

**MINUTES OF THE CHESHIRE TOWN COUNCIL ORDINANCE REVIEW COMMITTEE
HELD ON WEDNESDAY, JANUARY 25, 2018, AT 7:00 P.M. IN ROOM 207, TOWN
HALL, 84 SOUTH MAIN STREET, CHESHIRE CT 06410**

Present

Patti Flynn-Harris, Chairperson; Paul Bowman and David Veleber
Staff: Michael A. Milone, Town Manager; Louis Zullo, Personnel Director; Police Chief
Neil Dryfe; Deputy Chief Dennis Pichnarcik; Fire Marshal John Andrews; Building Dept.
Official Keith Darin; 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: BUILDING PERMIT LATE FEE CHARGE

Mr. Milone referred to his memo of December 8, 2017 and the subject of building permit-late fees. He said the Building Department and Fire Marshal are concerned about the amount of time and hours spent to visit premises at which activity has happened without a permit pulled. For improvements to a building, a permit must be pulled for each area of work, i.e. renovation, electrical, heating, plumbing, at \$150 per permit.

Late Fee Permit Analysis – This analysis was prepared to show the value of improvements, permit cost, and late fees per permit.

It was pointed out by Mr. Milone that there are more discoveries of non-permit renovations, additions, etc. when appraisers check the field card and find incompatibilities between the card and the structure itself. There is also possible loss of tax revenue. For an un-permitted activity the Town can only go back three (3) years, and in some cases it is more than three (3) years when improvements are discovered. The permit cost is \$25 for the first \$1,000 cost of construction, and \$12 for every additional \$1,000 cost of construction.

Example: \$5,000value improvement; permit cost \$73; late fee \$150; total cost of \$223; and loss of estimated tax revenue \$112.

If more than one permit is pulled for a renovation, i.e. 4 permits, the late fee charge would be \$600 (\$150 x4).

The question is finding a reasonable way to create a disincentive of this not happening.

Mr. Voelker asked how the Town will look at the distinction between the current homeowner who failed to pull the permit, or the owner who now has an improved property with a building permit issue.

It was explained by Mr. Milone that the Town cannot go back to a prior owner...it is whoever has the property at the time who bears the cost.

Mr. Veleber said he has run into these issues in his work as an attorney. He talked about sales of houses, with un-permitted renovations being a problem in title searches, for insurance, banks and lending companies, and affecting purchases of property. At a closing the participants must look at building permits for a property. He said homeowners must work with the Building Department to remedy the issues, and new homeowners are being saddled with the issues and the costs. There is a 9-year statute of limitations on building permits issued

In response, Mr. Milone said the recommendation is consideration of imposing a late fee of \$150 per permit; explore an ordinance change that the penalty will be double the permit costs of late fee, whichever is greater. For a \$5,000 improvement value with three permits pulled, the late fee would be the larger of \$450 or \$146. The Town wants to extract some kind of penalty for non-permitted renovations.

Mr. Darin informed the committee that real estate transactions are driving this issue, and between 2 and 5 situations come up a week. He cited an example on North Brooksvale Road with an independent living company putting an apartment on top of a retrofitted 3-car garage. The building is being turned into a group home, and the apartment must be removed.

Fire Marshal Andrews commented on inspection of a building and finding an apartment built without a permit. If people do not pull permits, there is no inspection of the work performed, which is often not built to code.

The name of the ordinance was raised by Mr. Bowman, who suggested calling it "Post Occupancy Ordinance". He has concerns from the perspective of charging for a permit for which the Town cannot provide a service. He cited electrical work that was done; the Town providing a penalty for the permit; but how can the permit be issued without inspection of the electrical work and looking behind the sheetrock. Mr. Bowman asked about a different method to collect the fees, satisfy the seller and buyer, make it a win-win for everyone. He gave an example of someone out of town buying a house in Cheshire, the appraisal comes back showing no permits for renovations, and the Building Dept. getting a panic call to handle the situation.

In that instance, Mr. Darin said this becomes his emergency, and his department must act timely.

According to Mr. Bowman the seller would be most motivated to fix the situation. He is trying to think of a way to assign a value for each discipline, i.e. the mechanicals...on a square foot basis.

Mr. Darin explained that the Building Department does a “non-destructive” inspection; if areas can be seen where wiring is questionable, the inspectors may have to check drywall.

Mr. Bowman is asking if the Town can be indemnified, and not accept liability for what is there, but cannot be seen or verified.

In reply, Attorney Schwartz said there are two issues. If that was the case he is not sure the buyer would accept something like that, and accept the Town saying it will not do its job and inspect that all is safe. If someone wants to buy the house, pay the fee, indemnify the Town...this could be done. This is a separate agreement and issue.

A question was asked by Mr. Bowman if the sign-off says the buyer accepts the house as-is...or the fee is paid.

This is a risky issue and Attorney Schwartz cited a trial where the Judge said the c/o can be issued without further consequences, as opposed to the town saying this. He dealt with a commercial facility built without a permit, got zoning approval, and brought a zoning enforcement action. The facility could not be inspected without ripping it up, and the Judge said that would be inequitable and it was allowed. It took the Town off the hook. Attorney Schwartz said we never want the Town to say, in a footnote on a document, that it is not doing its statutory duty. It would be illegal because the c/o should never have been issued, and it would be worthless to the buyer. The Town should go to court and be allowed to do its duty. The Town must be protected. If an owner does what must be done, the building inspector talks to the contractor on what was done and reviews the plans, the department can issue a retroactive c/o. Without doing the inspection, the c/o cannot be issued.

There was a discussion about certificates of occupancy (c/o) and certificates of approval (c/a) and issuing them. Mr. Bowman gave an example of getting a c/o on the property, and 6 months later the owner finishes a room over the garage. Mr. Darin said the c/o is for the scope of the work for which the permit was taken; it is defined; the close out document reflects that permit. If more work is done on the property, there is a final inspection on the work, a c/o is issued and the close out document closes that permit. A pool, deck, or shed receives a certificate of approval as they are not “dwellings”. A certificate of occupancy is for expansion of living space in a dwelling.

Mr. Veleber talked about an in-law apartment in Wallingford without a permit for it to be built. He asked for a c/o and was told Wallingford only issues one c/o for a house, and additions get a c/a.

Ms. Flynn-Harris asked Mr. Darin about cases where the work is so finished, an inspection cannot be done for the mechanicals.

When the work is concealed prior to the permanent inspection, Mr. Darin has a caveat of “work completed and concealed prior to permanent inspection”. He issues a c/o and signs it.

Attorney Schwartz sees an argument on this if something happened, as the statute requires the Building Official to sign off, do a full inspection...and someone might say he was not doing his administrative duty. Attorney Schwartz does not see a Judge making someone rip up something when the official is 99% sure it was okay.

The goal of the ordinance is for people to get a permit when having work done, and to have the late fee charges to cover the cost of man hours of the Building Department. Real estate agents spend lots of time in the department office with staff on renovations, some non-compliant, and close out documents are needed for a house closing. The fees accurately reflect the time of the department staff. Sometimes the homeowner gets a letter from the electrical contractor saying the work is code compliant, and the burden is put on the licensed person.

Mr. Andrews talked about sprinkler systems installed without a certified plumber doing the work, testing the system, giving the CFD a letter of approval, and the cost is borne by the homeowner.

In writing the ordinance, Mr. Bowman asked if there can be inclusion of having a licensed contractor, provision of certificate of insurance, and have this on the record.

Attorney Schwartz said his concern is this hamstring the remedy which Mr. Darin is doing in the inspection world. We don't want people to question the officials doing their job, or putting the onerous on the contractor to certify the work. Attorney Schwartz does not want the Town to do a run-around the statute...just copy what the statute says. He read an excerpt of the statute into the record.

The committee was told by Mr. Darin that there are now many “flippers” in Town who are flipping houses, do not take out permits, and are doing poor work.

Mr. Milone said staff will go back over the last few months of activity, run numbers based on double the permit costs, and bring the data back to the committee.

The committee was told by Mr. Veleber that there is a town in Fairfield County which has adopted a policy on open permit issues, payment of a fine/fee in exchange for a c/o without inspection.

Town staff has checked with CCM on the permit fee issues, but no information was available, so Mr. Milone asked Mr. Veleber to provide it to his office.

According to Mr. Veleber the statute says a 6 year limitation for work done, and if more than 6 years since the work was done the town cannot pursue unless it affects health, safety, welfare.

4. DISCUSSION RE: TRAFFIC CONTROL ORDINANCE

Chief Dryfe and Deputy Chief Pichnarcik were present for this agenda item.

Traffic Control Ordinance – Ms. Flynn-Harris pointed out page 2, changes to H and I, and Appendix A with additional streets.

The memo from Chief Pichnarcik dated 1/12/18 “Cruiser Revenue Projections” was reviewed by staff and the committee.

Chief Pichnarcik reported FY 2018, to date the program has generated \$41,000 in revenue; the entire FY 2016-17 the program generated \$47,287; assumption is \$2,600 every two weeks for routine rentals. Should the ordinance go into effect by the last quarter, it is assumed a slight increase in revenue associated with night work (6 p.m. to 6 a.m.). This work is predicated on the weather and car accidents; 5 jobs a month of 6 hours, \$750 per month, \$2,250 per quarter. The year end projection is revenue of \$77,000.

With the ordinance change, Mr. Milone estimates \$2,250 additional revenue per quarter, or \$10,000 annually.

Stating he was comfortable with the revenue projections, Mr. Bowman would like a portion of these revenue funds into a lock box for replacement of public safety vehicles. He does not want it going into the General Fund and evaporating.

Mr. Milone commented on dedicating revenue, and the many arguments to be made for what departments do being redirected for separate purposes. There is reluctance to do this because of the universality of how this would be applied. Mr. Milone cited the Parks and Rec Department, which generates much revenue that comes back to the General Fund. Cheshire Public Library revenue goes into the General Fund, and has made an argument for the money to go for materials, books, etc. The extra duty funds are going into the General Fund. With these difficult budget times every effort is being made to offset the pressure on the taxpayers. Every department would like to redirect money into special accounts. Mr. Milone noted the CPD is not covering its expenses, and the additional money will not generate significant funds to pay for more than 1 ½ police cars. In the future funds can be redirected to a special account. The only time this was done was for PW Dept. auctions, with generation of double or triple revenue for cars, as opposed to trading in the vehicles.

Stating he understands and respects the Town Manager’s feelings, Mr. Bowman said there is an ordinance and opportunity before the Council for the CPD. There is no ordinance before the Council for the Library or Parks and Rec Departments. Councils in

the past and those ahead of us have neglected departments for replacement of infrastructure and equipment, and there will be financial pressures going forward. Mr. Bowman asked the Police Chiefs about a chance or incident where CPD vehicles were involved in a pursuit and there were concerns about age and condition of the vehicle.

In response, Chief Dryfe said he is not aware of this. The CPD fleet is in good shape, and in the budget there are line item accounts for auto equipment and repairs. This year the revenue generated by the vehicle rentals will offset some of the cost of vehicles in the five year capital plan. This year the revenue generation was good, and next year it may not be as high. The cars are being used to generate revenue.

If a partial lock-box revenue is done, Ms. Flynn-Harris said it should be done by Council resolution, and this would give flexibility. With the \$77,000 projected revenue, she is leaning towards the money going into the General Fund. This can be discussed at budget meetings.

Mr. Veleber asked about there being enough CPD cars for the program and for shifts.

Chief Dryfe said he would never send out a car on extra duty and double up patrol officers. This year when the marked cars are replaced, the older cars remain in the fleet for extra jobs.

MOTION by Mr. Veleber; seconded by Mr. Bowman.

MOVED that the Ordinance Review Committee approves the Traffic Control Ordinance and forwards it to the full Town Council for approval.

VOTE The motion passed unanimously by those present.

5. DISCUSSION RE: ANTI-BLIGHT ORDINANCE

Ms. Flynn-Harris stated the ordinance and the flow chart were updated from the last meeting.

Attorney Schwartz went through all the changes with the committee.

1. Purpose – “blight” changed to “blighted property”.
3. Definitions – “Blighted Property” is defined, and it is more specific; “c and d” removed due to landscape issues.
7. a) added language: “It shall be prohibited for a property to be a blighted property or a Public nuisance.”
Deleted “on forms provided by the Town.”
- d) added last sentence...”In no event...”

9. a) 3) – “shall” changed to “may”; additional paragraph “In determining the amount...”

b) 1) – delete “or any police officer in the Town of Cheshire”.

10. Sunset Provision – The ordinance shall no longer be valid ___**months** after its effective date. The committee will determine the number of months.

The flow chart was updated and is in compliance with the way the ordinance is written.

Mr. Veleber asked if other towns have similar ordinances, and if “c and d” were adopted in those ordinances.

Attorney Schwartz stated the “c and d” were adopted in other town’s ordinances.

With regard to “c and d”, Mr. Veleber asked about enforcement problems or long periods of time dealing with frivolous neighbor issues.

Attorney Schwartz said there were none to his knowledge. And, usually after issuance of notice of violation, it gets cleaned up. He knows of one instance where the matter went to court about aesthetic issues, a citation issued, and the matter settled. For landscaping, neighbor to neighbor disputes, he has not seen major problems.

The ordinance is a good start, and Mr. Veleber said with “c and d” in it, the ordinance does not go far enough on what the Town should be able to do to enforce this against neighbors. He believes “c and d” are an important part of the ordinance, and without them in the ordinance, there should be a name change for the ordinance.

Ms.Flynn-Harris stated her two concerns. With “d”, she noted a problem in Town with the number of dead trees due to the ash worm, and this cannot be helped. If this tree is on a person’s property it is between the two neighbors and insurance companies. She has a concern about vegetation issues and the comment this constitutes blight. Page 2 (e) has the definition of “debris”, and this is what constitutes blight...not the grass and vegetation issues. Ms.Flynn-Harris believes the ordinance goes far to state what is “blight”.

According to Attorney Schwartz, this ordinance goes far, and he said there are other mechanisms outside this ordinance to address certain issues, i.e. zoning enforcement action. Some aesthetic issues could fall under zoning violations.

Mr. Veleber envisions the house being structurally sound, but with siding falling off, paint peeling, gutters falling off, windows broken...not decaying or in dilapidated condition, but neighbors see it every day, without any recourse.

Fire Marshal Andrews spoke about this recently, and said his office deals with these issues regularly...overgrown lawns, bushes, falling trees. It would be nice to have an

ordinance with teeth to deal with these things. Usually, other things are associated with these issues, and the way the ordinance is written, Mr. Andrews can get into the “blight issue”.

There are other issues in the yard with such a house, and Ms. Flynn-Harris said such a situation fits into the issue of blight.

Mr. Veleber commented on being able to fix the back yard and not touch the house. He said neighbors are seeing this blight situation in nearby houses every day, and it takes away from the house value and pleasing neighborhood.

With regard to “aesthetically pleasing”, Attorney Schwartz said this is hard to define. This ordinance is a good balance, and he suggested it be titled “Unsafe Structure Ordinance.”

During his time as Town Manager, Mr. Milone said he was opposed to a blight ordinance. He has confronted situations coming to his office such as scrubby bushes, long tall grass in neighbor disputes. They are ugly, irrational, and inconsequential things on which the Town must take action. If there is reference to these things in the ordinance, Mr. Milone believes people will take action on them, and take advantage of the ordinance. He has come around to supporting a blight ordinance due to situations encountered in the past three years...which take 9 to 10 months to get action and resolve because of not having an ordinance to empower staff to expedite solutions. This ordinance is a good balance; it gives staff the authority to act for safety and health; and the by-product of that is also blight. The definitions for debris, decay, dilapidated, are broad, but under this ordinance the Town can get in and take care of a blighted condition.

Mr. Milone suggested the “sunset clause”, because if the ordinance does not do what people want it to do...there is a time frame. He pointed out that staff is stretched with handling blight issues. To go out to measure lawns and conditions of bushes, additional staff is required.

In that regard, if the ordinance is approved, Mr. Bowman questioned how much time and manpower, in the next 12 months, the Fire Marshal’s office will spend in managing the issues of which it is aware.

Fire Marshal Andrews does not have specific figures on the time frame and manpower. However, he did state that with the ordinance it will cost the Town less time and money than the current process. With respect to manpower issues, Mr. Andrews said there will be less man hours than now. He commented on the astronomical high number of man hours put into a single property dealing with a blight situation because of not having an ordinance. The time, money, effort put into a single situation by the CPD, CFD, Fire Marshal, Building Department, Town Attorney is astronomical, with costs of thousands of dollars to the Town.

An explanation was given by Attorney Schwartz on the high number of manpower hours for a situation necessary to force a final decision on the owner. It takes a few hours to investigate a blight issues; a citation is issued approved by the Judge; there is no appeal; and the Town can put a lien on the property.

Section 8 Appeals was raised by Mr. Bowman, who requested a copy of the State statute Section 7.152c which is cited in the ordinance. In the statute he said it talks about the process of an appeal. Mr. Bowman asked if the hearing procedure is the same as an appeal...there has to be a court decision before there is an appeal.

Attorney Schwartz said it is an administrative appeal. It is akin to an appeal of a zoning violation of the Zoning Board of Appeals, to a hearing officer...not the full Board. The Hearing Officer is appointed by the Town Manager.

Attorney Schwartz explained the process...first is a notice of violation; if nothing is done on the property a citation is issued; the owner has 10 days to appeal the citation; if there is an appeal, the Hearing Officer conducts the hearing. At the hearing the property owner can bring an attorney, submit evidence, and the Hearing Officer decides whether to uphold the citation, or not.

In response to a question about appeal to the "Hearing Officer" and this being a different person from a "Blight Enforcement Officer, Mr. Milone said it is a different person. At the present time, the Town has a Hearing Officer for traffic violations, and he would request this same person, an attorney, to become the blight ordinance Hearing Officer.

With regard to Section 7, Attorney Schwartz said many ordinances speak to this statute. For any notice of violation or citation issued pursuant to a municipal ordinance, this statute has the proper administrative remedy to appeal.

The committee was told by Mr. Veleber that The Superior Court acts as the Appellate Court for the action of an administrative body.

Ms. Flynn-Harris informed the committee that the town of Avon CT titles their blight ordinance as "Blight or Unsafe Premises Ordinance". She also asked about the time for the sunset clause, and suggested it be 12 months.

The committee concurred with this title recommendation, and Section 10 of the ordinance will read: "The ordinance shall no longer be valid **12 months** after its effective date".

Under the term "appeal" in Section 7.152c, Mr. Bowman asked about a request for appeal being made after a trial.

Mr. Veleber said that is technically not part of the statute, and is a generic definition of "appeal".

In 7(d) Mr. Veleber said it talks about unregistered motor vehicles, without care for the emergency of the situation.

Attorney Schwartz noted this is also in (d), and is the same. His legal position is that, despite general statutes/building and fire codes allowing towns to go onto property to remedy certain situations, he does not believe a town should go onto any property and start remedying anything without a court order. In the event a Judge says it was not a violation, the town would be out a lot of money. Attorney Schwartz cited his legal position, that before going onto someone's property and remedying a situation, get a Judge to say it is okay...to protect the town.

For fire code issues, Attorney Schwartz stated the Fire Marshal and CFD staff can follow the fire code and health code issues. On a case by case basis, there can be discussion about entering the property with legal counsel.

MOTION by Mr. Bowman; seconded by Mr. Veleber.

MOVED that the Ordinance Review Committee approves the "Blight or Unsafe Premises Ordinance" to the full Town Council for approval.

VOTE The motion passed unanimously by those present.

Attorney Schwartz will make the small changes and forward the ordinance document to the Town Manager and Town Council.

6. DISCUSSION RE: INLAND WETLANDS PERMIT VIOLATION PENALTY
(postponed to a future meeting; no discussion or action)

7. ADJOURNMENT

MOTION by Mr. Veleber; seconded by Mr. Bowman.

MOVED to adjourn the meeting at 8:32 p.m.

VOTE The motion passed unanimously by those present.

Attest:

Marilyn W. Milton, Clerk