious about considering the notion of stopping curbside pickup and leaving it up to citizens to bring their wastes to the transfer station or contract this out privately.

Mr. Bullen said he thought it was a viable option. He said as a manager, he realized there were some budget restraints, and said they were looking for alternatives. He said it probably wouldn't be a positive choice, but was worth talking about.

Councilor Niman said this wasn't the first time he had heard this idea, and said it generally happened around Budget time. He said the DPW always threw this idea out, knowing that people would revolt. He asked what other kinds of options were realistic for cutting the DPW budget that didn't involve the waste stream.

Councilor Gooze said to him, a viable option was one that would allow a reduction in the number of employees and still provide services.

Mr. Bullen said part of the proposal of eliminating curbside pickup would involve eliminating a full time and a part time position. He noted that there had been discussion about possibly contracting out some of the snow plowing/removal, and landscaping services. He noted that the DPW had contracted out catch basin cleaning, which had resulted in some

pretty good savings for the Town. He said from his perspective, he was always looking at the little things, and how he could better manage people to make them more productive, and hopefully incorporate some savings from that.

Councilor Stanhope asked if it was possible to reduce the frequency of collection, to perhaps every other week.

Mr. Bullen said some thought had been given to that, and noted that the idea had come into play with some of the bids that came in. He said he wasn't sure how that would affect the DPW's operation.

Councilor Gooze said there were probably parts of Town that needed weekly pickup, but others that perhaps needed less. He asked if an evaluation had been done of this.

Chair Carroll said when she was on the Integrated Waste Management Advisory (IWMAC) Committee, she'd heard that it wasn't just the part of Town, but also what stage families were at that related to how often trash pickup was needed

Mr. Lynch said he would not want to ask employees to pick up twice as much, but less often. He said they used one person to pick up trash, and one to pick up recyclables, and noted that Portsmouth had 3 people on a truck, while Durham had one.

He also said most communities in NH plowed with two people in a truck, while Durham did it with one truck, and one person who made managerial decisions, including when to sand and salt. He said the employees were trained well and were paid well, and had good equipment. He said savings had been accomplished year after year.

He said the Wastewater Treatment plant should be staffed with nine people, and had five. He also noted that the DPW had sold its road grader, which saved the ongoing cost of replacing it. He said they now contracted out for pennies, and got a professional job every time. He said the DPW believed there were ways to continue to improve.

Concerning staffing levels, Mr. Lynch noted that Exeter had the same number of square miles as Durham, and had a few more roads and a thousand more people. He said they didn't collect solid waste and recyclables, and had 44 people in the DPW. He said Durham had 22 people. He said they did a good job, and had great employees.

Councilor Stanhope noted that many municipalities excluded commercial/industrial pickup, and only did pickup for properties with 4 families or less. He asked whether if the Town limited solid waste collection to this, there would be a significant savings in terms of overtime and equipment.

Mr. Lynch said currently, employees worked a 4 day work week, and said on the fifth day, recyclables at commercial properties were picked up. He said often, that was done on an overtime basis for at least one of the employees. He said this was one of the reasons they wanted to shift to a 5 day workweek, to cut out the overtime. He said this approach also provided a better mechanism to recycle, and said it was working.

He said cardboard in particular was a money maker. He said there was a savings involved, but said it didn't cover the entire cost of servicing apartment complexes and commercial/industrial establishments. He said there was the extra day of wear and tear on the vehicles. He said the concern was that if they didn't do it, these businesses wouldn't recycle, which wasn't acceptable.

Administrator Selig said the initiative to recycle had come out of the IWMAC. He said years ago, the Town covered the tipping fees of regular trash for commercial properties downtown. He said this was discontinued, but the Town continued to collect recyclables.

Councilor Mower noted an email from Doug Bullen that if the pick up of recyclables at commercial establishments was discontinued, this would result in an 8-10% drop in the recyclable rate.

Mr. Bullen said they had changed commercial accounts to single stream recycling, which had reduced the pickup time and overtime. He also said they assigned a part time guy in the spring and summer to fill the slot, which reduced the amount of overtime. He spoke further on some simple changes made recently in the way staff were deployed, and said the only time now when overtime was used was when there were vacations, holidays or injuries.

Councilor Mower asked Mr. Bullen if he had a sense of how much recycling had increased by going to single stream.

Mr. Bullen said it was fairly consistent, but was a lot easier from a collection standpoint, and said they had been able to reduce their costs.

Chair Carroll thanked Mr. Bullen for these kinds of details and said they were important, especially as the Council looked ahead to the Budget. She also thanked Mr. Bullen for the good work he did in the community. She said they had heard from several residents who had heard that some new ideas were proposed, and who had responded that they were happy with the way things were.

B. Initial discussion in preparation for the Administrator's proposed FY 2012 Operating Budgets, Capital Budget, and the 2012-2021 Capital Improvement Plan

Administrator Selig said at the last meeting, Ms. Jablonski had provided an overview of revenue and expenditures. He said they would like to get feedback from the Council early on in preparation of the 2012 Budget, which would begin soon.

He said a question was whether there were other kinds of information the Council would like to see, and whether they saw a need to modify services provided to the community.

He said another question was what they would like to see the Town move forward with, in terms of expenditures in the 2012 Budget.

Administrator Selig said taking into account contractual increases they were obligated to provide to employees based on collective bargaining agreements, and additional retirement costs, this came to an approximately \$300,000 increase, moving into January of 2012. He said this would happen if they changed nothing.

Chair Carroll said Councilors would have the opportunity to raise general or specific issues or questions that evening.

Administrator Selig said staff understood the economy had not really come back from the recessionary environment, realized residents had lost jobs or had taken a reduction in pay or benefits, and that property values hadn't regained the loss in value that had been seen a few years ago. He said over the last three years, the 2009 and 2010 budgets reflected reductions in order to offset the recessionary forces.

He said for the 2011 Budget, they were hopeful that the economy would be on the rebound, and some spending increases were made in order to try to get at projects and initiatives the Council wanted to see move forward. But he said the economy hadn't moved forward as much as they had hoped.

Councilor Gooze said before he came on the Council, it had made a number of changes to ordinances to allow for a better tax base. He asked whether given this, and the building that had happened, there was a number in terms of the revenue increase as a result of these changes now and looking to 2013.

Administrator Selig said a critical outstanding issue was the abatement appeal for the Varsity Durham properties, which collectively were valued at \$30 million. He said discussions on the abatement requests had broken down, and said this was moving to the Bureau of Tax and Land Appeals. He said it was hard to accurately predict valuation growth, because they weren't certain that the value that had been assessed would hold when it was appealed. He said they believed it would, but would have to wait and see.

He said the Fiscal Forecast had planned on a 0.5% growth in the tax base, but this year there had been a small decline because of abatements issued dating back to the 2008 valuation. He said ironically, many were multi-unit properties, noting that the reason the abatements were warranted was because they were not in as good a condition as the Assessor had thought they were in.

He said on the bright side, the Capstone project, which was potentially a \$30 million project, was moving forward. He said his best guess for 2012 was a 0.5% increase in the tax base. He said in 2013, they were likely to see a nice increase as a result of various projects that would be coming online. He provided details on this.

Councilor Niman asked how much property value had been lost as a result of all of the abatements.

Administrator Selig said about \$6-7 million in valuation had been lost.

There was discussion on the Varsity Durham abatement requests. Councilor Stanhope asked if they had a number on the table, noting that this was the Town's biggest exposure. He asked what the number was, and Administrator Selig said he didn't know.

Councilor Lawson asked if there was any forecast available for other sources of revenue from the State.

Ms. Jablonski said meals and rooms revenue and highway block grant revenue would be the same as this year. She said there would be a decrease in the motor vehicle revenues because of elimination of the registration surcharge.

Councilor Lawson asked if there was discussion about changes related to UNH, for things other than the Fire Department.

Administrator Selig said there was no area up for negotiation this year.

Councilor Cote said this would be one of the most challenging budget years the Council had ever faced, given the loss of revenue from the State, and downshifting to the towns. He said the Town ran the risk of losing personnel, which was a hard pill to swallow, but said he was afraid they were heading down that road.

Chair Carroll said that in terms of the downshifting that was occurring from the State, some residents in Town didn't realize that this was happening. She said this was not of the Town's making.

Administrator Selig said in Hanover, selectmen had calculated the downshifting costs that contributed to the town's increase in costs/taxes.

Chair Carroll said it was fine to provide information like this, if it could be backed up with facts.

Councilor Mower asked if it was appropriate for the Council to talk with Lee and Madbury selectmen to craft a notice to the School District, expressing concerns on the approach to budgeting, and hopes of a response from the District.

Councilor Gooze said it was the Council's obligation to look at the Town budget first. He said he would want to see a level funding budget, and what this would mean in terms of cuts.

Administrator Selig said they wouldn't bring forward eliminating curbside collection.

Councilor Lawson said part of the increase of \$300,000 was due to contracts and agreements, and said he was now uncomfortable that they would have to cut in other places in order to offset this. He said he believed that this was a year where they would find places where \$10,000 and \$15,000 cuts, in aggregate, would make a difference, and where programs that were somewhat discretionary would no longer be there.

He said part of the challenge was to go to department heads and ask them what they could do differently in order to be more efficient. He said if they said nothing, and Councilors found things they could have done, he would have a real issue with those department heads. He said this was a year where they needed to look at how they were doing business across the board.

Councilor Mower said she had seen some documents from other towns that might provide a framework for looking at expenses, and she described one from the Boston Fire Department that listed the various services provided. She said this kind of thing could allow prioritization, and determination of whether there were services that weren't being delivered in a cost-effective way and that could be either looked at differently or eliminated.

Councilor Stanhope said he saw some recent data on the Manchester Fire Department, which had laid off 15 firemen. He said through attrition, the department went from about 220 to 180 employees, and said they were forecasting reducing that further.

He said in terms of services provided, they should look at whether a service could be provided without a fee attached to it. He said they had to look at ways to eliminate services while ensuring that the same level of Town services was provided. He said they would be confronted with some hard decisions. He noted that he had learned that day that a town in Massachusetts had filed for bankruptcy, and also said a forecast had indicated that the economy recovery would take a half a decade.

Councilor Stanhope said he'd been forceful concerning the Varsity Durham position because he wasn't sure it was totally unfounded. He said there might be further erosion of the tax base because of the economic climate. He said if they intended not to burden residents already struggling to get by with an ever-increasing tax bill, it would be on their shoulders to make some difficult decisions.

Councilor Niman said he thought they would continue to see the property tax base erode, and said Capstone wouldn't save them from everything. He said this was a serious concern, and one that would continue for a few years. He said he liked Councilor Mower's approach, but said he had never seen a list of services provided.

Councilor Mower said she had started a spreadsheet that listed services by category, taking a page from the Exeter Fire Department report that was available online. She said this might be useful as a starting point for the Fire Department and Police Department, and said department heads could then start to look at services they provided with a different eye.

Councilor Niman said he wasn't sure he wanted to see a long list, because he would still find it difficult to make wise decisions. He suggested a different approach, which was to say he would like to see \$80,000 taken out of the Fire Department budget, or would like to see the Firefighters contract re-opened and he would then say they would have to pay toward their retirement, given the fact that the State wasn't paying this. He said a third way was to increase taxes, which he was not in favor of.

He said he would prefer to ask Chief Landry to look for the \$80,000, and to provide further incentive to do this, to say positions would be frozen until the money was found. He said Chief Landry could figure out a way to find the \$80,000, and said he would say this same thing to Chief Kurz. He said as an extra bonus, they should say policing had to be at the same levels on Thursday through Saturday.. He said he would go to the DPW as well to find \$80,000, and would also go to the Town Administrator.

He said together, the savings could be \$320,000. He said he realized that the tax base was eroding, so the tax rate would go up dramatically even if the Budget was level-funded. But he said he would take that for now. He said \$80,000 was realistic, noting that the Fire Department budget was almost \$3 million. He said it was nonproductive for Councilors to have the discussion on where to find the cuts.

Councilor Stanhope said the State employees recently made substantial concessions in order to save jobs, and said this had also happened with the Manchester Fire Department union. He said realistically, he thought they would be faced with opening all of the contracts in Durham, if they wanted to save jobs. He said this was happening in the private sector as well, and said it was a real period of adjustment in the world. He said he agreed with Councilor Niman that department heads needed to do this.

Councilor Mower said some towns closed offices once a week, and asked if this was something to think about.

Chair Carroll said Administrator Selig would take this idea into consideration.

Councilor Gooze said his own feeling was that he could live with a 2-4% increase in town taxes. He noted that there was an automatic revaluation going on because of the abatements from multiunit apartment buildings.

Administrator Selig said the \$300,000 number reflected fixed costs, and said there would be other requests for increases from boards and committees for various things. He also said in 2013, the next revaluation would be done, and described possible options for doing this. He said however it was done, there would be an increase in assessment costs.

Councilor Niman said he wasn't sure it would even be possible to set the tax rate, stating that the future of the property tax rate and revenues was too uncertain. He said instead, the discussion should center on the size of the Budget, and whether they wanted it to increase or not. He agreed there would be other costs to consider, so they would need to find other things they wouldn't do.

He said his \$80,000 plan probably wouldn't be good enough. He also reiterated that they needed to think of different ways to provide the services they provided. He said he would ask the Police Department and the Fire Department to find a less expensive way to meet their shift staffing needs, and said there were other options available. He said the world had changed. He said when the rooms and meals revenue numbers didn't come in right, revenue sharing with the municipalities would be cut, because there was no place else to go.

He noted that \$31 million had been cut from UNH, which would have an impact on the local economy, including the local real estate market, which would not be good for the Town. He said they either needed to start making the tough decisions now, or would wait until they were so far beyond the curve that they would never get themselves out.

Administrator Selig said he agreed with Councilor Niman that the only thing they had control over was what they were spending. He said an area where he differed slightly was that the Town had in fact been looking at how services were provided, and how to make

them as efficient as possible. He said this wasn't to say they wouldn't continue to make innovations, but said he didn't want people to think that departments hadn't already made changes. He said they had done some very efficient things, and said the numbers bore this out.

Chair Carroll thanked Administrator Selig for pointing this out. She said the Town had done a good job of tightening its belt for a long time. She said there were different ways of doing things, and said there were some challenges before them.

Administrator Selig said they had started belt-tightening a year before other communities around them had done this.

Councilor Cote agreed. He also said the Town portion was 24% of the total tax rate, and said they expected the same diligence from those responsible for the rest of the tax rate.

The Council stood in recess from 9:55 to 10:02 pm.

- C. First Reading on Ordinance #**2011-05**, a Council-initiated ordinance, in accordance with Section 175-14 (B) of the Durham Zoning Ordinance, that would amend Article XII, Zone Requirements, Section 175-53 (A), the "Table of Uses", of the Durham Town Code, to allow single-family residences as a permitted use in the Professional Office District

Councilor Smith MOVED that the Durham Town Council does hereby, in accordance with Section 175-14 (B) of the Durham Zoning Ordinance, move on First Reading Ordinance 2011-05, a Council initiated Ordinance that would amend Article XII, Zone Requirements, Section 17553 (A), the "Table of Uses", of the Durham Town Code, to allow Single-Family Residences as a Permitted Use in the Professional Office District, and schedules a Public Hearing for Monday, August 15, 2011. Councilor Stanhope SECONDED the motion.

Councilor Smith noted that the Council Communication indicated that on February 20th, 2006, after a public hearing at which no members of the public spoke, the Council unanimously adopted Ordinance 2005-06, which created the Professional Office District out of part of the Residence A District. He said in the Table of Uses for this new district, single-family residences were no longer permitted, which meant they were prohibited unless that use was grandfathered. He said it had taken about six years from the time the idea of the Professional Office district was first suggested in the 2000 Master Plan. He said three current Council members voted on this Ordinance change in 2006.

He noted the map of the Professional Office district, and said it was abutted on the north and east by the Residence A district, on the west by University property, and on the south and west by the Central Business District. He said what was proposed was a very simple change, and said he wasn't sure single-family residences hadn't been permitted in this district for any other reason than to encourage owners of these residences to turn their properties into professional offices, or to tear them down and put up multi-unit buildings. He said he hoped this would pass on first reading, and would then go on to the Planning Board after a public hearing.

There was detailed discussion on the physical location and boundaries of the Professional Office district. Councilor Smith read from the Zoning Ordinance on the purpose of the district:

The purpose of the Professional Office District is to provide an area for the growth of professional services and offices adjacent to the Downtown. The district allows for the conversion of existing fraternities/sororities into office uses as well as multi-unit housing. The district is intended to be pedestrian focused with strong pedestrian connections to the Downtown and UNH campus. The district is intended to maintain the existing character of the neighborhood by requiring buildings to be set back and the area in front of the buildings to be retained as open area and not used for parking or other vehicular activities.

Councilor Smith said none of these purposes were contradicted by making this change, to permit what used to be permitted in that area.

Councilor Mower asked Councilor Smith to discuss why he'd suggested that single-family residences be a permitted as opposed to conditional use in this area. She noted that he had referenced the decision by the Council to request that single-family residences be a conditional use in the MUDOR and ORLI districts, which were both commercial/business oriented, like the Professional Office district.

Councilor Smith said at the time that change was made, the idea was to have some Planning Board control and review when there was an application, such as the Capstone project. But he said in the Professional Office district, there was no large piece of land where someone could put such a development that might abuse what was already established there.

He said he didn't think it was necessary to put property owners and the Planning Board through the conditional use process in the Professional Office district. He said there were only three properties in the district that had been used as professional offices. He said he didn't think that one of them, Xmed, would revert back to residential, and said if it did, he didn't see why anyone would object to a single-family residence next to the Library.

He also said it was unlikely that the medical offices on the east side of Madbury Road were going to close down. He said he therefore saw no good reason to make single-family residences a conditional use, rather than to restore what used to be there, which was single-family residences as a permitted use. He said there were other things they might want to do down the road concerning extending the Professional Office district, or making other changes, but said he would like to start with this.

Councilor Stanhope provided some materials to Councilors regarding the NH Supreme Court's Simplex decision. He said the parcel Simplex owned on Woodbury Ave. in Newington was zoned waterfront industrial, and said they wanted to put in a Barnes and Noble there. He said they sought a variance, saying the zoning wasn't consistent with what was going on in the neighborhood, and the Town of Newington denied it. He said the case went to Superior Court, which upheld the decision. He said it then went to the NH Supreme Court, which found that zoning could not restrict a use that was consistent with the primary uses in the neighborhood.

Councilor Stanhope noted language that spoke to the decision, and he explained how it related to the situation Councilor Smith had spoken to, where there was a neighborhood that was predominantly residential, and the party sought to use their property for residential and were denied that use. He noted that the applicant had represented herself. He said what Councilor Smith had brought forward would allow a citizen to use their property in this zone consistent with the primary use there, without having to go through a process that could cost \$2,000-3,000 in professional fees.

He said there was nothing to say that at a point in time when the demand for office space exceed that for residential use, these properties wouldn't be utilized for this. He said what was proposed did not go against the intent of the Professional Office district. He said what the ZBA had said here was that the applicant couldn't use her property the way her neighbors could. He said this was a fairness question as to whether people would be forced to spend thousands of dollars in order to use their property consistent with what their neighbors were allowed to do. He said the Supreme Court spoke clearly on this. "The zoning restriction as applied to their property interferes with their reasonable use of the property, considering the unique setting of the property in its environment."

Councilor Stanhope said Councilor Smith had addressed an error in the Zoning Ordinance. He said he hoped the Council would bring this proposal forward to a public hearing.

Councilor Gooze first said he would support the first reading of the proposed Zoning change. He said the Simplex ruling referred to the hardship criterion, but said there were other variance criteria, and one of them was the public interest. He said the Master Plan and the Zoning Ordinance reflected a decision to encourage an area for the development of professional services, and said that was a reason he had spoken against approving the variance.

He said if the Council made a decision that the Ordinance should be changed as Councilor Smith had recommended, he was all for it. But he said just using the hardship criterion by itself wasn't the reason to do it. He also said the Supreme Court had dealt with only the hardship issue in the Simplex case.

He said he wanted to hear from the public and the Council on what was proposed now. He said he had spoke against the application before the ZBA because he felt it wasn't an appropriate place to make a decision on this issue. He said it was something that should be out more before the public than at the ZBA level.

Councilor Mower said an important point being raised was how the Zoning Ordinance and Master Plan were married. She said there might be a mismatch in this instance, and said in light of the Simplex case, it might be even more of a mismatch. She said vetting it in the community would provide feedback on this.

Councilor Gooze said at the public hearing, he wanted to hear whether people felt that going back to allowing single-family residences went against the purpose of the Professional Office district. He said he hadn't made his own decision on how to vote on this.

Councilor Niman said he wouldn't be at the next meeting so would speak now about the proposed Zoning change. He said that in response to Councilor Stanhope's comment about what was fair, just as there were private interests, there were public interests, and public

interests that transcended those of individual property owners. He said zoning in some ways was designed to protect or further the public interest, and said at times this was at odds with private interests. But he said the courts had ruled in the past that municipalities had the power to do that.

He noted that he was on the Council when it voted to create the Professional Office district, and said that was in recognition of the fact that the downtown had a limited physical area, and the fact that they might want to encourage certain kinds of activity close to the downtown, but since it was so small, it might not be sufficiently large to support all these activities.

Councilor Niman said he thought that when they supported the purchase of the Dimambro site, that would serve as a nice anchor for the downtown, and the downtown should spread in that direction. He said he didn't think it was in the interest of the Library or the community to have the Library surrounded by single-family homes, whether inhabited by families or students. He said he thought the Library would be better served if it was integrated into the downtown.

Regarding the comment that nothing else had happened in the district, he noted that Xmed was taking advantage of RSA 79-E. He said this was a tool the Town hadn't had in the past to turn some of these properties over to commercial applications, and said it was certainly a benefit to properties in the Professional Office district.

Councilor Niman said perhaps the EDC would bring forward a TIF proposal, and perhaps the Council would adopt it, which might extend all the way to the Library. He said perhaps that would allow financing of infrastructure improvements, which would make properties in the district more attractive for commercial development.

He said he had been talking recently with a business owner downtown that was unhappy with the location of his business and would like to be closer to the new Library. He said perhaps when the Library became a reality, it would serve as a magnet for other commercial entities that would populate the Professional Office district, and it would no longer be primarily residential.

Councilor Niman noted that Councilor Mower had indicated at the last meeting that the Conservation Commission was interested in the Amber acres site. He said if that property, or the Spruce Woods property or Tecci property became conservation properties, the ORLI zone would be gone, and the only place to expand the tax base would be downtown, which had limited surface area. He said it had to grow somewhere, and said his reading of the Master Plan was that the Professional Office district was an area that could expand the downtown. He said there was a public interest in keeping the zoning the way it was, and said the public wasn't served by allowing single-family housing there.

Councilor Stanhope said he expected that at some point in the future, the Professional Office zone would evolve into what was anticipated for it. He said what was proposed didn't interfere with that. He said it was only one property, and said when the demand was there, and someone was ready to buy up some properties, there was nothing in terms of what was proposed now to stand in the way of that.

Councilor Smith MOVED to extend the meeting beyond the 10:30 adjournment time. Councilor Mower SECONDED the motion, and it PASSED 6-2, with Councilor Stanhope and Councilor Cote voting against it.

Councilor Gooze said he hadn't decided on this yet. He said he was glad Councilor Niman had spoken.

Councilor Cote said there was no harm, no foul, allowing single-family homes. He said Councilor Niman had provided some good historical perspective. He said he remembered extensive discussion about the Professional Office district being a primary area for growth of the downtown. He said by allowing single-family homes by right, he didn't see a problem, because someone who wanted to do a professional office would still be able to do this. He said he would be interested to see why single-family homes had previously been taken out as a permitted use.

Administrator Selig said this was discussed at the time the Professional Office district was created. He said the idea was to transition away from single-family uses to alternate uses, and one way to do this was to not permit single-family residences.

Councilor Gooze said the incentive for the owner of the property in question to market to commercial entities or redevelop it was lost, if she could easily rent the property as a single-family home. He said this went against the purpose of the district. He said he would like to hear from the public on this, and said if no one showed up, that would mean something to him.

Councilor Smith said Councilor Niman did a good job of stating the public purpose of the zoning change. He said he hoped the establishment of the Library would cause the redevelopment of small single-family residences on both sides of Madbury Court. He said there were lots of opportunities for buildings to be turned into professional office space, and said he thought the Library would become a focus for this.

He noted that Administrator Selig had suggested that the Planning Board and Town Council consider including property immediately north of the Professional Office district and on the east side of Madbury Road in the Professional Office district. He noted that it would be easier to sell that kind of extension of the zone if single-family residences were a permitted use, because such uses in that extended area would be allowed to continue without the danger of losing their grandfathered status.

Councilor Niman said zoning created economic value, and took it away. He said as things stood right now, the highest and best use was to rent single-family homes in the Professional Office district primarily as student housing. He said it made the economics of turning the property over to some other use more challenging. He said it might be correct that the entire district would turn over eventually.

But he said the harm was that it would take longer for the changeover to occur, and might become less likely, depending on the rental market in Durham. He said the Town had the power through zoning to further the social interest and consequently create economic value or take it away. He said by opening the door to residential uses, one of those might be

renting to students, which made it more difficult for an office project to make economic sense. He said as a result, they would have to wait longer for the district to turn around.

Councilor Smith said there were other residential uses permitted in that zone. He said this one building in question was a single-family home from 1940 to 1994, when the new owner got permission to have a commercial office space. He said the slow development of the Professional Office district started with this house. He said the owner could, through adaptive reuse, turn it into a multi-unit building with three apartments, with the permission of the Planning Board, and said that would be contrary to what the Town wanted. He stated again that he didn't see the harm in what he was proposing.

Councilor Stanhope said the Court spoke clearly that municipalities must coordinate their zoning ordinances to reflect the current character of their neighborhoods.

“ Inevitably and necessarily, there is a tension between zoning ordinances and property rights, as Courts balance the rights of citizens to the enjoyment of private property with the right of municipalities to restrict property use. In this balancing process, constitutional property rights must be respected and protected from unreasonable zoning restrictions. The New Hampshire Constitution guarantees to all persons the right to acquire, possess and protect property. *See N.H. Const. pt. I, arts. 2, 12.* These guarantees limit all grants of powers to the State that deprive individuals of the reasonable use of their land.”

Councilor Gooze said if one took it at that, a ZBA would never turn down a variance request. He said that was why there were five variance criteria.

Councilor Stanhope said this clearly spoke to the issue of hardship created by the current zoning.

Chair Carroll said she would vote for the first reading, because she would like it to go to public hearing.

The motion PASSED 7-1, with Councilor Niman voting against it.

D. Other business - None

XII. Nonpublic Session (if required)

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

Councilor Mower noted that there had been discussion by some residents about the expense of instituting the bike pilot project on Madbury Road. She said the DPW had indicated that the cost for manpower, pavement marking, etc. was \$998.

Chair Carroll said this was a big change, for a small amount of money.

XIV. Adjourn (NLT 10:30 PM)

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

Adjournment at 10:40 pm

Victoria Parmele, Minutes taker