

**Town of Cape Elizabeth
Ordinance Committee Minutes**

September 6, 2012

4:15 p.m. Town Hall

Present: Jim Walsh, Chair
Kathy Ray
Dave Sherman

Staff: Michael McGovern
Captain Brent Sinclair
Maureen O'Meara

Mr. Walsh opened the meeting and asked for public comment.

Public Comment

David Volin, 17 Lawson Rd - Mr. Volin said any comments now would be redundant but he and his wife are interested in the progress.

Steve Schmidt, 5 Sea Barn Rd - Mr. Schmidt expressed concern with the maximum of 8 tenants for short term rentals. He spoke with Assessor Matt Sturgis regarding a decrease in value for using fewer bedrooms. The 8 tenant maximum discriminates against larger rental properties. His property has 6 bedrooms and he has to wall off two bedrooms. Not one size fits all.

Mr. McGovern noted that Matt Sturgis does not establish value based on rental of bedrooms but rather the value as a single family home without the potential for rental income factored in.

Betty Crane, 9 Starboard Dr - She is formerly a resident of Pond Cove park. She has attended a lot of meetings, read the draft and is disappointed that there has not been an answer to the problem by now. You should make it easier for the neighborhood residents because this activity is ruining the neighborhood when some property owners are trying to pay their taxes by renting. Another whole summer has passed and the neighborhood is suffering.

Heather Dallas, real estate agent - Ms. Dallas is managing a property close to Lawson Rd and has overseen weekly rentals this summer. She is interested in how this ordinance will be enforced. How many properties have been the subject of complaints?

Public comment ended. Mr. Sherman made a motion, seconded by Mrs. Ray, to approve the minutes, which passed unanimously.

Short Term Rental Amendments

The committee then reviewed the Short Term Rental Amendments using notes from the August 6, 2012 Town Council workshop.

The committee agreed to leave the definition of short term rentals as 30 days or less.

The committee discussed the parking requirements. Mr. Sherman noted comments received from Mrs. Patty Grennon suggesting a different parking limitation. Mr. Sherman noted that we want short term rentals to look like a single family home. If we limit total parking to 4 spaces, it will more closely resemble a home. Single family homes will typically have more than 4 parked cars only 1-2 times per summer, rather than every week.

Mr. Walsh also noted the Grennon suggestion and thought it could result in better management.

Mr. Sherman said it would be easier to enforce, just snap a photo and email it to the Code Enforcement Officer or the Police Department.

Mr. Walsh noted that landlords may still make arrangements for off-site parking.

Mr. McGovern asked if the standard is too strict and result in unintended consequences. Would parking spread throughout the neighborhood?

Mrs. Ray noted that parking is still allowed on the street.

Ms. O'Meara said that the current draft also limits guest parking to on-site only. If you want to limit total number of cars to 4, then maybe you want to go back to the draft where guest parking was not included in the parking requirement.

Mr. Sherman said that maybe we should not require guest parking and just regulate tenants to 4 spaces.

Mrs. Ray and Mr. Walsh concurred that guest parking not be included.

Captain Sinclair offered that capping total number of spaces is simpler to enforce.

The committee agreed to revise the draft to require a max of four parking spaces.

The committee agreed to add back to the draft an exemption for lots of less than 30,000 sq. ft. where the owner lives next door or on the same lot legally, from the additional requirements otherwise imposed on <30,000 sq. ft. lots.

Mr. Walsh noted that this exemption means you can't manage the property if you are living in Florida, even if you own the property next door.

Mr. Schmidt asked if the exemption applied if you are living in the short term rental. He said that he is staying at 5 Sea Barn just to keep things calm.

Mr. Walsh and Mr. Sherman asked if living in the short term rental and renting it out is allowed under the current Zoning Ordinance?

Mr. McGovern said that 5 Sea Barn Rd needs to decide if it is a short term rental or a bed and breakfast.

The committee wants to clarify that the exemption applied only if you were living on the same lot legally. Mr. McGovern said that we would have the Town Attorney review the language.

The committee discussed the 7 day minimum stay.

Mr. Sherman expressed support for one rental per 7 day period. If you rent for a 3 day term, then you have 4 dark days for each 7 day period. He wants to discourage the 1 day or weekend rental.

Mrs. Ray noted that most rentals have not generated complaints. Why do we need a limit? The committee recalled comments from neighbors about the flurry of people moving in and out can be disruptive to the neighborhood. Weekend parties were also noted.

Mr. Sherman noted that Saco explicitly prohibits daily rentals. We could prohibit weekend rentals on lots of less than 30,000 sq. ft. Rentals of 5 days seem common and have not been a problem.

Ms. Dallas was allowed to speak and noted time was needed between tenants. Public comment indicated that 2-4 hours was the time usually needed.

The committee noted that landlords could still rent for just a weekend and agreed to have the attorney work on the language.

The committee agreed to a suggestion by Mr. Walsh to add a copy of the Miscellaneous Offenses Ordinance to the Addendum that the landlord provides to tenants.

The committee reviewed the new suspension and revocation of permit section.

Ms. O'Meara explained this is a first draft responding to support expressed at the Town Council workshop for a 3 strikes enforcement approach. In particular, reference was made to Disorderly House Ordinances in Portland and South Portland. Consequently, the process in the draft closely mirrors the process in those ordinances. The process requires a "substantiated complaint" by the Code Enforcement Officer. His decision that a complaint is or is not substantiated could be appealed to the Zoning Board as an administrative appeal.

Mr. Walsh noted that in the Bar Harbor Ordinance, the Police Chief has a lead role. The Cape Elizabeth Zoning Board does not meet often.

Captain Sinclair explained that Chief Williams spoke with other chiefs. He prefers the Saco approach where enforcement is by the Code Enforcement Officer. He did not favor the Bar Harbor approach.

Mr. Walsh said that he liked the 3 strikes approach. He noted that Bar Harbor had four strikes.

Mr. Sherman and Mrs. Ray liked the Code Enforcement Officer/3 strikes approach. Mrs. Ray noted that not renting for 30 days is a big penalty, so there is no need for a fine as well.

Mr. Sherman asked if the Code Enforcement Officer has authority if there are egregious violations. Mr. McGovern responded that this ordinance would provide the authority. Mr. McGovern said that if this amendment is adopted, he would call a meeting of the Town Attorney, Police Chief, Code Enforcement Officer and others to make sure everyone understands what to do.

Mrs. Ray suggested that a time period for keeping track of cumulative complaints be added. The committee discussed time periods and generally agreed with 3 years.

Mr. Volin applauds the direction and the 3 strikes. He remains concerned about how you determine an incident. New people arrive each week and there is the possibility of disruption each week.

Mr. Walsh noted his suggestion to provide tenants with a copy of the Miscellaneous Offenses Ordinance. The common denominator is the landlord.

Sandi Dunham asked about what landlords will do with contracts if the permit is suspended.

Mr. Sherman suggested that you have to break the contract. Mr. McGovern said that contracts should be written to incorporate the ordinance provisions. Mr. Walsh said this is one way to put the burden on the landlord.

Ms. Dallas asked about the timeline. Mr. Walsh and the committee explained that the Ordinance Committee will finish its work this month and refer the draft back to the Town Council for the October meeting. They anticipate a public hearing in November, with a possible vote after the hearing. An ordinance takes effect 30 days after the vote.

Ms. Dallas said that VRBO (vacation rental website) has sent an email to Cape Elizabeth rental owners notifying them that the town is working on an ordinance.

Mr. Sherman asserted that the problem rental property owners know about the draft amendments.

The committee agreed to the 8 tenant and 8 guest maximum for properties on lots of less than 30,000 sq. ft. They also agreed to eliminate the guest limit for lots greater than 30,000 in size.

The committee discussed an overlay district option. Mr. Walsh recalled this option was suggested and discussed before. Mr. Sherman noted spot zoning concerns with this approach. Mr. McGovern suggested that the same issues that have been brought forward could happen elsewhere in town.

Mrs. Ray said we won't make everyone happy. If most people are partially unhappy, then we have probably done our job. We can look at this again as other issues come forward. In response, Mr. McGovern suggested that if this amendment passes, the Town Council could ask that a report on short term rentals be provided in October, 2013.

The committee discussed the rental agreement addendum and Mr. Walsh recommended that the Miscellaneous Offenses Ordinance be provided to tenants. Mr. Sherman recommended that the event rules be changed to the limit of tenants and guests allowed. Mr. McGovern suggested that a landlord group take on drafting good neighbor guidelines.

The Ordinance Committee agreed to submit the draft to the Town Attorney for review and to ask him to attend the next meeting.

Miscellaneous Offenses Ordinance

The Ordinance Committee moved to a discussion of the Miscellaneous Offenses Ordinance. Mr. Sherman said that including the 3 strikes in the short term rental draft goes a long way with enforcement and he is not sure we need to take time now to get into the Miscellaneous Offenses Ordinance.

Mr. Walsh asked Captain Sinclair if there is anything glaring in the ordinance.

Captain Sinclair noted that it is not very tightly written. In his 27 years, it has never been cited because police officers instead cite Title 17 of state law, which allows them to take someone to jail.

Mrs. Ray noted the ordinance prohibits men from being topless. Maybe we do not need to address this ordinance in conjunction with short term rentals, but it appears to need tightening up.

Mr. Walsh said we could invite Chief Williams to the next meeting and work on some improvements, similar to the approach used with Public Works Director Bob Malley and the Town Ways Ordinance.

The committee agreed to limit their review at this time to just disturbing the peace and put off a comprehensive review for another time.

The committee scheduled another meeting for **Thursday, September 20th, beginning at 8:00 a.m.**

During the public comment period, Sandi Dunham asked if the under 30,000 sq. ft. exemption was added today. The answer is yes.

Ms. Dallas asked if the over 30,000 sq. ft. provisions are available online. All drafts are available online.

The meeting was adjourned.