
Pa House Bill 809

Testimony of John Groh, Millcreek Township Supervisor (Erie County); former Building and Zoning Code Administrator Borough of Edinboro appearing before Pa House Local Government Committee July 20, 2015 in West Chester Pa

Hello, my name is John Groh and I am a township supervisor with Millcreek Township (Erie County). Before I took the office of supervisor in January 2014, I had a 26 year career working in the field of building and zoning code enforcement for a few different municipal governments. I earned Certified Building Official (CBO) designation with the International Code Council and possess nearly all of the professional certifications required by the Pennsylvania Uniform Construction Code. I am also an instructor of municipal zoning and planning courses with the Pa Municipalities Planning Education Institute. Without saying much more, I have a great deal of experience and knowledge of the development and application of municipal zoning and building code ordinances. I wish to share some thoughts in regards to student rental ordinance and my support for House Bill 809.

The following is my experience with a municipality which adopted a student rental ordinance in 2008.

During my employment as Building and Zoning Administrator with the Borough of Edinboro from June 2008 until December 2013, I dealt with the development, adoption, administration and enforcement of a student rental ordinance (Ordinance 563). When I began my employment at the borough, one of the first tasks assigned to me by the borough manager was to correct as I saw a feeble attempt at a student rental ordinance that had been adopted by the borough council a few months prior. It was perplexing mess which left me with many questions such as "just what was being regulated" and "why would the borough wish to adopt such an ordinance since it is the host municipality to Edinboro University". At first, the reason wasn't too clear but eventually it did reveal itself....taxes. Keep in mind that in 2008 a rental tax ordinance which was adopted by the Borough of Millersville and used as a model by many PA municipalities was under appeal at that time. Eventually, the Millersville rental tax ordinance was overturned by the Pennsylvania Supreme Court which in effect, nullified similar ordinances throughout the Commonwealth. Another question which gnawed at my ethics was the discriminatory nature the proposed zoning ordinance amendment would have over a group of people; all which were trying to make a better life for themselves thru higher education. The framers of planning and zoning ordinances never intended the power of such regulations to be misused or discriminate against groups of people. I would say it is akin to adopting an anti senior citizen ordinance because of the potential need for more emergency services such as ambulances. It is akin to telling someone "sorry, you can't live here because you are....fill in the blank". We all know that could not occur since it would be discriminatory to enact such law. However, when it comes to matriculated persons municipalities can skirt the issue. The authority found in the Pennsylvania Municipalities Planning Code Act 247, (the enabling law which allows for municipalities to adopt zoning and planning ordinances), is pursuant to the 10th Amendment of the US Constitution also known as Police Powers. It is difficult for university students as a whole somehow pose a danger to the protection and promotion of the

health, safety and welfare of the public. In the student rental ordinances, students are being treated the same as junk yards and adult entertainment uses with the excessive separation distances required by Ordinance 563. In Edinboro, the separation distance is 20 times the lot width of the district it is located. A lot that is 100' of frontage would not allow another student rental to be less than 2000' from another. It is in essence, treating students as if they are a nuisance or undesirable land use. For those who adopt such ordinances, I would like to remind them students are people not land uses. There is a definite misuse and abuse of power in regards to the adoption of student rental ordinances.

Let's keep in mind that we all were 19 years of age at one time. Some of us had done foolish things that we just as soon forget. Zoning ordinances are not intended to regulate personal conduct. It isn't correct to state that all 19 year old college students are bad people nor would it be right say all 19 years are. Yet, it seems student rental ordinances are adopted on the premise that college students are nothing but trouble. I don't think so. Like every demographic group there is always a small portion that creates a problem. Why punish all of them?

Ordinance 563 established many nonconforming or "grandfathered" uses which would be subject to expiration if one year lapsed between student occupancies. It was evident the plan was to eliminate student rentals within Edinboro whether immediate or in the long run. The values of the rentals would be affected due to lower demand and the eventual inability to rent to students. I kept asking myself "are they sure they really want to do this?"

The Edinboro University helped build the town. Businesses and rental owners thrived because of it. In case the residents of Edinboro didn't know, it is a university town and has been since 1857. Many of the rentals that were occupied by EUP students would fall victim to such ordinance thru the newly created regulations. It was clear to me the intent was based on a trumped up belief that students were the cause of higher crime in the borough and the need for more code enforcement. The fact is neither claim in the legislative intent provision of the ordinance was substantially proven as fact. I knew that and felt very uneasy about it. In my career as a code official and as an instructor of zoning planning courses, I know that zoning ordinances must be of substance and have a direct connection to the activity being regulated. The Borough of Edinboro ordinance did neither. To say the least, it was very stressful drafting an ordinance that was of this nature. The old saying "too much, too little, too late" is for the most what the ordinance is about with the emphasis on too much and too late.

It was written in the best way possible although it has no rational basis. The courts could rule the Edinboro ordinance as being too broad and vague. I am not an attorney and cannot dispense legal advice or opinions but in my professional experience, the Edinboro student rental ordinance made no sense at all. I believe the ordinance adopted by the Borough of Edinboro was based on unfounded and unproven science which labeled all university students as being a problem. I was not provided with any facts or basis for the ordinance other than the direct orders by the borough manager to draft it. However, one of the documents entered as supporting evidence was a report by the Pennsylvania Economy League regarding the effect of tax exempt universities upon their host municipality. The Borough of Edinboro said the proposed ordinance had nothing to do with taxes but rather the "proliferation" of EUP students in the borough (as stated in the legislative intent of the ordinance) ; almost as to imply they were a terrorist organization pillaging the village and taking no hostages. Almost sounds nuclear with words like that. As I have said repeatedly, it was very clear that the ordinance was

intended to punish the Edinboro University. Yes, tax exempt properties do have an effect on municipalities. As a township supervisor, I am aware of that. In the case of student rental ordinances, any host municipality could use the student rental loop hole to retaliate against the exempt status and get away with it. For lack of a better term, it is an attempt to squeeze the university out. That is until the Pennsylvania Legislature intervenes and hopefully does the right thing by declaring matriculated persons a protected class of people from discriminatory ordinances and policies. I support your interest in this matter and know you will do the right thing.

As an example of how senseless Edinboro Ordinance 563 is when I give a sample of the policies, procedures and enforcement actions by most of all, the attitude of the borough in regards to the ordinance. It is alarming. One of the most alarming attitudes by borough officials was the quietly held response to the concerns raised by landlords. "If they (the landlords) don't like it, they can file an appeal but it will cost them money to do it". Yes, there are reasonable fees to conduct such appeals to the zoning hearing board and none of the appellants had any success before the zoning board. Further, it requires a higher court to invalidate the ordinance. In essence, the borough had the landlords "over a barrel" due to the cost of filing an appeal.

One particular disturbing matter had to do with a young couple that rented a house in the Lakeside District of Edinboro. They were university students; she at EUP and he was at Gannon University in Erie. He was also a full time prison guard in Erie. He is also a Gulf War veteran. The rental dwelling they chose to rent in 2011 had been occupied off and on by university students for many years prior. In fact, many of the seasonal cottages in the Lakeside District were rented by EUP students from thru fall thru spring. However, when the couple decided to rent it in 2010 it had not been rented by the students in the year prior thus it was not eligible for student rental permit. The landlord rented the house to the couple and it was discovered soon after by the Borough of Edinboro that they were students and the enforcement actions began. I would say the enforcement investigation was similar to a witch hunt of the 1600's. It was determined by the borough that the landlord was in violation of the student rental ordinance and an enforcement notice was sent. The owners appealed the violation notice and a hearing was held. As I said previously, they were students at their respective universities but were also in a romantic relationship. However, they were not married. This became a key issue at the hearing as the landlord claimed the couple was a family. The zoning hearing board disagreed with that claim and denied the appeal but ruled that if the couple were married, there would be no violation of the ordinance. In other words, the definition of "family" was held to that found in the zoning ordinance. It mentions married persons but not those which are cohabitating. Please do not think I am defending that living arrangement but realize it is a sign of today's society. I believe the zoning hearing board would have liked to overturn the borough's violation notice but knew it would undermine the spirit of the ordinance and would cause further appeal by the borough. In my opinion, the zoning hearing board had to do what they could to uphold the ordinance even if it meant "grasping" at certain provisions. The zoning board ruling became the laugh of the community as most people were opposed to the ordinance from the time of adoption. The ruling basically stated that if students met the definition of family in the zoning ordinance, it trumped student classification. A disturbing part to this was I began to believe if other students would say they are married would I then be

ordered to check with the courthouse to see if they actually were? Scary; I don't think anyone has ever verified if my wife and I are married. I can say we are.

A majority of the Borough of Edinboro residents and landlords were very vocal regarding the adoption of Ordinance 563 and believed it would just be a matter of time before it would fall into shaky ground. The fact is it requires a class action lawsuit against the borough to overturn the ordinance based on the fact it is arbitrary and capricious. However, no individual landlord could afford to do that. If there were, I believe the ordinance would have been overturned and ruled unconstitutional.

I sincerely believe it is time for the Pennsylvania Legislature to intervene in the matter to prohibit discriminatory ordinances against matriculated persons adopted by many municipalities throughout the Commonwealth. It is clearly an abuse of the intent and powers of municipal zoning ordinances. We must also recognize the fact that today's university students are not the traditional student of the past which continued their education right after high school. Many are in their 20's or have served in the armed forces before entering higher education. We should not manipulate the spirit and intent of zoning ordinances as a means to regulate personal conduct or retaliate against institutions of higher education for their tax exempt status. We must also remember that the majority of university students are there to do one thing; better their own life thru higher education. Should we blame students for the ills of a community? No.

On a personal note, I would like to say that I am one of the nontraditional students of today as I recently graduated from Millersville University at age 58 with a certificate in Public Management. There are more and more people like me that are advancing their education by entering university programs later in life.

As a closing comment, I believe there is a moral obligation for all tax exempt entities to support their municipality in one form or another. This is especially true in regards to State System of Higher Education Universities. I think this is where a real problem may lie. There are things the universities can do to be good corporate citizens instead acting as a political island within the host municipality. The key is collaboration with the municipality instead hiding behind the tax exempt shield. Taxpayers cannot be expected to foot the bill for tax exempts. They are already burdened enough. I think universities and hospitals should provide something whether financially or in kind services. Payment in lieu of taxes or PILOT programs can offer some relief. So can in kind services or collaborative agreements. Quit waving the tax exempt flag.
