

RESOLUTION

WHEREAS, the Town Council, as part of its economic growth and development initiatives, is desirous of adopting an ordinance pursuant to certain State enabling statutes, to aid in implementing its initiatives; and

WHEREAS, the Town Council specifically intends to adopt the powers and authorities under RSA 79-E, the State Economic Growth Resource Protection and Planning Policy statute,

NOW, THEREFORE, the Town Council does hereby resolve and ordain that the following ordinance, entitled, Downtown Derry Revitalization Tax Relief Program, is hereby adopted and further ordered to be codified in the Derry Town Code as Chapter 138, Article II, 138-8:

Code of the Town of Derry

Chapter 138

ARTICLE II

138-8: Downtown Derry Revitalization Tax Relief Program (RSA 79-E)

State Law References: Community Revitalization Tax Relief Incentive, RSA 79-E, State Economic Growth, Resource Protection and Planning Policy, RSA 9-B, Appraisal of Taxed Property, RSA 75:1, Collection of Taxes, RSA 80:1-80:42-a, and Administrative Procedure Act, RSA 541-A.

Adoption of Community Revitalization Tax Relief Incentive Program

Pursuant to the authority granted by RSA 79-E (Attachment A) the Town of Derry adopts the Downtown Derry Revitalization Tax Relief Program, for application within the geographical limits of the revitalization district described herein as Attachment A: "Downtown Revitalization District".

- 1. Short Title:** Downtown Derry Revitalization Tax Relief Program
- 2. The Enabling Statute:** New Hampshire Statutes-RSA-TITLE V –TAXATION - CHAPTER 79-E:
COMMUNITY REVITALIZATION TAX RELIEF INCENTIVE

3. Purpose: Declaration of Public Benefit

It is declared to be a public benefit to enhance the Town of Derry's downtown and town center with respect to economic activity, cultural and historic character, sense of community, and in-town residential uses that contribute to economic and social vitality.

It is further declared to be a public benefit to encourage the rehabilitation of the many underutilized structures in our urban and town center as a means of encouraging growth of economic, residential, and municipal uses in a more compact pattern, in accordance with RSA 9-B.

Short-term property assessment tax relief and a related covenant to protect the public benefit as provided under this chapter are considered to provide a demonstrated public benefit if it encourages substantial rehabilitation and use of qualifying structures, or in certain cases, the replacement of a qualifying structure, as defined in this chapter.

4. Tax Relief Authority

- a. The Town of Derry hereby adopts RSA 79-E in the manner specified under RSA 79-E: 3. In addition, the Town may modify the incentive program to best suit the needs of the Town and its constituents.
- b. The governing body shall herein refer to the Derry Town Council (the Council may designate an agent as permitted per Town Charter).

5. Definitions: In the interpretation and enforcement of this article, all words other than those defined specifically below shall have the meanings implied by their context in the ordinance or the ordinarily accepted meanings. For the purpose of this ordinance, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

- a. **Covenant:** A formal and legally binding agreement or contract such as a lease, or one of the clauses in an agreement of this kind.
- b. **Qualifying Structure:** A building located in the "Revitalization District" as per attached map.
- c. **Substantial Rehabilitation:** Rehabilitation of a qualifying structure which costs at least fifteen (15%) percent of the property's improvements and/or structures pre-rehabilitation assessed valuation, or at least \$75,000, whichever is less.

The Town Council may further limit "substantial rehabilitation" according to the procedure in RSA 79-E:3 as meaning rehabilitation which costs a percentage greater than 15 percent of pre-rehabilitation assessed valuation or an amount greater than \$75,000 based on local economic conditions, community character, and local planning and development goals.

- d. Assessed Valuation(s): The assessed valuation of the improvements/structures as of (April 1st within the tax year time line the application is made, pursuant to RSA 79-E).
- e. Replacement: The demolition or removal of a qualifying structure and the subsequent construction of a new structure on the same lot.
- f. Tax Relief Period: The finite period of time during which the tax relief will be effective, as determined by the Town Council body pursuant to RSA 79-E: 5.
- g. Tax Relief: For a qualifying structure, that for a period of time determined by the Town Council in accordance with this chapter, the property tax on a qualifying structure shall not increase as a result of the substantial rehabilitation thereof.

For the replacement of a qualifying structure, that for a period of time determined by the Town Council in accordance with this chapter, the property tax on a replacement structure shall not exceed the property tax on the replaced qualifying structure as a result of the replacement thereof.

- h. Tax Increment Finance District (TIF): Any District established in accordance with the provisions of RSA 162-K. (The Town of Derry, through action of the Derry Town Council, adopted the provisions of RSA 162-K on May 7, 2002.)

6. General provisions

a. Public Benefits:

In order to qualify for tax relief under this chapter, the proposed substantial rehabilitation must provide one or more of the following public benefits, and the proposed replacement must provide one or more of the same public benefits to a greater degree than would a substantial rehabilitation of the same qualifying structure, as follows:

- 1 It enhances the economic vitality of the district;
- 2 It enhances and improves a structure that is culturally or historically important on a local, regional, state, or national level, either independently or within the context of an historic district, town center, or village center in which the building is located;
- 3 It promotes development of municipal centers, providing for efficiency, safety, and a greater sense of community, consistent with RSA 9-B; or
- 4 It increases residential housing in town centers.

7. Covenant to Protect Public Benefit

Tax relief for the substantial rehabilitation or replacement of a qualifying structure shall only be effective after a property owner grants to the municipality a covenant ensuring that the structure(s)

shall be maintained and used in a manner that furthers the public benefit for which the tax relief was granted and as otherwise provided in this chapter.

This covenant shall be coextensive with the tax relief period. The covenant may, if required by the Town Council, be effective for a period of time up to twice the duration of the tax relief period.

The covenant shall include provisions requiring the property owner to obtain casualty insurance, and flood insurance if appropriate. The covenant may include, at the governing body's sole discretion, a lien against proceeds from casualty and flood insurance claims for the purpose of ensuring proper restoration or demolition of damaged structures and property. If the property owner has not begun the process of restoration, rebuilding, or demolition of such structure within one year following damage or destruction, the property owner shall be subject to the termination of provisions set forth in RSA 79-E:9, I.

The Town shall provide for the recording of the covenant to protect public benefit with the registry of deeds. It shall be a burden upon the property and shall bind all transferees and assignees of such property.

8. Application Procedure

Substantial Rehabilitation or Replacement of a Structure: An owner (or Agent) of a qualifying structure that is located in the district, who intends to substantially rehabilitate or replace such structure may apply to the Planning Department for this tax relief. The applicant shall include the address of the property, a full description of the intended rehabilitation or replacement, any changes in use of the property resulting from the rehabilitation or replacement, and an application fee. The application shall be on a pre-approved application form provided by the Town Planning Department.

9. Additional Requirements of Applicant for the Replacement of a Building or Facility

In instances where a qualifying structure is determined to possess no significant historical, cultural, or architectural value and for which the governing body makes a specific finding that rehabilitation would not achieve one or more of the public benefits established in RSA 79-E:7, to the same degree as the replacement of the underutilized structure with a new structure, the tax relief incentives provided under this chapter may be extended to the replacement of an underutilized structure in accordance with the provisions of this chapter.

In order to assist the Planning Staff with the review and evaluation of an application for replacement of a qualifying structure, an owner shall submit to the Town Council as part of the application (a New Hampshire Division of Historical Resources *individual resource inventory* form, prepared by a qualified architectural historian) and a letter issued by the local heritage commission, and if the qualifying structure is located within a designated historic district established in accordance with RSA 674:46, a letter from the historic district commission or, if such local commissions are not established, a letter issued by the New Hampshire Division of Historical Resources that identifies any and all historical,

cultural, and architectural value of the structure or structures that are proposed to be replaced and the property on which those structures are located.

In connection with these findings, the governing body may request that the Division of Historical Resources conduct a technical evaluation in order to satisfy the governing body that historical resources will not be adversely affected.

The application for tax relief shall not be deemed to be complete and the governing body shall not schedule the public hearing on the application for replacement of a qualifying structure as required under RSA 79-E:4, II until the letter, as well as all other required information, have been submitted.

10. Application Fees

An application fee of \$150.00 (one hundred-fifty) – or the amount subsequently adopted by the Town Council - shall be paid at the time of application submission to the Planning Department, made out to the “Town of Derry”.

The applicant shall also be responsible for the reasonable expenses incurred by the municipality in the drafting, review, and/or execution of the covenant. If the application is approved, the applicant shall be responsible for the cost of recording the covenant.

11. Review and Decision by Town Officials

Upon receipt of an application, the governing body shall hold a duly noticed public hearing to take place no later than 60 days from receipt of the complete application, to determine whether:

- The structure at issue is a qualifying structure;
- Whether any proposed rehabilitation qualifies as substantial rehabilitation; and
- Whether there is a public benefit to granting the requested tax relief;
- And if so, for what duration.

The Council may seek assistance from Town Officials, Legal Counsel, Boards or Commissions in making their determinations.

No later than 45 days after the public hearing, the governing body shall render a decision granting or denying the requested tax relief and, if so granting, establish the tax relief period.

After following the procedures established herein, the governing body may grant the tax relief, provided:

- 1) The governing body finds a public benefit under RSA 79-E:7; and
- 2) The specific public benefit is preserved through a covenant under RSA 79-E:8; and
- 3) The governing body finds that the proposed use is consistent with the municipality's master plan or development regulations; (and) or

- 4) In the case of a replacement, the governing body specifically finds that the local Heritage Commission has determined that:
- The replaced qualifying structure does not possess significant historical, cultural, or architectural value,
 - The replacement of the qualifying structure will achieve one or more of the public benefits identified in RSA 79-E:7 to a greater degree than the renovation of the underutilized structure, and
 - The historical, cultural, or architectural resources in the community will not be adversely affected by the replacement.

If the governing body grants the tax relief, the governing body shall identify the specific public benefit achieved under RSA 79-E:7, and shall determine the precise terms and duration of the covenant to preserve the public benefit under RSA 79-E:8.

If the governing body, in its sole discretion, denies the application for tax relief, such denial shall be accompanied by a written explanation. The governing body's decision may be appealed either to the Board of Tax and Land Appeals or the Superior Court in the same manner as provided for appeals of current use classification pursuant to RSA 79-A:9 or 79-A:11 provided, however, that such denial shall be deemed discretionary and shall not be set aside by the Board of Tax and Land Appeals or the Superior Court except for bad faith or discrimination.

12. Exemptions

Tax Incremental Financing District (TIF): The Town shall have no obligation to grant an application for tax relief for properties located within tax increment finance (TIF) districts when the governing body determines, in its sole discretion that the granting of tax relief will impede, reduce, or negatively affect:

- (a) The development program or financing plans for such tax increment finance districts; or
- (b) The ability to satisfy or expedite repayment of debt service obligations incurred for a tax increment financing district; or
- (c) The ability to satisfy program administration, operating, or maintenance expenses within a tax increment financing district.

13. Other Programs

The provisions of this chapter shall not apply to properties whose rehabilitation or construction is subsidized by state or federal grants or funds that do not need to be repaid totaling more than 50 percent of construction costs from state or federal programs.

14. Duration of Tax Relief Period

The Town Council may grant such tax assessment relief for a period of up to 5 years, beginning with the completion of the *substantial rehabilitation*. (The issuance of a Certificate of Occupancy determines completion.)

For the approval of a *replacement* of a qualifying structure, the Town Council may grant such tax assessment relief for a period of up to 5 years, beginning only upon the completion of construction of the replacement structure. (The issuance of a Certificate of Occupancy determines completion.)

The governing body may, in its sole discretion, extend such additional years of tax relief:

- Up to an additional two (2) years of tax relief for a project that results in new residential units, or
- Up to four (4) years for a project that includes affordable housing, or
- Up to an additional four (4) years of tax relief for the substantial rehabilitation of a qualifying structure that is listed on or determined eligible for listing on the National Register of Historic Places, state register of historic places, or is located within and is important to a locally designated historic district, provided that the substantial rehabilitation is conducted in accordance with the U.S. Secretary of Interior's Standards for Rehabilitation.

No such additional years of tax relief may be provided prior to the completion of construction of the replacement structure. The municipal tax assessment of the replacement structure and the property on which it is located shall not increase or decrease in the period between the approval by the governing body of tax relief for the replacement structure and the time the owner completes construction of the replacement structure and grants to the municipality the covenant to protect the public benefit as required by this chapter. The governing body may not grant any tax assessment relief under this chapter with respect to property and structures for which an election has been made for property appraisal under RSA 75:1-a.

The Town Council may adopt additional local guidelines to assist it in determining the appropriate duration of the tax assessment relief period.

15. Resumption of Full Tax Liability

Upon expiration of the tax relief period, the property shall be taxed at its market value in accordance with RSA 75:1, at the date of April 1, of said year.

16. Lien for Unpaid Taxes.

The real estate of every person shall be held for the taxes levied pursuant to RSA 79-E:9.

17. Extent of Tax Relief

Tax relief granted under this chapter shall be calculated on the value in excess of the original assessed value. Original assessed value shall mean the value of the qualifying structure assessed at the time that the governing body approves the application for tax relief and the owner grants to the municipality the covenant to protect public benefit as required in this chapter.

Tax relief granted under this chapter shall pertain only to assessment increases attributable to the substantial rehabilitation performed under the conditions approved by the governing body and not to those increases attributable to other factors including but not limited to market forces, such as revaluation and/or periodic assessment updates.

The tax relief granted under this chapter shall only apply to substantial rehabilitation or replacement that commences after the governing body approves the application for tax relief and the owner grants to the municipality the covenant to protect the public benefit as required in this chapter.

18. Rulemaking

The Town of Derry will abide by any rules the Commissioner of the Department of Revenue Administration adopts, pursuant to RSA 541-A, relative to the payment and collection procedures under Chapter 19, Sec. 19-24 (RSA 79-E:9).

19. Notifications

Once the application is received and deemed complete, the Town will notify the applicant of the date of the required public hearing.

20. Violations, penalties and enforcement: Termination of Covenant; Reduction of Tax Relief; Penalty
If the owner fails to maintain or utilize the building according to the terms of the covenant, or fails to restore, rebuild, or demolish the structure following damage or destruction as provided in RSA 79-E:8, III, the governing body shall, after a duly noticed public hearing, determine whether and to what extent the public benefit of the rehabilitation or replacement has been diminished and shall determine whether to terminate or reduce the tax relief period in accordance with such determination. If the covenant is terminated, the governing body shall assess all past taxes to the owner as though no tax relief was granted, with interest in accordance with Paragraph II.

Any tax payment required under paragraph I shall be payable according to the following procedure:

The Commissioner of the Department of Revenue Administration shall prescribe and issue forms to the local assessing officials for the payment due, which shall provide a description of the property, the market value assessment according to RSA 75:1, and the amount payable.

The prescribed form shall be prepared in quadruplicate. The original, duplicate, and triplicate copy of the form shall be given to the collector of taxes for collection of the payment along with a special tax warrant authorizing the collector to collect the payment under the warrant. The quadruplicate copy of the form shall be retained by the local assessing officials for their records.

Upon receipt of the special tax warrant and prescribed forms, the tax collector shall mail the (duplicate) copy of the tax bill to the owner responsible for the tax as the notice of payment.

Payment shall be due not later than 30 days after the mailing of the bill. Interest at the rate of 18 percent per annum shall be due thereafter on any amount not paid within the 30-day period. Interest at 12 percent per annum shall be charged upon all taxes that would have been due and payable on or before December 1 of each tax year as if no tax relief had been granted.

21. Enforcement

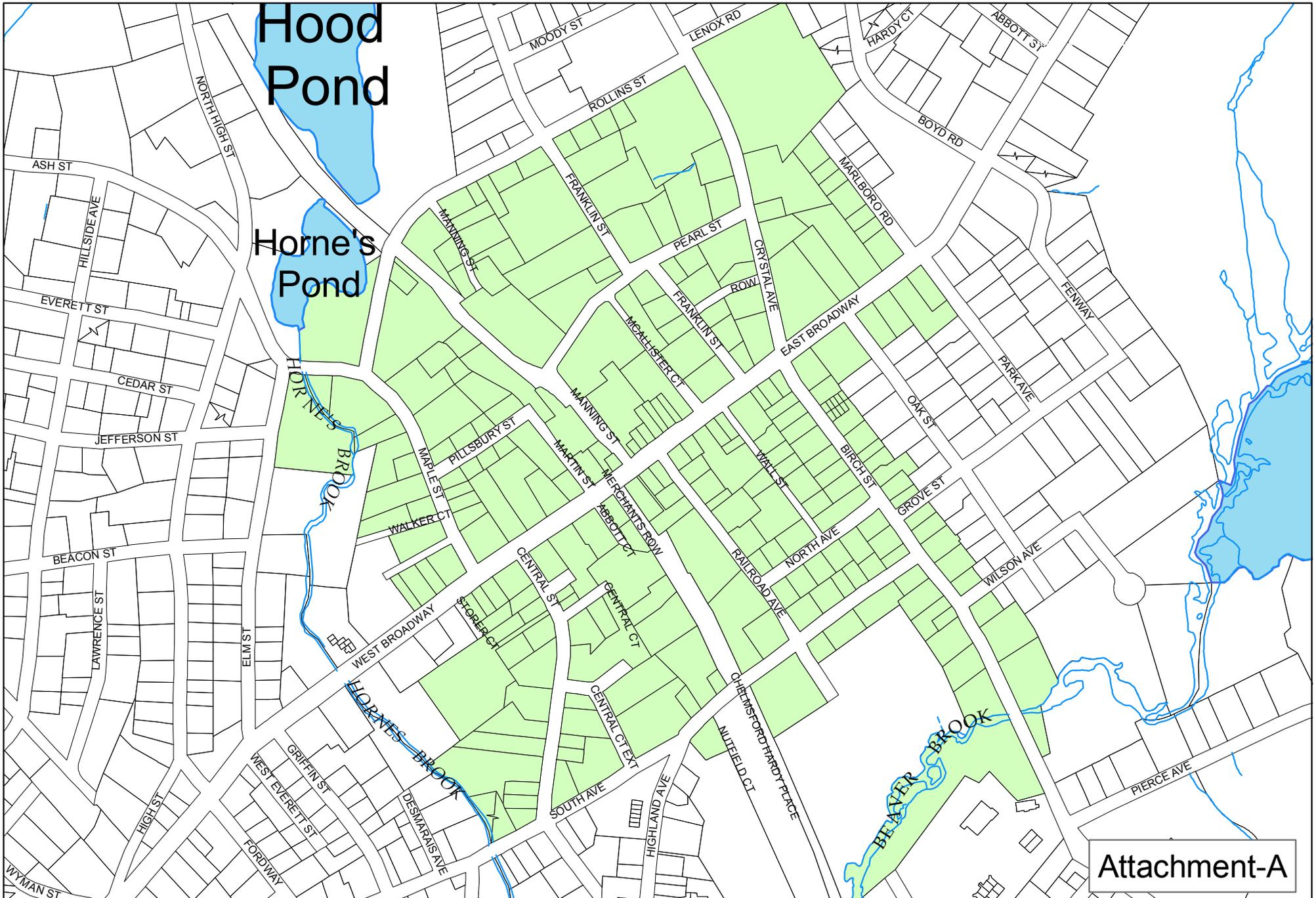
All taxes levied pursuant to RSA 79-E:9 which are not paid when due shall be collected in the same manner as provided in RSA 80.

22. Effective Date: The effective date of this ordinance shall be June 13, 2012

23. Attachment

- A. Downtown Derry Revitalization District Map

Downtown Derry Revitalization Tax Relief District



Attachment-A

Attachment C

Application for Downtown Derry Revitalization Tax Relief Program



Site Property Owners:	Application # _____
Last name:	First name:
Last name:	First name:
Street Address:	
Address continued:	
Town/City	
State	Zip code

Property Address in Derry NH for Tax Relief Application			
Property name (if any):			
Street Address:			
Address continued:	Map:	Block:	Lot#

Application fee of \$150.00 made out to Town of Derry NH: check # _____
NOTE: The applicant will need to pay reasonable costs associated with the Town recording the Covenant, between applicant and the Town, should this application be approved by the Town Council.

Is this a “renovation” project, or a “removal and replacement” project?

If renovation, proceed to next question. If replacement is proposed, also complete Section 9.

Year(s) built Square footage of existing building(s):

Attachment C

Application for Downtown Derry Revitalization Tax Relief Program

Eligible or listed on state or National Register of Historic places? Yes ____ No _____ (see www.nh.gov.nhdhr. If "yes" describe how you intend to meet the US Secretary of Interior Standards for Historic Preservation:

Existing use(s) Include number of residential units and square footage per other use:

Proposed uses:

Does the Proposed Use(s) require a Change in Use?

Will the proposed use include additional residential units?

If yes, please describe, including if the units are eligible for subsidy or if they are market-rate rentals:

Is the proposed site located within an adopted Tax Increment Financing District?

Are there any federal, state or local grant funds that have been used on this property, or are proposed for this property? Describe below, including amounts, uses and dates of repayments.

NOTE that any use of federal or state funds that do not need to be repaid (grants) for the site after an application is submitted or approved may reduce or eliminate the tax relief.

Attachment C

Application for Downtown Derry Revitalization Tax Relief Program

E. Plumbing

Description:

Projected completion date:

Cost: \$

F. Mechanical

Description:

Projected completion date:

Cost: \$

G. Accessibility, Fire and Safety

Description:

Projected completion date:

Cost: \$

H. Other

Description:

Projected completion date:

Cost: \$

Applicant may attach copies of contracts with contractors, plot or building plans, building permit applications, sketches, renderings or photos that could help explain the project and how it meets the program requirements.

Section 9: Additional Requirements for the Removal of a Structure and Replacement:

Any application for replacement of a qualifying structure shall also submit a New Hampshire Division of Historic Resources "Individual Inventory Form" prepared by a qualified architectural historian and a letter from the Derry Heritage Commission that identifies any and all historic, cultural, and architectural value of the structure(s) that are proposed to be replaced, and the property where they are sited. Prior

Attachment C

Application for Downtown Derry Revitalization Tax Relief Program

demolition will void this application. This application shall not be considered complete until such time as the Individual Inventory Form and letter are submitted.

Important Notice regarding “Original Assessed Value”: Per RSA-79-E 13(II) the base or original assessed value for any tax relief period is only set after the following two conditions are met:

1. Approval by the Town Council by vote at a meeting, and:
2. The applicant entering into a covenant with the Town and satisfactory to the Town to protect the public benefit.

The applicant shall not commence any of the improvements included in this application – including the demolition to any existing structure(s) - until such time as the application has been approved by Council. Improvements before that time will not count against the 15% or \$75,000 minimums.

Affidavit:

I have read and understand the Downtown Derry Revitalization Tax Relief Incentive and accompanying state legislation (RSA 79-E) and attachments, and am aware that this will be a public process including a public hearing overseen by the Town Council, to discuss the merits and eligibility of this application. I understand that there will be a subsequent need to grant a covenant in the property’s deed to the Town of Derry and will pay any reasonable expenses associated with the drafting and recording of the covenant.

I understand I will have to provide insurance coverage on the applicant property(s).

I understand this application will not be determined complete nor forwarded to the Council for their action until all the necessary information is provided to the Town.

Applicant Signature

Print Applicant’s Name

Date

Attachment C

Application for Downtown Derry Revitalization Tax Relief Program

Planning Department acceptance as Complete: _____ date: _____

Action taken by Town Council, the reason(s) for the Finding of Public Benefit, or if denied, the reason(s) for that denial:

Duration, conditions and other considerations, including requirements for insurance:

Date of vote:

Attachment B



SAMPLE Covenant and Agreement

THIS AGREEMENT made this _____ day of _____, 20__ Between applicant (s) _____(name), dba: _____,

Legal address:

Contact phone number

Property address: _____, Derry NH 03038
(Map: ___ Book: _____ Lot: _____), and the Town of Derry, New Hampshire.

WITNESSETH: Above applicant(s) covenants and agrees that it shall renovate above listed property(s) as indicated in the application dated _____, as deemed complete by the Town Planning Office on: _____ Number: _____.

Items to consider and attach description if appropriate:

- Special considerations, conditions, requirements and understandings:
- Requirements to carry the following insurance policies and coverage:
- Use requirements:
- Other terms to be observed by and between the parties:
- Duration of Tax Relief, including any extensions as allowed under #13 Duration of Tax Relief Period:
- Additional requirements of the applicant:
- Construction Start date:
- Construction completion _____, 20__ per issuance of Occupancy Permit
- Council minutes of their action:
- Other:

II. The Town of Derry NH covenants and agrees it finds the application provides a Public Benefit per RSA 79_E, and that it shall provide the applicant with tax relief as approved by Town Council vote on _____, 20__ based upon the above Applicant’s application of _____, 20_ Number _____.

This agreement shall be binding upon the parties, their successors, assigns and personal representatives. Time is of the essence on all undertakings. This agreement shall be enforced under the laws of the state of New Hampshire .

Signed in the presence of:

Witness: _____	Applicant or Agent: _____
Witness: _____	for Town of Derry NH: _____