

Letters to Grand Island Town Board from Randall White regarding Tourist Home Law Amendment

June 16, 2016

Dear Board Members,

A few initial questions about the proposed Local Law regarding short-term/transient rental properties that was discussed at yesterday's workshop meeting and that I understand will be scheduled for a July 5, 2016 public hearing.

1. Why are you going out of your way to help tax cheats?

2. Are you willing to live right next door to a short term/transient rental property? Or is that acceptable only for my family but not for your family?

Erie County Hotel Tax

These properties are subject to the Erie County Hotel Tax. On April 9, 2015, I sent the attached FOIL request to Erie County. I sought the required Certificate of Registration, pursuant to that law, with respect to each of the property owners who had filed the lawsuit against the Town and each of their properties that was mentioned in the lawsuit. The Certificate of Registration is a requirement and a prerequisite to remitting the hotel tax to Erie County. In other words, a property owner who does not have a Certificate of Registration cannot possibly be paying the hotel tax to Erie County.

I received the attached April 12, 2015 FOIL response from Erie County showing that only JJ Manor had a Certificate of Registration. Therefore, none of the other property owners could possibly be collecting and paying the required hotel tax.

I submitted the FOIL request and response, and explained their significance, in my letter of July 17, 2015 to the Town Board in support of Local Law #9. I incorporated that July 17, 2015 letter by reference in my August 9, 2015 submission to the Planning Board. I also discussed the failure to pay the hotel tax in my public comments at Board meetings, as well as in conversations with individual Board members. Thus, the failure of the property owners to pay the hotel tax was a matter of public record, known to the then Board, and certainly known to the property owners themselves.

On February 9, 2016, I submitted the attached FOIL request to Erie County to determine if any of the property owners had subsequently bothered to register and pay their hotel tax. I received the attached February 12, 2016 FOIL response documenting that those property owners still had not registered and were still not paying even the current hotel tax (much less past due hotel tax). I mentioned this to Mr. McMurray during our subsequent February 20, 2016 meeting on this topic.

This proposed local law is an effort – by whoever introduces it and whoever votes for it – to help people who refuse to pay their taxes. To make matters worse, its an effort to help them operate the very businesses on which they refuse to pay the applicable tax.

Why anyone would want to be seen as supporting tax cheats is beyond me. But a vote for this Local Law is precisely that. A vote for this Local Law is a clear choice to help and align yourself with people who do not pay their taxes. And the public record should be – and will be – crystal clear as to who is helping them – over the objections of the people who live near the properties. (Not the property owners; they're too smart to live in or near the rental properties they operate).

Transient Rentals in Your Neighborhood

Are you willing to live right next door to a short-term transient rental property?

Let's take a hypothetical. Assume, for example, that the law is passed. Assume, further, that a group – perhaps of disgruntled people who already live next door to some of these properties and have objected to them and this law – get together, decide to jointly purchase a home and operate a short-term/transient rental, and decide to do so right next door to you.

Would you be willing to live right next door to that short-term/transient rental property? The answer had better be yes, if you vote for this law. Because I do not want to live next door to them, under the current law I will soon not have to do so, and this proposed law seeks to force me – and my family – to have to do so.

If you tell me (by a vote for the law) that its acceptable for my family, it had better be acceptable for your family. So I presume that anyone who votes for this law will not object to the operation of a transient rental right next door to them.

Sincerely,

Randall D. White

June 17, 2016

Dear Board Members,

I understand that some of the transient rental property owners and/or proponents may have been threatening to file a lawsuit against the Town unless the current law, Local Law #9, is repealed.

But if they believed they had a good second lawsuit, wouldn't they already have filed it? They sued the Town once, after all; if they really believed they had grounds for a second lawsuit, do you think they would have waited this long and spent this much time and effort asking you to repeal the law?

And in the lawsuit they did file, the property owners themselves admitted – in their court papers – that the Town had the authority and power to enact Local Law #9. Their argument was that the “old” 2005 Code did not prohibit short-term/transient rentals in residential districts. But the property owners expressly admitted that the Town COULD prohibit them if the Town wanted to do so.

For example, in his affirmation filed on 10/14/15 (para. 11), the property owners' attorney admitted to the Court that:

“Indeed if the Town wanted to prevent the short term rental of single-family detached dwellings when it amended the Zoning Code in 2005 it could have done so easily and plainly with language such as: “Rental of single-family detached dwellings for less than thirty (30) days is prohibited.” This simple and direct regulation does not exist anywhere in the Code!”

The property owners' Reply Memorandum of Law, also filed on 10/14/15 (p. 2), likewise told the Court that:

Indeed if the Town wanted to prevent the short term rental of single-family detached dwellings when it amended the Zoning Code in 2005 it could have done so easily and plainly with language such as: “Rental of single-family detached dwellings for less than thirty (30) days is prohibited.” **This simple and direct regulation does not exist anywhere in the Code.**

In her decision, NYS Supreme Court Justice Diane Devlin also acknowledged the clear authority of the Town to enact a law such as Local Law #9:

“Clearly, if the Town had wanted to prevent the short term rental of single-family detached dwellings when it amended the Zoning Code in 2005, it could have done so easily by specifically defining that use and doing it unambiguously.” (4/2/2015 Decision, p. 5).

In enacting Local Law #9, the Town simply did what the property owners and the Court said the Town could do. Indeed, section 1 of Local Law #9, setting forth the background, purpose and intent of the law, says just that. It states that the Town “disagrees with [Justice Devlin’s] interpretation and has filed and served a notice of appeal.” It goes on to state, however, that Justice Devlin had “noted that the Town has the authority to limit such uses, and the property owners agree; she merely held that in her view, the Town Code did not restrict non-owner-occupied transient, short-term rentals in residential zoning districts.”

In effect, both the property owners, and the Court, have said that the Town could enact Local Law #9.

Of course, any new law amending or repealing Local Law #9 would be another matter entirely, and we (my wife Peggy and I) certainly reserve our right to file a legal challenge to any such law or proposed law.

Sincerely,

Randall D. White

June 27, 2016

Dear Town Board,

This morning I appeared in the Town Clerk’s Office to request a copy of proposed Local Law #7 as referred to in the Notice of Public Hearing, published on June 24, 2016. The Clerk’s Office, however, was not yet in possession of proposed Local Law #7. I waited while they called the Town attorney who, I was told, then sent them proposed Local Law #7. The Clerk’s Office, in turn, provided me with a copy.

As an initial matter, it is evident that, contrary to the Notice of Public Hearing, copies of the proposed Local Law were not available for inspection in the Town Clerk’s Office on June 24, 2016.

The Notice of Public Hearing describes the proposed Local Law only as one “to allow certain transient rentals or short-term rentals to continue.” That description is fundamentally false; nothing in Local Law #7 limits its application to “certain” transient or short-term rentals. Indeed, Local Law #7 is facially applicable everywhere on Grand Island. As a result, the Notice of Public Hearing is materially inaccurate and misleading, legally ineffective to give notice of proposed Local Law #7, and any law enacted pursuant to that Notice will be subject to legal challenge on those grounds.

Sincerely,

Randall D. White