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Subject: Mr. Clements' Recent Message re Trash and the Draft Short Term Rental Registration Ordinance
Date: Thursday, May 23, 2024 4:11:49 PM

I am sending this to the members of the Short Term Rental Registration Committee and to members of the Village Council. As the Council knows, I do not usually request that my messages to Council be read aloud at Council meetings—to preserve the limited time at meetings for scheduled Council business. Your Rules of Procedure (3.3), however, states:

“The communication or a summary shall be read at that time, unless waived by the author or if no member of council asks that it be read or summarized.”

To the best of my knowledge, that ROP has not been amended, as of yet. The Council can decide whether to read this or a summary, but, if Mr. Clements’ recent misleading message (or a summary) is read and this message (or a summary) is not similarly read, the Council itself will be responsible for endorsing the misrepresentations and unsupported assumptions in Mr. Clements’ message. I ask only that the two messages be given similar treatment—in accordance with your EXISTING ROP. (If you choose to read summaries of both, I have provided a summary at the close of this message.)

To begin with, I assume that Mr. Clements is sincere in his comments and suggestions, that start with the following scenario:

"Situation: After a [residence] was vacated this last weekend their trash was evidentially [sic] not stored correctly leaving the trash all over the backyard. This condition lasted for 2-3 days. It's not clear who finally picked up the trash. There was no way for adjacent residents to know how to respond for help to correct this problem as there are no regulations or procedures in place. Clearly here [sic] is no one at the Village to lodge these complaints and to know the frequency and magnitude of the problems neighbors face from [the situation]."

Mr. Clements’ scenario, however, contains unsupported discriminatory assumptions and several misstatements. Further, Mr. Clements carries forward misrepresentations and unsupported assumptions in asserting that a draft Registration Ordinance would be of no assistance. Finally, Mr. Clements “conclusions” are nothing more than his inadequately demonstrated preconceived assertions that continue to be made without any actual factual support. He then posits the equivalent of an assertion that not doing what he wants will result in the collapse of civilization in Empire.

Turning to the particulars of Mr. Clements’ misrepresentations and unsupported assumptions:

First,

Although Mr. Clements bemoans a supposed lack, currently or in the draft Registration Ordinance, of any regulations or procedures in place to address the issue of unsecured trash disposal, THERE IS ALREADY AN ORDINANCE THAT ADDRESSES IMPROPER TRASH STORAGE!! Ordinances Nos. 97 and 128 (Nuisance) prohibit storing garbage and rubbish outside of a totally enclosed structure, except in a sealed container designed for the

purpose of holding junk, garbage or rubbish. Combined, these include food wastes, paper, cardboard, bags, rags, etc. A “sealed container” includes garbage cans with fitted tops or plastic bags which have been closed or twisted shut. NO NEW LAW IS NEEDED. Mr. Clements’ false assertion on this significant point casts doubt on the veracity of anything and everything else he has asserted in his message to Council and the Committee. Ordinance No. 97 already applies to STRs, as well as all others. There is simply no need to state that the Village “really means it” for one category of single family dwellings. Everyone must comply.

Mr. Clements asserts that trash issues will not be resolved “in the absence of penalties.” Because the basis for his conclusion (that there is an absence of penalties) fails, his conclusion (trash issues will not be resolved) also fails.. If he is really asserting that the Village’s penalties are not actually imposed, then he should have said that. Mr. Clements’ logical conclusion would be that ALL of Empire must be awash in unsecured trash, because the penalties under Ordinance 97 are not enforced. As anyone can tell, that simply is not true! I have no doubt that there are some situations of unsecured trash, on occasion, but that is likely true for all kinds of single family residences—those with their principal residence in Empire, those with seasonal part time residence in Empire, and some with temporary residence in a STR. But if Mr. Clements wants strict enforcement of ALL Village ordinances, he can ask the VC to create a local police force (or code enforcement team) and pay the taxes to support that. (Better yet, Mr. Clements could organize a village wide HOA to enforce his standards against all of those single family residential homeowners whose views Mr. Clements purports to represent and who agree to join.)

On the other hand, perhaps Mr. Clements’ unstated (and unsupportable) assumption is that “those people” who temporarily reside in STRs cannot be expected to abide by ordinary concepts of civility/courtesy. If so, perhaps he might have a discussion about that with trustee Walton who has admitted that she stays in STRs when she travels.

Second,

Mr. Clements falsely represents that there is no one to enforce these kinds of restrictions, currently or with a Registration Ordinance. Ordinance 97, however expressly designates the Zoning Administrator and the Village President to issue civil infraction citations for violations, and, in addition, provides that the Village may initiate court proceedings to abate or eliminate violation of that Ordinance. Surely, that is enough! The Village office has (as does the Village website) a form to report complaints. If someone remains silent in the face of that opportunity, it is no one else’s fault. Creating yet another Ordinance is merely one more that the potential complainant will ignore!

Perhaps Mr. Clements does not want to provide owners who are willing to make their single family dwellings available to temporary visitors the same protection that the Nuisance Ordinance provides to all other property owners before the Village can take steps to abate a nuisance. That protection includes a notice from the Village describing the property, the nature of the nuisance and giving 10 days to eliminate the nuisance. (Such notice requirement only applies to the Village taking action to abate the nuisance, not to issuance of a civil infraction citation (with a fine of up to \$500, with each day being a separate violation).)

The time to resolve trash issues is EXACTLY THE SAME for single family dwellings rented to temporary occupants as for every other single family dwellings. If Mr. Clements thinks that is insufficient, he can propose an amendment to the Nuisance Ordinance with a timeline applicable to EVERYONE. Does Mr. Clements propose that all property owners in Empire must be called from bed to address the horrors that result from trash bags being “vandalized” by roaming animals? Civilization in Empire has not ceased and will not cease to exist, in the absence of Mr. Clements’ preferred deadline. Obviously, Mr. Clements is more interested in

placing artificial barriers to short term rentals, rather than fairly resolving issues that can arise whenever ANY neighbor creates trash issues.

Third,

Mr. Clements falsely asserts that there is no way for adjacent residents to know how to ask for help. Currently, the adjacent neighbors could take the same steps to address the situation, as with any adjacent property, when the owner is away from the premises (e.g., a “permanent” resident leaves for a 2 month vacation out of state; or a seasonal resident visits for a weekend and then leaves). One does not need to wait for a possible problem to arise. Ask for the identity of the owner/local contact BEFORE THERE IS A PROBLEM! That is not a difficult “ask.” It is a “neighborly” ask. No ordinance is required to make such an ask. Indeed, I suspect that most neighbors would likely have asked and obtained that information. How is an adjacent property owner to make that ask of an owner of a single family dwelling that rents to temporary residents? The answer is that the vast majority of of Empire’s STR residence owners make no effort to hide their identify. Most are local, either living in the Village or nearby.

If the owner is someone that has never visited the property (so there was no easy way to ask for contact information), there would have to be a local rental agent/management company taking care of the property. Who mows the lawn? Who comes to clean for the next occupants? Surely, that is not accomplished in the dead of night. Just ASK whoever performs that task for the contact information of the owner or local property manager. Or ask one of the temporary residents for the contact information of either the owner or local property manager. It is not really very hard, if one takes the responsibility to inquire BEFORE an issue arises. (Recently, at a VC meeting, one neighbor who reported a trash issue obviously KNEW the owner lived in Ohio. How? In obtaining that information, did the neighbors also obtain contact information.?)

If nothing else, currently, the Village office can supply the name and address of such owners (property tax records or water bills). Or, owner information often can be obtained by using the Leelanau County Tax Parcel viewer. Someone will have a mailing address. A polite neighborly letter only costs the price of a stamp.

If all of the above is just too much to ask of adult adjacent neighbors, note that the draft Registration Ordinance will result in contact information for the owner and local contact being available in the Village Office. There is no basis for asserting that it is “insufficient.” If a neighbor chooses to remain willfully ignorant of such information, until an issue arises, it is no one else’s fault. Adult residents can and should be expected to act as adults. The information is available, now, but the draft Registration ordinance would make it even easier to obtain, without waiting for a problem to arise. Get the information and be prepared! Behave as an adult who takes responsibility.

Fourth,

MR. CLEMENTS HAS NOT ASSERTED THAT ANYONE WITNESSED THAT THE TRASH WAS STORED INCORRECTLY IN HIS SCENARIO... “Evidently,” there was no direct evidence as to why there was a small amount of trash in the yard, as shown by the photo supplied by Mr. Clements.



Mr. Clements merely provides his assumption that the trash was stored incorrectly. That assumption may or may not be correct. Because the photo shows that there was a proper sealed trash container, and the poor quality photo appears to show at least one plastic bag on the ground, one can infer one of two likely possibilities:

- (a) trash was not placed in that sealed container and in a closed, twisted shut plastic bag; OR
- (b) a plastic bag was closed (twisted shut) and something (presumably an animal) tore open the sealed trash bag that contained trash
 - anyone residing in Empire should know that there are raccoons (a most likely suspect), as well as coyotes that enter the village at night (not to mention the occasional bear and herds of deer)

Another possibility (that there is someone is so hostile to STRs as to create a scene that can be photographed, in an effort to generate prejudice against STRs) is unlikely, unless that someone possesses such an overt hostility that would “justify” making misrepresentations to the Council and Special Committee.

In the absence of a photograph of the supposedly unsecured trash when the temporary occupants left after the weekend, but before the trash blew around the yard, I suggest that inference (b) is as likely or more likely than the assumption made by Mr. Clements. For sure, Mr. Clements’ assumption is not more evidently accurate. I doubt that most Empire single family dwelling residents would immediately jump to the assumption that a full-time resident or seasonal resident would be at fault, rather than the possibility of animal intervention.

Temporary residents deserve the same consideration from any fair-minded person.

(Note that in Mr. Clements' Scenario, NO TRASH WAS SPREAD ONTO A NEIGHBOR'S YARD!)

Fifth

Mr. Clements assumes that temporary occupants who would be provided with a “Good Neighbor Guide,” pursuant to the draft Registration Ordinance, will ignore those guidelines, while, at the same time, he (apparently) believes that those who live in Empire as a primary or seasonal part-time residence will act as good neighbors without receiving even a suggestion as to how to act. Such elitist snobbery is unbecoming as a basis for Village policy.

Conclusion:

Mr. Clements’ solution is to have yet another “LAW.” Why do some always think that an ordinance is the only solution to what is not a difficult problem. (As is sometimes said, when

your only tool is a hammer, you see all problems as nails.)

If Mr. Clement's logic were correct, (paraphrasing Mr. Clements) with far more than 65 properties occupied as principal (or part-time but more than 30 days) residences, it is unrealistic to believe that there will be no issues relating to trash, parking, noise or situations which could put Empire residents in the unsafe dangerous position of self-policing. Situations that could escalate into threatening confrontations! Why would a Village put its residents in that position?

Mr. Clements' evident answer is that "we" are not like "those people" (others) who come to visit Empire for a week or weekend.. And everyone must know that "those people" are not fit to live (even for a few days) next door to "us."

As I wrote at the start of this message, I do not suggest that Mr Clements is not "sincere" in his positions. As recently written, however, by the D.C. Bar Disciplinary Counsel,

"Extremists are often sincere, and fanatics are the sincerest of all. Such sincerity is no virtue; it is evidence of how dangerous the true believer can be."

April 29, 2024, Disciplinary Counsel's Proposed Findings of Fact and Conclusions of Law, at p39, in In re Jeffrey B. Clark, Esquire (D.C. Court of Appeals Board of Professional Responsibility Hearing Committee Number Twelve , Bd Docket No 22-BD-839).
Please save Empire from sincere demagogues!

Terry Bacon
Wilce St, Empire

SUMMARY

1. Mr. Clements' recent message falsely represented that there are no regulations or procedures in place in the Village to address the situation of property owners becoming aware of a neighbor "evidently" not correctly securing trash, resulting in portions of the trash dispersing around a back yard. In making that misrepresentation, Mr. Clements was either willfully ignorant or intentionally lied to this Council. The Village Nuisance Ordinance (No. 97, as amended in Ordinance 128) expressly addresses that situation. The trash described by Mr. Clements—and shown in the photo he included—are required to be in sealed containers (which include a twisted shut plastic bag). EVERYONE in Empire is required to comply.
2. Mr. Clements' recent message also falsely represented that, currently or after adoption of a Registration Ordinance, there is and will be no one to enforce a requirement of properly disposing of trash. The Nuisance Ordinance expressly designates the Zoning Administrator and the Village President as authorized to issue civil infraction citations and, when authorized by the Council, to take necessary steps to abate or eliminate the nuisance. That enforcement is available to address violation by ANYONE in the village.
3. Mr. Clements further falsely asserted that adjacent neighbors have no way to know how to ask for help. These adjacent neighbors are adults, not pre-schoolers incapable of thinking, reading, and speaking intelligently. Complaint forms are in the Village Office and on the Village web site. Adults are capable of learning who owns the property where trash is not correctly secured—by using commonly known resources and common communication skills and courtesies. Indeed, Mr. Clements' message did not even assert that he does not know the identify of the owner and has been unable to determine contact information for the owner or

local contact. The same resources apply to ALL supposed offenders. A draft Registration Ordinance will make it even easier for the most simple minded among us to obtain contact information for local contacts and owners of single family dwellings that rent to temporary occupants.

4. Mr. Clements made an unsupported assumption that the incident he described was the result of incorrect trash disposal. Without more direct evidence, it is just as likely to be the result of an animal ripping open an otherwise twisted shut plastic bag which was used in addition to the typical solid trash container. Mr. Clements ASSUMES the worst. If he had proof for his assumption, he would have and should have supplied it. Because Mr. Clements wants to demonize visitors to Empire, he, when faced with two possible causes, immediately chooses to assume one that blames the visitor.

5. Consistent with his unsupported assumption that a visitor to Empire was at fault for incorrectly disposing of trash, Mr. Clements also—without any basis-- assumes and asserts that visitors will not comply with a Good Neighbor Guide that a draft Registration Ordinance would cause to be supplied to those visitors. Mr. Clements' elitist snobbery allows him to assume that those "others" will not respect the same standards "we" follow. (Or perhaps Mr. Clements is demonstrating the concept of "projection.")

More "LAWS" and more complex laws are not always the answer. When some laws are needed, they should be fair and applicable to EVERYONE. Sincere beliefs (by extremists) that the residents of Empire are better behaved than everyone else who merely visit Empire is additional evidence of how dangerous such extremists can be.