

April 3, 2024

To: Empire Village Council Members

Short-Term-Rental Committee

From: Roy Sonnema & Debra DeWitt

9993 West South St., Empire [P.O. Box 202]

Please Note: We wish this letter publicly posted at the committee website, and ask Council and committee members to read it and consider our suggestions. In the interest of time, we'd also request that only the addendum at the end be read out loud at the next committee meeting.

The Short-Term-Rental Committee has requested suggestions to improve the current draft STR ordinance so we'd like to contribute our thoughts. But it is our opinion that there are much larger problems and issues at stake that need to be addressed: language problems with the draft ordinance, but also a failure of process and potential legal liability. So, we write to both the Short-Term-Rental Committee as well as the Village Council.

A Problem with the Ordinance Document, and a Solution:

There are many minor mistakes in the current draft ordinance document we'd like to correct, but to keep this letter short, here is what we think is *the single most important change* to make:

The beginning of the draft ordinance document simply fails to capture and balance the central issue. We recommend completely deleting the "purpose" subsection at the front of the document and replacing it with this:

Guiding Principles:

1. *The Village Council of Empire recognizes that short term renting has a long history in Empire, and that it is both a legal and beneficial activity within the village. Short term renting provides income to owners; it generates revenue for local businesses and taxes; and it provides lodging for visitors who do not want hotel/motel/camping accommodations. As home to the Welcome Center for Sleeping Bear National Lakeshore, Empire recognizes its role as a seasonal tourist destination and the importance of STRs within the village.*
2. *The Village Council equally recognizes that all home owners and residents within Empire have a basic right to safe, attractive, and quiet neighborhoods without heavy traffic or parking problems. Many residents are retired or use their homes as vacation residences. Owners who short-term-rent have a responsibility to properly maintain and supervise their properties in a way consistent with residential zoning. Renters should behave with the understanding that they are guests in and need to respect the rights of surrounding home owners.*

3. *The Village Council is committed to the principle that both of these rights—the right of homeowners to rent short term; and right of homeowners to quiet, safe neighborhoods--can be met and balanced simultaneously, if properly and effectively regulated.*

Accordingly, The Village Council institutes this Short-Term Rental Ordinance: . . .

Please do not include them in the document if you just want fancy proclamations. These are real ideas that can guide the decision-making process—that is, if we can all honestly agree with these basic principles.

The process for the creation of this document has failed to make a *bona fide* attempt to engage all stakeholders—property owners, owner-renters, residents and renters—to ensure a fair and balanced document that reflects the ideas and feelings of everyone affected by a new STR ordinance.

Some **major** problems about the STR committee process we observe so far:

This is a rushed, opaque process: an STR committee began meeting in January when most homeowners are not present in the village, and set a target to complete writing an ordinance and registration form before most residents return.

Key data is missing or may not be reliable. Apparently, the number of STRs for Empire was determined by walking around the village and “guesstimating” the number of STRs through personal knowledge, consulting neighbors, or by sending anonymous requests for information to some homeowners. So, look where bad thinking has brought us--the committee and council are about to make decisions about caps and percentages of STRs based on accumulated *rumor-data*? Please do not make this mistake; you need reliable, factual information before deciding anything, and you only know it is reliable if you collect the information in a proper way.

Key information has been difficult to get or is still missing: only two of the five draft versions are available online to the public even now, and village council office did not publicly post the 2020 and 2023 reports online until March, only after we telephoned to request them. What other key documents /information is there that people don't even know about?

No *ad hoc* community task force was formed specifically to vet community comments/ideas/concerns. You are committing a major public policy failure here—in a democracy any ordinance that affects the whole community is the whole community's business. It is incumbent upon you to take time; reach out to all stakeholders and genuinely listen to concerns as this process unfolds. That really is not happening.

No systematic method for collecting and vetting community comments/ideas/language. The committee is accepting suggestions by letter or comments at meetings, but is not reaching out and encouraging full participation. And the comments and suggestions by letter just seem to sit in the letter box unprocessed.

Some **minor** problems we observe so far:

Meeting Minutes do not show what decision-making has taken place and by whom.

The history and provenance of edits to the ordinance document are non-existent or completely missing.

We also think outside professional services could help this process. Writing an STR ordinance is a complex and difficult thing. Many communities have gone through this, it may be useful to get a professional guide to help. We are not advocating copying other communities STR ordinances, but let's examine their processes and do this right.

Some suggestions for a better process: before drafting any ordinance, (1) an STR information request should be mailed to every property owner, explaining that the information is needed for emergency services and to understand STRs in Empire. (2) Then tabulate the information and build a reliable data base. (3) Next step, survey property owners and residents to gauge community attitudes and concerns about STRs. (4) Tabulate this information also. (4) Only after this should you initiate a formal process for developing an ordinance.

When the Village Council created this committee to write an ordinance without taking these first steps, *it was a premature and irresponsible decision*. You should back up and do this again, the right way.

3. This ordinance denies new homeowners their rights.

A major point discussed at the last meeting of the STR Committee was the dire financial effects a restrictive ordinance may have on current homeowners who rent. When it was pointed out how a cap could cause financial hardships on owners who would be restricted or excluded, one of the council members stated basically, well, that's their fault—then they never should have moved here in the first place. Some people assume that short term renting is by nature “bad” and needs to be monitored and restricted, and the village has unrestrained authority to do so.

But actually, it's just the opposite. Short term renting in Empire is completely legal as a right of property owners and has financially benefitted owners for many years; it is *status quo*. *It is the Village Council that is now changing the rules* and proposing new restrictions for STRs in the village. A valid counter argument would be: if you don't like or want STRs near you, why did you make a seasonal tourist town your home? Certainly, the village council has the authority to implement a new STR ordinance. But at the same time, the village bears responsibility to mitigate in good faith any new restraints on homeowners who may be affected.

This is where “grandfathering” plays a role. Owners who were renting previous to the time the new ordinance takes effect can continue to do so; new homeowners after the effective date will have to work under the new regulations.

So, we note the “Definitions” section of the draft ordinance states the following:

“Grandfathered – A STR unit operating as such at some time in 2022 through ---2024. Proof of Short Term Rental of property during that time will be required.” (p.2)

This is not a definition of “grandfathered.” *It is written precisely to preclude and block new homeowners from ever being grandfathered because they failed to do something (rent) in the two years prior to the new ordinance.*

Ex post facto laws and regulations are expressly forbidden by the Constitution of the United States (Article 1, Section 9, Clause 3 and Section 10). Basically, you cannot pass a law or regulation that penalizes someone for doing something (or failing to do something) before it becomes law. Your

grandfathering clause is trying to do exactly that—it singles out new homeowners from even the right to request grandfathering because they didn't rent since 2022.

The framers of the US Constitution called *ex post facto* “tyranny” because the British used it all the time to police colonists. (British Guard in Boston: “Mr. Ben Franklin, the British magistrate has passed a new ordinance saying that only printers who have used British-made paper in the last two years are allowed to print; we note you are making your own paper; therefore, we are seizing your printing press”). Thank goodness we citizens of the United States have a Constitution to protect us from corrupt British magistrates and over-reaching village councils.

The new owners in our neighborhood began their house construction two years ago and have made their intentions to rent perfectly transparent from the start. They have made significant financial investments in their projects over the last two years. They have the right to be grandfathered.

We bring this up not because we are making a legal argument, but simply to point out how reckless, poorly-informed and inadequate this document and the whole process has become under the current STR Committee. **This entire sentence on “grandfathered” should be struck from the draft ordinance immediately.**

So, to sum up, this is what we observe happening: A flawed process with no real community input; a draft document with inadequate and bad language; and a rush to get low caps and language to contain this horrific STR threat to our dear community. Can you understand why some people are so upset at what is happening?

We agree with Todd Avis (letter 03.26.24), this process is broken and proceedings of the SRT Committee should be paused before any ordinance is taken up for vote. Then restart it in a way that is inclusive and responsive to the whole community.

We look forward to further engaging with the council, committee and our neighbors about this important community issue.

Thank you.

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Addendum:

To the Short-Term-Rental Committee:

We would like only the following section of our letter read out loud at the next STR committee meeting. We also ask the chair of the STR committee explain to the public why they have not done due diligence on these things:

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