

# Approved - May 19, 2010

Durham Rental Housing Commission  
Tuesday May 5, 2010 – 4:00 PM  
Durham Town Hall – Council Chambers

**MEMBERS PRESENT:** Sam Flanders, Jay Gooze (Town Council Representative), Ann Lawing, Kitty Marple (Neighborhood Representative), Ryan Deziel (Student Representative), Chair Paul Berton, Brett Gagnon

**MEMBERS NOT PRESENT:** Mark Henderson

**PUBLIC ATTENDEES:** Tom Johnson, Robin Mower, Laura Specter (Mitchell Municipal Group), Rene Kelley (Deputy Police Chief), David Kurz (Police Chief) Tom Johnson (code enforcement office), Robin Mower, Annmarie Harris, Todd Selig, Tom Richardson, John Kostas, Nick Kostas, Cathy Maranhac, Stephen Boutwell, Richard Peyser, Ashley Rennelow, Ryan Deziel, Rob Watson, Susan Roman, Gerald Taube, Leonard Klein

**Call the meeting to order:**

Chair Berton called the meeting to order at 4:05 pm.

The members of the commission introduced themselves. Chair Berton asked Mr. Gooze about the process for having a new board member appointed to the commission. He responded that the process for appointing a new member would include going before the Town Council for their approval of the recommendation.

**Town Reports:**

**Code Enforcement Office – Tom Johnson**

Tom Johnson said his office has been busy with new construction, and has not as much time to deal with rental housing issues. Mr. Johnson said there are a lot of cases pending, violation letters have been sent out, there is correspondence pending regarding violation letters, and there are a few properties for sale and one case which has started the process of going before district court for a civil land use complaint. Mr. Johnson said the office is thinking of gearing up for more enforcement for other cases that may go to court over the summer and that direction from the commission is appreciated.

Chair Berton asked if he still felt optimistic about the level of awareness and positive trends towards addressing single family rental properties. Mr. Johnson responded that many landlords are waiting to see if the Town is consistent and serious with their enforcement of the issues.

## **Police Department – Deputy Chief Kelley**

Deputy Chief Kelley said that it has been a relatively quiet spring. He noted that statistics indicate a decrease in the number of complaints, the cost of services have decreased, the noise complaints have decreased and the arrest numbers are slightly below the past three years. Deputy Chief Kelley said the past weekend was the busiest weekend of the year – however, things seem much quieter this spring than years past and hope it is a trend that will continue. He noted the police department is still putting extra staff out on Thursday, Friday and Saturday nights and will continue this practice through graduation and that bike patrols are out as well, and have been successful in stopping some noise disturbances before complaints from residents.

Jay Gooze asked if there have been problems with the roaming groups going to house parties. Deputy Chief Kelley said there have been less cases reported.

## **Fire Department Report**

Todd Selig, Town Administrator said there is a single alarm brush fire at the transfer station so there is no fire department representation for this meeting.

## **Town Administrator Report – Todd Selig**

Todd Selig said at the last meeting the commission directed him to contact the Town of Hanover regarding similar issues they may have had as Durham and what they have done to deal with the issues. Mr. Selig said he spoke with the Hanover Town Manager and she reported that they have a handful of properties causing issues and have been unable to reach consensus around an ordinance to address those issues but will send a draft document of an ordinance that is being worked on.

## **Draft Ordinances – Todd Selig**

Mr. Selig explained four ordinances have been drafted for the commission to review and make recommendations on; large gathering permit ordinance, rental housing ordinance (licensing), disorderly housing ordinance and an update to the noise ordinance.

Jay Gooze suggested the commission review the drafted ordinances and make decisions whether to recommend they be brought before the council.

Robin Mower asked if all the drafted ordinances are defensible. Laura Specter responded that they are all defensible.

## **1<sup>st</sup> Draft ordinance discussed – Large Gathering**

Todd Selig began the discussion regarding the large gathering ordinance – he noted the ordinance is an attempt to address the large numbers of people gathering on a property

(inside or outside). He said the main concerns are that these gatherings create issues of noise and traffic and want whoever is planning the gathering to show that they have made provisions to deal with these issues. Mr. Selig said a permit will not be issued unless there are provisions to keep within noise limits, provide for garbage removal and clean up, as well as adequate off street parking and adequate sewage facilities. He noted the trigger for a permit being required is currently set at 50 people outside and a figure to be decided for inside based on square footage between the hours of 11 pm to 7 am in this current draft. Mr. Selig also noted that the on duty watch commander may issue permits.

Jay Gooze noted that changing the time parameter for the noise ordinance from 11 pm to 10 pm will be discussed later and the commission may want to consider including this change into the large gathering ordinance. He asked how the number of 50 was arrived at as a trigger for needing a permit.

Laura Specter replied that 50 was the number used when this type of ordinance was discussed a few years ago. She noted this number should be discussed by the commission – but it seems a reasonable number if a resident would like to hold a graduation party or something similar without having to go through the permit process.

The members discussed in great depth the trigger number for both inside and outside gatherings, as well as whether the number should be for each unit or an entire property. Police Chief Kurz said the police department would appreciate keeping the process simple. The landlords requested a smaller number be used as the trigger and reminded the members that most of the landlords' leases have a social occupancy clause of double the physical occupancy – which is much smaller than 50. The pros and cons of this were discussed in detail.

The members discussed fraternities and UNH property being exempt. Todd Selig explained that UNH properties have traditionally not been a problem and if there are problems there is a process to go through with the university to deal with the problems. Chief Kurz explained that the recognized fraternities and sororities are registered with the town and they apply for an assembly permit from the fire department – if problems were to arise the assembly permit would be withdrawn. All members agreed that the wording “recognized” needs to be in the ordinance.

The mechanism of issuing the permit was discussed and that a permit application would need a signature of the property owner. It was also noted that the violator of the ordinance would be issued a \$300 fine.

The consensus of the Commission was to keep the trigger number at 50 for both inside and outside gatherings per unit and to have the draft reflect this and bring back to the commission at their next meeting.

## **2<sup>nd</sup> Draft Ordinance discussed – Update to the Noise Ordinance**

Todd Selig said the Police Department has found that they have been challenged regarding the use of the noise meters, as well as the noise meter no longer being operational. He said the updated ordinance draft has language referring to the noise meter stricken and added the language: "...it shall be unlawful for any person to make, continue or cause to be made or continued any excessive, unnecessarily loud noise or any noise which either annoys, disturbs, injures or endangers the comfort, repose, health, peace or safety of others within the town limits..." and change the start time of the noise ordinance to 10 pm (currently at 11 pm).

There was a lengthy discussion regarding the time change with many members of the public participating and some of the UNH student body officers (Stephen Boutwell, Richard Peyser) commenting that they did not favor a time change to the noise ordinance.

Ryan Deziel said he spoke last semester against the change in time to 10 pm. He noted that he does not see this as a solution to any problems, but as an action that may cause more complaints, the need for more police presence and possibly the unintended consequence of some students responding in a manner that the town is not trying to encourage.

The Police Department discussed that they can respond to an issue or an anonymous complaint and warn the offending parties to "quiet down", but cannot prosecute without a complaint by a resident. Chief Kurz said he will be making a presentation to the Town Council regarding the adjustment to the noise ordinance and would like to be able to say it was reviewed and recommended by the Durham Rental Housing Commission.

A majority of the members of the Commission voted in favor of recommending the revised noise ordinance (including time change to 10 pm).

Mr. Selig explained that the revised ordinance will be brought before the Town Council for a first reading. The Council will decide if they have an interest in moving the ordinance forward to schedule a public hearing. At public hearing the public is invited to express feedback, the Council will then decide whether or not to adopt.

### **3<sup>rd</sup> Draft Ordinance discussed – Disorderly House Ordinance**

Todd Selig commented that this ordinance focuses not on the tenant, but on the property owner with the idea that ultimately the owner needs to be responsible for the behavior occurring on his/her property. He said this is not to target the responsible owners, but to get the attention of those owners that are absent and not paying attention to what is going on at their properties. Mr. Selig explained that after a first event the owner will be notified; after a second event the Police Chief will request to meet with the owner of the property to discuss ways to alleviate the issues; after a third event the owner will be fined \$300 after a fourth event the owner will be fined \$500, meet with the Police Chief and 3 representatives of the Durham Rental Housing Commission to discuss ways to alleviate the problems and show that they have taken steps to evict the tenants; the owner and the

Chief will sign a document outlining the steps that need to be taken to resolve these; after a fifth event and all subsequent events there will be a fine of \$1000.

Jay Gooze asked if there could be some other wording to the affect that the landlord has shown a good faith effort to resolve the problems on his property without having the wording refer to eviction alone. This was discussed, with the landlords saying they do not want to be “held hostage” by a misbehaving tenant. They commented that eviction is an undesirable process for all concerned. Paul Berton asked if it could read “at the discretion of the rental housing commission” if the Commission feels the landlord is making a real effort at solving the problem. Ann Welsh suggested defining benchmarks to be met by the landlords. Todd Selig suggested adding the wording regarding best efforts and the discretion of the Commission, meeting with all members of the Commission and moving this to step 3 and also repeating it at step 4. Mr. Selig said the ordinance would be brought back to Town staff for a rewrite and be brought back to the Commission for another reading at the next meeting.

#### **4<sup>th</sup> Draft Ordinance discussed – Rental Housing Ordinance**

Todd Selig explained that the Rental Housing Ordinance will be a registration for all rental properties in the town of Durham. He noted that once a property is in the registry this will trigger an inspection. Mr. Selig explained that it is being proposed that the town be divided into five zones with an estimate of every property being inspected every five years, unless a complaint is filed against the property. He noted that if during the inspection the inspector sees something that is not in compliance the issue will be pursued by the Town.

Laura Specter explained that State code 48a gives the town the ability to enforce minimum standards of rental properties and how can the town enforce these minimum standards if it is not aware of where rental properties are located. She said this is the legal basis behind this type of ordinance.

The members discussed if there is a need to charge a minimal registration fee for administrative costs and the consequences of not registering a rental property. Todd Selig noted that a landowner that neglects to register a rental property will be fined and then automatically added to the registry which will trigger the inspection process.

Chair Berton noted the professional landlords do not favor a registry because they feel the inspection process always costs them money and there are a number of properties in town that are in a gray area regarding the number of allowable residents due to grandfathering and/or past documentation from past administrations.

It was decided by consensus of the commission to have the Durham Landlord Association membership review the proposed Rental Housing Ordinance and submit comment to the Commission at the June meeting.

#### **Other Comments**

Gerald Taube asked if the Commission has discussed proposing a maintenance ordinance. The pros and cons of this type of ordinance were briefly discussed and the Commission asked Tom Johnson to distribute to the members a model maintenance ordinance for them to review and discuss at the next meeting.

### **Summary and scheduling of next meetings**

The Commission scheduled meetings for May 19<sup>th</sup> at 4 pm in Durham Town Hall, Council Chambers and June 23<sup>rd</sup> at 4 pm in Durham Town Hall, Council Chambers.

Chair Paul Berton summarized the following actions to be taken on the proposed ordinances:

Large Gathering: to be sent to town staff to include Commission comments in rewrite. Return to the Commission for their final review at the May 19<sup>th</sup> meeting.

Update to the Noise Ordinance: Gave Chief Kurz the Commission's recommendation for this update to the noise ordinance.

Disorderly House Ordinance: to be sent to town staff to include Commission comments in rewrite. Return to the Commission for their final review at the May 19<sup>th</sup> meeting.

Rental Housing Ordinance: send to the Durham Landlord Association for their membership to review and comment. Return to the Commission for their review at the June 23<sup>rd</sup> meeting.

Maintenance Ordinance – distribute model ordinance to Commission members for their review and discussion at the June 23<sup>rd</sup> meeting.

Mr. Kostas requested that the meeting times and dates be posted on the Town website.

*Kitty Marple MOVED to recommend Sam Flanders as the next chair of the Durham Rental Housing Commission. This was SECONDED by Jay Gooze and APPROVED unanimously.*

The May 5, 2010 meeting of the Durham Rental Housing Commission adjourned at 6:08 pm.

Respectfully submitted by,

Sue Lucius, Secretary to the Durham Rental Housing Commission