

**Town of Cape Elizabeth  
Ordinance Committee Minutes**

January 15, 2020

7:30 a.m.

Town Hall

Present: Penny Jordan, Chair  
Jamie Garvin  
Chris Straw  
Valerie Deveraux, ex officio

Staff: Maureen O'Meara, Town Planner

Councilor Penny Jordan called the meeting to order. The minutes of the January 6, 2020 meeting were approved 3-0.

Public Comment

Frank Strout, 1184 Shore Rd - He supports ordinance changes that resolve STR negative impacts. He questioned the 30 day cap in Sec. B #2 and #3 when others are capped at 90 days. He objects to comments made by Councilors Straw and Adams that people who need to rent to pay taxes should move.

Councilor Straw clarified that he did not say move out of town. He is suggesting that, for example, if an empty nester with a 6-bedroom house is asking to rent out their property to pay their taxes, then they should consider downsizing if they have more house than they need before they ask the town to change the rules.

Mr. Strout asked if we will need to check a box if we need money to pay for college costs or medical costs, instead of to pay taxes?

Councilor Jordan stated that position is not supported by the whole town council. Before STRs, people with more house than needed have rented out. This new business model is making it more prevalent. There is a history of renting out to offset taxes.

Councilor Garvin concurred this is not the policy position of the town council. There has also been discussion of the housing stock balance, referencing the comprehensive plan, and what type of housing is optimal for community needs. The problem with downsizing is that there are not a lot of options. We continue to have escalating costs of services, both town and school, and STR rental income and the senior tax credit provide some relief for tax payers. He supports finding different revenue mechanisms.

Councilor Deveraux said she is a member of the town council, but not the Ordinance Committee. She cannot vote at the committee level but is in alignment with Councilors Garvin and Jordan on selling a home unless you choose to. People run businesses in homes now, not just STRs. We need to balance with reasonable and updated regulations.

Deb King, 125 Old Ocean House Rd - She sees the need to deal with housing stock. Her home is her business and she doesn't agree that home sale should be considered. She loves her home and thanked the committee for the suggestion to talk to her neighbors. Her lot is two acres and her neighbors don't hear anything. June Eiesland (neighbor and STR operator) noted that when she held her parents' funeral last summer, STRs were convenient for family members who traveled and could stay in town. Mrs. King noted that some online "Cape" listings were deceptive and actually located in other towns. It is hard to discern what is going on. She is opposed to a \$500 permit that the town would use to buy "spyware" and the problem is people who buy homes and operate STRs who don't live there.

Councilor Garvin clarified that "Host Compliance" enforcement software does not read personal email, but rather uses algorithms to scrape and analyze data from sites like VRBO, Airbnb, etc. For example, the regulations limit STRs to 1 rental per 7 days and the software can do more of that work than 1 person, such as flagging multiple bookings.

Mary Ann Lynch, 2 Olde Colony Ln - There are good renters who are trying to be responsible and we legislate for the irresponsible. The business model has changed and seasonal rentals are not all on 2 acre lots. This proposal is a good compromise to balance property rights in residential neighborhoods. The transition is important so that this summer's contracts are not disrupted. There should be reasonable expectations and she urges a moratorium effective 1-1-2021 for future contracts.

Doug Dransfield, 40 Richmond Terrace - He supports STR restrictions. There are STR negatives and it is not enough to deal with people who don't follow the guidelines. When do we call the Police or CEO? Penalties? How many are renting without permits? Eliminate the investor STRs and stop activity before 1-1-2021.

Sandy Dunham, 11 Becky's Cove Ln- She loves her house and she was 60 when she moved in. They kept the cottage next door and to help pay expenses, they rent out the cottage as an STR. There is never a problem and renters are good friends. There are no parties or groups and lots of repeat renters. Two renters

moved here. Renters spend money here and 90% of STRs are no problem. You should address problem properties and not penalize all other STRs.

Craig Cooper - Maine license plates say "vacationland." Tourism is a huge industry in Maine and Cape has a history of vacation homes for Portland residents. He is a contractor, property manager and long-term resident. He represents a property owner who has a guest house 1/3 mile away from her residence. If you are ok with a guest house next door, then why not 1/3 mile away? People want to keep their homes no matter what. Enforcement should be an equal part of the regulations. Everyone should have a permit and \$50 is too low. Investor issues are separate and landlords can restrict subletting. Focus on the small number of problems.

Penny Pollard, 3 Peabbles Point Ln - She is an STR owner and the Cape provisions should protect renters and neighbors. There are a few bad actors, but that is not the case in her Peabbles Cove neighborhood. There is a widow who needs STR income and the 30 day cap won't work for her. There is also an extended family who is renting a home to business people for meetings. This is a complaint and compliance issue and you shouldn't punish all STR operators.

Councilor Garvin asked if her STR was her primary residence and she said no. Some of her examples are primary residences. She lives in the neighborhood but is not a direct abutter to her STR. Councilor Jordan asked about the widow's STR and it is rented year-round.

Tony Armstrong, 32 Lawson Rd - He lives across the street from an STR and the problem isn't just renters, but also traffic increases from drive bys looking for STRs, or service people. We have 4-5 people each weekend driving in the neighborhood planning a future vacation and it changes the neighborhood character.

Scott Rockwell, 119 Old Ocean House Rd - His STR is year round and 0 problems. That's the case with most STRs. Our rentals are posted without an address, no sign. Responsible STRs are treated broad brush with negative STRs.

Councilor Garvin asked commenters, if STR renters, to indicate if it is their primary residence.

Eileen Monaghan, Peabbles Point - She is with Penny Pollard. They bought the home for their parents, who did not move there, so they rent it STR to keep for the family. It is the only way they can keep the property. You should make sure all STRs are permitted. How many properties have complaints lodged? There should be three strikes enforcement.

Councilor Garvin said we are working with different STR numbers. One issue is the massive gap between number of STRs and number of permits. Market conditions are dramatically different today than when the STR regulations were originally drafted. STRs are now proliferating with corresponding increases in complaints. The model has changed to more investors and the regulations have not kept pace so adjustments are needed.

Ms. Monaghan said change is equaling eliminate and Councilor Garvin did not agree. His emphasis is primary residency rather than limits on duration.

Jim King, 125 Old Ocean House Rd - How does limiting the number of days deal with violations? You can have a bad apple in 3 months.

Councilor Deveraux suggested the time cap addresses issues like traffic, number of people in the neighborhood and neighborhood residents not having a time when they can experience quiet enjoyment of their property.

Mr. King said that in the off-season, there are few people. He has people this weekend.

Councilor Jordan acknowledged traffic impact in some neighborhoods. The committee still needs to complete the draft review. We spent a lot of time defining the parameters and now we need loop through to test the parameters.

Vicky Kennedy - She owns a second property on Richmond Terrace. It was to be their dream home, then her husband had a heart attack. They did not intend to rent, but adapted to the situation. We did have a police complaint instead of calling us. The STR operation is temporary and they are moving in the spring. She is a realtor and questions how many are buying homes as an STR investment.

Doug Dransfield - Your neighbor did.

Vicky Kennedy - That is an exception. There is nowhere for people with large homes to move.

Gary Cummings, 36 Richmond Terrace - I was one of the complainants. It's not my responsibility to call you. Another STR tenant could not reach the renter. The intention was to operate an airbnb on day 1.

Kathleen Newman, St. Albans, Maine - I own a STR at Peabbles Point. It was in my former husband's family for decades and he visited it with family and friends

without charging for use. I could lend it to a friend for the summer and it's not a big difference if I am making money. You are trying to solve a problem for a small group of people. I can't afford not to rent the property and promised my husband on his death bed I would not sell it. Some people rent for a couple of months and everyone has people to clean.

John Greene, Sprague Corporation - The Sprague Corporation is unique and can use the 7 acre exception. We have had as many as 7 rental summer cottages and have rented for a long time. We rent for a week to 3 months. We no longer have 7 as some are used by family members, but some may go back to rentals. We operate April - November, so a 30 day limit is a problem. We treat our neighbors well, avoid complaints and also want tourists, so we do not want a 3 month limit. Taxes are increasing and we may tear down the cottage and build year round homes.

Councilor Jordan confirmed his concern with duration limits. Councilor Garvin confirmed that the cottages had historically been rented seasonally, that rental periods range from 1 week to whole summer, then weekly. Councilor Deveraux asked how many STRs now and there are 3 currently. Some family members are not renting, some are going back to STR. There were 7 in the 1980's.

Helen Muther, 517 Ocean House Rd - She is commenting about the apartment above the Bird Dog Road House. It was built in 2017 and designed as an STR, located in the BA District. The ordinance proposes eliminating STRs in the TC and BA Districts to promote affordable housing, but she supports an exemption for residential units in the BA District located in mixed use buildings. She submitted suggested language.

Leslie Young, 8 Golden Ridge Ln - She manages STRs. As a 20-year employee at Community Services, so many people who had split up would be happy to have a place to live in to stay in the community. During family reunions, STRs allow family to stay in town, as well as when people are looking for a home here. She supports tourism and understands complaints because people use her driveway and yard to access a public trail. STRs bring wonderful people to town.

### Committee Discussion

Councilor Jordan noted she was happy to hear from both sides today. The committee began with page 8 of the draft.

They agreed to delete the permit duration in this section as it was now located elsewhere in the draft regulations. Information on the permit about when the

STR is available will be more important if duration limits are adopted. Now, permittees list the entire year as the rental period.

The committee liked the revised code compliance language proposed by the CEO. Councilor Straw does not want to duplicate state standards, but this language also helps people understand what is required.

Councilor Garvin asked about the turnaround time to obtain a STR permit. Ms. O'Meara said that most time is spent by the CEO assisting with compliance to obtain the permit and permit issuance is not delayed. This is a good question for the CEO.

The committee supported proposed edits to the sanitary waste section.

The committee discussed the parking requirement and agreed to keep the reference to Sec. 19-7-8. A proposed change is to require guest, as well as tenant, STR parking on the lot. Ms. O'Meara noted an unintended consequence is that STR owners may pave the front yard, or other parking construction incompatible with the neighborhood character, in order to meet this standard. Councilor Straw noted that the paving can be done anyway. The committee agreed to require parking for tenants *and guests*. There was concern that even if parking is provided off-site, STR renters will park on the road. For now, the committee agreed to keep provision of parking off-site as an option.

The committee discussed rental intensity limit and Ms. O'Meara explained the history that inspired this provision, which only applies to lots of 30,000 sq. ft. or less. It was structured to make it easy to enforce by a simple head count by police officers responding to a complaint. This requirement recently resulted in a substantiated complaint. The committee agreed a head count is a simple enforcement method. Councilor Straw explained that the State Fire Marshal regulates 9 or more bedrooms as a bed and breakfast. Ms. O'Meara explained that life safety code and zoning use terms do not need to match.

Councilor Jordan asked Mr. Rockwell how many bedrooms he rents out and he said 3 of 6 total. The average rental party is 2.5 people, although they can host a family of 6. The Primary Residence hosted definition allows only 2 bedrooms to be rented out.

The committee continued to discuss rental intensity. Councilor Deveraux thought renting to 14-18 people (equates to 7-8 bedrooms, plus a "sleeping space) for a week is likely to cause neighborhood problems, as experienced in South Portland. Councilor Straw said an alternative approach is to set limits by zoning district. The committee agreed to leave the existing provisions.

The committee moved to complaints. Councilor Garvin asked about the consequences of not getting a permit? There is a difference between an omission and purposefully not getting a permit, and the penalty should be not being allowed to operate. This is a privilege and he is troubled that folks are skirting the regulations. Councilor Jordan felt the intent is different for someone who forgot from someone who has operated an STR for a year. Honing in on the primary residence will address this issue.

Councilor Deveraux noted that some STR operators are not shirking because they are operating as a homestay which does not currently need a permit.

Deb King and Scott Rockwell confirmed this was their situation.

Councilors Deveraux and Garvin said going forward, all STRs should get a permit and if they do not get a permit, there should be a stiff fine. Councilor Straw does not support large daily penalties that can be abusive. He prefers that no permit can be obtained for 1-2 years. He noted the proposed changes to homestays which address the existing issue.

The committee revised C. Short Term Rental Requirements, to address lack of a permit. The committee noted that people make mistakes, may be in the hospital, so the first offense should have a reasonable penalty. The committee generally agreed that the first offense "fine" would be to pay double the permit fee. The second offense (within a 5 year period) would be no permit for 1 year. A permit application received more than 30 days after the permit deadline shall be considered late, in order to provide a grace period. Ms. O'Meara will work with the Code Enforcement Officer to establish some kind of application completeness threshold so that someone can't just sign the permit form and submit it to make deadline.

Councilor Jordan asked if the ordinance should specify that people should call the Police Department with complaints. Councilor Garvin asked how to address the problem that people don't know who to call with complaints. Ms. O'Meara was concerned about compromising existing police department authority by referencing it in the Zoning Ordinance. Who to call has been a chronic issue. Residents have been urged to call the Police, in these meetings and by the Town Council. That should continue. Staff will ask the Police Chief to advise the committee.

Councilor Deveraux does not want a STR permit to be revoked for the first complaint. Councilor Jordan said many complaints are a nuisance. Ms. O'Meara reported that most complaints, such as a "nuisance" under the Miscellaneous

Offenses Ordinance enforced by the Police Department, do not fall under the STR regulations and are therefore not subject to the 3 strikes structure. When the STR regulations were first adopted, the town then reviewed the noise regulations and added times of day expectations. The committee considered STR complaints that are violations of other town ordinances. The committee reviewed the list of current ordinances and agreed to add that a violation of other town ordinances related to the operation of a STR shall also be considered a substantiated complaint.

The committee discussed how violations of town ordinances could accumulate. Councilor Garvin confirmed that complaints related to other ordinances also have appeals, etc to determine the complaint was valid. The committee increased the penalty for the second substantiated complaint to suspension of the permit for not less than 6 months. After the third substantiated complaint, the permit is revoked for 3 years.

The committee agreed to delay the transition provision until the ordinance is closer to adoption, but the intent is for contracts in 2021 to comply with the newly adopted provisions.

Councilor Garvin does not support treating hosted and unhosted primary residence STRs differently. Councilor Jordan would consider allowing hosted STRs more days if they receive a conditional use permit. Councilor Straw agreed.

Under Sec. B, members questioned if you could use multiple categories for the same property to expand beyond the 30-90 days rental limitation. This will be discussed more at the next meeting.

Deb King - She had 98 reservations last year, usually staying 2 days.

Councilor Garvin asked Mr. Rockwell how many weeks he usually rents? Mr. Rockwell said 90 days, some weekend retreats and ski weekends. Councilor Garvin is testing the relevance of the day limit and the 30-90 days seems arbitrary. Councilor Jordan likes the conditional use option to expand the cap and Councilor Garvin supports an escape clause. Councilor Jordan observed that with the other limits, the 30-90 cap doesn't make sense.

Councilor Garvin reasserted his opposition to separating hosted/unhosted. Councilor Straw described how an unhosted STR could include lobster bakes, mini-parties in the back yard every weekend that do not violate any rules. Nevertheless, that is an impact on the neighbors so some level of restriction is appropriate, perhaps with a conditional use approval.

### Public Comment

John Greene - The Sprague Corporation is unhosted/seasonal and the day cap is a huge burden. They have a property manager on site. Even 90 days without a consecutive requirement adds a complexity to management.

Gary Cummings - He wants hosted, primary residence addressed separately because they aren't the problem. When STR owners are not there, then there is a problem. He didn't complain at Christmas because it felt like Scrooge.

Councilor Garvin asked if he would support unhosted primary residence. Mr. Cummings said he still wants a cap because all the activity is outside, crowds are constant. He observed that nobody knows what goes on at the Sprague Estate. He thanked the committee for its patience and said his comments relate to his neighborhood.

STR owners offered to have a host committee augment enforcement.

### Next meeting

The next committee meeting will be Thursday, February 6, 2020 beginning at 7:00 p.m. in the Town Council Chambers. Meeting adjourned at 10:43 a.m.