

Approved - December 15, 2009

**Durham Rental Housing Commission
Tuesday, December 8, 2009 – 4:00 PM
Durham Town Hall - Council Chambers**

MEMBERS PRESENT: Chair Paul Berton, Rene Kelley, Mark Henderson, Brett Gagnon, Ryan Deziel, Brendan J. O'Sullivan, Martie Gooze, Tom Johnson, Ann Lawing (arrived at 4:45 pm)

MEMBERS NOT PRESENT: Karl Van Asselt, Sam Flanders

PUBLIC ATTENDEES: Karen Mullaney, Jim Jelmsberg, Janice Aviza, Stan Aviza, Annmarie Harris, Diane McCann, Rob Watson, Barbara Wright, Jack Hendrix, Tom Johnson, Dudley Dudley, Diana Carroll, Deborah Hirsch Mayer, Ed Valena, Todd Selig, Robin Mower

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

Chair Berton noted that Ms. Martie Gooze will present a report from the residential owners association.

Ms. Gooze noted there are additional individuals that would like to give their input and suggestions that have not yet done so, but a preliminary report and suggestions have been compiled. Ms. Gooze distributed a written report with seven (7) suggestions that the Durham Residential Owners Association requests the RHC endorse:

- 1) Change the Zoning Ordinance to include single family and duplex non-owner occupied residences that are used for rental purposes as a Commercial use. Revise the Table of Uses and Performance Standards to reflect this change (provide the possibility for exemptions, i.e. sabbaticals).
- 2) Change Article III 175-10 B to allow the Code Enforcement Officer access to single family and duplex non-owner occupied residences without having to wait 10 days for compliance after a notice of violation has been served.
- 3) Request a part-time Code Enforcement position to aid our full time Code Enforcement Officer with rental housing violations.
- 4) Request guidance from Town Administrator for Police to enforce existing State Laws regarding underage drinking.
- 5) Request guidance from Town Administrator for Police and Fire to inspect properties (with Town Code Enforcement Officer) where recurring violations/parties are

documented and require Police and/or Fire calls. Be willing to request an Administrative Warrant for inspection when needed.

6) Incorporate a Property Maintenance Code into Durham's Zoning Ordinance or into a single Family and Duplex non-owner occupied Rental Housing Registration Ordinance.

7) Request that the Town maintain a database of all police, fire and code enforcement violations including citizen requests for possible violations of existing State and Local ordinance.

The members and public attendees discussed the seven suggestions, it was noted that the Town has agreed to hire a part-time, temporary Code Enforcement staff member.

Discussion regarding #1: *Change the Zoning Ordinance to include single family and duplex non-owner occupied residences that are used for rental purposes as a Commercial use. Revise the Table of Uses and Performance Standards to reflect this change (provide the possibility for exemptions, i.e. sabbaticals).*

Ms. Gooze stated that the Owner's Association felt strongly that suggestion number one should not include homes being rented only for sabbatical.

The group discussed how the suggestion of including this class of property as a commercial use would be effective in controlling the current problems that exist. The group discussed if there would be a difference in the tax rate if classified as commercial use and if this would be a financial incentive to better maintain the property. It was also noted that this would be a means for the Town to garner information as to which properties are being rented and therefore a means to provide information to the owners regarding ordinances, regulations and expectations in Durham regarding rental housing.

Discussion regarding #2: *Change article III 175-10 B to allow the code enforcement officer access to single family and duplex non-owner occupied residences w/o having to wait 10 days for compliance after a notice of violation has been served.*

Ms. Gooze noted there have been attempts this year to avoid violations from the Code Enforcement Officer by temporarily disguising the number of residents in a property during the 10 day "waiting period". She said the Owner's Association is recommending reducing the "waiting period" before entering a property for an inspection. Mr. Berton suggested shortening the time to 24 hours.

Discussion regarding #3: *Request a part-time Code Enforcement position to aid our full time Code Enforcement Officer with rental housing violations.*

Town Administrator, Todd Selig, will speak to this recommendation later in the meeting.

Discussion regarding #4: *Request guidance from Town Administrator for Police to enforce existing State Laws regarding underage drinking.*

Ms. Gooze said the Owners Association understands this is a difficult situation for the police. They feel that alcohol consumption is fueling a lot of the problems and asked if it is possible to initiate undercover operations to find underage purchases in bars and stores. She said the Association also strongly supports the rehiring of the police officer position lost in budget cuts.

Discussion regarding #5) Request guidance from the Town Administrator for police and fire to inspect properties (with town Code enforcement officer) where recurring violations/parties are documented and require Police and/or fire calls. Be willing to request administrative warrant for inspection when needed.

Chair Berton noted he believes the Town Council is in communication with a local judge to expedite the process regarding administrative warrants. Ms. Gooze said the Association feels it is important the Town have a listing from the judge what constitutes reasons to enter a property in order to expedite the process.

Discussion regarding #6) Incorporate a property maintenance code into Durham's zoning ordinance or into a single family and duplex non-owner occupied rental housing registration ordinance.

Ms. Gooze said the Association feels that some properties are a health and safety issue, noting that one house has been sited for health and safety violations.

Discussion regarding #7) Request the Town maintain a database of all police, fire and code enforcement violations including citizen requests for possible violations of existing state and local ordinance.

Ms. Gooze said the Association feels this would be a way for the Town to see which owners are repeatedly allowing violations on their property.

Chair Berton noted the Durham Landlord Association had meet to review the recommendations and agree with the Owners Association that existing ordinances need to be strengthened, support the need for an additional police officer and an additional code enforcement position. Mark Henderson stressed that the landlords feel the additional officer is very much needed and they strongly support the additional officer position. He noted they also support a stronger fee structure for fines, community service requirements and perhaps fining the host of underage drinking parties in order to create a disincentive to hold parties and take a stronger stance against underage drinking. Mr. Henderson said the Landlord Association also support the Police and Fire departments reporting together to reported incidents with large numbers of individuals. He said the group has begun assigning neighborhood landlord representatives to neighborhoods that have reported problems to communicate with the property owners. Mr. Henderson said the Coe Drive and Cowell Drive area have been assigned a landlord representative. Ms. Gooze said she appreciates the Landlord Neighborhood Representative idea. Mr. Berton asked the Police Department representative, Rene Kelley to speak about the fee structure in Durham. Deputy Police Chief Kelley said the Town noise ordinance begins with a first offense fee of \$100 and goes up to \$1000, State ordinance for unlawful possession of

alcohol begins with a minimum fine of \$300, Town ordinance for hosting an underage drinking party has a first time fine of \$500 and the Town ordinance for an open container violation has a fine of \$200. He said all the court fines from Town ordinances and alcohol violations are paid to the Town of Durham and last year the Town collected \$140,000 in such fines. Deputy Chief Kelley also noted that fines associated with any student arrested by University Police for alcohol violations are paid to the Town of Durham. He discussed the difficulty of being able to convict on the hosting an underage drinking party offense, noting that State Statute requires 5 people underage in possession of alcohol not related to the residents of the apartment be detained in order to qualify for a charge of "hosting". Deputy Chief Kelley said the department assigned a detective last spring to underage drinking parties, he had well over 100 arrests by himself and was successful in stemming a lot of problems before they happened. He said the Durham Police make a concerted effort to strictly enforce alcohol and noise ordinances. Deputy Chief Kelley noted the Town also requests assistance from the County Sheriff's Office for every weekend in the fall. He said the department puts a lot of resources into this issue and take it very seriously and respond aggressively. Chair Berton asked if there was anything the police would request from the Dean of Students Office at UNH to help with the issue. Deputy Chief Kelley said that any person arrested by the Durham Police Department who is under the age of 21 gets a letter written to their parents saying what the charge is and when the court date is and the arrest log is sent to UNH. He said UNH identifies students arrested, notifies the Dean of their College and the Dean of the College then meets with the student. Deputy Chief Kelley said he requests of the judge that the student attend a three part alcohol program offered at the University which consists of an intake session with a drug/alcohol counselor, attendance at an alcohol education class and an exit interview. He noted the number of cases of repeat offenders from the University is very low. Deputy Chief Kelley said he speaks with Ann Lawing of the Dean of Students Office on a regular basis and he feels the University is not afraid to step up and deal with poor student behavior. He said he felt the board is on the right path and that a joint effort is needed to address these issues.

The Commission discussed if they should make a recommendation regarding the fine structure. Robin Mower said she felt it would be appropriate for the Commission to make such a recommendation. Jim Jelmsberg said he felt an increase in fines would be a deterrence and suggested a \$300 fine for first offense and a \$750 fine for the owner of the property for a noise violation. Ryan Deziel said the neighborhood representatives are working on putting together a list of fines for offenses and providing them to students renting property in Durham. He said raising the fines may be helpful.

Brett Gagnon noted the University's Community Guide has all the information on violations and fines. She said the Guide is available as a PDF file and can be added as a link on other websites.

Town Administrator Todd Selig reported town attorney, Walter Mitchell will be meeting with a Dover District Court judge regarding the process of Administrative Warrants. He said he would keep the Commission updated on that progress.

Mr. Selig said it was clear to him from previous discussions that the Town is understaffed in the zoning enforcement office. He said as a result Marcus Evening has been hired on a part-time, temporary basis. Mr. Selig said Mr. Evening has begun working for the Town and will be out in the field taking photographs of properties and taking down information. He said the plan is to have two weeks in on the project before the University breaks for the semester and then to continue when the new semester begins. Mr. Selig noted this position was not budgeted, there are no benefits associated with it. He said he is hopeful this will make an impact and then as the process becomes more effective the amount of hours of the position can begin to be reduced.

Mr. Selig said the restructuring of the fine schedules will be dependent upon whether the ordinances are included in the master fee schedule, are determined by state statute or are determined by local ordinances. He noted these need to be reviewed and looked at from the perspective of the Police Department as well.

Mr. Selig discussed recent cases in Ontario Canada where prosecution based on zoning violations went forward with criminal prosecution as well. He said the town attorney will be exploring this possibility.

Mr. Selig noted the police are limited in being able to respond to one call with a large number of officers because there will be multiple calls at the same time and a finite number of officers are on duty to respond. He noted this makes it physically challenging to take all people at a party into custody. The public initiated a discussion about the possibility of using additional police forces to assist the Town of Durham in policing efforts and the University sharing in those costs. Deputy Chief Kelley said additional officers are used, but they are officers the Durham Police Department are familiar with and are sure will follow their protocols. He noted that during the first and the last 8-10 weeks of UNH's school year the Durham Police Department has all staff on duty from 9 pm to 3 or 4 am on Thursday, Friday and Saturday nights, including the parking enforcement officer and one of the secretaries, the department also contracts with the Sheriff Department for 4 deputies with 2 transport vehicles.

Deputy Chief Kelley said the Durham Police force and the UNH police force have a good working relationship. He noted they are as busy as the Durham force and their force has been decreased from 19 full time officers to 15 full time officers. Deputy Chief Kelley reported the UNH President has authorized adding two positions to the UNH force.

Todd Selilg reported the request for a change in composition of the Durham Rental Housing Commission is being reviewed by Town Attorney Mitchell.

He noted no solution has been found to the issue of noise complaints resulting from large groups of people walking through neighborhoods. Mr. Selilg said the colder months of January, February and March will be the time to finalize recommendations so they can be implemented before the warmer weather arrives.

Robin Mower suggested the Rental Housing Commission meet again soon to decide what they are comfortable with requesting from the Town Administrator and the Town Council.

The Commission members and the public discussed the concept of changing the usage of single family and duplex non-owner occupied residences to Commercial Use. Barbara Wright noted some concern with this concept and asked what the impacts of having a commercial zone in a residential area would be. Ms. Gooze replied that the intent would be to change the use of the single and duplex non-owner occupied properties, not change the zoning of the neighborhood. Code Enforcement Officer, Tom Johnson said the terminology of Commercial Use is not correct for this purpose. Karen Mullaney noted the intention is to make the rental use of single and duplex non-owner occupied properties less desirable. She said this may also be a way for the code enforcement office to garner information about the size of the building and the number of occupants. She said this could be a possible way of asking for a form of registration to provide information for the Town's data base. Barbara Wright asked if the idea of licensing has been abandoned. She said a fee could be associated with the licensing and the fee could be used to help offset costs of the police department and trash removal costs. Ms. Gooze said the idea of licensing would depend if it was possible to separate out single family non-owner occupied properties from larger properties. Chair Berton said if the specific class of property can be separated and targeted for licensing the Landlord Association will have no objections.

Chair Berton asked Jim Jelmborg to discuss his suggestion of Conditional Use permits. Mr. Jelmborg said last meeting he had asked Attorney Mitchell about a conditional use permit and he had responded that it was worthy of looking into further. Mr. Jelmborg noted the conditional use permit would be required when a single family owner occupied home was changed to a single family non-owner occupied home (also duplexes). Chair Berton asked if this would assist in segregating the class of property and accomplish more than a license. Robin Mower noted this would be putting the bulk of the responsibility on the Planning Board (who would need to review the conditional use permits). Chair Berton asked if the approach of a conditional use permit would deter would be owners from purchasing single family homes as investment property. Mr. Jelmborg thought it would be a deterrent.

Chair Berton suggested the Commission meet again on Tuesday December 15th at 4 pm to formulate recommendations to the Town Council, discuss licensing versus condition use permit and to discuss questions to send to the Town Attorney. He noted this would be a working session, open for the public to attend and listen, but not give public comment.

The December 8th, 2009 meeting of the Durham Rental Housing Commission was adjourned at 5:40 pm.

Respectfully submitted by,

Sue Lucius, Secretary to the Durham Rental Housing Commission