

**Town of Cape Elizabeth  
Ordinance Committee Minutes**

November 7, 2019

7:00 p.m.

Town Hall

Present: Penny Jordan, Chair  
Valerie Adams  
Caitlin Jordan  
Jamie Garvin, ex officio member

Staff: Maureen O'Meara, Town Planner, Ben McDougal, Code Enforcement Officer

Councilor Penny Jordan called the meeting to order. The minutes of the October 28, 2019 meeting were approved 3-0.

Public Comment

Chair Jordan asked for any comment on items not on the agenda. No one commented. She stated that comments from the last meeting were heard loud and clear, as well as emails and conversations on the phone. She would like public comment to be within the 15 minute/3 minute per person rule.

Barbara Cummings, 36 Richmond Terrace - Congratulations on election and thanks to Councilor Adams for supporting a STR ban. There are not a lot of homes for sale in Cape Elizabeth, especially for families. Four homes in her neighborhood have been bought by investors and those homes should be available for new families and children. She hasn't heard of any STR owner who could not stay in town because they couldn't afford their home. Nationally, towns are revisiting STR regulations. Airbnb does not do background checks so we don't know who is staying in our neighborhoods. Why are these businesses allowed in residential zones.

Tom Dunham, 11 Becky's Cove Ln - He owns 2 homes in Cape and rents out one. The rental income is important, and operating an STR is a lot of work. Guests stay 1-2 weeks and he has been renting for 10 years with no problems. We were involved in the current ordinance development which is practical and an enforceable process and permit. He sympathizes with neighbors that are impacted by noise.

Chair Jordan confirmed that the rental cottage is on a separate lot. Councilor Garvin asked if it is adjacent to his residence and Mr. Dunham said yes.

Elizabeth Menz, 27 Cross Hill Rd - She referenced her letter. She raised 3 sons and rents out her home in the summer to cover college tuitions for 28, 22 and 20 year olds. She often rents to grandparents visiting family living in Cape. The home is her primary residence, she has a permit and rents weekly during the summer. She is at the house 2-3 times a week during rental season and does her own turnover and landscaping. She agrees with limits on investors.

Gary Cummings, 36 Richmond Terrace - He supports a ban and does not want a business operating in a residential zone.

Chris Bond, 15 Sunrise Dr - He lives in town and operates 2 properties as a short term rental, which he does not want to give up. There are no complaints on his properties and no one should have to live with poor behavior and noise, but that can be managed by enforcing existing laws. Your discussion is banning a class of people from living in Cape Elizabeth. If you are not the "landed class," you should be excluded. He objects that STRs damage the housing supply. If the town wants affordable housing, it should fund it. The town's development requirements make housing expensive and implies we want the "right sort of people." You ignore that homes sit empty most of the year, which is a waste.

Councilor Garvin asked how many STRs he has. Mr. Bond clarified that he owns 3 buildings and 1 is a duplex. He rents a combination of STR in the summer and long-term in the winter.

Craig Cooper, builder for 40 years - The town requires affordable housing in new development. He is speaking for Mary Giftos who owns a guest house that she rents as a STR in the summer to off-set taxes. There have been no complaints on her property and the complaints that the town has received are based on 1 property, so don't punish all STRs for one problem. Permitting is too cheap and fees should be increased. You should implement 3-strikes for enforcement.

Don Russell, 31 Lawson Rd rental operator - A STR ban is fascist. High fees and fines make sense. He was a South Portland Planning Board member for 2 terms. There should be a 3 strikes for neighbors who complain when the complaint isn't substantiated. The complaints are false accusations.

Tony Armstrong, 32 Lawson Rd - He questions the label "fascism" and a 3 strikes for neighbors who complain. There are more complaints than have been formally made.

Tom Dunham, 11 Becky's Cove Ln - He bought the cottage in 1979. It's a lot of work to stay in Cape. We need painful enforcement.

Mary Otulakowski, 172 Two Lights Rd - She operates 3 STRs where guests stay in town, and she employs people to maintain the property when she is not here. She operates the yellow cottages next to Tammaro Landscaping. She lives where she is surrounded by seasonal homes. She is happy to pay more for the permit.

Scott Rockwell, 119 Old Ocean House Rd - We need clarification. He operates a homestay to use the bedrooms in his farmhouse when his kids moved out. It allows them to stay in a 5 bedroom house and is a fun way to meet people. Some of his guests decide to move to Cape. His taxes have doubled in the 25 years he has been here. It is unclear what exactly are the requirements as everyone has a different story. People don't understand if they need a permit and recommendation #86 will define that.

Chair Jordan said that if you do not understand the ordinance, Code Enforcement Officer Ben McDougal can clarify it. We are looking at the ordinance and going beyond the comprehensive plan recommendation.

Councilor Garvin asked if the confusion is about the 2 weeks exemption?

Mr. Rockwell said the owner v. non-owner is confusing, renting 2 days v. 1 month. Ben was clear when he had questions.

Councilor Garvin clarified that all town councilors are ex officio members of all committees and he wants to hear input but is nonvoting.

Chair Jordan will begin with looking at definitions, then a map review. She has heard tonight that summer rentals don't fit Cape but Cape used to be a summer rental location for Portland.

Councilor Adams said that she still supports the ban, but will participate in reviewing the draft.

The committee began reviewing and revising a chart of different types of STRs.

The committee discussed how to define primary residence. The town does not currently have a definition. The South Portland ordinance uses the homestead exemption as a method to determine primary residence. Councilor Garvin asked ban supporters if there is a distinction?

Barbara Cummings said it is hard to define when there are exceptions. Homestays are acceptable if you live in the house, rent and stay on the property. Exceptions equal loopholes. Very few STRs in Cape have permits. Even with a ban, some will go underground and just pay the fines. Without a ban, ordinance

changes are a bandaid. People lie, say the guests are "friends of ours," or house cleaners.

The committee reviewed the South Portland definition and agreed to use the "primary residence" definition as a working definition.

Andy Strout, Fowler Rd - He asked what adjacent means in his family's circumstance. Councilor Garvin suggested a definition of adjacent was needed. Chair Jordan said it usually means a shared property line. Councilor Caitlin Jordan offered that if the road was not there, the properties would abut. The committee agreed to a concept of "immediately abutting."

Councilor Caitlin Jordan said that someone may live in town, not abutting, still in town. The committee indicated that was the "investment" category.

Chair Jordan asked if you have to own or rent another property to qualify? Councilor Caitlin Jordan noted that even renters have residency. Councilor Garvin said it is worth making the distinction in rental type between someone who's not here and someone who owns another property in town because they have "more skin in the game." He said the core problem is real estate speculation. It is not a problem to generate supplemental income. Chair Jordan agreed and Councilor Adams disagreed.

The committee discussed defining "investor," but can't use LLC because some families use that for property management.

The committee reviewed the lot size map. Councilor Caitlin Jordan explained that the map assists in having different regulations for STRs on small lots in contrast to large lots with few neighbors. Chair Jordan suggested that with 7 acres, you could have a STR even if you are not present and it would not disturb abutting residences. Councilor Caitlin Jordan suggested turnover on a STR on 10 acres would likely not bother anyone.

Councilor Garvin asked about setting a cap on the number of STRs in a neighborhood. Councilor Caitlin Jordan was concerned with fairness in treating folks the same instead of the first person gets a permit and other property owners are out of luck.

Chair Jordan suggested that we are heading to a policy where using your primary residence as a STR is key in high density neighborhoods. Councilor Garvin asked if there is any concern that STRs in secluded areas will result in more illicit activity? Is this an unintended consequence?

Councilor Adams summarized discussion at a prior meeting that STRs on larger lots would not annoy the neighbors, but people are still driving fast and can annoy neighbors.

In reviewing the map, Councilors Jordan agreed that 3 and 5 acres was too small. 7 acres was preferred. Councilor Adams remains uncomfortable because we are ignoring housing policy issues and potentially creating more problems. This STR direction does not address the neighbor issue and the affordable housing issue.

Chair Jordan acknowledged a tension. She is considering people's investments and wants to give them some choices. She also wants to keep the fabric of the neighborhood. People want to continue to own property if they don't live there, put kids through college. It is different when it's not the primary home. Maybe a second home should be rented out long-term. The STR ordinance creates opportunities and angst. She hopes people will rent long-term.

Councilor Caitlin Jordan said we are taking too many options away from property owners. Councilor Adams said we take options away all the time and used the example of requiring a driver's license.

Councilor Garvin noted that if we eliminate STRs that are not a primary residence, or people who operate it live in town, that will reduce STRs and incentivize long-term rentals. We will need a transition and still need enforcement and penalties. He referenced a Denver article.

Chair Jordan wants to craft policies, then work on penalties. People have rented out for years and STRs bump up against that tradition. We need to address pressure in neighborhoods.

Councilor Garvin expressed equal concern with a housing issue where out-of-state people own homes in Cape who rarely use the home.

Chair Jordan noted that before Broad Cove was built, people bought summer homes in Cape and it is ok to be valued for that. Councilor Garvin responded that those summer homes were historically not sprawling family homes. Councilor Adams stated that just because this work won't cure our housing problem doesn't mean we shouldn't address part of it. She supports an STR ban unless it is a hosted homestay. This addresses neighbor concerns and housing policy. The lot size doesn't matter.

Councilor Garvin thinks the lot size complicates the issue. STRs are the primary residence, or maybe a second property owned by a town resident. This would address 1/2 of the Richmond Terrace problem. Councilor Caitlin Jordan said the

overarching concern is STRs. Even if all homes are owned by someone else in town, it is still a problem. Lot size can help a neighborhood. Councilor Garvin would like our energy to be on compliance to tamp down the problem.

The committee concluded review and revision of the STR chart and will continue at the next meeting.

### Public Comment

Chair Jordan opened the public comment period and asked if the committee had covered nuances?

Craig Cooper - He is opposed to the lot size limit. Ms. Giftos' guest house is 1/3 mile away from her home.

Tom Dunham - He agrees with Mr. Cooper and wants to focus on enforcement. His daughter will one day own the cottage and will need to rent it out to afford to keep it. It is too small to live there permanently. Maine has a tradition of second homes on lakes and ponds and are forced out due to taxes. It's morally and ethically wrong. If you sail along the coast, you pass many "dark homes" which is changing the community.

Gary Cummings - He is sympathetic but it is a business to rent out second homes. He is ok if the STR abuts the primary residence but he doesn't agree with owning a house in another neighborhood. It's a hotel. We need the rules to be plain and simple or Ben won't be able to enforce it. The internet has changed things and we need to consider the property rights for the whole community.

Councilor Garvin pointed out that the existing ordinance allows some businesses in residential districts.

Tim Hebda, 55 Richmond Terrace - He asked about the differences in permitting of non-residential uses?

Mr. McDougal responded that businesses in residential zones often require site plan review by the Planning Board.

Scott Rockwell - Cape heritage includes STRs. One home was rented while the owner was in the hospital to keep it occupied.

Tony Armstrong - He recommends obtaining legal advice as it may be tricky to treat nonresidents differently from residents who operate STRs that are not their primary residence. He likes the large lot idea but it doesn't always result in a

separation of neighbors with long, narrow lots. Fees and enforcement should be dealt with later and should be strong. STRs are a factor in housing supply and Cape is not meeting its fair share of affordable housing for the region.

There was discussion about the legal foundation for regulations that favor residents and Mr. McDougal suggested proximity to STR from primary residence. It was observed that South Portland residents might benefit from this while Cape residents might not. For the next meeting, staff will obtain an opinion from the town attorney regarding differing regulations based on residency.

Councilor Garvin would like an analysis of existing STRs and the categories created during the discussion. Ms. O'Meara referenced a map showing 120+ STRs submitted to the committee by a resident and the Host Compliance estimate of 160 STRs, but the town does not have the data to evaluate. Councilor Garvin said we need this to see if the ordinance changes will address the problem and will talk to the Town Manager about requesting or purchasing the data from Host Compliance.

#### Next meeting

The committee agreed to select the next meeting date after the Town Council caucus.

The meeting adjourned at 9:20 p.m.