

**MINUTES OF THE CHESHIRE TOWN COUNCIL ORDINANCE REVIEW COMMITTEE
MEETING HELD ON THURSDAY, JUNE 8, 2017, AT 7:00 P.M. IN ROOM 210, TOWN
HALL, 84 SOUTH MAIN STREET, CHESHIRE CT 06410**

Present

Patti Flynn-Harris, Chairperson; Paul Bowman and Timothy Slocum.

Staff: Louis Zullo, Personnel Director; Town Attorney Joseph Schwartz

1. ROLL CALL

The clerk called the roll and a quorum was determined to be present.

2. PLEDGE OF ALLEGIANCE

The group Pledged Allegiance to the Flag.

3. DISCUSSION RE: ANTI-BLIGHT ORDINANCE

Ms. Flynn-Harris stated she had attended a meeting of the “Problem Sites Committee” which consists of town personnel responsible for the public’s safety, health and well being. The list of personnel membership is cited on the last page of the draft ordinance document. The proposed ordinance is based on town personnel experience with blight issues, information from surrounding towns, and Attorney Schwartz’s experience in writing blight ordinances. The proposed ordinance is a short document which covers everything of concern, determines the role of the committee and the Blight Enforcement Officer.

The committee was told by Attorney Schwartz that Town Manager Milone has someone in mind who will be the “Blight Enforcement Officer” (Officer). Over the last few years there have been six litigations dealing with blight properties, and there is time and expense involved. Attorney Schwartz commented on the Barbara Peck house, which is a true hoarder’s house; someone was living there; it had building code, fire code, human service and zoning issues; and the Police Department and Chesprocott became involved because of the many issues and concerns. He had to commence injunction action where the court found violations of building, fire and health codes. There were additional issues with remediation of the situation, and getting the person back to the house. During this time, Town Manager Milone looked for a better way to deal with blight issues.

According to Attorney Schwartz, adoption of the blight ordinance is a tool to issue notice of violation, with a citation issued, filing of a document with the courts for a judgment lien to attach to the property. This is an easier way to get a judgment and remediation. There are challenges with a blight ordinance, and Attorney Schwartz said it can spiral out of control, and this is why the committee was formed with an Officer in place. A blight complaint comes to the Officer, then to the committee, and the matter goes forward from there.

Mr. Slocum asked how many instances the committee has experienced in Cheshire; how serious is the issue in Cheshire; and the number of blight properties got out of control.

The ordinance is a good tool for the committee, and Attorney Schwartz advised it helps eliminate the town spending \$20,000 to \$30,000 for injunction orders, remediation costs, legal fees/attorney responses/trial preparation. The defense is usually pro se and leniency is given to the property owner with extensions of time for remediation. With the blight ordinance a violation notice is issued; there is 30 days to respond; without remediation the violation continues at a penalty of \$100 a day; the matter goes to court for resolution. Attorney Schwartz said the ordinance process is less expensive, more efficient and focused, with the committee administering the ordinance.

It was pointed out by Attorney Schwartz that the town does not want to get involved in "neighbor disputes" and the committee would vet each property and complaint. At the present time there are six (6) properties in town that are blight properties. As long as the ordinance is administered property, he has confidence everything will be done right.

Mr. Zullo stated that the committee pulled in different groups, and there are usually 11 or 12 people at their meetings. The committee meets when a blight violation is filed.

Ms. Flynn-Harris commented on the fact that the blight issues were flagged by the Peck house and there were many blight issues involved.

Mr. Bowman stated he has concerns about property rights and property owners, while still supporting the public's safety, health and well being. In this regard, he noted that some people are not capable of taking care of themselves, and he was involved in the Peck Lane issues. He has concerns and questions about safe levels. Mr. Bowman asked about the costs involved for this committee to meet, i.e. the hourly pay rate of these town employees (Town Planner, Building Inspector etc.). He also stated that the Building Department is running at 110%, and it takes two weeks to get plans done. Mr. Bowman wants to know the costs of a one to two hour committee meeting which assembles town department heads together.

For any type of blight property, Attorney Schwartz said it could be a building, fire, zoning, health code issue that involves cost. The matter comes to him, and with his legal costs it is more than the matter going through committee process and issuance of a citation.

Ms. Flynn-Harris said the costs will vary depending upon the identified issues. The Officer would assess the complaint, issue a response, give additional time to the property owner to remedy the problems, and also determine if the committee is appropriate for the situation.

Mr. Zullo said it is possible not everyone will be at a committee meeting at the same time for a blight issue. Everyone is at the table now because this is a work in progress. He joined the committee three months ago.

Under "Membership" the committee discussed the phrase "who shall be regularly in attendance", and amending this statement. It was recommended to change to read..."designated department member invited".

This committee was started up to determine and identify sites, and Mr. Slocum said the list of department heads allows for identification of properties on which a complaint is received.

Under "Purpose" Ms. Flynn-Harris noted that it states the committee could look throughout town and identify properties never before identified. But, it is not their charge to go out and find properties.

Attorney Schwartz stated that any member of the town or committee can file a complaint and bring it to the Officer.

Looking at the departments cited for this committee, Mr. Bowman questioned "Economic Development Department", and its involvement in blight properties. He has a problem with bureaucracy and oversight.

Attorney Schwartz noted there could be a blight commercial property surrounding other properties.

This committee does not report to the Town Council, and Mr. Bowman does not like the method of appeal to the Officer. It is possible the Officer could be wrong, and there could be mitigation of neighborhood issues. He restated the importance of property rights. Mr. Bowman talked about a hardship situation which is in violation of the blight ordinance...where a resident/senior citizen has a broken down car sitting on their property; there is no money to repair or remove this car; neighbors complain; and a violation is issued. He thinks the committee will be so busy they will not know what to do.

There are many cases that have no funding to handle a blight situation, and Attorney Schwartz said it could be health issues, zoning issues, property owner unable to get the house up to date. It is less costly for the town to issue a citation than move forward for zoning enforcement action. With the ordinance there is an appeal period. Going to court before a judge could be good for the homeowner, not the town, and cost up to \$10,000.

Ms. Flynn-Harris said she understands the need for flexibility for people in need. She knows from the Fire Marshal about people cited for violations and the town working with them. She noted there must be some remedy in place before the matter goes to court.

It is not hard and fixed, and there is total discretion, but Attorney Schwartz said there can be issuance of a citation immediately. There are situations with the elderly or someone unable to remediate and alternative actions can be taken...an appeal to the Hearing Officer.

Mr. Slocum stated his confusion about some of the “definitions” cited in the ordinance, i.e. section d)...regarding trees, and said this seems to be a regulation. He cited section c) relating to vegetation 12 inches or greater for a period of ten (10) days or longer. If a lawn is overgrown, not mowed, he asked about going after someone for grass being too high.

Ms. Flynn-Harris talked about blighted property...and the definition. There are two categories – “Abandoned” and “Blighted Property.”

It was explained by Attorney Schwartz that “abandoned” could be a lot with no one living there, or an abandoned parking lot not being taken care of...vacant property with no intention to return. A “blighted” property could be residential or commercial that is no longer maintained. With the ordinance in place the town can issue a citation and it is a tool to be used other than a tax sale judgment lien on a property.

Scope of Provisions – the committee discussed this section of the ordinance. Mr. Bowman asked whether this is also open land. Attorney Schwartz said it could be open land.

Mr. Slocum pointed out property in the center of town (old theater site), the serious concerns about this property, and asked if a real estate owner could be compelled to clean up a site and make it beautiful.

In reply, Ms. Flynn-Harris said it would be more of a “clean up” or there is a lien against the property. Something is now being done with this property.

Under the “Abandoned “ definition, Mr. Bowman asked about someone not paying rent for two months, and why this is included.

According to Attorney Schwartz, non-payment of rent may be an indication of vacating the premises...i.e. removing things, not currently living there as an indication of not returning to the property.

There was a brief discussion regarding house rental, maintenance required under the lease agreement, landlord not living in Cheshire and not seeing the tenants vacate after no rent for two months. The property is abandoned, so there must be notification to the landlord about the situation.

The question of the town being able to go in and maintain the property was raised by Mr. Bowman.

Attorney Schwartz said the town would not go in without a court order or written consent of the owner.

In that regard, Mr. Bowman commented on people abandoning properties through foreclosure, and the bank unwilling to work with the town on issues or concerns. This is a situation going on with several properties.

Attorney Schwartz stated he is not advocating for the ordinance, and it is a Town Council decision. With the ordinance in place there will still be scenarios happening, and actions can be commenced by the Town Attorney. A blight issues goes to the Enforcement Officer who talks to the department head. There is discussion on notice of the violation route which is faster and less costly than the litigation route, and gives the homeowner time to handle the problems.

Mr. Bowman asked about the Problem Sites Committee as part of the Public Safety Commission.

It was stated by Mr. Slocum that there is no public component with the blight issue...it is one issue.

Attorney Schwartz stated the Planning Department issues a cease and desist order without a public hearing; PZC receives notification of this order; and the property owner can appeal to the PZC. A notice of violation would have a hearing before the Hearing Officer within 10 days. Building Code, Fire Code, Health Code violations can be appealed to the same building officer.

In the ordinance and appeal process, Mr. Bowman said people cannot appeal to a peer...they can only go through the committee and Hearing Officer. He is fearful there is a police mentality for the property owner. Part of the ordinance is an aesthetic issue. He is trying to understand the makeup of the group.

This committee is similar to the Juvenile Review Board, and Mr. Slocum said the JRB has a public component. Having a single member of the public identifying problem sites is not reasonable. There could be a PZC or Council member on the committee.

In that regard, Attorney Schwartz said concerns could be alleviated with a member of the Town Council on the committee to hear about the issues.

Mr. Bowman said it needs to be a peer. He asked about other municipalities having blight ordinances and the number of cases pending before such a committee.

With an ordinance there are not many pending cases, and Attorney Schwartz said there is savings of time and money when the ordinance is used. In meeting with the local committee he did not envision aesthetic situations.

Ms. Flynn-Harris asked how to put teeth into the ordinance to address situations where the property is owned by a bank, LLC, etc.

In that situation, Mr. Bowman likes what is being proposed relative to \$100 day fine for the property owner.

The Ordinance Review Committee discussed the definitions stated in the ordinance, the need to further define “blight, decay, debris, abandoned and/or blighted property”. Questions were asked about blight property incorporating abandoned property; nuisance property as blighted property; exclusion of agricultural land; open space excluded under the statutes; specific areas for inland wetlands.

Attorney Schwartz read CGS Section 22-3(b) into the record as it relates to land being used for agricultural purposes.

Blighted Property – is anything in the subsections deemed to be blighted property.

The committee discussed taking out the vegetation section 3 (c).

3(d) – relates to trees. Mr. Bowman expressed concern about the town losing its Ash Trees due to infestation. He cited an instance of a large tree in the middle of someone’s property that the owner cannot afford to remove. What happens?

Attorney Schwartz noted that dead or decaying trees on a property is usually a neighbor’s call to the town, and this would be considered a neighborhood dispute.

Following discussion, the committee recommended deletion of 3(d) from the ordinance.

3(e) – relates to unregistered motor vehicles. This is also a zoning violation under the general statutes; only one unregistered motor vehicle or trailer is allowed on a property at one time.

3(f) – this is also a zoning violation for storage, warehousing etc.

3(g) – this section did not include industrial zones; towns do not want to enforce ordinances in industrial zones; with changes in zone from commercial to industrial or industrial to commercial, as long as there is prior use, and the property is not abandoned there is no violation; once property is abandoned it cannot be brought back to the pre-existing non-conforming use.

Blight Enforcement Officer – this is by appointment of the Town Manager.

Debris – is used as a definition in blighted property; is also cited in 3(g); the definition is the same in the zoning regulations.

Attorney Schwartz informed the committee that nothing is “grandfathered in” under the proposed blight ordinance, and the ordinance is more for exterior rather than interior situations.

Mr. Bowman asked about people with tag sales week after week with articles on the property.

If it is a true tag sale, Attorney Schwartz said the items would be taken in and taken out every week and not left on the property.

Ms. Flynn-Harris commented on the many issues raised about the ordinance by the Ordinance Review Committee. She suggested the committee have further review and discussion, schedule another meeting, and make its decision before the ordinance is forwarded to the full Town Council. Mr. Bowman and Mr. Slocum concurred with this recommendation.

This is a significant ordinance, and Mr. Bowman said everyone must be comfortable dealing with the issues and violations and property values.

As with any ordinance, Attorney Schwartz said there are pros and cons. He will provide blight litigation legal bills and situations for committee review and discussion.

If the proposed site committee is approved, Mr. Bowman said there should be submission of a monthly report on committee actions to the Council.

4. ADJOURNMENT

MOTION by Mr. Bowman; seconded by Mr.Slocum.

MOVED to adjourn the meeting at 8:35 p.m.

VOTE The motion passed unanimously by those present.

Attest:

Marilyn W. Milton, Clerk