

Approved - December 8, 2009

**Durham Rental Housing Commission
Tuesday, November 17, 2009 – 4:00 PM
Durham Town Hall - Council Chambers**

MEMBERS PRESENT: Chair Paul Berton, Rene Kelley, Perry Bryant, Mark Henderson, Brett Gagnon, Karl Van Asselt, Ryan Deziel, Samuel Flanders, Ann Lawing, Brendan J. O'Sullivan

PUBLIC ATTENDEES: Karen Mullaney, Jim Jelmsberg, Kitty Marple, Johanna Knight, Janice Avize, Martie Gooze, Richard Gsottschneider, Rob Watson, Tom Richardson, Robin Mower, Diana Curaca, Deborah Hirsch Mayer, Diane McCann, Beth Potier, Barbara Wright, Todd Selig, Robin Mower, Walter Mitchell, Tom Johnson, Jay Gooze, Maury Berovick

1) Call the meeting to order and acknowledge absentees: Chair Berton called the meeting to order at 4:05 pm

Todd Selig, the Town Administrator, said the Commission had submitted a request for a change in the makeup of the Commission. The Commission request is as follows: 2 landlord representatives, 2 neighborhood representatives, 2 UNH representatives, a student representative, a tenant representative, a Town Council representative, a police department representative, a fire department representative and a code enforcement office representative. He noted the Town office is in the process of putting the changes into the ordinance and will schedule a first reading with the Town Council on December 7th. If the Council is comfortable with the changes, the ordinance will go to a public hearing the second meeting in December, after which it will be returned to the council for approval.

Mark Henderson noted this configuration would mean one of the three landlords on the Commission would be released from the board. He suggested since Paul Berton is the Chair and he is the Durham Landlord Representative that Perry Bryant be allowed to step down from the Commission.

Paul Berton asked Deputy Police Chief Rene Kelley for a Police update. Deputy Police Chief Kelley reported the past two weeks have been relatively quiet.

Chair Berton welcomed Water Mitchell, Town Attorney and said Commission members and then the public would have the opportunity to discuss items with him. He noted that everyone in the room shares the same goal, but may not agree on how to get there and Mr. Mitchell is here to answer questions and offer insight.

Attorney Mitchell said he is here to answer questions and listen and get a better feel for what the members and the public are interested in and confirm if there is the authority to do what is being discussed

The idea of licensing of non owner occupied single family properties was discussed. The members asked if licensing is possible in the State of New Hampshire. Attorney Mitchell said the State of New Hampshire does have a provision to allow licensing. He noted the framework of the statute is from the standpoint of protecting the occupants of the house, not the behavior of the occupants and regulating that behavior.

The idea of strengthening the existing Durham “three unrelated” ordinance was discussed. Perry Bryant noted this ordinance has been the most effective tool in the past, but as of late the Town has not been able to enforce the ordinance. He asked what needs to be done to strengthen the ordinance and why there is a problem enforcing it now. Attorney Mitchell said he has the sense that there is a combination of not enough time and resources to devote to the ongoing problem and the tenants becoming more creative in their avoidance of enforcement.

Mark Berton asked if it is possible to strengthen the ordinance by not requiring advance notice before inspection. Attorney Mitchell said the 10 day advance notice before inspection comes from the language of the ordinance itself. He noted if the ordinance did not require advance notice, Town officials would be able to knock on the door during normal business hours and ask permission to enter the property for an inspection. Attorney Mitchell said there is also the procedure of obtaining an administrative search warrant from the superior court if the tenant will not grant permission for an inspection. He suggested it would be advantageous to enter into a discussion with the superior court judge regarding the general issues with the Durham “three unrelated” ordinance and the problem with inspecting properties. Attorney Mitchell said if the Town goes back to a property with a search warrant and the tenants still refuse them entry for inspection, the Town would need to return to the court and get permission to forcibly enter the property. He noted a judge would be more inclined to grant this permission in the case of a healthy and safety issue. Jay Gooze said it would be possible to bring photos of properties showing conditions that may be considered dangerous. Tom Richardson said the method of addressing a judge in advance in a generic meeting many years ago was very successful for the fire department. Karl Van Asselt said by the time the Town was able to obtain an administrative search warrant, any evidence of more than three unrelated individuals living in the property would be gone. He concluded, in theory the idea of an administrative search warrants sounds good, but in practice it is difficult to get the court to move fast enough to be effective.

Karl Van Asselt suggested using the nuisance ordinance as a means to discourage landlords from allowing the “three unrelated” ordinance from being disregarded. He said if a nuisance complaint is brought against a property owner, a judge agrees the nuisance has occurred and issues a ruling to stop the behavior and if the behavior continues the owner can be fined. Councilor Van Asselt noted if the behavior occurs again, the owner can be fined an increased amount. He said he felt the property owner will reach a point where he can’t afford to keep paying the fines and will deal with the behavior occurring and become more responsible for the property. He said he felt the nuisance ordinance is an avenue that should be considered.

Sam Flanders inquired if there is a way to write an ordinance that is framed specifically at the residential rental property as opposed to other to other rental property in town. Attorney Mitchell suggested focusing on the location or zone for creating an ordinance. Sam Flanders

said commercial zones are created in different areas, but with residential rentals there is not the advantage of a buffer that is created in commercial zones. Perry Bryant noted that the “three unrelated” ordinance has been crafted with this in mind. Mr. Flanders said he does not feel the ordinance stops the behavior and trying to enforce the ordinance is very difficult, if not impossible. Mr. Bryant said he felt there are ways to enforce the ordinance such as counting toothbrushes, counting beds, looking at the lease to see who is on it, checking to see who is receiving mail at the address. Ryan Deziel agreed, saying the tenants may think of removing the beds, but may not think of other things like the mail and toothbrushes.

Jim Jelmsberg asked if requiring a conditional use permit for an owner occupied single family property being converted to a non owner occupied rental property would be a deterrent. Attorney Mitchell said this idea is worthy of looking into further. Paul Berton asked how this would work during the turnover of the property. Mr. Jelmsberg said he believed the realtor would be required to disclose the issue. Johanna Knight asked what would happen if the owner of the property moves and allows it to be rented. Attorney Mitchell replied that a conditional use permit would be required. He said, in addition to the question of having the authority is the underlying question of if the council would pass such a requirement. Rob Watson noted that this could be bypassed by a parent putting his child’s name, who is a UNH student, on the lease. Sam Flanders said the student wouldn’t live there forever and then there would be a change of use.

Robin Mower asked what other college towns in New Hampshire have done about this situation. Attorney Mitchell said that his firm also represents the town of Hanover. He said he would inquire if they have had similar issues and how they addressed them.

Todd Selig asked Tom Johnson to speak to the difficulties he is encountering with enforcement. Tom Johnson said the type of property owners and tenants have changed and many are looking to skirt the law. He noted that he will go to a property, identify himself and inform the tenants why he is there, ask permission to enter and inspect the property. He said frequently the tenants will tell him to contact the landlord and close the door. Mr. Johnson said his frustration is not having the right tools to get into the property and deal with the tenants and property owners.

Sam Flanders asked if there is a visible violation if there is anything that can be done and if there is the possibility of fine. Mr. Johnson said he can write a zoning violation letter and get the owners involved and follow the fine structure for the violation. He noted that would require getting the attorney involved and then going to court.

The members and public discussed the possibility of using the administrative search warrants effectively by devoting resources towards a small number of properties as a means to send a message that the Town is serious about enforcing the ordinances. They also discussed as part of those resources monitoring the properties, number of people living there, cars parked there, number of beds being moved into and out of the property, etc.

The discussion then turned to the possibility of an ordinance regarding social assembly after a certain hour at night. Attorney Mitchell noted the Council had discussed this possibility in the past. He said practical questions arose about residents holding normal social functions in their

homes and being affected by such an ordinance. Jay Gooze asked if it was legal to have such an ordinance. Attorney Mitchell said it is legal.

Barbara Wright said she felt some of the ideas mentioned are addressing symptoms that might have to do with the “three unrelated” ordinance, but does not feel that a social occupancy ordinance is addressing the concerns of noise and trash. She said she feels the issue is when the occupants impose on the neighborhood. Ms. Wright also cautioned against unintended consequences when trying to address the problems.

Sam Flanders said there are other issues associated with over occupancy, not just noise. He said the houses can be physically devastated by over occupancy, lose value, affect the tax base for the town, and affect the perception of the neighborhood.

Karen Mullaney said she has been researching what other college towns have done to try to address similar issues. She suggested considering requiring a certificate for non owner occupied rental properties. Ms. Mullaney said West Lafayette, Indiana (home of Perdue) has such a requirement. She said in order to receive a certificate the property owner must agree to regular inspections, provide the name and phone number of the people living in the property, provide the name and address of the owner and a local contact person. She noted there are significant financial penalties for owners who do not allow inspection or fulfill the other requirements.

The members and public discussed how best to proceed. Attorney Mitchell suggested coming to a consensus as to how the group would like to proceed and present to him in a general format for him to evaluate. Jay Gooze suggested the neighborhood representatives come to the next meeting with suggestions to present, the group discuss and come to a consensus and then present to the attorney for him to review.

Mark Henderson said one problem not discussed this evening is the groups of roaming people. He asked if it is possible for the police to approach a group of people walking down the road or do the police need a legal right to stop and talk to the group. Deputy Police Chief Kelley said the police can speak to the individuals, but cannot detain or search them without probable cause.

Paul Berton suggested Martie Gooze act as the second neighborhood representative until one is formally designated by the Town. He asked Mrs. Gooze and Mr. Flanders to gather information from the neighborhoods and bring suggestions back to the board at the next meeting. He said the board would then condense and structure the information and present it to the attorney for his review. Attorney Mitchell said that this sounded like a good approach. He offered to speak to Hanover and Keene for suggestions.

Jay Gooze said the roaming groups of people need to be addressed as well and asked if there is anything that can be done from a legal standpoint. Attorney Mitchell said the police can try to persuade the people to move on, but cannot arrest with just cause. He said at some point the line is crossed and the problem becomes disturbing the peace. Deputy Police Chief Kelley said the problem comes when the behavior being reported has moved on by the time the police arrive or the behavior does not occur in the presence of the police. He said the police share in the neighbor’s frustration and they don’t allow groups of people to congregate on street corners. He said this is very difficult from the policing standpoint.

Paul Berton highlighted the key points for the neighborhood representatives to discuss with their neighbors are; crafting ordinances around classes of properties, conditional use option, targeting behavior, administrative search warrant, beef up Code Enforcement Office authority, adding personnel to the Code Enforcement Office, increasing dollar amount charged for fines.

Ms. Carol noted it is important to have continued cooperation with UNH and to get UNH's support with whatever path the Town decides to take. She said Ann Lawing has done a great job and thanked her.

The members and the public discussed the meeting time of the Durham Rental Housing Commission. Maury Borovick suggested meeting in the evening so more neighborhood residents could attend. Paul Berton reminded the public that the meetings involve municipal and university employees. Sam Flanders suggested holding one meeting in the evening after the work has progressed further.

The next meeting of the Durham Rental Housing Commission was scheduled for December 8th, 2009 at 4 pm. Mrs. Gooze and Mr. Flanders will present to the Commission on that date.

Robin Mower suggested posting the dates of the meetings on the Town website.

The November 17th, 2009 meeting of the Durham Rental Housing Commission adjourned at 5:40 pm.

Respectfully submitted by,

Sue Lucius, Secretary to the Durham Rental Housing Commission