

These minutes were approved at the February 17, 2025 meeting.

NOTE: *These minutes were not sealed by the Town Council and are therefore considered a public document.*

**DURHAM TOWN COUNCIL
NON-PUBLIC SESSION
MONDAY, FEBRUARY 3, 2025
DURHAM TOWN HALL - COUNCIL CHAMBERS
6:00 PM**

MEMBERS PRESENT: Chair Sally Needell, Chair Pro Tem Joseph Friedman, Councilor Wayne Burton, Councilor Eric Lund, Councilor Darrell Ford, Councilor Curtis Register, Councilor Heather Grant and Councilor James Bubar.

MEMBERS ABSENT: Councilor Emily Friedrichs (who uses the pronouns ze/zir/zirs/zirself and the title Mx. Friedrichs)

OTHERS PRESENT: Administrator Todd Selig, Town Assessor Darcy Freer

I. Call to Order

Chair Needell called the meeting to order at 6 p.m.

Councilor Eric Lund MOVED that the Town Council go into Non-Public Session in regard to IAW RSA 91-A:3(e): Consideration or negotiation of pending claims or litigation. Chair Sally Needell SECONDED the motion. The motion passed on a unanimous roll call vote of 8-0.

II. Overview of pending litigation

Town Assessor Darcy Freer presented an overview of four separate New Hampshire Board of Tax and Land Appeals cases. She pointed out while all four cases can be considered and decided individually, the history behind them and the methodology for settling them is the same for all of them.

Ms. Freer said four fraternities or sororities in Durham - NH Beta Housing LLC, Gamma Mu Alumni Association, Alpha Gamma Rho and Alpha Phi International Fraternity - have applied for local level abatements for tax years 2022, 2023 and potentially 2024. They have appealed their 2022 and 2023 abatement decisions to the New Hampshire Board of Tax and Land Appeals.

Ms. Freer described the fraternity or sorority buildings as having a dormitory-style set-up with shared kitchens and bathrooms, and housing between 28 and 52 students at maximum capacity.

NH Beta Housing LLC, Gamma Mu Alumni Association and Alpha Gamma Rho have a long history of litigation with the town of Durham. In the past 15 years, Gamma Mu and Alpha Gamma Rho have challenged their assessed values at the local level and at the Board of Tax and Land Appeals eight times. NH Beta Housing has challenged its assessed value at both levels for 10 of those years, including the current appeals.

Most recently, these three fraternities appealed their assessments at the local level and at the Board of Tax and Land Appeals for tax years 2018, 2019 and 2020. Ms. Freer said they used Commercial Property Tax Management LLC as their representative for the appeals and hired appraiser Wesley G. Weeks MAI to appraise the properties. The Board heard the cases; the appraisers testified about their appraisals; and the Board ruled in favor of Mr. Reeks' appraisals, granted the abatements including interest, which resulted in the town losing just over \$110,000 without interest.

The three fraternities and Alpha Phi are now under appeal for tax years 2022, 2023 and potentially 2024 depending on the Town Council's decision during this session. All four are again represented by Commercial Property Tax Management and have hired Mr. Reeks as their appraiser.

Ms. Freer said she hired Barry J. Cunningham, PhD, ASA, MAI, AI-GRS, of Valuation Research Counseling to assist in reviewing the cases. She said he is well-respected by his peers and by assessors, and has been invited to speak about value by organizations such as the International Association of Assessing Officials.

She said Mr. Cunningham reviewed the cases and appraisals. He thought Mr. Reeks' appraisals had some merit; thought that he could certainly argue some details of the appraisals; said he could defend a slightly higher value; but felt the town's equalized assessed value, also known as market value, would be undefendable, especially for 2022. The EQ ratio for 2022 was 61.5 percent; for 2023, 94.2 percent; for 2024, 82.5 percent.

Ms. Freer said his recommendation is to try to settle the cases before contracting with an appraiser.

She said the typical approach in these situations is to split the difference, which is the approach she took when meeting Paul Krupinsky, the taxpayers' representative from CPTM. She offered a settlement to split the difference between the equalized assessed value and Mr. Reeks' opinions of value for 2022, 2023 and 2024. She said this will settle the appeals for 2022 and 2023, and a future forthcoming appeal for 2024, and amounts to a town loss of \$46,597.81 in total for all four for all three years, including interest.

Ms. Freer noted the 2023 EQ ratio was used for the 2024 abatements, since the 2024 EQ ratio was unknown at the time of abatement discussions. The town now knows it's 82.5

percent. If the 2024 EQ ratio is used, the settlement is a further loss for the town at \$59,015 as opposed to the \$43,986 without interest.

Ms. Freer said if the town decides not to settle, brings these cases to hearing, and the Court decides in favor of Mr. Reeks' appraisals, like before, the potential loss could be in excess of \$132,600 without interest, which is probably \$5,000 to \$6,000 more. She said this is using the 2024 EQ ratio. The town would also have to pay the cost of Mr. Cunningham's appraisals to go to court. That would be about \$3,000 to \$4,000 per property plus the cost of his time to defend them in court, which she estimated at about \$20,000 because the hearing would probably go two days because of the number of properties involved.

At the worst, the town's loss would be approximately \$164,000 to defend and if the court rules in full favor of the appeals. If the court decided to meet in the middle, the 2024 EQ ratio would have to be used, which would be an additional loss of \$16,000, and the town would still have to pay Mr. Cunningham's costs.

Chair Pro Tem Friedman, who works in commercial real estate professionally, said he believes the assessments of the fraternity properties are extremely low and that the town would prevail if the appeal cases went to a hearing.

There was a discussion of the method of determining property value used. Chair Pro Tem Friedman said these fraternities have appealed these buildings every year he's been on the Town Council and he thinks they just do it out of habit. He gave the example of the fraternity property at 5 Strafford Avenue, noting the town's assessment was \$121,000. He said typically in commercial real estate, the way properties are equalized is on a dollars per square foot basis. He said this may be different in municipal appraisals, but it's still a way to value one building against another.

He said generally the value of Durham homes now for sale is at about \$300 per square foot. He said according to the town's 2022 assessment, 5 Strafford Avenue is at \$121 per square foot. He said the fraternity's appraisal for that year is at \$85 per square foot. He said the same property for 2023 and 2024 is \$188 per square foot, and the fraternity is arguing that it's only \$151 per square foot. He noted there are differences between a fraternity property and a residential home. He believes the commercial property tax abatement specialists, companies like the one representing the fraternities, engage with them to file these tax abatements year after year. He said the fraternities don't pay unless they successfully get the abatements, which results in them appealing every tax year. Councilors noted that the specific fraternity at 5 Strafford Avenue made at least substantial external improvements last summer and those should have been included in the assessment having increased the property's value. Councilor Eric Lund noted April 1 is the key date for improvements to be assessed in a property's value and improvements made last summer would be reflected in the 2025 tax value, not the 2024 one.

The difficulty of finding comparative sales for fraternities was noted as so few actually sell. The difference between these dormitory-style fraternity properties and the fraternities that are set up more like apartments was also noted.

Councilors asked if the fraternities have accepted the settlements she proposed, and Ms. Freer confirmed they all had, remarking how they agreed pretty quickly in this cycle, sometimes in several hours. Councilors speculated as to why they agreed so readily to settle.

Councilor Register wondered if the Town Council approves the settlements, will the fraternities keep doing the same thing, asking for abatements and appealing, and how does the town get out of this loop.

Ms. Freer replied that she thinks the town may need to define these dormitory-style buildings differently, as opposed to how it defines student housing like those apartment-style units with individual bedrooms, bathrooms and kitchens, and assess the two types differently. She also said reaching out specifically to each of these taxpayers prior to finalization of values during this year's statistical update and making sure the town hears back from them might be effective, too.

Councilors discussed the quality of the assessments the town is developing for these kinds of properties, the appraisals the town is getting once the abatement is requested, and how to make the process better to avoid requests for abatements, and then appeals in the future.

The next steps if the Town Council doesn't decide to settle were discussed. Ms. Freer was asked if she's under any time pressure for a decision and how much time does the town have if she wants to continue to negotiate? She said if the Council decides not to settle, she and Mr. Cunningham will inform the Board of Tax and Land Abatements of that, and that a hearing is needed. She said the Board is now setting hearings in April so she would have up until the time of the hearing to negotiate further. She said there is potential to settle at some point, but not sure much it would improve on the current settlement agreements.

Councilors discussed the pros and cons of deciding to settle at this session, and how to improve so the town won't be faced with this in the future. Councilor Lund pointed out that settling and approving the payment of the \$46, 597.81 in abatements is on the Unanimous Consent Agenda for the Town Council meeting that will follow this Non-Public Session so asked if a motion is needed or if this is a conversation that needs to continue because if the Council is not going to settle, this needs to be pulled from Unanimous Consent. He also said the decision to seal the minutes of this Non-Public Session depends on whether the Council agrees to the settlement or decides to move forward to a hearing. He said if the Council agrees to the settlement, then it would not be appropriate to seal the minutes. He proposed an informal vote to know where the Council is leaning.

A discussion occurred about the strategy and value of not settling at this point, if the settlement agreement could be improved, and whether it was worth the extra time and cost. Councilors discussed using the capitalization rate of a property to compare it to other properties, and how the value of a property in a university context plays into the valuation process. Chair Pro Tem Friedman asked Ms. Freer if she thought Mr. Cunningham was being aggressive enough in these appeals, and Ms. Freer said she did, and that he is fair to the town.

Administrator Selig confirmed that if no councilor wants to pull the payment of the abatements from the Unanimous Consent Agenda, then there is no need to seal the minutes of this Non-Public Session.

Councilor Ford suggested a poll of the Council to see where the matter stands. Chair Needell agreed and said an “aye” is a desire to settle and leave the approval to pay the abatements in the Unanimous Consent Agenda. The poll indicated no councilor wanted to pull the payment of the abatements from the Unanimous Consent Agenda.

Councilor Friedrichs arrived in Council Chambers at 6:58 p.m.

III. Adjourn

Councilor Eric Lund MOVED that the Town Council exit Non-Public Session. Chair Sally Needell SECONDED the motion. The motion PASSED on a unanimous roll call vote of 9-0.

The Non-Public Session adjourned at 6:59 p.m.

- Jane Murphy, Minutes Taker