

**Town of Cape Elizabeth
Ordinance Committee Minutes**

March 11, 2020

6:00 p.m.

Town Hall

Present: Penny Jordan, Chair
Jamie Garvin
Chris Straw

Staff: Maureen O'Meara, Town Planner,

Councilor Penny Jordan called the meeting to order. The minutes of the February 26, 2020 meeting were approved 3-0.

Public Comment

Councilor Jordan noted that the committee had already heard a lot of comment at prior meetings.

Councilor Garvin noted that he had prepared a summary of STR discussion/issues, which is shown below:

General areas of consensus

- All STR operators will be required to have a permit
Impact:
 - a. Eliminates confusion around who does/does not need a permit to operate
 - b. Gives clear and realistic picture of the amount of STR activity taking place and ability to benchmark and track over time;
 - c. Delivers revenue to support compliance measures

- Contract with a 3rd party compliance partner
Impact:
 - a. Supplements the efforts and expands the bandwidth for the Code Enforcement Officer
 - b. Increases enforcement and ability to cite/penalize offenders
 - c. Expense neutral, funded by user fees

- Primary residency as property threshold for STR eligibility
Impact:

- a. Reduces speculative real estate investors from purchasing properties for the sole purpose of operating an STR
 - b. Reduces number of STR guests — fewer stays per calendar year
 - c. Decreases (does not eliminate) likelihood of unwanted behavior by guests
 - d. Responsible property owners retain the ability to recognize supplemental income when their properties are unoccupied
- Adjacent/abutting properties also STR eligible
 - Impact:*
 - a. Mostly similar to primary residents above

Outstanding items still up for debate

- Should hosted and unhosted stays be treated differently?
- Limit or cap on number of days STRs can operate; does that vary based on hosted/unhosted?
- Eligibility for properties on (larger) lots of a certain size
- How stiff to make penalties for non-compliance/violations -- should they be monetary, loss of permit, both?
- Any difference in regs between residential and commercial districts

Gaps

- Properties owned by occasional but non-permanent residents
- Penalties for offensive behavior that falls outside the regulations spelled out in the STR ordinance

He reviewed the general areas of consensus and suggested debate focus on the outstanding and gap items. He said that the ordinance changes may not address all STR issues but "don't let perfection be the enemy of progress." Things we may not be able to address include non-primary residents and penalties for non-STR regulation violations, referencing the Police and Code Enforcement departments conclusions that this is problematic.

Councilors Straw and Jordan commended the summary. Councilor Straw favors more restrictions and suggested that he might support unhosted if a neighbor is a proxy, in which he would assume that the neighbor would be compensated by the STR owner.

Councilor Garvin thought of obtaining neighborhood agreement but does not want to burden tonight's meeting with that.

Public Comment

Doug Dransfield, 48 Richmond Terrace - He wants revisions to the purpose statement that emphasizes the need to constrain STRs to protect neighborhoods. He is concerned that the current draft continues the enforcement burden on one employee. The responsibility for the renter should be on the owner, like how a hotel operates. The requirement for a contact number for the owner should be put in the ordinance and the owner should have someone available.

Deb King, 125 Old Ocean House Rd - She had eye surgery today. Something horrible happened when she was operating her STR. 2-3 three men showed up from Portland, then they wanted 5 friends to join them. STR supervision is needed. She rents every week so a restriction on the number of days won't work. We are heading into a financial crisis and will need this income. She hardly sees her neighbors in the winter. With a 6 month cap, she won't do winter rentals. STR operators are talking about getting a lawyer. She shouldn't be in the same category [as an unhosted]. She asked people why they aren't registering? They have a stove and shouldn't. Be careful when a software salesman says you have 150 STRs in Cape because some listings are actually located in South Portland. The Lawson Rd STR may not exist longer as it is for sale and the furniture has been moved out.

Councilor Garvin clarified that the number of STRs was provided by a citizen, as well as the software vendor.

Tim Hebda, 55 Richmond Terrace - The primary residency requirement is a positive step and he is glad the Town Council is moving toward a moratorium. He supports stiffer penalties and is not convinced that a moratorium will stimulate permit applications. He is interested in Host Compliance and what it can do. The "Gaps" identified force the question of where do renters match up against full-time residents.

Councilor Garvin agreed that Host Compliance and others out there offer promising enforcement support. The town manager has spoken with them and other communities have spoken well of them.

Jenny Aronson, 27 Lawson Rd - She appreciated the Garvin summary. She has called property managers, but keep in mind they are running a business. She

thought the property manager had heard her concerns, but then learned that the same property manager had been critical of her at town hall. They are interested in managing property for revenue, not neighbors.

Cindy Voltz, 33 Philip Rd - She has a tech background and visited the Host Compliance and other websites. There is a suite of tools and resources online with valuable content. She encourages the committee to get professional help to craft the ordinance so that it stands up in court.

Councilor Garvin noted the webinar provided by Host Compliance yesterday.

Melissa Burke, 7 Point Rd - STR operators can be part-time residents. She used the Host Compliance website and presented a powerpoint. She suggests requiring a minimum length of ownership before an STR can be operated. She noted that the web information indicates that no one self reports. She and her friends scraped airbnb and VRBO for STR listings. They drove around, looked at pictures and found 127 properties in Cape. She showed the properties by years of ownership and used reviews as a proxy for number of stays.

Councilor Jordan asked her to speculate on the minimum number of years of ownership. Ms. Burke declined, and cannot share her database because it is not stable and many people helped. Councilor Garvin observed that the data was also based on the off-season.

Councilor Straw said he loves data and questioned if some properties are located in South Portland. Ms. Burke said they verified Cape locations.

John Voltz, 33 Philip Rd - Host Compliance are consultants and what happens when you get it wrong? It is worse than no enforcement. He recommends a consultant webinar, and the American Planning Association session on STRs. You don't have data to support your conclusions and are using anecdotal information. You should freeze in place, get data, check for stakeholders missing at the table, and consider the lodging tax and state actions. Slow down.

Councilor Straw asked about other communities that link time of ownership? No other examples were provided.

Councilor Garvin noted that Mr. Voltz joined after the committee prepared their problem statement and we have data of regional growth in STRs. We have information about STR housing speculation, unmonitored STR issues and unwanted behavior statements. We want to respond to problems now and not grow problems in the future. The problems won't be contained and are getting into other neighborhoods.

John Voltz said you should publish your data.

Councilor Jordan said she takes citizen input seriously and considers issue reports data.

Councilor Straw observed that you can never perfectly regulate. He is more comfortable over-regulating to protect neighborhood peace and quiet enjoyment. Any commercial activity with external impacts in a residential area are a nuisance. That's my data.

Councilor Garvin referenced a January 21, 2020 Portland Press Herald article that just airbnb has tripled since 2016. Additional regulations are not slowing growth, with high peak weekends in July and August. He appreciates the data collected earlier and now.

Zev Myerwitz, 12 Hill Way - He lives in the Town Center and owns 1 STR, 11 LRTs (Long Term rentals). He has a manager and lives next to the STR. It is a pleasant experience as they don't know we're the owner. It is quiet with no parties. He supports mandated hosting and thinks STRs are good for the commercial areas without caps and other rules that are appropriate for the residential areas.

Councilor Straw noted that the draft ordinance has limits for multifamily buildings. Dr. Myerwitz rents 10 units LTR, but wants the option available for STR.

Councilor Jordan asked how often you rent the STR. Dr. Myerwitz said the STR is rented year round, but his preference is to rent to a family as a LTR. There are no families with kids in the 10 units, but lots of grandparents and young professionals.

Councilor Deveraux asked if he owned the building/lived there and Dr. Meyerwitz said yes. He is adjacent but may move. Councilor Deveraux is concerned with unlimited STRs in the commercial area as hotels pay state taxes. We want family housing instead of STRs.

Councilor Straw is conflicted. He was originally ok with STRs in commercial zones, but Councilor Adams made a good point that smaller housing units in the Town Center are affordable and therefore should also be restricted.

Councilor Deveraux noted that people run businesses out of their homes in residential areas and she doesn't want the commercial district to just be airbnbs.

Councilor Straw noted that STR revenue supports local business owners.

Councilor Garvin said it is not a binary choice. We try to promote mixed use buildings, but the primary business use is not economically sustainable. STRs or LTRs support the businesses. Dr. Myerwitz confirmed that he would not have built a building for his business without the residential and would have rented in South Portland instead. He wants to develop more in the Town Center and wants the option to have an STR as a first floor commercial use.

Victoria Volent, 58 Cottage Farms Rd - She supports the primary residence approach. She wants to emphasize that hosted stay equals rooms and unhosted stays equal whole house. There is more revenue with whole home and they are very different. The unhosted stays generate nuisances and take away housing stock, therefore the regulations should be different. In one local hosted STR, a 3 bedroom home rents out 2 bedrooms, plus a basement unit with two bedrooms. Is it the intent to have that much activity in one residence?

For STRs in commercial districts, she loves Dr. Myerwitz's project. It is just what we need, a mixed use commercial/residential building where we have diversified the housing base with rental units. He can still do 1 STR, but the other units should be LTR. For example, 535 Shore Rd has just been purchased and already an STR permit has been issued. The same applies to the apartment above the Bird Dog Road House. We want residents in the Town Center.

We have at least 127 STRs, per powerpoint, and maybe up to 145-150 now. Looking at new permit trends, we have longer term residents moving out of their homes and instead of selling them, are retaining them as STR rentals. We have families that want to move to Cape, but cannot find a home for sale. These properties are tied up and used as moneymakers, and that hurts the community. Her data shows that several of the more affordable homes are now STRs. This is more important than the number of years you have lived here.

She sat in on a Host Compliance presentation to the City of Portland. Their recommendation is to not make the regulations complicated or the data package delivered to the Code Enforcement Officer will also be complicated and it will take more time to review. Caps are simple.

She is the Housing Program Manager for the City of Portland and works with developers to fund/build affordable housing for low-income, the missing middle, etc. Portland has 400 housing units tied up as STRs. No one local is reaching out to Portland to ask about the STR experience. She is passionate about housing for everyone.

Councilor Garvin noted that we discussed STRs at a regional GPCOG meeting last week. Ms. O'Meara said South Portland is happy with Host Compliance. Councilor Garvin said the town manager is engaging with them. Cape was out front with STRs in 2012.

Scott Rockwell, 119 Old Ocean House Rd - He is concerned with lodging fees. Airbnb will collect those and maybe that is a consideration. He gave several examples of commercial activities allowed in residential areas. We don't want to maintain our 8 bedroom house, and use only 5 bedrooms now. Our kids may come back and we are not ready to move on. STRs are better than LTRs because sometimes people don't pay their rent. STR owners are willing to help craft ordinances, use our expertise and we have the time. We'll do the registration form and a commission.

Frank Strout, 1184 Shore Rd - How do you determine primary residence?

Councilor Jordan said we will get to it in the ordinance.

Mr. Strout noted that if the property is owned by an LLC, it can't get a homestead exemption and if it is a trust, the assessor needs to review the trust documents.

The committee decided to review the Garvin summary document next.

- All STRs need a permit

All committee members agreed, and homestays must be included. Councilor Garvin noted that this includes retaining a third party to support enforcement and increased fees to pay for that.

- Third party enforcement

All committee members agreed, Councilor Straw noting a trial period option.

- Primary residence as property threshold

Councilor Jordan that if there is no other path, she agrees. Councilor Garvin hears the public coming around to that and it should go a long way to address issues.

- Adjacent property option

Councilor Jordan agrees.

Councilor Straw is reluctant to allow STRs if it is not the primary residence. He wants the people gaining revenue to also be annoyed by the activities. Many complaints are not ordinance violations, but an intensity of use incompatible with the neighborhood. He would consider a neighbor sign on or neighbor compensation.

Councilor Garvin has a fundamental problem with the hosted/unhosted distinction. If the STR is a primary residence hosted, the vast majority are onsite. If unhosted, folks are away on vacation but not away 182 days. If the STR is operating 2 weeks/year, that is a low volume of impact.

Councilor Straw would take some baby steps. If the rationale for STR operation is to pay taxes, then only a limited number of days is needed to rent. For him, if the STR is unhosted, 2 weeks is outside the acceptable limit.

Councilor Jordan noted that we had previously agreed to allow adjacent, non-primary STRs.

Councilor Straw noted that if you are adjacent to the STR, then you are experiencing any adverse impacts. It is logical and consistent.

Councilor Deveraux noted the Lawson Rd problems which would be the same if the STR owner lived next door. She supports capping unhosted.

Councilor Garvin has no issue with accessory dwelling units (ADUs) being used as STRs. The reality is that nana may be in the main house and the STR provides revenue to stay in the house. Don't put too much energy into outliers. There are not a lot of ADUs right now doing this.

Councilor Straw noted this could create a financial incentive to turn ADUs into STRs.

Councilor Jordan circled back to the "adjacent" bullet to confirm that if you are present on the property, the STR is considered "hosted."

Councilor Straw said a healthy housing stock is a selection of 1-4 bedroom homes.

Councilor Garvin said the bigger problem is that we are losing the lower bedroom number homes, which are more affordable.

- Hosted/unhosted differently treated

Councilor Jordan supported the differentiation because incidents are more likely at unhosted STRs.

Councilor Straw thinks we should permit hosted year round if you can have a daycare in a residential area. He would require a conditional use permit similar to the day care requirement and assuming the permitting process wouldn't be too onerous. Otherwise, he would limit hosted to 30 days.

Cindy Voltz - How do you monitor the number of days a property is rented? You have no tools and are relying on people to self-report.

Councilor Straw said that you would lose your right to operate if you are discovered.

Councilor Garvin that Host Compliance would flag properties that have met the threshold.

Councilor Jordan asked that public comment end so that the committee could complete its work.

Councilor Garvin would keep it simple; noting there are no complaints with hosted properties. By their nature, primary residency unhosted will not have as high a volume.

The committee discussed if primary residence unhosted should have a cap. Councilor Garvin does not support a cap because they are limited to 182 days. Councilor Straw said that there is no penalty but unhosted rentals can be disruptive and annoying. Unhosted has less "skin in the game." He would limit unhosted to 2 weeks, using the example of impacts on a neighborhood from a "garage band."

Councilor Garvin would be surprised if there are 10 properties in the primary residence/unhosted category. Most are unhosted only when the residents are on vacation. There won't be people who are away 6 months.

Councilor Straw said this suggests you should be ok with a cap. Councilor Deveraux noted that enforcement will be needed.

Councilor Jordan asked if members would treat a STR as hosted if there is a proxy?

Councilor Straw countered that a sign off from the neighbors if the STR is rented beyond 14 days or an abutter is a proxy.

Councilor Garvin favors simplicity. A teacher rents for 5 weeks. Setting a cap is arbitrary. Councilor Deveraux concurred.

Councilor Jordan supports STR operation as long as there is a contact person/proxy.

Ms. O'Meara noted that the current ordinance requires a contact person, as well as the application form, but there still have been complaints.

Councilor Garvin wants to make that a violation.

- Eligibility for large lot STR

Councilor Jordan supports this. There were questions of whether the 7 acre number is arbitrary. Ms. O'Meara displayed the map developed in late 2019 showing the townwide distribution of lots of 3, 5, 7, and 10 or more acres in size. The concept of the large lot exemption is that the lot is far from others that will be annoyed by the STR. Lots of less than 7 acres tend to be in or near neighborhoods.

Councilor Straw reviewed the RA District and Sprague Corporation lands. He agrees with the 7 acres, but would also want review so that the STR structure is not located next to neighbors.

Councilor Garvin is fine with 7 acres.

- Penalties

The committee discussed the 3-strikes policy but was unsure the penalties were functioning as a deterrent. Ms. O'Meara shared a discussion with the Code Enforcement Officer where fines would be applied instead. If a permit is revoked for a month, there are potentially 4 families with contracts that may appeal to Town Councilors and a fee system would avoid that. Contracts are worth thousands of dollars and there may be court challenges to pulling the permit.

Councilor Garvin said he supported cancelling contracts. He asked members of the public which is harsher?

Mr. Rockwell and Mr. Strout said cancelling contracts is harsher. Mrs. King suggested that instead of a fine, you would lose one month of rental for the following year.

Scott Dobos, 8 Farmhouse Rd, Scarborough - It may not be enforceable to cancel a contract.

Councilors Straw and Garvin gave examples of the CEO revoking licenses when permit requirements are not met, and if the permit is revoked, the contract must be broken.

Mr. Dobos asked who kicks the STR off the platform? If the STR owner is a bad actor, he will just keep booking. It is impossible for Ben [CEO] to enforce.

Councilor Jordan asked what is the likelihood of that happening? Do you have an alternative?

Mr. Dobos felt it is a loophole but had no other suggestion.

Councilor Garvin is interested in using the fines and feels fines are a deterrent, as well as revoking the permit.

Councilor Straw stated that the fundamental problem remains behavior and not STR violations.

- Different regulations for commercial v. residential

Councilor Garvin may be in the minority of the full council but supports unlimited STRs in the commercial zones. STRs are consistent with the mixed use goals in the Town Center and there are not that many properties where STRs would operate. There should be no primary residence restriction.

Councilor Jordan wants to encourage commercial activity in the Town Center.

Councilor Straw would permit STRs in all commercial zones.

- Non primary residence STR owners

Councilor Straw gave the example of a seasonal camp in Bridgton. The manager is living adjacent to the STR so it may be ok to allow 30 days of rental. He may support a permit for nonprimary resident STR.

Councilor Jordan used the scenario of Peabbles Cove, where the home was purchased for parents who never moved there. The owners are in close proximity and have skin in the game.

Councilor Straw characterized this as preserving housing stock v. troublesome behavior and this route undoes what we have done so far.

Councilor Garvin is concerned that this is a loophole/problem that undermines all the work that has come before. He questioned if length of ownership demonstrates community commitment. Is this minimum time 5, 7 or 10 years? He sympathizes but this exception undermines all we have agreed on. A proxy is no more vested than a renter.

Councilor Straw suggested if we allow a property manager approach, we could have micro BnBs all over town.

Melissa Burke - How many days a year are required? Maybe weekends for 6 months? When the abutter is the proxy, that is skin in the game.

Councilor Deveraux asked if Ms. Burke has a homestead exemption. Ms. Burke said her primary residence is in Boston but we're here and no less of a neighbor.

Councilor Straw suggested that 90 days of occupancy be considered.

Gary Cummings, 36 Richmond Terrace - If you stray from the primary residence requirement, there is no reason to be here.

Jenny Aronson - Ms. Burke is a great person. We have situation in the neighborhood that was 1 house, now the whole neighborhood has changed with multiple houses.

Councilor Garvin is concerned with the increasing trend of second homes, but that is not always related to STRs.

Councilor Jordan is interested in looking at years of ownership. People stay here 20 years and want to keep their property in the family for their kids. When people move out of town, you lose the essence of the neighborhood. She wants to preserve the work already done.

Councilor Straw empathizes with both sides, but second homes impact sense of community and you can still rent long term.

The committee asked Ms. O'Meara to incorporate their discussion into the proposed amendments. Ms. O'Meara confirmed the committee does not need to track at which meetings changes are made, but just changes from current ordinance provisions. Councilor Garvin also asked staff to identify red flags.

Councilor Garvin referenced Chief Fenton's comments and would like to hear other ideas. Perhaps we should do a deeper exploration into what other communities are doing. We want to look at components and not overlook things that can result in a strike.

Ms. O'Meara described a conversation she had with CEO Ben McDougal. He related an example where short term renters were outside smoking and relating the partying they enjoyed the evening before. The abutters' children could hear the language and activities described. None of this is a violation, but it is an example of behavior that residents object to.

Councilors Jordan and Garvin want to look at regulations to address unwanted behavior and get to strikes sooner. Councilor Straw wants to avoid triggering violations.

The committee scheduled the next meeting for Monday, March 23rd at 7 pm.

John Voltz - This is unfair to part time residents. They are not causing problems and have skin in the game.

Councilor Garvin asked what different distinction would you draw? If we set a minimum number of days you need to be at the property, what is the minimum number? We have to distinguish from housing speculators.

Ms. Burke - She supports an abutter proxy.

Councilor Jordan suggested that a term be used for person who is not here all the time but perhaps at least 30 days a year. If we can define criteria to define the term, then make it discrete. We have lots of part-time residents and not all are STRs.

Mr. Voltz - There are lots of ways to get skin in the game. You should revisit all categories, starting with part-time resident, also non-resident.

Councilor Garvin encouraged him to share any ideas.

Mr. Voltz - How about deposits?

Councilor Straw clarified that "skin in the game" means physical presence. We can't make "annoying" a violation, so no one would lose a deposit.

Mr. Voltz -Property has a value.

Councilor Jordan asked for someone to send some discrete criteria we can use to define part-time resident. Councilor Garvin asked how you prove that?

Ms. Burke - She suggested time spent could be tracked using Easypass.

Mr. Cummings - We have 5, potentially 6 STRs [in his neighborhood]. Part-time residents will stay 30 days for the opportunity to run a STR. We would be fortunate to have more full-time residents rather than a house sitting vacant. Your primary residence approach was fair, less than that and the regulations are weak. I don't want to live at a "Higgins Beach."

Victoria Volent - You are in the weeds. Keep it simple with primary residency. You can't solve everybody's personal issue. Problems occur when a STR is not a primary residence. You are undermining everything to solve this.

Deb King - Can you limit the number of STR permits?

Councilor Straw asked if a dispersal requirement could be used. Ms. O'Meara said yes. She observed that assumes you are one of the ones who receives a permit. The town operates a lottery for Great Pond boat rack spots and there are 32 winners out of over 100 applications. The result in limiting STRs is that you could have one property owner operating a STR and a similar property owner down the street denied, which has political consequences.

Deb King - Can you cap STR permits at 150?

Councilor Jordan thanked everyone for participating. The meeting adjourned at 9:30 p.m.