

Approved - December 7 2011

Durham Rental Housing Commission
Wednesday November 2 2011
Town Council Chambers, Durham Town Hall
4:00 PM

Members Present: Kitty Marple, Paul Berton, Brett Gagnon, Ann Lawing, Pam Weeks, Karen Mullaney

Members Not Present: Jessica Fruchtman, A.J. Coukos

Public Attendees: Sam Flanders, Robin Mower, Jay Gooze, Todd Selig, Senator Amanda Merrill, Janet and Stan Aviza, Captain David Holmstock, Annmarie Harris, Cathy Maranhao, Clynton Namon

I. Approval of the minutes from September 21st, 2011

Ann Lawing MOVED to approve the September 21st, 2011 minutes as written, this was SECONDED by Brett Gagnon and APPROVED unanimously.

II. Reports from Town Representatives (Code Enforcement, Police, Fire, Town Administrator and other boards or commissions)

Police Report: Captain David Holmstock

Captain David Holmstock said he would review the arrest numbers in different categories and compare those numbers to 2010 numbers.

Statistics reported:

The number of arrests for 2010 for the period of January to the end of October was 825. Of the 825 arrests, 334 arrests were made by Durham officers, 482 arrests were made by UNH officers, and 9 arrests were made by State Police.

The number of arrests for 2011 for the period of January to the end of October was 804. Of the 804 arrests, 411 arrests were made by Durham officers, 372 arrests were made by UNH officers and 21 arrests were made by State Police.

In 2010 58% of those arrested were students.

In 2011 59% of those arrested were students.

The total cumulative arrests since the start of the school year in 2010 were 399.

Of those 399 arrests, 134 arrests were made by Durham officers, 257 arrests were made by UNH officers and 8 were made by State Police.

The total cumulative arrests since the start of the school year in 2011 were 388. Of those 388 arrests, 197 arrests were made by Durham officers, 170 arrests were made by UNH officers and 21 were made by State Police.

The number of total calls in 2010 was 11,900 and the number of total calls in 2011 has been 14,170.

The number of total calls from August to the end of October in 2010 was 3206 and the number of total calls from August to the end of October in 2011 has been 3871.

Jay Gooze said the impression these statistics give him is that there have been more Durham arrests and less UNH arrests this year compared to last year. He asked if this means the undesirable behavior has moved off campus into Durham.

Chair Marple noted that the Police Department reported at last month's meeting that the numbers of arrests in the downtown area have increased.

Ann Lawing said that anecdotally they are not hearing that cultural shifts have occurred this year compared to last year.

Captain Holmstock said they are unsure why the increase has occurred.

Robin Mower asked if the numbers from Homecoming weekend were included in the statistics.

Captain Holmstock responded that the figures do include Homecoming weekend. He said he has been in Durham for 22 years and Homecoming has become less problematic each year. Captain Holmstock noted that the weather on Saturday created a different scenario for the officers who were inundated with calls for downed wires etc. He said the department did respond to the usual areas, such as Young Drive where they were called by residents to break up a crowd and move it out.

Clynton Moore asked which types of calls created the increase.

Captain Holmstock responded that they were for all kinds of calls from noise violations to assault.

Janet Aviza asked if the calls for downed wires were included in the count of the total number of calls.

Captain Holmstock responded that they were.

Town Administration Report: Town Administrator Todd Selig

Mr. Selig reported that the focus for the last several days has been on power issues. He noted the biggest issue of relevance to this Commission is that the Town Council passed a resolution to consider introducing a bill that would grant college communities the ability to regulate rental housings more than it does today. Mr. Selig said this would allow communities to inspect properties and noted that the local delegation will consider this and decide if it is appropriate to bring forward.

Paul Berton suggested that the members should review the original settlement agreement that created this body. He said he feels the Commission has strayed from the original settlement agreement. Mr. Berton noted that the Commission was originally set up to address issues associated with the members of the Durham Landlord Association. He said the Town is now dealing with a new entity, the nonprofessional landlord and the problems this has brought to the neighborhoods. Mr. Berton said the agreement required the landlords to produce a property inventory list and a contact information sheet. He noted the landlords did this in 1994, but it was never repeated. Mr. Berton suggested it would be a good idea, before additional ordinances are considered to review the agreement and have all the landlords present a property inventory list and a contact information sheet. He said the court asked the town to communicate with the landlords in the form of creating this Commission and it seems to be straying from the original agreement. Mr. Berton noted he had forgotten what the original settlement agreement addressed, so went back and reviewed it. He suggested other members do the same and meet to discuss it. Mr. Berton said he is not sure the Disorderly House Ordinance falls within the settlement agreement.

Chair Marple said the Town Council has passed a resolution asking the legislation to go forward.

Mr. Berton said he believes the resolution is in violation of the settlement.

Mr. Selig said the Town Council passed a resolution requesting that the delegation consider this. He said the delegation needs to consider it and if the legislation is passed it will be many months in the future. Mr. Selig suggested copying the agreement and distributing it and discussing it at the next meeting of the Rental Housing Commission.

Jay Gooze said he was the Councilor who brought the resolution forward to the Town Council. He noted there are not many landlords in the Town of Durham who signed the settlement that have non-owner occupied rental property. Mr. Gooze said for that reason he did not feel it should go through the Rental Housing Commission.

Chair Marple read a portion of the settlement to the members.

Mr. Gooze noted that the Town Attorney has reviewed the resolution and does not feel that it conflicts with the settlement between the Town and the DLA.

Paul Berton asked if this is the approach that will be taken, what is the purpose of this Commission. He said he feels the resolution is in violation of the spirit of the settlement.

Karen Mullaney said she previously commented that she felt the Commission has progressed and that it has been many years since the settlement. She said there have been many changes in the student housing market and the Town of Durham needs to react to those changes.

Mr. Berton agreed that things have changed a lot and noted there is a different entity the Commission and Town are trying to control from having a negative impact on the town. He repeated he is suggesting that the agreement be read and that the members think about how enforcing it (specifically by requiring the inventory list and the contact information be submitted) may give the Town the ability to address some of what it is seeking and to see what problems it will not address in town.

Karen Mullaney noted the DLA is a voluntary group and asked what the Town can do about other landlords in town.

Mr. Selig reviewed some of the history of the settlement. He said years ago the Town was moving forward with an ordinance to require registration of properties with the names of tenants being required. Mr. Selig noted this was intended as the first phase in a comprehensive program, with following years moving forward with inspections. He said this was challenged by the DLA based upon the issue of being required to provide the names of the tenants. Mr. Selig said the Town was willing to enter into a settlement agreement and the DLA dropped the case. He said the Town agreed to move forward with the formation of this Commission as part of the settlement. Mr. Selig said the Town is prohibited from requiring the original signatory landlords to provide the names of tenants living in their properties and are not suggesting that be done. He said the settlement agreement was a collaborative effort between the town offices, the neighborhoods, and the landlords to address issues. Mr. Selig said he believes that has been done and that the Commission has had some success. He said many citizens experience issues despite the good work of the Commission and are still concerned about the impacts of student rentals. Mr. Selig said much of the concern is driven by non-owner occupied rentals, which the Town has minimal authority over. He said this request for the legislation to consider is an attempt to gain more authority. Mr. Selig said he feels the Town has ongoing, persistent problems occurring that transcend this Commission and the settlement. He recommended making copies, distributing them to members and other interested parties, to refresh members of the role of this board by reviewing the town code provision which outlines the duties of this Commission. Mr. Selig said these items could be published in the "Friday Updates", which is a venue that has been used.

Mr. Berton submitted his inventory list and contact information sheet to Chair Marple for the Town and the Commission to review as required by the settlement.

Chair Marple noted that it is not the professional landlords that are creating the issues attempting to be addressed by the resolution. She noted Senator Amanda Merrill was invited to the meeting to speak about the resolution.

Mr. Berton noted that he has submitted his inventory sheet to the Chair to see if it would help in the process.

Mr. Gooze said an inventory is not what the Town Council is looking for in this request. He said an inspection system is what is being requested. Mr. Gooze said he feels each community can define how they want to work their system; he suggested it would be possible for a property to be inspected once every three years if there is a management system in place and there are minimal complaints at the property. Mr. Gooze noted the Town Council is not writing the ordinance, only asking that the local delegation consider enabling legislation.

Senator Amanda Merrill introduced herself saying she is the local State Senator for Dover, Durham, Lee and Rollinsford. She said she was approached about potentially introducing legislation. Senator Merrill said the deadline for the House filing has passed so the Senate would be where the legislation would need to be introduced and their deadline is next Thursday. She said she has done some research and is not convinced there is a need for this enabling legislation. Senator Merrill said Manchester performs regular inspections on a three year cycle of all rental properties. She said she reviewed RSA 48A (minimum housing standards statute) and there are different opinions if the language is adequate for Durham. Senator Merrill said her opinion is that the RSA seems to cover some of the issues regarding inspections and entering properties (focused on health and safety issues). She said there is a list of factors to look at and determine if it includes things such as overcrowding. Senator Merrill said she is trying to become better educated about the existing statutes, the overlapping concerns of other groups, and that she spoke with attorneys and colleagues in other college towns. She said she has not seen interest from her colleagues and they have not been contacted by their towns. Senator Merrill said it is not a strong position to come in with a bill focused on one community. She said some will be concerned it is a bill for a subset of a community and some say it is discriminatory for college towns. Senator Merrill said she believes numerous issues may be raised in the legislature concerning the breadth of the inspection power and that she shares some of those concerns.

Ann Lawing thanked the Senator and noted the information was helpful. She asked if Manchester has a registration program for rentals.

Senator Merrill said she is not sure if it has a registration process, but said the inspection process covers all rental properties. She said RSA 48A provides that an ordinance could include language to inspect dwellings to determine if it is unfit for

human inhabitation. She said she feels it is worth speaking to Manchester about their program.

Mr. Selig said the Town of Durham has explored the registration idea within the boundary of Statute 48A. He said the challenge is it does not grant the authority for a registration and to ensure if dwellings are fit for habitation we need to know where the properties are; so a registration is needed as well. Mr. Selig said the framework of 48A, which is very specific and precise, is a challenge. He said the statute lays out the sanitary standards required, the formation of a local board of health, and the process if a problem is found; if the owner does not remedy the problems the municipality can use authority to go in and require changes be made, if changes are not made the municipality can make the and then a lien can be put on the property to regain the costs of the repairs. Mr. Selig said it was the hope of the Town Council to not have to be constrained by that type of a process where “unfit for human inhabitation” would trigger the inspection. He said they wish to institute an ongoing inspection program to detect early on if there are health, safety, code and zoning issues that would potentially cause health and safety issues, then get the owners to make repairs or be subject to a progressive fine system. Mr. Selig said that is why they wanted a new statutory framework; to provide more discretion and flexibility.

Sam Flanders asked if they have thought about this being more general to cover all rental properties and not just student rentals.

Jay Gooze said there are points for and against that and they should see what other legislators think of the idea. He said they will see what has the best chance to pass and what is appropriate.

Mr. Flanders said he is worried it is too narrow.

Senator Merrill said Cordel Johnson of the Local Government Center said he believes there is case law to suggest having such focus, but not sure if it would be easier to pass if it affected all towns.

Clynton Namo asked why if there is a mechanism available to the Town to do this why go through the House. He said there is a registration and inspection process in Manchester and clearly it is already allowed, so why go to the State to acquire the power that you already have.

Jay Gooze said they were not aware of the process in Manchester. He said the Town attorney felt a rental housing registration and inspection would be problematic.

Mr. Selig noted the current statute would not allow us to focus on zoning issue; but only on health and safety issues.

Paul Berton asked if there is a wave of substandard housing with real health and safety concerns in Town or are we looking at mechanisms to get to the “three unrelated” regulation.

Mr. Gooze noted that Mr. Johnson feels that he does not know what shape the properties are in until he can get in to assess their conditions.

Mr. Berton noted that when the Fire Department and the Code Office are inspecting properties this allows them to inspect the properties and see if there are concerns that need to be addressed. Mr. Berton asked Mr. Selig if he feels there is a wave of substandard and unsafe housing in town.

Mr. Selig responded that the vast majority of the housing stock is 50-75 years old and many of the people that manage the non-owner occupied properties are not professional landlords and often are not well versed in code requirements for tenant properties and also may not have a vested interest in the management of the property. He said there is sufficient anecdotal information from the code officer that there are existing problems with no way for officials to enter a property, access the situation and require remedies. Mr. Selig said that is the health and safety side, but there is also the zoning violations side. He said if rental properties are accessed on an ongoing basis the Town will be able to detect zoning violations, which will improve the quality of life for full time Durham residents that live among the student rentals. He said they were advised that they could move forward with the inspection process, but if they were challenged, they would not be on solid ground to sustain such a challenge. Mr. Selig said they have chosen to move forward with requesting the legislature to review their initiative. He said they are attempting to focus on a proactive program that would include regular inspections to ensure safety and work with the landlords to correct violations and use a fine system if landlords are not responsive. Mr. Selig said the Town Council is aware that the current legislative environment may not be conducive to such a request.

Ms. Mower suggested reviewing the program in effect in Manchester at a future Rental Housing Commission meeting and discuss that program as a potential option for Durham.

Karen Mullaney asked if there is anything the Town can do to require that owners of rental property be members of the DLA.

Mr. Berton said the DLA has attempted to reach out to single family property owners that rent. He said when they discover what the DLA suggests for landlords they are not interested in being a part of the group.

Ms. Harris asked approximately how many of the original 20 signatures on the agreement are still active landlords in Durham.

Mr. Berton responded that roughly 50% (11 landlords) are still active, and another 25% of the original properties are still rentals, but owned by different members of the DLA.

Ms. Lawing asked if there had been any interest from the delegation of other college towns regarding this proposed legislation.

Mr. Selig said he has reached out to the Administrators in Hanover, Plymouth and Keene to see if they would be interested in supporting this. He said the towns of Plymouth and Hanover responded that they would be in touch with their boards and respond to him.

Mr. Berton asked Mr. Selig if there were an unsafe, unsanitary and possible disastrous situation in town if they would have the ability to address the situation.

Mr. Selig responded that they would have the ability to address the problem, but the issue would be finding out about the problems.

Mr. Berton asked how the Town would pay for the process they are proposing.

Mr. Selig said the Town Council has not had a conversation about the funding of the program, but have only requested that the enabling legislation be considered. He noted the draft includes assessing a fee for inspections up to \$50, but that is yet to be determined.

Mr. Berton asked the UNH representatives on the Commission, Ann Lawing and Brett Gagnon, if they felt UNH students are subjected to substandard housing and if they felt students would step forward if they were subjected to substandard housing.

Both Ms. Gagnon and Ms. Lawing said they have not been presented with situations of substandard housing, but noted that students may not always bring such issues forward to the Town.

Ms. Mower noted there may be students living in substandard housing but the Town is not hearing about it.

III. Public Comments

Sam Flanders said he would like to report that there are issues on Coe Drive with too many cars parked on some properties. He said he does not see enforcement of that regulation happening.

Mr. Flanders also said he would like to suggest again that the RHC be able to serve as an expert body to advise boards that are making decisions on rental housing issues (ZBA and Planning Board). He said the Charette suggested that mixed occupancy occur. Mr. Flanders said there is no diversity in the buildings that are being built

downtown; that they are only student rentals. He said without diversity it will create situations where problems can occur. Mr. Flanders said there is a need to pay attention to what is going on downtown regarding approving housing projects and how it affects the residents of Durham. He suggested asking the boards to discuss applications that concern rental housing with the Rental Housing Commission.

Janice Aviza said she agrees that neighborhoods need to be taken into consideration when approving student housing projects downtown.

Robin Mower asked what would be needed to develop the process for the RHC to gain the authority to request a review of applications and advise the Planning Board.

Mr. Selig said the Town has a large number of advisory boards that are not shy about addressing their views on many things. He said the Energy Board has addressed the Planning Board with a checklist to review, the Conservation Commission has input, the Economic Development Committee has input. Mr. Selig said this board can monitor applications before the Planning Board and express their point of view. He suggested the Commission would need to meet more often and someone would need to monitor the Planning Board applications and agenda, but he believes the Planning Board would be open to their feedback. Mr. Selig said he does not feel this board should be required to comment on applications.

Karen Mullaney said she thinks that unless there is a major project that affects many people as abutters, you do not get the kind of attention and response of a lot of people speaking. She said Friday updates could have statements noting that the RHC could be the channel for comments regarding rental housing issues that go before the Planning Board.

Chair Marple said the Commission would need to monitor the Planning Board schedule and be aware of what is coming up.

Annmarie Harris said she does not believe that the current process for the Master Plan is not enlisting public input to make it representative of the community.

Chair Marple said there was a gathering of Durham residents in March for that purpose.

Ms. Harris said it was only a one time meeting and in the past there was more input from the public. She said she does not have the confidence that the Master Plan will be representative of the community as it has been in the past.

Chair Marple said she would make an effort to pay attention to the upcoming applications to the Planning Board and if there is a relevant application to the Commission, she will bring it forward.

Robin Mower suggested that members of the Commission consider coming to the ZBA meeting on Tuesday, November 8th, because there is an application of interest; one requesting a variance to the three unrelated” regulation.

IV. Unfinished Business

V. Houses for sale, Coe Drive

Chair Marple noted that two units on Coe Drive are for sale and asked if UNH has a mechanism to get information about these sales and other affordable housing opportunities to graduate students and young faculty members.

Paul Berton suggested using the Campus Journal.

Brett Gagnon said there is no mechanism that she is aware of.

Ann Lawing said people from the community can put a notice in the campus journal, or the UNH classifieds. She also suggested contacting the Graduate School and Provost’s office for listings of graduate students and new hires.

VI. Rental licensing, inspection, update on progress

This item was discussed under the Town Administration report.

VII. New Business

No new business was discussed at this meeting.

VIII. Set next meetings: December 7th and January 25th

Meeting dates were tentatively set for December 7th at 4 pm and January 25th at 4 pm.

IX. Adjourn -

The November 2, 2011 meeting of the Durham Rental Housing Commission adjourned at 5:30 pm.

Respectfully submitted by,

Susan Lucius, Secretary to the Durham Rental Housing Commission