

**MINUTES OF THE CHESHIRE TOWN COUNCIL ORDINANCE REVIEW COMMITTEE
MEETING HELD ON THURSDAY, JULY 12, 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, David Veleber.
Staff: Sean Kimball, Town Manager; Arnett Talbot, Asst. Town Manager; Al Smith, Town Attorney; Suzanne Simone, Environmental Planner; Keith Darin, Building Inspector; John Andrews, Fire Marshal;

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: INLAND WETLANDS PERMIT AFTER THE FACT FEE

Attorney Smith drafted new language for "After The Fact Permit" section of the Ordinance.

Ms. Flynn-Harris read the new section into the record. (copy attached)

This new section requires a call of public hearing at the Town Council meeting on August 14th. If the call is approved, the public hearing will be held in September.

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

MOVED that the Ordinance Review Committee forward the new "After The Fact Permit" language to the full Town Council for approval of call of a public hearing.

VOTE The motion passed unanimously by those present.

4. DISCUSSION RE: UNSAFE PREMISES ORDINANCE

Fire Marshal Andrews and Building Inspector Darin were present for this agenda item.

Ms. Flynn-Harris stated the proposed language for the subject ordinance was reviewed and discussed at the July 12th meeting. The committee wants to insure the ordinance is as clear as possible and well laid out for specific conditions.

Chapter 7/Section 7-3 Definitions – a copy of the definitions was submitted for the record; additional definitions shall apply.

Unsafe Structures and Premises Ordinance

Section 3 Unsafe Structures – this definition was read into the record by Ms. Flynn-Harris.

Section 4 – Unsafe Premises – this definition was read into the record by Ms. Flynn-Harris.

Unsafe Structures – the definition was read into the record, and seems to be straight forward and clear.

Mr. Bowman talked about the word “damage” in the definition. He cited a situation of someone having damage to a house or garage, waiting for an insurance settlement, and taking such a condition into consideration. He cited an example of a garage hit by a tree and being unsafe, but the house is safe...is it all or nothing with damage.

The Committee was told by Attorney Smith that any enforcement, by an enforcement officer, is subject to discretion as a matter of law. Consideration is given to the time and scope of the remediation, along with insurance settlement and specifics of the situation. In the proposed ordinance there is a level of discretion available to the enforcement officer.

According to Fire Marshal Andrews, the cited situation does not fit into the proposed ordinance. An insurance settlement could take a year or more to collect, the garage is not repaired until then, and there could be another avenue to handle this situation.

There was a discussion about the “damage to the garage” situation. The garage could have all electrical services; it is open to the elements; but an elderly person could still live in the house until remediation is done. Mr. Bowman wants to insure all or nothing in this type of situation.

The Committee discussed removing the word “damage”. Ms. Talbot said the threat to public safety is where the judgment lies, and in the situation cited there is no threat to the property owner. Mr. Bowman stated “damage” does not have to be + or -, it is how the definition is applied. Attorney Smith noted it could be damage by Act of God or self-inflicted.

Mr. Veleber stated “damage” implies a third party; dilapidation or decay is usually something the property owner allows to happen.

Building Inspector Darin cited situations where people leave trees and stumps sitting in yards for extended periods of time, which is unsightly and unsafe.

Mr. Bowman suggested using “unsafe storm damage” in the meaning of Unsafe Premises.

The Committee was informed by Attorney Smith that there could be a loop hole for someone to fix or not fix the damage (i.e. vegetation), and unless a rotting tree poses a threat, it is not covered by this ordinance.

When something is “unsafe”, Mr. Andrews said there is a way to deal with that situation, other than “blight”. With a damaged garage from a storm or accident this is not blight, and the property owner would not be fined \$100 a day until it is repaired. After a long period of time and failure to repair the garage it could become blight.

There was a discussion about the time frame of 180 days for repair work to be undertaken and completed.

Mr. Bowman noted the property owner could get a 180 day permit extension from the Building Department. This permit could have an override for public health and safety issues by judgment of the Building Official.

If there is public health and safety rationale behind the order, Attorney Smith said the work should be done in 60 days...he is not sure the building permit provision of 180 days would trump this. If there is fear of imminent danger of collapse, the Building Inspector could order immediate demolition.

Unsafe Premises – line #3...should read “poses” a serious threat to public health or... The Committee talked about trees/stumps on a property for a long time, i.e. 2 years, without being taken care of...and how this would apply under “vegetation.”

Attorney Smith said vegetation in an unkempt manner is not under the ordinance...it is only vegetation which poses a serious threat to public health.

In the current draft, Mr. Veleber said “blight” is an inappropriate word and it is safe or unsafe. He asked for a situation where the ordinance would be enforced.

Fire Marshall Andrews cited existing Cheshire properties in bad condition; some are privately or bank owned; vegetation is growing into sidewalks and driveways and neighboring yards; some have rodents, raccoons and other animals inside the house; and these properties would fit into the ordinance. They would be the first properties the Town would address under the ordinance. Mr. Andrews stated the Town has come onto a property, fixed the situation, made it safe, and placed a lien on the property.

Attorney Smith stated this ordinance would enable this to be done for properties. This ordinance is a good start and can work.

Vacant - The Committee discussed this definition and the 60 days cited in the ordinance, and adding the word “contiguous”. Mr. Bowman pointed out someone could be on vacation for 60 days with their house vacant, but not abandoned. He said there must be a bad condition in order to trigger this ordinance.

Section 8 Enforcement – the provisions of enforcement are cited. Under 8), after discussion, the Committee agreed to eliminate the last sentence. The ordinance

gives the Enforcement Officer authority to enter the premises and notices are subject to appeal.

Mr. Andrews raised the issue of a situation requiring immediate action and not having to wait for Town Council approval. He stated it was \$48,000 to remediate the Peck Lane property, and explained it would be about \$15,000 average cost to take down a house.

The Committee agreed it would be the authority of the Town Manager to spend the money, with the Town Manager liable to the Town Council. The dollars spent must be below the Charter threshold.

With regard to the "vacant" situation, Mr. Veleber said there must be a reason for officials to enter premises, whether vacant or abandoned in an unsafe condition.

Mr. Andrews explained that, without significant danger, the Town helps property owners with maintenance, if needed. This is part of community service, and a great tool for enforcement officers in handling a situation.

Mr. Bowman commented on it being easier to determine an "abandoned" property if the utilities are turned off. Without running water etc. a house cannot be inhabited. There is a house on Country Club Road which would come under "abandoned" because there is no utility service...so it is not considered vacant.

Ms. Talbot stated the changes made to the proposed ordinance are not significant enough to require another public hearing.

Attorney Smith will make the changes to the ordinance language as recommended by the Committee for the August 14th Council meeting.

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

MOVED that the Ordinance Review Committee forward the Unsafe Structures and Premises Ordinance to the full Town Council for approval.

VOTE The motion passed unanimously by those present.

5. DISCUSSION RE: BUILDING PERMIT LATE FEE CHARGE

Attorney Smith submitted a new Section 3.3 (e) for the Committee to review. The issue is clear...tax revenue would increase annually as the tax rate increases.

Mr. Bowman talked about the \$150 fee being charged for the first two years, and it should be for all permits. The Town staff should be able to quantify the fee imposed on an annual basis. There should be a line item and tracking in the operating budget for "fees".

The Committee discussed a house without a certificate of occupancy having a late fee imposed on an annual basis.

Mr. Darin said the Building Department can send violation notification to residences without a certificate of occupancy. He noted that going through the State Prosecutor gets more of an immediate reaction from the property owner. Regarding demolition permits he reported the Building Department rarely runs into this situation, and these permits are not often requested.

Tax Revenue – Ms. Talbot clarified that the tax revenue is from the date when the home improvements were made and up to when the \$150 fee was paid for the permit.

It was the recommendation of Attorney Smith to leave the language as now stated.

According to Mr. Veleber, permits close after a certain time period, i.e. nine (9) years. He explained tax assessor violations cannot be sought after three (3) years from when the work was done. Mr. Veleber stated it is not the responsibility of a closing attorney or title searcher to look for building permits for a property.

Mr. Darin did call CCM who advised him they are unaware of any other towns undertaking unsafe structure and premises ordinance. He commented on the safety issues involved when work is done without a permit, and this work being sub-standard under the codes.

Ms. Flynn-Harris stated the ultimate objective is to recoup lost tax revenue, along with the safety issues.

The situation of a property transfer & closing and lack of building permits for improvements was cited by Mr. Bowman. The permit fees should have been paid by the property owner doing the improvements...not by someone new moving into the house. He said there should also be extra charges to expedite permit fees.

The Committee was informed by Mr. Darin that the Building Department usually works well below the 30 day time frame in the statute, and most permit fee applications are now done on-line. With the new Section 3.3 he believes #2 will put an additional work burden on the Tax Assessor's Office.

The late fee permit analysis with estimated tax revenue (Schedule A) was reviewed by the Committee. Attorney Smith suggested that using the double permit costs is more than the estimated tax revenue (as shown on the chart).

Sunset Clause – this clause is important for the ordinance, and allows for review and determination on whether it is working.

With double the permit fee imposition, the Town does not have to figure out when the work started.

6. DISCUSSION RE: BUILDING PERMIT FEE WAIVER FOR HANDICAPPED ACCESSIBILITY RENOVATIONS

New Section (2) – was read into the record; copy attached.

Mr. Bowman cited the situation of a Veteran taking out a permit in October 2017 for work on his house to accommodate his disability which was a result of his military service. The permit fee of \$793 for his disability (ADA compliant) home improvements was excessive and unfair. The permit fees should be reimbursed to this Cheshire Veteran.

Ms. Talbot stated the rebate would be coming from the last fiscal year. A public hearing on this new provision would be required.

The Committee agreed there should be a permit fee waiver for Veterans who must undertake home improvements under ADA compliance, and as determined by the U.S. Department of Veterans Affairs.

7. ADJOURNMENT

MOTION by Mr. Bowman; seconded by Mr. Veleber

MOVED to adjourn the meeting at 8:17 p.m.

VOTE The motion passed unanimously by those present.

Attest:

Marilyn W. Milton, Clerk