

# *Approved November 17, 2009*

**Durham Rental Housing Commission  
Tuesday, November 3, 2009 – 4:00 PM  
Durham Town Hall - Council Chambers**

**MEMBERS PRESENT:** Chair Paul Berton, Rene Kelley, Perry Bryant, Mark Henderson, Brett Gagnon, Ryan Deziel, Samuel Flanders

**MEMBERS ABSENT:** Ken Barrows and Council Representative Karl Van Asselt

**PUBLIC ATTENDEES:** Malin Clyde, Brendan J. O'Sullivan, Zack Wade, Anne Lawing, Annmarie Harris, Kitty Marple, Carolyn Ricker, Walter Fischer, Janice Aviza, Kim Strogon, Martie Gooze, Robin Mower, Diana Carroll, Dudley Dudley, Ed Valena, Richard Gsottschneider, Maury Borovick, Jim Jelmberg, Jay Gooze, Todd Selig

## **1) Introduction /Board Review**

Chair Berton called the meeting to order at 4:07 pm and acknowledged members present and absent. The members introduced themselves and their association to the public in attendance.

## **2) Reports:**

**Police** – Deputy Police Chief Rene Kelley reported the trend of high volume of calls for service continues. He noted that the calls for service are above average over the number of calls for service for the past three years. Kelley stated that the number of arrests during the UNH academic year have increased dramatically and noted a shifting in the ratio of students versus non students being arrested. He said that historically there has been a 50/50 ratio, but this year he has seen an increase in the number of students being arrested and that a majority of the non students being arrested are individuals visiting UNH students. He said a lot of outsiders are coming into the community on the weekends to participate in the social life. Deputy Police Chief Kelley said that Halloween evening was busy with a number of calls for service for noise complaints and large crowds needing to be dispersed – in general a very busy night.

**Fire** - Fire Inspector Brendan O'Sullivan reported that the Fire Department experienced a similar increase in calls on Halloween. He said they had 25 calls for service in a 24 hour period. He explained the fire and safety regulations regarding overcrowding; saying that if there are more than 49 people in a building the building needs to have certain life safety equipment (such as exit signs, emergency lighting, 2 exits etc.), if there are over 100 people the owner is required to be issued a permit from the fire department, which is not issued unless there is an inspection.

Sam Flanders asked if a regular dwelling can have 49 people in it without violating any fire and safety rules or if a question of having too many people in a dwelling could be a reason for Mr. Tom Johnson to enter a dwelling for an inspection. Brendan O'Sullivan replied that they would not be breaking any rules as long as there was 250 sq ft per person and no imminent hazard could

be articulated unless the 50 person threshold was met (at which point the Town may want to confirm that the life safety equipment is in place) .

Sam Flanders asked Fire Inspector O'Sullivan what the nature of the fire department calls have been. Brendan O'Sullivan replied that they have mostly been medical aid calls, with the majority being alcohol related.

Bryant Perry asked if the calls have come from incidents occurring on the street, in houses or from accidents. Fire Inspector O'Sullivan replied that they have varied, but most have been medical aid calls related to alcohol, both on and off campus.

Paul Berton asked if fire and safety codes could be used as a reason to accelerate Mr. Johnson's ability to verify occupant numbers in dwellings. Fire Inspector O'Sullivan replied that this could be done only if the Town felt that there were more persons than allowable per 250 sq. ft.

Paul Berton noted that most landlords have a social occupancy of double what the occupancy is; for instance; if the building has an occupancy limit of 3 people, the social occupancy would be 6 people. Perry Bryant noted that these numbers are based on the occupancy of the total building – there could be a 10 unit building with a social occupancy limit of 8 people in each unit, which would be a total of 80 people for the building.

Paul Berton noted that when making suggestions to landlords for dealing with unruly tenants, they recommend that the landlords incorporate a low social occupancy limit

Sam Flanders asked if formal social occupancy limits for housing can be established. Paul Berton said he asked Mr. Johnson if it was possible to have an ordinance for social occupancy limits for a non owner occupied property and he expressed some resistance to the idea. Mark Henderson said he believes Mr. Johnson's reluctance was due to the question of legality of such an ordinance. Perry Bryant suggested such an ordinance for all housing, not just rental property, noting this would affect some gatherings such as weddings, family celebrations etc. Paul Berton asked if the public would be opposed to a social occupancy limit across the board in the community and if it would be an inconvenience to file the proper paperwork in an attempt to address some of these issues. Sam Flanders suggested a limit on assembly that is in effect after a specific time – such as midnight or 10 pm. Robin Mower suggested connecting such an ordinance to the noise ordinance time frame.

**Landlords:** Mark Henderson reported that over the last few weeks the Durham Landlord Association has become more active by trying to contact the owners of problem properties. He noted they have made contact with three owners and have suggested a social occupancy limit be added to their leases and the use of local management security companies. Mark Henderson said they have also sent sample leases. He said word is getting back to some of the owners that they are in an uncomfortable situation and that they need to make efforts to address the situation.

Paul Berton suggested that Mr. Johnson be a formal member of the board.

**Town:** Todd Selig said that at the present time the code enforcement office is not formally a member. He explained that Mr. Johnson is at a conference this week so was not able to attend the meeting today. Mr. Selig said he felt it makes sense to have Mr. Johnson be a part of this

Commission. He said this board is established by ordinance – he also suggested having someone from the Fire Department on the Commission. Mr. Selig said the ordinance would need to be changed to add the additional members. He also suggested increasing the number of neighborhood representatives. Mr. Selig said the group should talk about these suggestions and then make a recommendation. He also noted that the tenant representative position is vacant and noted that the last tenant representative was a Newmarket resident because the group had been unable to get a Durham resident to take part in the Commission. Perry Bryant said he felt the group should keep trying to get a tenant representative. Annemarie Harris said that if this board is responsible for establishing policy it seems the people making policy should also be residents of the community.

Todd Selig said that since the last meeting of the group a lot of effort has been on the budget development. He said there had been concerns expressed with regard to minutes of the meeting, so Sue Lucius will be attending the meetings to take minutes. He said that the minute taker is not available on the first Tuesday of the month, so another time will need to be scheduled.

Mr. Selig said the Town Council has had discussions with regard to the composition of committees and if it makes sense to have non residents on Town boards. Mr. Selig said the Town Council is open to having non residents serve on committees and that this committee has no requirement to be a town resident.

Mr. Selig said the budget does have implications on the issues being discussed. He said the police department was reduced by one officer in 2009 which has had a significant impact on their ability to respond to calls for service. Mr. Selig said they are doing a phenomenal job with the resources they have and that the police department has requested the 19<sup>th</sup> officer back. Mr. Selig said he has not recommended the additional officer in the new budget because he is trying to keep the tax rate stable. He also noted that the Code Enforcement Office is driven primarily by complaints – it is an imperfect process – the code enforcement officer responds and sometimes tenants are cooperative and sometimes they are not. Mr. Selig said if the group wants to ramp up enforcement it would mean more money, more staff and someone actively going into neighborhoods and checking up and creating lists. He said if this is something the group wants, there needs to be a discussion about it financially since it is not in the budget recommendation now. He noted the fire department could be increased as well, but he has not requested an increase because of financial constraints.

The members discussed the desired composition of the Commission; suggesting that another neighborhood representative, a Fire Department representative, and a Code Enforcement Office representative be added to the Commission. The members discussed the two UNH representatives on the board and recommended requesting a representative from Commuter Student Services as well as a representative from the Dean of Students Office and a renewed attempt be made to fill the vacant tenant representative position. The members asked Anne Lawing of the Dean of Students Office if she would join the members at the table for this meeting.

**Neighborhood:** Sam Flanders reported that the RHC workshop was beneficial. He said it was decided to seek volunteers to be neighborhood watch representatives. Sam Flanders said it is hoped that these volunteers will look out for individual neighborhoods and communicate what is

going on in the neighborhoods to the Rental Housing Commission. He said it is hoped that the group can then contact realtors to communicate regulations on rental housing in Durham and also reach out to students moving into the community and let them know there are guidelines and etiquette to follow when moving into a neighborhood. Sam Flanders said there are individuals who have volunteered for lower Madbury Road, Bagdad Road, Faculty Road, Cowell Drive and Bayview Road. He noted they are looking for volunteers for the other roads in the Faculty Road neighborhood, upper Madbury Road, Edgewood Drive, Woodman Avenue, Denison Road, Coe Drive, School House Lane, Old Landing Road and Beards Road. Sam Flanders said they are not trying to exclude any neighborhood, if anyone is having problems in a neighborhood that was not mentioned, or wants a neighborhood watch person, to contact him and let him know.

Sam Flanders said they have been in communication with Anne Lawing regarding the University's one strike and out policy regarding alcohol in the UNH dorms. He said they have agreed to have further discussions. Sam Flanders said he would like to have community involvement on this issue, have a dialogue, and try to affect policy change. He asked anyone who is concerned about that issue to come forward.

Sam Flanders said several citizens have been researching the possibility of a town wide mandatory inspection and licensing program for residential rental properties. He said they are trying to limit it to non owner occupied property and exempting certain classes of owner occupied property. Sam Flanders said they are trying to see if it is legal and asked Paul Berton about bringing this topic into the rental housing commission discussion. He asked public members to voice their opinions on this suggestion.

Sam Flanders said he gave a presentation on rental housing at the last Town Council meeting and hopes to establish an ongoing forum at the Town Council meetings so the Council members are acclimated to this topic. Sam Flanders encouraged other residents to take part in these presentations to the Town Council and to bring a variety of topics to the council to paint a broad picture of issues of rental housing in Durham. Paul Berton congratulated Sam Flanders on a job well done addressing the council.

**UNH:** Brett Gagnon from the commuter student services office in the MUB reported that she and student employees are going to different resident halls to do workshops with students about living off campus to help students understand that once you move off campus you are a resident of the community, present issues to think about, discuss what a lease is, etc. She said they will be having an Apartment Fair on Thursday November 19<sup>th</sup> where students can come to meet different landlords. Anne Lawing said they also bring in landlords from other communities. She said they usually get 600 students in 3 hours.

Anne Lawing said she is keeping other administrators on campus informed of the discussions regarding rental housing in Durham, including the Chief of Staff in the Presidents office, Director of Residential Life, Admissions, and other vice presidents, as well as meeting with the student body president and vice president and the student senate.

Sam Flanders said that Ryan Deziel will be doing some of the student outreach – which is a significant effort and should be appreciated.

Martie Gooze suggested giving a presentation at the apartment fair about the responsibilities and issues that come up during the year and trying to work together to solve them. Brett Gagnon said there are no formal presentations at the apartment fair. She said they hand out the Community guide to the students and can try to put something additional together addressing more of the concerns of this group.

Sam Flanders said there is a UNH video about what happens when you get arrested that is shown on dorm floors, but that people living off campus may not be exposed to it.

Anne Lawing said the video is available to anyone on streaming video. She noted that they are also trying to market it to parents as well as focusing on 1<sup>st</sup> year students by asking families to watch it together.

Paul Berton said the video is focused on alcohol and being arrested, he asked how it can be incorporated to deal with the rental housing issues. Perry Bryant suggested updating the video and the community guide to include more issues. Sam Flanders suggested having a video loop at the apartment fair. Paul Berton said he stresses with his tenants to think about their hometown or their parents and what affect certain actions would have on them. He suggested using this approach in an update to the video or the community guide.

### **III. RHC workshop**

Paul Berton the first focus of the workshop was on the sale of properties and how to discourage single family houses from becoming student rentals. He said there was discussion on strategies to use before the purchase and sales agreement and how to approach the situation after a purchase and sales agreement to let the new owners know the Durham rules and regulations concerning rental properties. Paul Berton said he learned there is a lot that does happen from Tom Johnson's office after a property is sold.

Mark Henderson reported his action item from the workshop was how to deal with the property once it is being listed. He said he has met with a local realtor (Johanna Knight) who will be doing a weekly search of houses that come on the market in Durham within a specific price range (\$300,000 plus/minus). Mark Henderson noted that there are currently thirteen houses on the market in that price range and only three of the listing agents are from Durham. He said, it is the RHC's suggestion that the listing agents be sent a letter from the Town of Durham making them aware that if a potential buyer is looking at the property as an investment property there are guidelines that need to be followed and also make them aware of past problems and the consequences of not following the guidelines. Mark Henderson said the goal is to get the information to the listing agents. Mark Henderson also suggested doing a search on closings and sending a letter to the new owners outlining the guidelines if the property is to be used as a rental property. Paul Berton asked if the listing agent receives a letter from the Town are they required to disclose this to potential buyers. Mark Henderson said he believed they would be required to disclose it to potential buyers. He suggested however that the letter needs to have more than the legal responsibilities, but also include social behavior guidelines and etiquette.

Maury Borovick said he felt realtors should be encouraged not market a single family home that isn't being used as a student rental as a student rental unless the buyer brings the idea up. He

noted a specific single family home property listing by a local realtor suggesting the property would make a good investment property. He said there was a realtor in town, who is now retired, who went out of his way to instruct his agents not to promote something to be a student rental if it is not currently a student rental. Mark Henderson responded that it is the realtor's job to sell the property and it is legal to buy and sell investment property. He noted, the realtor needs to make sure that the "three unrelated" law is explained. He said the Landlord Association is trying to give the agents another set of guidelines to pass on to perspective owners.

Ed Valena asked if a section could be added to the disclosure statement regarding the "three unrelated" law in Durham. He wondered if it is possible to have this added and initialed by the seller. Mark Henderson said he has never seen this done, but will check to it to see if it is possible.

Paul Berton encouraged the Durham Business Association members to encourage their members who are realtors in the area to become more active in that disclosure.

Jay Gooze suggested it would be helpful at this point to get the town attorney involved in the process to answer questions about what is legal and what can or can't be done.

Sam Flanders said that it does not appear that the "three unrelated" law is consistently enforced in Durham. He noted a specific case on 18 Cowell Drive, where the residents were provided notice in June 2008 of an inspection to be held within 15 days. Sam Flanders said in June 2009 the inspection had not been completed. He asked if there is a way to get an administrative search warrant for such inspections. Jay Gooze said again that these issues need to be pursued with an attorney to see what can be done legally.

Paul Berton said at the workshop there was discussion about having conversations with the UNH Parents Association and the UNH Alumni Association to heighten awareness of the issues in Durham with rental properties. He said the participants in the workshop then moved on to talk about what could happen when a problem property comes to the attention of the Rental Housing Commission and how the Commission can respond to the situation. Paul Berton said there was discussion about having a student representative make the first contact with the tenants in a problem property and the student explain the tenant's role in the community and what the local zoning regulations are. He said they also discussed the landlords contacting property owners and making sure they are aware of what is going on in their properties. Paul Berton said the workshop also pointed out that it is important to give the property owners the proper tools to deal with the situation. He noted there was a discussion regarding the role of code enforcement, the welcoming process with student representatives and if the property continues to be a problem what steps can be taken at the Dean of Students level.

Anne Lawing said at the workshop a graduated and team approach was discussed. She said this approach may include someone from the Dean of Students Office and someone from the Rental Housing Commission approaching tenants in a problem property. Anne Lawing said if problems persist there would then be a focus on more formal meetings on campus, as a symbol that this is a University issue and invite in the tenants, property managers, parents, and a representative from the police department. She said if that does not resolve the problems then the University

can bring the “Code of Conduct” into the equation and hold the students accountable per those regulations.

Paul Berton said he would like to commend Anne Lawing on a quick and successful mediation at the beginning of the school year with a problem property at 99 Madbury Road. He said he does not believe 99 Madbury Road was problem this past weekend. Deputy Police Chief Kelley confirmed this. Martie Gooze said she saw under aged people with open containers walking away from 99 Madbury Road being loud. Paul Berton asked if perhaps students were still going there and being told to go away. Anne Lawing reported that she held a meeting with the property manager, Lieutenant Sean Kelly from the police department, the two student tenants and a set of parents. She said what helped was having the police perspective and management perspective and being able to catch any discrepancies stated about the property and talk to the students about expectations and what was seen by different people at different times. She said it was helpful to have the manager hear what was going on at the property and have the students engage in a dialogue with the manager in front of the parents about expectations going forward. Sam Flanders said that Anne Lawing needs to be applauded for this, she worked hard on it. He said there may still be some problems, but he can say from his own experience that some of the loudest and most troublesome times occur when tenants send people away.

Jay Gooze asked if anyone had been in contact with 57 Madbury Road. Anne Lawing asked if that was a problem house and said she would put it on her list.

Paul Berton said it was discussed at the workshop to begin having meetings every two weeks starting in mid August in order to be more involved when the school year begins. Mark Henderson said in early August, neighborhood representatives can come to the Commission and let us know what is going on so we can address the situations before homecoming.

Paul Berton said at the workshop they also discussed the issue of roaming students. Mark Henderson said weekends frequently have people coming from off campus and roaming the town. He said, while trying not to put all the responsibility on UNH, what does UNH offer to entertain these students and visitors on weekends. He also noted that Ken Barrows forwarded a blurb sent out by UNH addressing this issue and basically telling students to be courteous and keep the noise levels down. Brett Gagnon said the item being discussed is on page 7 of The New Hampshire, in an editorial entitled; “Like a pro – rules of UNH”. Brett Gagnon read number 7 from the editorial:

... “Don’t be obnoxious while walking home from a party or you will be arrested, there is nothing more suspicious than someone stumbling down Madbury, Garrison or Strafford Avenue shouting at cars and people as they pass by. The only thing worse than being arrested, would be the police finding out where you were and shutting down that party. Learn how to control yourself after a few drinks or do not drink at all.” ...

Mark Henderson suggested discussing what would be a good way to keep students occupied. Tom Richardson said he is a local landlord, and in the past three weeks he has confronted three people, who were student aged about making noise after midnight. He said all three were not UNH students. He said this is not a new phenomenon - non students are a problem.

Maury Borovick said he is a proponent for licensing. He said the Durham Town website states that the Durham Rental Housing Commission is charged with addressing and resolving the continuing public policy issues associated with rental housing. He asked how much time it will take before this is accomplished. Paul Berton responded that he has been involved in the process for 15 years and that it has hit a new threshold, the bar has been raised. He noted that the Commission has been working hard. Maury Borovick asked why there is an opposition to licensing. Paul Berton responded that he did not want his property rights to be infringed. Maury Borovick said many businesses are licensed. Paul Berton asked Maury if he felt licensing would solve the problems. Maury Borovick responded that he did not feel licensing would solve the problems but that it would make it more cut and dry. He said, a landlord would have certain responsibilities to the tenant and neighbors. Maury Borovick said licensing would allow people in Town Hall to know who the people are that are responsible for problem properties and how to contact them. He said the owners would know what regulations they need to follow and fines and consequences if they don't follow the regulations.

Annmarie Harris said she does not understand why the multi unit landlords are opposed to the possibility of licensing. She said it seems to her that Tom Johnson's office does not have a mechanism to address these houses that are affecting the neighborhoods.

Tiffany Leaps said she moved into town 4 years ago and that this is an issue of the quality of life. She said her children have been woken up at 1 or 2 in morning by profanity and fighting on the street outside their home. She said she feels the Town has no teeth to enforce the regulations which are written to deal with the problems.

Paul Berton said he understands and would like to see the problem no longer exist. He noted that he has spent a lot of time and energy, he feels for the families affected by the situations and notes that if student rentals were not in single family homes it would strengthen his market. Tiffany Leaps said she does not have a problem with rental property – but has an issue with the Town's lack of ability to enforce regulations.

Dick Schneider said he is a resident and a landlord. He said he has found the discussion interesting and has a comment for the Town Manager (Todd Selig) and the Town Council member present (Robin Mower); the Town of Durham needs to add another police officer. He said he feels the Town is suffering from the loss of a police officer and suggested adding back the officer removed last year. He said, the groups of people wandering around town, is much worse than it has ever been and another police officer is needed to deal with this situation.

Mark Henderson said as president of the Landlord Association, he can say one of the issues with licensing is that some of the landlords are concerned their livelihood is being put into the hands of the tenants. He said he thinks there are other ways to solve the problems besides licensing, such as a nuisance ordinance. Sam Flanders said he feels this is a valid concern that needs to be looked at and see if it can be addressed.

Maury Borovik said the licensing process is meant to make the irresponsible landlord accept responsibilities. He noted the landlords present are proactive and take care of their properties and that licensing would be in their best interest.



Todd Selig said he felt it would be more to have the Town Attorney come to a meeting of the Commission and have the members and the public ask questions. Todd Selig said he would ask him to come to the next meeting if the Commission wishes. Mark Henderson suggested putting some questions together for the attorney from both the neighborhood and the landlord side for him to review prior to meeting with the Commission. Jay Gooze suggested asking the attorney about the administrative warrant issue to enter a property.

The members decided the next meeting of the Durham Rental Housing Commission will be on Tuesday, November 17<sup>th</sup> at 4 pm in Council Chambers at Town Hall. Paul Berton noted that he will ask Todd Selig to invite the attorney to the meeting. Perry Bryant suggested sending questions or issues to be discussed with the attorney to Sam Flanders.

The November 3, 2009 meeting of the Durham Rental Housing Commission adjourned at 5:45 pm.

Respectfully submitted by,

Sue Lucius, Secretary to the Durham Rental Housing Commission