

Approved: September 5, 2012

Town of Durham
Durham Rental Housing Commission
Wednesday June 27, 2012

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

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

Also Present: Police Chief Kurz, Janice Aviza, Robin Mower, Jim Lawson, Tom Johnson, Annmarie Harris, Fire Chief Corey Landry, Diane McCann, Robin Mower, Town Administrator Todd Selig, Mark Henderson, Vincent Avery, Cathy Maranhao, Audrey Hickey, Richard Gsottschneider, Carolyn Ricker, Shelley Mulligan, Mark Rubinstein, Jay Gooze, Tom Richardson

I. Approval of minutes from May 7th, 2012

Anne Lawing MOVED to approve the May 7th 2012 minutes as written, this was SECONDED by Kitty Marple and APPROVED unanimously.

Chair Marple announced the next meeting of the Durham Rental Housing Commission is scheduled for September 5th, 2012 at 4:00 pm.

Chair Marple thanked the landlords in the audience for being present to discuss the Rental Inspection Ordinance

II. Department Reports (Code Enforcement, Police and Fire Departments)

Fire Department: Chief Corey Landry

Fire Chief Corey Landry reported that the Fire Department put a new tank truck in service today. He noted it has been a steady summer with no out of the ordinary activity.

Police Department: Chief David Kurz

Police Chief Kurz reported the summer has been very quiet with no major situations of disturbances, noise ordinance issues, etc.

Paul Berton asked what the warm spring season was like for the Police Deptment.

Chief Kurz responded that the spring was normal. He explained that the months of September and October are the months for more police activity and that decreases as the year proceeds and school work becomes more involved. Chief Kurz noted that April and May are months with more police activity, but that the past month saw only 20 arrests all month and that amount can occur in a week in the fall.

Paul Berton asked Ann Lawing how the summer session at UNH has been and if there are many students on campus or if it has been quiet.

Ann Lawing responded that summer session is ongoing and there are many summer camps occurring on campus which makes for a bustling campus. She added, behaviorally it has been a quiet summer. Ms. Lawing also noted there are a couple of dorms open this summer as there are every summer.

Code Enforcement Office – Tom Johnson

Tom Johnson reported that it has been a quiet summer from a rental housing stand point. He said there have been a few trash complaints. Mr. Johnson noted that 9/11 Madbury Road has their occupancy certificate and the Grange also has its occupancy certificate for all the rental units and is currently working on the commercial space located on the first floor. He reported that the Kostis project on Pettee Brook has begun construction. Mr. Johnson said Orion Properties have submitted permits for work on renovating their existing properties and Golden Goose which purchased Rob Watson's properties is doing interior renovations to increase the number of beds and will also be doing some work on parking at the property located at 57 Madbury Road. He explained some trees will be removed and the driveway will be moved to behind the tree line alongside the house and the circular drive in the front will be removed and replaced with lawn so there will no longer be parking at the front of the building. Mr. Johnson said Golden Goose may also be paving at the 26 Strafford Avenue property. He said the Capstone project is still waiting for gas lines to be completed on site. Mr. Johnson said they expect that to occur next Wednesday and are attempting to have occupancy begin in the project by August 1st. He noted this will require inspections on all of the residences in the project.

Chair Marple asked if Golden Goose added two more residents to the property on Edgewood Road.

Mr. Johnson noted that he is in the process of scheduling an additional inspection on the property, but noted that the last time he inspected the property it had three tenants.

Mr. Johnson reported that the Peak project is currently at the Planning Board stage so he has no further information on it.

Richard Gsottschneider asked what level enrollments at UNH are for the fall.

Ms. Lawing responded that they are steady and that they will not have the final tallies until the end of September.

Unfinished Business

III. Proposed Rental Inspection Ordinance review and comment

Chair Marple asked if the members of the committee and those in the audience had the opportunity to review the Draft Proposed Rental Inspection Ordinance.

Several of the members and members of the audience indicated they had read the draft.

Paul Berton expressed his surprise at not having heard of a housing standards ordinance prior to receiving the agenda for this meeting.

Chair Marple indicated she had sent the draft of the proposed ordinance to all members and that Mr. Roger Hawk had presented at last month's meeting regarding this issue.

Mr. Berton asked if this ordinance was driven by this board or by the Town Council.

Chair Marple indicated that the Town Council had requested that this type of ordinance be investigated and discussed.

Town Administrator Todd Selig said that this type of ordinance has been discussed for many years. He noted that the landlords have expressed concern over it; but the Town Council has expressed an interest in having a discussion regarding such an ordinance. Mr. Selig noted he engaged Roger Hawk to help evaluate such a program and he is present today to discuss this as a work in progress. He said it is not in a form where it is ready to be brought forward. Mr. Selig said that Mr. Hawk is a well-respected planner in the area and the community can benefit from his insight. He noted this issue has been discussed in previous meetings and at other public meetings and also written up in the "Friday Updates". Mr. Selig said an overview will be presented by Mr. Hawk and feedback after the presentation will be valuable. He acknowledged that many in the landlord community do not think this is a good idea; however, the Town would like to get the benefit of their feedback before moving to the next step and has chosen this board as a means to address this issue and receive feedback.

Diana Carroll suggested that the version of the proposed ordinance should note across the top that it is a draft.

Janice Aviza asked if it is being proposed that this program be run through the Fire Department and not the Code Enforcement Office.

Mr. Selig said in the past when this program was discussed it was proposed to be run through the Code Enforcement Office. He noted that in reference to some concerns expressed, he felt it made more sense to consider it under the auspices of the Durham Fire Department. Mr. Selig acknowledged there are differences of opinions from members of the staff regarding the proper department to manage this program. He said from his perspective it makes more sense for the Fire Department to take on the management of it.

A resident asked if this program deals with all residences or just rental properties.

Mr. Selig said this program would deal with all rental properties; professional, single family non-owner occupied homes and ancillary apartments. He noted the State statute is constructed in a manner that deals with rental properties only.

Roger Hawk apologized for not adding the word “DRAFT” to the top of the proposed ordinance that was distributed. He noted that the provisions under this proposed ordinance are still being discussed. Mr. Hawk explained that the framework for the ordinance was provided to him as drafted by the Town’s attorney several months ago. He said he performed research, worked with Tom Johnson and Fire Chief Landry to see how they would realistically undertake the inspection component. Mr. Hawk said this ordinance establishes the legal framework and structure for how the regulation is adopted in town. He said the operational procedures, inspection check lists, fee structures still need to be worked out and enabled through this ordinance and articulated in the ordinance. Mr. Hawk said the basic structure of the ordinance is enabled by RSA 48A and stated in Section I. He explained that Section II deals with the provisions for collecting inspection fees. Mr. Hawk said they are working on linking the amount of effort by Town staff necessary to support an inspection program to the cost of the inspection fee. He said this will be determined by the number of inspections able to be performed in a day, the amount of time it takes to schedule with the landlords to meet and conduct inspections. Mr. Hawk pointed out that there is much bureaucracy associated with the program and there is a need to understand that to determine the appropriate fee structure. He said at this point they are suggesting a fee in the range of \$130/property that would be charged to arrange and conduct an inspection and a follow up inspection. Mr. Hawk said an additional fee will be charged to undertake additional inspections if it is a multi-unit building on a per unit basis. He said the fee will be based on time it takes for each unit to be inspected. Mr. Hawk explained that for multi-unit buildings the \$130 fee will be to get to the building, conduct inspection of the common areas (such as building egress, the site around the building, etc.) then conduct inspections in each unit within the building for a separate smaller fee (yet to be determined). He said it has been suggested to impose fines for noncompliance at a rate of \$250/day.

Mr. Hawk said Section III deals with minimum standards which are arrived at from the State statute and are basic features for public safety and welfare. He said that the Fire Chief and the Code Enforcement Officer are developing a checklist for inspections that they want to distribute before the ordinance is finalized so everyone will know what is expected of property owners. Mr. Hawk said they hope to have that available in the very near future.

Mr. Hawk said Section IV deals with registration and the inspection process. He noted that he needs to meet with the Town attorney on this. Mr. Hawk said there needs to be a process where the Town notifies the community of this ordinance and makes them aware of the program, communicates the requirements of the ordinance and then property owners will need to contact the Town to register or request an inspection of their property. He said when the ordinance is adopted it will have an enactment date and subsequently the Town personnel will perform inspections to certify properties meet the minimum standards. Mr. Hawk said a mechanism is needed for the property owner to contact the Town and request an inspection be undertaken. He said he currently believes with the assistance of a half time inspector and a part time administrative assistant it will require a year and a half to two years to inspect all the rental properties in town. Mr. Hawk said there will be a learning curve to see how effective the inspector can be in inspecting properties; as the inspector become more efficient over time that efficiency can relate directly to the cost of the program. He said it is presumed that this should be a self-supporting program and that the inspection fees charged relate directly to the cost of town staff needed.

Mr. Hawk said Section V deals with the enforcement process and contains language regarding when a fee for re-inspection will apply and when cases will be turned over to the court to remedy a situation if there is a reluctant property owner.

Mr. Hawk said Section VI deals with the appeal process. He noted the appeal process is to have a case go before the Town Council if a property owner is not satisfied with the hearing before the Fire Chief; and if that is not acceptable it will then go before the Superior Court.

Mr. Hawk said Section VII deals with a Superior Court petition process.

Mr. Hawk said Section VIII deals with liens, which will only take place if a property owner is not forthcoming with payment of fines, or a building is in serious disrepair and needs demolition. He said in that case the lien would be for the cost of demolition.

Mr. Hawk said more meetings with the Town staff and attorney are needed to reach a decision on the cost to administer the program, which will be how the fees charged are calculated.

Mr. Gsutttschneider said there is an underlying presumption that all rental properties are in the same condition. He said the reality is that they differ greatly and asked if they have given any thought to new buildings not needing to be inspected as often.

Mr. Hawk said they do recognize that there are different circumstances, but the bottom line is that if this is adopted and the check list is adopted those minimum standards would need to apply across the board. He said how quickly the Fire Department demands corrective action is a judgment call the inspector needs to make. Mr. Hawk said if an older building has several issues that are not life threatening there may be more leniency with regard to the amount of time deficiencies will need to be corrected in, but ultimately they will need to be fixed.

Mr. Gsotttschneider said the current level of inspection standards are fairly strict and noted that new buildings meet the standards in the ordinance and asked why they need to be inspected.

Mr. Hawk said there has been a discussion regarding the potential of having a self inspection program which could apply to new buildings and professionally run buildings with managers. He said how that would be administered is under discussion, but the idea is to go through one inspection cycle and if there is a comfort level with a property and the property manager inspection may only be required every second or third time. Mr. Hawk said there is still the need for a validation process to ensure property managers stay on top of what is expected.

Mr. Gsotttschneider said he felt that was a good idea and is surprised it was not mentioned in the draft. He said anything built or renovated in the last five years meets every standard and it seems redundant to inspect them again. Mr. Gsotttschneider said he has brand new buildings and he will have to pay a fee to have them inspected when he had them built to standards. He said he understands the purpose of this ordinance but feels there needs to be some reasonableness built in.

Mr. Hawk said he understands what is being said and agrees that a new building should meet all the standards. He said the other side is that even new buildings need to be properly maintained and items such as egress need to be checked.

Fire Chief Landry said those buildings are not what they are worried about. He said the Fire Department is worried about the buildings that are overcrowded and not properly maintained; so those will not be the first inspections performed. He said at some point all the rental buildings will need to be inspected because things do happen inside those buildings that affect safety, such as exits being blocked and fire detectors being disconnected.

Mr. Gsottschneider asked how grandfathered situations will be dealt with and what time frame would be available to fix deficiencies.

Fire Chief Landry said the State RSA is clear that rental properties need to meet certain standards regardless of what codes they were regulated by when they were built.

Mr. Gsottschneider suggested it would be a good idea to create a document listing some of the categories that will be looked at and define them.

Fire Chief Landry said he is working on a draft checklist which will include that information. He said the law is clear as to when a building can be shut down and it is not an easy process. Chief Landry noted that some issues will need to be resolved immediately while others can be included in a plan with a schedule for resolving issues

Tom Johnson said the items that will be reviewed under the inspection process area basic items that were in the codes in 1938.

Vincent Avery asked if there is a means to remedy the issue of a single family home with an accessory apartment that is inspected and found to have issues that had previously been inspected and approved.

Chief Landry responded that there may be situations where what was allowed previously may not have been correctly approved. He said there is an appeal process in the State of New Hampshire where such a case could be heard. Chief Landry said as Fire Chief he is limited as to what he can approve and not approve. He said the Department would work hard to fix any problems and get the correct answer. Chief Landry noted that if the issues were not a severe life safety issue they would attempt to find a way to work with the property owner.

Tom Johnson noted that House Bill 137 which is waiting for the Governor's signature adopts internationally existing building code and gives us the legal authority to allow some differences.

Mr. Selig said one of the issues that is prompting me to drive this conversation is some of the close calls with fires that have occurred recently. He asked Fire Chief Landry to comment on that.

Chief Landry said there were several fires last year in town in different residences. He said there was one close call after Thanksgiving, before the students returned on Edgewood Road. He explained the residence had four occupants in the building and that a fire started in the sun porch and was diverted to a bedroom. Chief Landry said the Department found several issues of deficiencies in the residence and said it was fortunate that the students staying there were not home the night of the fire. He said there would have been at least one death that night as the fire was well involved before the Department was informed of it. Chief Landry said that fire was a wakeup call regarding single family homes that have been converted to student rentals being an issue. He said frequently the residences do not have smoke detectors, proper egress, may have padlocked doors etc. Chief Landry said there was also the case of the residence at 14 Edgewood Road that had two bedrooms in the attic without proper egress. He said those are the types of residences that the Fire Department would like to inspect first.

Tom Johnson stated that he had just heard that the Governor signed HB 137.

Jim Lawson said he feels the proposed ordinance is a rough draft that still needs a lot of work. He noted the intent this evening is to have a conversation regarding the ordinance. Mr. Lawson said he is concerned that the standards are subjective and need to be more specific. He said there also needs to be a process to look at the administrative laws to be referenced in the ordinance. Mr. Lawson said he is concerned about focusing on the life safety issues; fire detection, suppression, egress, and he did not envision this program addressing connectors, switches etc. He suggested it may be a little too broad and needs to focus on life safety aspects more.

Ann Lawing asked how much time per unit or per house does the Fire Department feel will be needed.

Chief Landry said it may require quite a lot of time. He said there are several different factors; one recent inspection took two trips to the house, four phone calls and then the follow up visit. He said others are done quickly. Chief Landry said the professional buildings with multi units will require that either everyone be home or they be given permission to enter. He said much time has been spent attempting to determine how much time will be required. Chief Landry said it will require a lot of scheduling time, a lot of paperwork and some research time, in addition to the actual inspections. He noted that at this time they are estimating that they will be able to do five new inspections a week.

Janice Aviza asked if the inspections will be annual.

Chair Marple responded that they will not be annual, but most likely every two to three years.

Jay Gooze said there has also been some discussion about a self-inspection process for buildings that show a competency in their first inspection.

Paul Berton said he understands that the Edgewood Road situation reinvigorated awareness of life safety code. He said the Durham Landlord Association believes that all of their properties meet life safety code. Mr. Berton said their concerns are the costs of the program. He noted that

the majority of the reason for this program is the single family residences being rented and asked if this ordinance will be effective in addressing the quality of life in neighborhoods, property values and other issues that residents are concerned with.

Chief Landry said he is concerned with life safety no matter where they are built and that is a quality of life issue. He said they are strictly looking at life safety issues and that is why this program is being administered through the Fire Department.

Mr. Berton asked if the driving issue has been the single family neighborhood student rental and if this inspection process will be separate from that issue or tied together.

Mr. Selig said this has been reviewed by the Town's attorney who has advised us that if we implement an inspection program it needs to be a health and safety program and that is why it is important for the Fire Department to manage this.

Chair Marple said while that is true, Mr. Hawk noted at an earlier meeting that this inspection process could also be used to identify other issues if they arose.

Mr. Selig said the Fire Department can report to other agencies if they come across situations that are obvious and problematic.

Chief Landry noted that their report to other agencies will be as they have been in the past. He said the reports will list the property inspected, the address of the property, what was found during the inspection and any issues that arose. Chief Landry noted that if they report they inspected a property with four beds and another Town agency knows that that property should only be rented to three residents they are free to follow up on that information.

Mr. Gooze said he understands the concerns of the landlords and said by crafting and implementing the ordinance correctly in terms of a fee schedule, and how often units are inspected; that multi units that are inspected initially and found to be meeting codes at a high standard will not be required to be inspected every year. He said this is still in the working stages but a process is being discussed to decide how often and if units can be self-inspected. Mr. Gooze said it is their goal to ensure that the ordinance is not onerous for the property owners that are behaving appropriately. He said a fee is needed to get the program up and running.

Mr. Gsottschneider said there should be a way to recognize that recently built and renovated structures may not need to be inspected in the first several years

Fire Chief Landry said he agrees with a process for self-inspection after the initial passing of an inspection. He noted those properties are not the problem areas, but there needs to be an initial inspection.

Mr. Gsottschneider asked if the inspection fee occurs when the property is inspected.

Fire Chief Landry said he believes that will be the process.

Mr. Gooze noted that there will be consequences if a property owner is self-inspecting that all items on the check list are taken care off and an issue is detected.

Mr. Selig said even with a self-inspection program there would be some minimal fee because that program would still require staff time.

Mr. Gsottschneider said that many landlords have insurance clauses that require inspections every year and asked if those would be acceptable to the town.

Mr. Gooze said that has been discussed and it would require the insurer to inspect and record all of the items on the Town's checklist.

Mr. Gsottschneider said that most of the landlords deal with a few insurance companies that handle rental properties, so perhaps the checklist could be utilized by the insurer.

Diane McCann asked if this inspection process and the documents associated with it refer back to other Town standards that must be enforced.

Chair Marple said this ordinance does not involve other town ordinances.

Ms. McCann asked how certain requirements are measured; such as uncleanliness.

Mr. Lawson said that is one area that needs to be defined better.

Fire Chief Landry said there is a State definition that is health related to uncleanliness and that could be used.

Janice Aviza said the wording of the section dealing with the notification of tenants needs to be worked on.

There was a discussion regarding contacting residents of the rental units, the means to do this, the time it would take and the best time of the year and day to schedule inspections.

Mr. Gsottschneider asked who would be responsible for notifying all of the tenants in large buildings.

Mr. Johnson said the Town staff will schedule a date for the inspection of the entire building and the building owner will be responsible for notifying the tenants.

Mr. Lawson asked if typical leases have provisions for access for maintenance and inspection.

Mr. Gsottschneider said most of the landlords have a provision for quarterly inspections.

Pam Weeks said she sets up her leases to allow 24 hour notice for showing the apartment six months before the end of a lease.

Ms. Mower asked what the next step in this process will be.

Chair Marple said Mr. Hawk will speak with the Town attorney regarding the suggestions and comments he heard at this meeting and redraft the ordinance.

Mr. Gsottschneider said it would be a good idea to have some of the landlords review the new draft.

Mr. Selig said he would be happy to include landlords as part of the discussion. He said the goal is to have a document that works and to think through potential issues.

Mr. Gooze suggested including a landlord of a single family home in the discussions and someone from the Town Council.

Mr. Selig said he would set up a work session with Mr. Hawk and other parties.

Mr. Hawk said some good points have been raised.

Chair Marple asked Mr. Hawk to provide another draft which she will distribute before the next meeting of the Durham Rental Housing Commission in September.

Mr. Hawk said he will hold one or more work sessions between now and then.

New Business

IV. Discussion of Durham Landlord's Association letter dated June 8

Chair Marple asked Mr. Berton if he would like to discuss the letter from the DLA that was sent to the Chair.

Mr. Berton said he would like to discuss the fact that single family rentals are not going away and asked what the Commission is doing about it.

Chair Marple said it is the hope of some in the Town government that the expansion of the housing stock on the outskirts of Town would alleviate some of those issues.

Mark Rubinstein said if he was looking at the new construction for student housing he would be reluctant to speculate that the market for single family housing for student rentals is profitable at this point.

Karen Mullaney said the economy and the new projects in town are a deterrent.

Tom Richardson said there will be 3000 new beds in town, including the new beds this summer. He wondered where the students came from and noted there are many houses for sale in Durham.

Mr. Selig said at the Durham Business Association meeting last week a property manager of single family homes that has vacancies said people that are calling about the vacancies are families that are inquiring about renting the properties. He said the pricing is still at a point where it is too expensive for families, but it is getting closer. Mr. Selig said the Town Council wants to bring more families back into those homes.

Mr. Gooze asked Mr. Rubinstein if there is a population of students that are more able to afford higher prices.

Mr. Rubinstein said the University has a cross section of population, but most of the students are in the middle and use loans to pay for a portion of their education.

Mr. Berton asked if the University had information about off campus housing options would it affect the number of students admitted and transfer decisions.

Mr. Rubinstein said it would not, he said academic capacity is what restrains or opens up the possibility of changing class size.

Mr. Berton said every May he hires ten students to help work on his apartments during turnover. He said during conversations with them this year he said eight of the ten were involved in an overcrowded off campus situation. He said the issue of overcrowding in single family rentals has not been addressed. Mr. Berton said the single family home is still a very attractive option to the students.

V. Schedule next meeting

The next meeting of the Durham Rental Housing Commission is scheduled for September 5, 2012 at 4 pm.

VI. Adjourn

Chair Marple adjourned the June 27, 2012 meeting of the Durham Rental Housing Commission at 5:52 pm adjourned.

Respectfully submitted by,

Sue Lucius, secretary to the Durham Rental Housing Commission