

**Town of Cape Elizabeth
Ordinance Committee Minutes**

October 28, 2019

7:00 p.m.

Town Hall

Present: Penny Jordan, Chair
Valerie Adams
Caitlin Jordan

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

Councilor Penny Jordan called the meeting to order. The minutes of the June 17, 2019 meeting were approved 3-0.

Public Comment

Chair Jordan noted that the Town Council has received amazing input with constructive ideas. She opened the meeting to public comment.

Don Russell, 31 Lawson Rd (rental operator) - The current ordinance needs minor edits. It is poorly written now and it should encourage mediation. The Cape Elizabeth Police Department visited his short term rental on June 2nd and there was a violation due to a language problem. He has rented to over 140 families for four years and 99% follow the rules. You do not need a more restrictive ordinance, which would erode private property rights. He does not support the South Portland regulations. Some communities have chosen not to regulate short term rentals. He has bitter, activist neighbors who will never be happy.

Jennie Aronson, 27 Lawson Rd - She stated Mr. Russell is not a neighbor. Joe Soley owns the property, Mr. Russell rents it and operates a business. Views are precious and she doesn't want to see ten cars with out-of-state license plates, people, families and parking in her driveway. She suggests a compromise that the person who rents it out should be on the property when it is rented. She should not have to manage the property by calling the police. A neighbor may have a party 1-2 times a summer, but there is a party every weekend with a short term rental.

Tony Armstrong, 32 Lawson Rd - Some issues can easily be dealt with. One, if you don't register, Ben [McDougal] can't do anything. People are not reregistering every year. Two, homestays should register as short term rentals (STRs). Three, look at short term rental enforcement nationally. There is a

difference when it is owner occupied v. full-time rental/business. The June 2nd event was more than a translation problem. How can the parking go wrong when the renter lays out the rules? He explained how a tree came down in the storm, he called Mr. Russell and he directed him to Mr. Soley, who did remove the tree.

Tim Hebda, 55 Richmond Terrace - The Short Term Rental regulations are ineffective. There is a disconnect between the number with permits and the number of STRs operating. STRs are removing affordable housing and school enrollment is dropping. Short term rentals bring traffic, parking, noise, throughout the year with a new renter each week. The ratio of renters to owners is changing. One renter went in the wrong house. He is a father and a teacher. We reach out to owners and they do not resolve issues. Non-owner short term rentals should be banned, fees increased and have true enforcement and coordination between departments.

Victoria Volent, 58 Cottage Farms Rd - It will be difficult to thread the needle. We tried before. Don't just go after symptoms. If a property owner wants income, they can rent long-term. We are losing school enrollment, which is not due just to STRs, but also losing affordable housing. Workers important to the town cannot afford to live here. We should support the comprehensive plan and the Metro Council resolution. Ban STRs in favor of long term rental units.

Barbara Cummings, 36 Richmond Terrace - We have 5 STRs in the neighborhood now and STRs will get into other neighborhoods. Our neighborhood was all families. Now we have 40-50 people walking around who don't live there. Neighbors are taking care of the impacts because they are not at a hotel, with maintenance, ubers, etc. This is a business in a residential zone.

Gary Cummings, 36 Richmond Terrace - He provides Ben information every week and some complaints are verified. There is not a week without a violation. He wants a STR ban in residential neighborhoods. There should be high fines. The first violation should result in a 30 day suspension, second violation 1 year suspension, third violation multiyear suspension. Even with live-in owners, it is still a problem.

STR committee discussion

Chair Jordan reviewed her plan for the meeting. First, review existing ordinance; then review the staff memo, then identify ordinance pros and cons. The committee reviewed the existing ordinance.

Councilor Adams noted that nothing in the Homestay definition prevents an owner from leaving when they rent out a room.

Councilor Caitlin Jordan asked how to enforce multiple groups in a 7 day period? Mr. McDougal said that turnover is an issue for neighbors.

In response to a question, Mr. McDougal said permit issuance is time consuming. Renting without a permit is a zoning violation, but you can cure the violation by obtaining a permit. No late fee is applied.

He summarized the permit review he conducts. It can take an hour or more to identify the STR owner. The application is not the easiest and few people understand the building code.

Chair Jordan asked if the majority of STR operators call Mr. McDougal about the permit. He said the majority don't call.

Councilor Caitlin Jordan asked what steps he takes if an STR operator does not get a permit. When contacted, Mr. McDougal said no one refused to get a permit. They apologize and many say they are a homestay or rent for only 2 weeks a year. He noted that he spends more time assisting someone getting a STR permit than someone getting a building permit for a million dollar house. The fees are not comparable. Councilor Caitlin Jordan suggested that we may need a more streamlined process. Mr. McDougal suggested that a fine to double or triple the fee be built into the ordinance to motivate permit renewals.

Chair Jordan suggested the fee could be a percentage of the rental income. She asked if there is a problem with locating a STR contact. Mr. McDougal said there is no problem if they obtain a permit.

Councilor Adams asked if the name of a complainant is released. Mr. McDougal said he does, which is a FOAA requirement.

Chair Jordan asked about code compliance. Mr. McDougal said eventually there is code compliance, but it requires multiple inspections. She asked about parking and he noted there was some coordination with the Police Department needed. She noted the duplication of subsections d and f.

Councilor Adams asked about the availability section. The language is tied to a contract and needs to be enhanced to apply to any group. Ms. O'Meara suggested that once a STR permit is obtained, the property should always comply with the STR provisions, not turn them off to allow a second group to move in as a family or friend. The "churn" was mentioned in 2011 as disruptive

to a neighborhood. The committee discussed the use of a STR by families in addition to rental guests in the same week. In response to a question, Mr. McDougal said applicants write on the application that they will rent for one year and it is hard to regulate when it switches back day by day.

Councilor Caitlin Jordan said that can be strengthened. Councilor Adams said she is coming from a different perspective and is in favor of no STRs.

Chair Jordan asked if complaints/violations are deemed valid, is there a fine? Mr. McDougal said the first violation requires a remediation plan and suspension of the permit with a second violation. There have been no suspensions.

Asked about any other items in the staff memo, Mr. McDougal supports obtaining third party enforcement and requiring a permit for homestays.

Chair Jordan asked about the duration of ownership chart in the staff memo. Ms. O'Meara said she was trying to look at a trend of investors purchasing homes in neighborhoods. There is some evidence, but she only looked at properties with permits so a lot of STRs may not have been included.

Councilor Adams would like to hear about the policy position of the committee members.

Chair Jordan identified the following points:

- allow STRs on larger lots not near neighborhoods
- allow STRs for property owners who want to retain their home on a fixed income
- review investor purchase
- balance neighborhood and property owner rights
- allow STRs for a primary residence or live there 3/4 year
- Perhaps limit rental duration to 10 weeks

She is ok with leveraging property to generate income. Councilor Caitlin Jordan concurred.

Councilor Adams explained why she would support eliminating STRs. She found it hard to buy an affordable house in Cape Elizabeth and she is an attorney. There is an STR in her neighborhood that could be an affordable home. STRs are problematic because they convert housing to a business. If you cannot afford your home, it may be time to downsize. That's how the market cycle works, and it is failing right now. STRs are equivalent to an unstaffed hotel and it

is a waste of our resources to manage people not respecting our laws. There should be a \$2,000 fine for the first violation.

Chair Jordan suggested in the Elizabeth Park scenario that the STR could be owned by someone who has moved elsewhere in the town and wants to hold onto the home. Perhaps we can tweak the homestay to make it primarily residential, a minimum % of time in residing there, 10-12 weeks a year as a rental, to get skin in the game.

Councilor Adams felt that is too long, maybe 30 days/yr. The decision to rent may indicate it is time to move.

Councilor Caitlin Jordan questioned where you move to? Sell the four bedroom house and move to Portland?

Councilor Adams suggested it does not make sense to stay if you are renting out 3 months a year. That is not how a primary residence is supposed to work. Why not vitalize the town center with a B & B instead?

Chair Jordan supports people leveraging their assets to stay in their home. Councilor Caitlin Jordan concurred. Chair Jordan mulled the number of weeks for renting, 30 days, 10 weeks. For the town to be diverse, we need to accommodate this.

Councilor Adams said diversity is supported with a turnover in housing stock. We create more housing appropriate/small enough for people to afford. Ms. O'Meara called attention to the accessory dwelling unit provisions that allow "overhoused" home owners to create housing in their existing home. Accessory dwelling units are a common way to create affordable housing.

Councilor Caitlin Jordan questioned if home owners can afford the renovations to create the accessory dwelling unit.

Both Councilor Jordans support STRs in low density areas.

Committee members suggested creating two ordinance packages, one that keeps and one that bans STRs. Committee members agreed in concept to:

- shifting to long-term rentals;
- shifting toward STRs with the property owner present;
- making fines to address violations meaningful
- increasing the STR permit fee

There was a suggestion to peg the license fee to the rental income, but also questions about how to verify the rental income.

Mr. McDougal speculated on permit costs. He supports third party enforcement, for example Host Compliance, and that cost should be borne by the permit holders. He estimates \$250-\$300 a year. He spends about 4 hours per permit.

Councilor Caitlin Jordan asked about the most difficulty with the permit. Mr. McDougal said obtaining a complete application, and understanding the building code requirements. He visits a STR at least 2 times. The information could be packaged and posted online to reduce hand-holding time.

Committee members discussed permit fees. Mr. McDougal suggested \$250, Chair Jordan up to \$1,000, and Councilor Adams \$500 or an amount to encourage long-term rentals. Mr. McDougal mentioned adding a permit requirement for homestays and there was some consensus to separating homestays into long-term and short-term.

The committee tried to summarize types of STRs: occupied, investor, primary resident but not onsite during rental.

Councilor Adams questioned if the town should have STRs even if the property is someone's primary residence. It's not good housing policy to allow STRs so that someone can afford to keep a property.

Chair Jordan said retaining property is a Cape Elizabeth heritage issue, not an affordable housing issue. Families should not have to part with property that has been in the family for generations, but should be able to keep it for later generations. Councilor Adams suggested retaining as a long-term rental, or renting as a STR for 3 months. Councilors Jordan referred to private property rights and keeping the old Cape Elizabeth ways, heritage, history.

Chair Jordan noted that people purchase summer homes as a non-primary residence. They want to rent out the second home. Our housing policy should also maintain the essence of Cape Elizabeth. Councilor Caitlin Jordan agreed.

Councilor Adams does not support STRs for non-primary residences. They can still do long-term rentals as an option.

Mr. McDougal said that limiting the number of weeks a year that can be rented as an STR is an option, but he's not sure how to tie it to a primary residence.

The committee discussed the density of STRs. Capping the number in a neighborhood could be problematic in measuring the cap and the folks owning property in the neighborhood that can't rent when the cap is met. There was agreement to look at a map of lot sizes at 3, 5 and 7 acres to allow STRs not near a neighborhood. A chart/bare bones outline is also needed.

The committee discussed the difficulty in distinguishing between investors and family-owned STRS, as families can create LLCs.

Public Comment

Victoria Volent - Thank you for working on this difficult issue. Even if you allow 10 weeks of renting, you still have problems with parking, etc. and end up in the weeds. Long-term rentals allow you to keep a home in the family, and allows people in the market to move in, out and up. When you take houses off the market, the cycle breaks.

Jennie Aronson - She agrees that you can't say it's time to move, but STR owners should have skin in the game, not destroy a neighborhood for others. People who live there full-time pay taxes.

Gary Cummings - The answer is to rent long-term. An owner in the neighborhood rents out rooms long-term and there are no complaints. More detail will invite violations.

Tim Hebda - He agrees slight adjustments won't address STR impacts. Property owners shouldn't leverage property any way you want. The essence of Cape Elizabeth isn't a revolving door of weekly visitors.

Frank Strout, 1184 Shore Rd - He and family members are partners in a 20 acre LLC. It is family land and 3 still live here. We pay a combined \$80,000 in taxes. To make our house an STR, we spent \$200,000. The property has been in the family 100+ years. This direction is not helpful for families who want to stay, although he sympathizes with neighborhood impacts. They operate a long-term rental for the winter, STR summer months.

Tony Armstrong - His family has been here 250 years, in his house 60 years. In his neighborhood, the essence has been blown away by STRs, turnover. He thinks an accessory dwelling unit is a good alternative and supports Councilor Adams' housing marking comments. Families used to pass down homes and we don't need STRs to do that.

Next Meeting

The next meeting is scheduled for November 7th, beginning at 7:00 p.m. The meeting adjourned at 9:15 p.m.