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Durham Rental Housing Commission
Wednesday May 19, 2010 – 4:00 pm
Durham Town Hall – Council Chambers

MEMBERS PRESENT: Chair Sam Flanders, Jay Gooze, Ann Lawing, Kitty Marple, Ryan Deziel, Paul Berton, Brett Gagnon, Mark Henderson

MEMBERS NOT PRESENT: none

PUBLIC ATTENDEES: Brendan J. O’Sullivan (Durham Fire Department), Rene Kelley (Deputy Police Chief), Todd Selig (Town Administrator), Diana Carroll, Cathy Maranham, Gerald Taube, Leonard A. Klein, Catherine Ramunno, Michelle O’Donnell, Diane McCann, Karen Mullaney, Christina Cainzza (UNH student body vice president), Susan Roman, Annmarie Harris, Tom Johnson (code enforcement office), David Kurz (Police Chief), Steve McCusker (Durham Fire Department)

I. Comments from New Chair

Chair Flanders thanked the members for their time spent on this commission; especially the former chair Paul Berton. Chair Flander said the commission will be considering new ordinances for the town and he urged everyone to think carefully about the new ordinances before sending them to the Town Council for their review and to take into consideration the wording of the ordinances to ensure there are no unintended consequences.

Chair Flanders said he would like to make the meeting a bit more formal and suggested that each new agenda item be open first for public comment and then proceed to a discussion among the members of the commission.

Jay Gooze reminded the members and the public that this meeting is not a public hearing and that there will be full public hearings on any proposed ordinance that goes forward to the Town Council which will give the public more time to make comments.

II. Approval of the minutes from the prior meeting –

Chair Flanders noted a spelling error on page 2. The members unanimously approved the May 5, 2010 minutes of the Durham Rental Housing Commission as amended.

III. Reports from Town Representatives; Police, Fire, Town Administrator, and other boards or commissions

- 1 a) Rene Kelley (Police Department) said there is nothing new to report this week other than
2 the department getting ready for the end of the school year on Saturday May 22nd.
3 b) Brendan O’Sullivan (Fire Department) said there is nothing new to report.
4 c) Todd Selig (Town Administrator) said Tom Johnson is on his way back to Durham from
5 a meeting in Concord and will be at the meeting soon. Mr. Selig said a few changes were
6 made to the draft ordinances as an outcome from the last meeting of the Durham Rental
7 Housing Association and these will be discussed later in the meeting.
8 d) Jay Gooze (Town Council Representative) reported the noise ordinance was presented to
9 the Town Council for a first draft. He said there were a number of comments made by
10 the councilors and that the few non-substantive changes will be made by the town staff.
11 He noted the council felt the term “annoying” to be vague – Councilor Mower suggested
12 using the definition used by the town of Hanover; also the time distinction for Sunday
13 morning will be removed. Mr. Gooze said these changes will be made and brought back
14 to the council at the next meeting as a unanimous consent item.
15 e) Tom Johnson said there is nothing new to report.

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17 IV. Comments from Commission Members

18
19 Paul Berton reported the Durham Landlord Association met and some of the landlords are
20 adamant in their opposition to the rental housing ordinance and wished to engage their attorney.
21 Mr. Berton said he felt it may be a useful idea to arrange a meeting between the Landlord
22 Association’s attorney and the Town’s attorney and sought Todd Selig’s opinion on this
23 suggestion. He reported they both agreed it would be a good opportunity and a good way to try
24 to find a middle ground and avoid conflict.

25
26 Sam Flanders asked what the specific concerns of some of the landlords were to the rental
27 housing ordinance. He said he thought it would be helpful to understand the concerns in order to
28 make better decisions.

29
30 Paul Berton said he believes the two attorneys will bring the discussion back to the board. He
31 said if the two attorneys are going to be hired then it would be best to utilize them and hope the
32 two of them can find the middle ground.

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34 V. Review, Adjustment, and Consent to the Agenda

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36 Chair Flanders asked if any member had any suggestions or changes to the agenda.

37
38 Jay Gooze proposed removing item IX (discussion of Durham’s proposed “Rental Housing
39 Ordinance”) from the agenda since there will be a discussion between the attorneys.
40 He also suggested spending as much time as necessary on the “Disorderly Housing Ordinance”
41 and suggesting thinking about removing item VIII (“Large Gathering Ordinance) from the
42 agenda.

43
44 Sam Flanders suggested working on item VII (Disorderly House Ordinance) first and if there is
45 time discuss VIII.

1 It was the consensus of the Commission is to remove item IX from the May 19th agenda.

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3 VI. Public Comments

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5 Chair Flanders asked for public comments other than comments regarding the items on the
6 agenda. There were none at this time.

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8 VII. Discussion of Durham's Proposed "Disorderly House Ordinance".

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10 Public Comments:

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12 Chair Flanders asked if there were any comments from the public. Hearing none he suggested
13 perhaps the public needed time to read the draft distributed and if there were comments during
14 the discussion the board will be happy to entertain them.

15
16 General Discussion:

17
18 Todd Selig said the Rental Housing Commission at its last meeting discussed the disorderly
19 house ordinance draft and one concern raised was that it wasn't until the fourth disorderly event
20 that the landlord meets with the rental housing commission—Mr. Selig said that has been
21 changed and is now a requirement after the third disorderly event. He said the other comment
22 made was the wish to see a mechanism to waive the fine if the landlord was earnestly working to
23 address the problems. He reported that the fine may be waived, if in the discretion of the police
24 chief, the landlord has undertaken good faith efforts to prevent the disorderly event.

25
26 Mr. Selig asked the commission to consider if the landlords are to meet with three
27 representatives of the commission or the commission as a whole and if the police chief is the
28 correct person to waive the fine or does the commission want to be the body to decide that or
29 have it written so the police chief can waive the fine with an appeal mechanism available to the
30 rental housing commission. He noted the fourth and fifth incidences have the same languages
31 and the same questions apply to them

32 .
33 Jay Gooze suggested the following wording: "The fine may be waived, if in the discretion of the
34 town administrator or the police chief, the landlord has undertaken a good faith effort and
35 requested a waiver of the fine to the rental housing commission." He said he is also proposing
36 fines for the 1st and 2nd offenses.

37
38 Ryan Deziel noted that the ordinance states there is a 7 day time period from the date of written
39 notification to the date of the meeting between the landlord, the police chief and the rental
40 housing commission. Mr. Deziel noted the full rental housing commission normally meets one
41 to two times a month and meeting within a 7 day period could prove to be problematic.

42
43 Ann Lawing asked what the normal structure is for waiving fines in the Town of Durham. Todd
44 Selig responded that the Police Department has the discretion to decide if they want to bring
45 forward the prosecution to collect a fine and they may administratively decide to not press the

1 fine. He said another issue to consider is that the Town cannot enforce the payment of the fine
2 until it goes to court and the judge rules in favor of the town.

3
4 Paul Berton suggested having the Code Enforcement Officer and the Police Chief be responsible
5 for waiving the fines. Todd Selig said the benefit of having the appeal go before the Rental
6 Housing Commission (or a representation of them) is that it would occur at a public meeting with
7 the police department present to state the offenses and with minutes being put into the public
8 record of the meeting. He noted these minutes could be used as a record if the case were to go to
9 court.

10
11 Chief Kurz said he looks at this ordinance as being designed to get the abuse to stop. He said
12 this gives him the flexibility to make the decision – if someone comes to the table to work with
13 the town - to waive the fine. He said he feels this gives him the means to do things to get the
14 activity to stop in the first place.

15
16 The members discussed if landlords should appear before the entire board or three
17 representatives of the board. Mark Henderson said if they appear before three representatives of
18 the board he feels one of the representatives should be a landlord (who may be able to provide
19 suggestions for dealing with the tenants). Mr. Henderson said he feels it is relatively simple for a
20 landlord to prove that they are being proactive. The members also discussed how to enforce that
21 the owner or representative of the owner meet with the police chief and board representatives
22 within 7 days. Mr. Henderson said he feels they should need to meet in person or have their
23 legal representative meet in person with the chief and the board representatives and if they do not
24 appear impose a fine. Mr. Henderson also proposed having the three representatives be a
25 landlord representative, a neighborhood representative and the commission chair.

26
27 The members discussed how this proposed ordinance affects the landlords but not the tenants
28 causing the issues. It was noted that while this ordinance does not involve the tenants it is likely
29 that the incidences which have led to this ordinance being invoked would have caused the
30 tenants to have come in contact with the police department for other violations and therefore will
31 be held responsible under other ordinances and/or laws. It was also noted that the absentee
32 landlord that is not involved actively with his property, tenant or discussions with the town is
33 who this ordinance is tailored to reach by getting them into discussions with the town about their
34 property and the actions occurring there.

35
36 The members then discussed the fine fee structure; at which offense the first fine begins, how
37 much that fine and subsequent fines would be, how much to fine a landlord that fails to meet
38 with the police chief and the commission representatives.

39
40 There was a lengthy discussion regarding what types and frequency of offenses would constitute
41 a “disorderly house”. Chief Kurz said that anytime a police officer responds to a property an
42 email goes out to the owner of the property. He said this means most of the time the property
43 owner is aware of what has gone on at their property. He said when the police department sees
44 that there are not multiple calls to the same property; that alone is a positive impact; however if
45 there is a history with a property that is not understanding or doing something about the issues,
46 that is when this type of ordinance would be helpful.

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2 Mark Henderson asked Tom Johnson if this type of ordinance would help him with code
3 enforcement. Mr. Johnson replied that it would be helpful because the police will have an earlier
4 presence at the property, plus the awareness and education to the tenants will help and once this
5 type of report is filed other deficiencies that were discovered will be reported to his office.
6

7 Gerald Taub asked how many properties this type of ordinance would have affected this year.
8 Deputy Chief Kelley responded that the police department would have found this type of
9 ordinance helpful with two properties over the past year. He added that the goal is not to have to
10 use this at all and that the definitions are narrowly defined because other ordinances are written
11 to deal with the other issues discussed earlier in the meeting.
12

13 The members discussed if the fines applied to a landlord if different units in a building were
14 issued separate offenses. Chief Kurz noted that in his experience the large complexes are not a
15 problem because the managers are on top of what is going on in the buildings. Jay Gooze said
16 the Police Chief will have the discretion of not fining a landlord if an incidence occurs that the
17 landlord is working on.
18

19 Gerald Taub suggested there needs to be a mechanism clearly defined regarding the consequence
20 for a landlord failing to respond and that a representative of the landlord needs to have legal
21 authority to bind the landlord. He also suggested giving the Police Chief the discretion to go
22 forward or not go forward with the process and to be able to appoint a representative to meet
23 with a landlord in his place.
24

25 There were questions from the public as to why a landlord should be held responsible for the
26 actions of someone over the age of 18.
27

28 Deputy Chief Kelley said if the behavior at a property is so problematic it is causing blight on the
29 neighborhood, the property owner has the obligation to do something about that, and an
30 obligation to the community and the neighborhood to make sure their property is not disturbing
31 the neighborhood.
32

33 Jay Gooze suggested the following wording for the proposed Disorderly House ordinance;
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35 **First disorderly event:** No later than five calendar days after the first disorderly event at a
36 building, the police department shall deliver by hand or first class mail a copy of this chapter as a
37 courtesy and a notice advising the owner that the police department has responded to a disorderly
38 event at his or her building.

39 **Second disorderly event:** No later than five calendar days after the second disorderly event at a
40 building, the police department shall deliver by hand or first class mail a copy of this chapter as a
41 courtesy and a notice advising the owner that the police department has responded to a second
42 disorderly event at his or her building. The owner or his or her representative (*authorized in*
43 *writing*) shall meet with the chief (*or his designee*) within seven days of the date of the written
44 notification, or at such other time as agreed by the chief, to identify ways to eliminate the
45 problems identified. *If the owner or authorized representative fails to meet with the Police Chief*
46 *(or his designee) a fine of \$500 will be assessed.*

1 **Third disorderly event:** No later than five calendar days after the third disorderly event at a
2 building, the police department shall deliver by hand or first class mail a copy of this chapter as a
3 courtesy and a notice advising the owner that the police department has responded to a third
4 disorderly event at his or her building. The owner of the disorderly house shall be subject to a
5 fine of \$500.00. In addition, the notice shall advise the owner or his or her representative
6 (*authorized in writing*) that he or she shall meet with the chief (*or his designee*) and three
7 representatives from the Rental Housing Commission within seven days of the date of the written
8 notification, or at such other time as agreed by the chief, to identify ways to eliminate the
9 problems identified. *If the owner or authorized representative fails to appear, the fine will be*
10 *doubled.* The fine may be waived if, in the discretion of the police chief, the landlord has
11 undertaken good faith efforts to prevent the disorderly events.

12 • The owner must agree to take effective and immediate measures to address the
13 disorderly house with the initiatives memorialized in a written agreement. The plan must
14 be implemented within one-week of the meeting unless the chief and the representatives
15 from the Rental Housing Commission agree to another date.

16 • The owner and the chief shall sign said written agreement. If the owner fails or refuses
17 to enter into such an agreement the chief shall refer the matter to the Town Administrator
18 for further legal action.

19 **Fourth and subsequent disorderly events:** No later than five calendar days after the fourth and
20 subsequent disorderly events at a building, the police department shall deliver by hand or first
21 class mail a copy of this chapter as a courtesy and a notice advising the owner that the police
22 department has responded to a fourth, or subsequent disorderly event at his or her building. The
23 owner of the disorderly house shall be subject to a fine of \$1000 for the fourth and subsequent
24 events. The fine may be waived if, in the discretion of the police chief, the landlord has
25 undertaken good faith efforts to prevent the disorderly events.

26
27 Todd Selig said he believes there needs to be further thought about the second bullet which refers
28 to further legal action. He suggested more discussion with the Town Attorney and the Police
29 Department.

30
31 Jay Gooze suggested asking the Town Staff and the Town Administrator to reword the proposed
32 Disorderly House Ordinance using the comments suggested by the Rental Housing Commission,
33 and the Town Attorney and the Police Department's input regarding the bullet points in the third
34 disorderly event.

35
36 Paul Berton MOVED to assign Jay Gooze to work with the Town Administrator to clarify points
37 discussed at this meeting for the purpose of rewriting the proposed Disorderly House Ordinance
38 to present to the Town Council. This was SECONDED by Kitty Marple and APPROVED
39 unanimously.

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41 VIII. Discussion of Durham's Proposed "Large Gathering Ordinance" – This item was
42 tabled for discussion at a later meeting.

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44 IX. New Business or Other Business as Time Permits – no further discussion at this
45 meeting.

1 X. Setting of the Next Meeting Date – June 23, 2010

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3 The Durham Rental Housing Commission will meet on June 23, 2010 at 4 pm at the Durham
4 Town Hall, Council Chambers.

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6 XI. Adjourn (6:00 pm)

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8 Jay Gooze MOVED to adjourn the May 19, 2010 meeting of the Durham Rental Housing
9 Commission at 6:00 pm. This was SECONDED by Ryan Deziel and APPROVED unanimously.

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12 Respectfully submitted by,

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14 Sue Lucius, Secretary to the Durham Rental Housing Commission
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