

**Town of Cape Elizabeth
Ordinance Committee Minutes**

February 26, 2020

7:00 p.m.

Town Hall

Present: Penny Jordan, Chair
Jamie Garvin
Chris Straw

Staff: Maureen O'Meara, Town Planner, Paul Fenton, Police Chief, Ben McDougal, Code Enforcement Officer

Councilor Penny Jordan called the meeting to order. The minutes of the January 15, 2020 meeting were approved 3-0.

Public Comment

Sam Milton, 52 Kettle Cove Rd - He manages two units, 1 short-term and 1 long-term in a 3 unit building. The revenue helps pay \$20,000 in taxes and he has 2 kids. He does not support the 90 day limit on unhosted because he is not a problem. He wants to be able to rent a three unit building under the new rules.

Councilor Jordan asked if 1 unit is his primary residence and he said yes. Councilor Garvin referenced an email he sent where you prefer to mirror the South Portland approach with no cap. If there is a cap, is there a compromise number that would work for you? Mr. Milton said 180 days would work. He gets a lot of activity in the spring and fall, so he prefers no cap.

Councilor Straw stated that Mr. Milton is a family friend and he encouraged him to attend the meeting as Councilor Straw did not want to discuss STRs outside of the committee meeting.

John Voltz, 33 Philip Rd - He has lived in areas with rentals and the purpose for limiting STRs is not clear. He supports holding off on any STR regulation, as a well as a moratorium, until you can quantify and measure the effects. Rules are a big intrusion into what property owners can do. STR numbers are exploding and you are just starting to get data. You should push STRs to get registered, look at enforcement problems, and don't go too far with regulations. The Portland area is experiencing a housing crunch and STRs are a partial response, so you should wait until the housing problem is solved.

Deb King (125 Old Ocean House Rd) - She also does not support a cap as it solves nothing and you should have compassion for the elderly who can stay in

the community with STRs. This doesn't apply to her because she has had no problem with her STR. Where does the 7 acres come from? There are 3 complaints and one property is being sold. You should address the unsupervised homes.

Tim Hebda, 55 Richmond Terrace - He supports the draft STR regulations. In recent years, issues have multiplied. Homes are purchased for the purpose of operating a STR and data has shown that numbers are trending up. He supports the moratorium going forward. He also supports more enforcement, which is more than 1 person can do now.

Melissa Burke, 7 Point Rd - She wants to legislate the behavior we want but do not legislate what taxpayers do with their property. Her property is not her primary residence but she contributes in other ways to the neighborhood. They visit in the winter and rent in the summer. She researched complaints and most are from 2-3 properties. You should consider responsible regulations like Palm Beach, which requires a response to a complaint in 30 minutes. The ordinance should work for the whole community and a committee should be established instead of a moratorium. She would volunteer.

Councilor Jordan asked about living here in the winter. Ms. Burke said they spend weekends here and live in Boston, and have contributed to CELT and the Shore Road Path.

John Voltz - He understands the difficulty in living next to a poorly run STR. A 6-12 month process is a long time.

Craig Cooper for Mary Giftos (1055 Shore Rd) - You should concentrate on the problem areas and isolate them rather than a blanket regulation that covers the majority of STR owners. Complaints are coming from "professionally rented" STRs. Mary Giftos uses her guest house. Your ordinance allows a guest house if it is adjacent and she will be hurt by this ordinance.

Councilor Garvin stated that the challenge with known problem areas is that today's STR can become tomorrow's problem area. It is difficult to do spot problem solving and the problem will grow if left unchecked. Spot efforts are impractical and unrealistic.

John Voltz - You should revisit the data.

Craig Cooper - The problem properties should be addressed with the "3-strikes" rule. The chief has several calls to one property. Some properties are not a problem. The professional STRs are a problem, for example 31 Lawson Rd.

Councilor Garvin gave the example of a short term rental across the street. Tomorrow a renter could be a problem.

Craig Cooper - The "3-strikes" should be applied. All STRs should get a permit and then lose the permit with strikes. We have had STRs for 15 years and should not use a blanket approach. We will need to readdress every 2-3 years. We need funding for enforcement from increased permitting fees.

Councilor Garvin, addressing Mr. Voltz's comments, noted most regular attendees have heard information which has formed his 2 issues. First, he wants to reduce housing speculation and that trend is increasing to the long-term detriment of housing stock and the ability to attract new residents. Second, he wants to address concerns with STRs denying the peaceful enjoyment of property due to bad operators. Regulations on property and activity should address both. To Ms Burke, the greater concern is that property is bought and then not lived in as a resident.

Melissa Burke - STR is how we use our property now. When our kids were younger, we visited often. They are teens now with schedules. In four years, we'll be back.

Councilor Straw said the key point is that you can still do month to month rentals. He referenced the comprehensive plan and state rules that the town must plan for housing. (1) Zoning regulates how people interact without conflict; (2) We are tasked to implement the comprehensive plan and need to accommodate growth and change. We need to preserve residential property for residential purposes and not quasi-commercial purposes. If housing stock is gobbled up, we need to build more housing, and will lose open space.

Gary Cummings, 36 Richmond Terrace - This issue is in many communities with opposition to STRs. In his neighborhood, 1 STR is hosted and 4 are not. The hosted STR is there and takes care of business. For the other 4, it is up to the neighborhood to police it. This committee is making positive headway.

Sandy Dunham, (11 and 12 Becky's Cove Ln) - She operates a STR in the abutting cottage for 14 years with never a problem. She screens people, and the same couple came in June and September. She sympathizes with the high density neighborhoods but questions how limiting to 90 days solves a noise problem. We addressed this 14 years ago with a problem property. You should deal with the owner through enforcement. You could have new problem properties in the future and should address them when you receive complaints.

Deb King - Are we required to increase housing units?

The committee responded no.

Deb King - Is it fair to push people out of opportunities to add housing? This is heavy handed. Her homestay is not an issue.

Scott Rockwell, 119 Old Ocean House Rd - He is glad to see participation and he has a problem with limiting days as they have weekend renters throughout the year. The 60-90 day limit will limit the days they can take off in the summer. There are no complaints on weekends in the winter. You should try to protect the future STRs. You should get everyone to register and sign off on the regulations. For example, Denver Colorado had lots of STRs and all are registered. You should keep costs low for all to participate. A group of STR operators are meeting to put together helpful suggestions and are willing to serve as an advisory committee as problems come up. We could help with 2:00 am calls to the police and support the 30 minute reply requirement.

The committee decided that the next meeting will be held on **Wednesday, March 11th, beginning at 6:00 p.m.**

Councilor Jordan initiated discussion of a possible moratorium in acknowledgment of the long process, to put before the Town Council at the March 9, 2020 meeting.

Councilor Garvin was interested in a moratorium to address people who start entering into contracts/bookings, to avoid conflicts with new rules after January 1, 2021. The moratorium would be for 180 days, could be extended, but the town must demonstrate it is working to address the problem. New regulations would likely be in place within 180 days. The intent is not to be punitive, but protect people from entering into contracts they will then have to cancel.

Councilor Straw noted that the moratorium may not need to take effect in 2021 if we get the regulations completed.

Councilor Jordan wants the 180 day clock to start now to stop new STR entries into the market. Councilor Garvin noted that we are discussing two different types of moratoria and committee members agreed. The committee wants to allow current STR operators to continue until new regulations are adopted, and also wants everyone interested in STRs to have fair warning that changes are under consideration, and should expect to comply with the new regulations when they are adopted.

The committee discussed incorporating into the moratorium a different treatment for hosted v. unhosted STRs or primary residence/unhosted v. unhosted, but there was not agreement. All agreed to the goal to have new regulations adopted by November and that the moratorium would be to reduce new STR entries.

Jeff Holden, 402 Pulpit Rock Rd - Why aren't you enforcing and using the August, 2019 STR memo instead of adopting new regulations? If you need manpower for the police department, school teachers are off during the summer and may work part-time to address STR complaints. With 3 strikes, permits will go down. People need to follow the rules and someone needs to follow up. You should protect the rights of people who rent as well as neighbors.

Councilor Garvin reviewed that, at the last meeting, the committee linked violations of other ordinances to the STR 3 strikes. The August memo was a status report. There are not many STR documented violations because other ordinances may be violated, so no one gets to 3 strikes.

Jeff Holden - Why can't we define that?

Councilor Jordan said that is what we are doing. Councilor Garvin noted that if we focus just on behavior, we miss the other aspect of housing speculation.

Jeff Holden - He said housing speculation is a separate issue and he is here because he rents his home. People who are buying property are not here. You should deal with that separately, and not allow folks to buy property just to rent. People abusing the ordinance are not here tonight.

Councilor Jordan said we are trying to listen to everyone and draft an ordinance that considers that input. We listen to a young woman who wants this to be her home someday. Peabbles Cove has been summer cottages that is now impacted by this business model and we should maintain our town heritage. How do we meet the needs of someone who wants to do it right, and not a STR investor? A moratorium puts the brakes on investor activity, and also a flag to nonpermitted STRs to get a permit.

Jeff Holden - He thought the moratorium would include new restrictions on current conditions.

Councilor Jordan said it was considered but then discarded.

Jeff Holden - Most STRs are during the summer.

The committee voted 3-0 to recommend to the Town Council that a moratorium be adopted to halt new STR permits after June 1, 2020.

Councilor Jordan asked Code Enforcement Officer Ben McDougal about ways to incentivize people to apply for the permit. He noted advertising, hiring Host Compliance, and more penalties.

Councilor Straw noted funding for Host Compliance can be included in the budget taking effect July 1, 2020, and won't be needed before then. Councilor Jordan said in the near term we can use outreach. The committee asked about timing of getting a sweep of STRs in town, using Host Compliance data, and paying for contracted services.

Mr. McDougal described the services Host Compliance can provide, including a package of evidence that a property is operating as an STR. Currently, loopholes in the ordinance exclude some properties from needing a permit. He hears every excuse and it is difficult and time-consuming to pursue potential scofflaws. The draft language ties in advertising, which will help.

During the moratorium, Councilor Jordan asked the CEO could advertise that STR permits are needed and he agreed.

Councilor Garvin said the budget includes revenue assumptions and is separate from the moratorium, the main point of which is to not add more STRs. Councilor Jordan said the fees would be adjusted when the ordinance changes are in place.

Councilor Jordan asked about near term adjustments to address violations. Can a nuisance violation also be considered a STR violation? How come STR calls are Code Enforcement responsibility and not the Police Department as most calls relate to parking and noise?

Mr. McDougal said we need the Police help and they have been very helpful.

Police Chief Paul Fenton said no area police department enforces STR regulations. There is a major concern linking violations of other ordinances to a STR violation. His department emphasizes community policing and education, and he wants to preserve his officers' discretion. For the ordinances the Police Department is responsible for, STR renters should be treated like everyone else. Citations are written when education and cooperation are not successful, plus citations are not very effective with visitors who will be leaving town in a week.

Councilor Garvin asked if the citation could be written to the owner, not the renter?

Chief Fenton said we document what we see when we arrive on site, and we forward the report to the CEO. The chief is concerned with public expectations that his officers will be STR regulation experts and initiate enforcement immediately.

Councilor Straw asked if other towns use the Police Department to enforce STR rules and Chief Fenton said other police departments are not doing this.

Councilor Jordan clarified the process. When the police prepare a report, it is sent to the CEO. Councilor Garvin noted it is challenging because the police report is not a charge or violation.

Councilor Straw used the example of noise. Chief Fenton said the typical response is to ask folks to quiet down, and is the difference between education and enforcement. Councilor Straw noted police officers are not checking decibel levels.

Councilor Straw wondered if violations can be documented by neighbors. Councilor Garvin questioned if that could be used on an ordinance determination because it is one person's word against another. Lawson Rd is an example of how that would not work.

Councilor Straw concluded that this is why there is a bright line of not allowing commercial activities in residential areas. No one wants the police department to change their approach. Councilor Jordan mused that the fact the call was made might be treated as a violation and Council Straw countered that it could be completely unfounded.

Ms. O'Meara noted that South Portland has severely limited STRs in residential zones, and is finding that successful. Councilor Garvin noted STRs are allowed in commercial zones.

Councilor Jordan asked about shifting the burden of proof. Mr. McDougal said that tens of thousands of dollars in STR rental income are on the line, so violations will be challenged in court. It is hard to get evidence that will stand up in court. It would be very difficult to prove rudeness.

Councilor Straw suggested STR operators handle enforcement by being onsite. Councilor Garvin can't support an onsite rule that wouldn't allow operators to be

gone for the weekend. The committee noted rentals have been going on for generations, just not at the current volume.

Councilor Garvin said that if it is your primary residence, you are there 183 days, so he is not concerned with the amount of time rented. Councilor Straw observed that there is no pre-existing renter relationship so any renter could go bad. Councilor Garvin, with the perspective of annual municipal budget increases, is ok with a property owner generating supplemental income. Councilor Jordan said that if you go away for the weekend, you can have a surrogate contact person. Councilor Straw prefers the owner be on site and not put the onus on abutters to call to complain.

Chief Fenton explained that when a call comes in the middle of the night, the officer waits for a response. Calls are dispatched through Portland, and are a lower priority than many weekend calls, so waiting times increase.

Councilor Garvin remains unhappy with 30-60-90 day caps because if the STR is a primary residence, people will live there longer. Councilor Straw supports restrictions to avoid the "mini-hotel" with no one onsite.

Councilor Garvin said a daycare can be more disruptive and Councilor Straw agreed and supports rezoning some neighborhoods.

Chief Fenton wants to align police and public expectations. Police officers will not enforce STR rules, but will observe and provide a report.

Councilor Jordan noted the primary residence definition needs further review to eliminate loopholes. The ordinance draft will be reviewed at the next meeting. Councilor Straw noted the ordinance may be changed by the Town Council as well. Councilor Jordan encouraged the public to submit ideas on any STR not fitting into the draft.

Craig Cooper - Referencing the moratorium, there is a major loophole now for STR rentals of 2 weeks only with no permit. People are slipping through the cracks.

Councilor Garvin said we are not using the software yet, but the 2 week exemption is proposed to be eliminated.

Frank Strout, 1184 Shore Rd - He is glad the moratorium applies to new STRs. We have an established relationship with many families. He has been a realtor for 18 years, surveyed fellow realtors on STR speculation and said it rarely

occurs. STRs are mostly people who want to stay in their homes. He is not sure where his property stands.

Councilor Jordan asked if his property was 7 acres or more in size.

Mr. Strout said yes. They need 90 days minimum as they do long-term rental during the winter. Some use revenue to pay medical or education expenses, not just taxes. The CEO and Police letters were good and he agrees with the police approach. He noted that Beach Bluff Terrace was originally rentals.

Councilor Garvin responded that his focus is on taxes because that is what this body has influence over, where other expenses are a personal decision.

John Voltz - How do you address repeated problems? You should add an education component for the property owner. He remains concerned with constraining property permanently during a housing disruption.

Jenny Aronson, 27 Lawson Rd - She has called the Police and had the expectation there would be a violation/strike when there wasn't. She agrees with the Police Department position. People have been rude and it is upsetting, but you can't legislate that. When her kids were little, they wandered with other kids in the neighborhood. You wouldn't do that now as there is less comfort in her neighborhood with weekly renters, walking with red cups, every week like it is Old Orchard Beach. She supports the primary residence requirement.

The meeting adjourned at 9:20 p.m.