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May 25, 2012

PUBLIC STATEMENT – REGARDING OUT OF TOWN PROPERTY OWNER VOTING

Section C-4(a) of the Town Charter contains the following provision which has allowed "out-of-town" property owners to participate in Rising Sun municipal elections for many years:

Every person who is (1) a citizen of the United States, (2) at least eighteen years of age, (3) a bona fide resident of the Town for at least thirty days preceding any election at which he shall offer to vote or who, *in the absence of such residency, shall own a fee simple interest in real estate within the Town* is eligible to register to vote in the Town elections.

As a result of a federal court opinion that the board of commissioners were presented with on May 22, 2012, the Board of Commissioners, faced with serious legal issues related to this matter, were left with no legal options but to declare nonresident property owners ineligible to vote in any upcoming Town elections effective immediately.

The issue of Towns in Maryland allowing non-resident property owners to vote in local elections has been clearly decided. In the case of Tobin v. Town of North Beach MD (which is located in Calvert County Maryland), the provision of the North Beach charter allowing non-resident property owners to vote was challenged in the United States Federal District Court of Maryland. The Court in that case stated that such a provision violates the Equal Protection Clause (Fourteenth Amendment) of the United States Constitution. As it turns out, several other municipalities along with Rising Sun, had provision like the one contained in the North Beach Charter. However, with the North Beach decision and continued pressure from the American Civil Liberties Union, all of the other Maryland municipalities amended their charter to avoid liability and complied with the Court's decision. Rising Sun, as demonstrated by its inactions, chose not to address the issue. However, two recent events involving the Town's voter registration process brought greater scrutiny to this illegal practice:

- 1) We had a local business attempting to register multiple individuals on the Town's voter registration list, claiming that they were legally associated with the business entity. Essentially, the property owner (an "entity") was trying to secure voting rights

for several individual persons. They were claiming that those persons were on the board of directors for this entity and as such, were considered owners of the property and entitled to vote. Quite frankly, this “abuse” raised several legal questions that needed to be addressed in order to protect the integrity of the Town’s voting system. As farfetched as it might seem, this practice would have entitled larger corporations, with various CEO’s, Presidents, Board of Directors and share holders to now have a vote in our Town Elections, thereby diluting the vote of our residents; in addition

- 2) We received a letter from a veteran of the U.S. Marine Corp that put the Town on notice that he was offended by this practice and was contacting the American Civil Liberties Union to put an end to this process.

Upon the receipt of various legal opinions, it became increasingly clear that any continued act of defiance by engaging in this unconstitutional practice, would subject the Town and actors therein - elected officials, election judges, employees and anyone one else associated with this practice - to significant civil and criminal liabilities.

Briefly these areas of liability include:

- Violation of Federal Voter Rights Act – this includes provision of vicarious liability for the Town and the actors therein, when there is knowing and intentional violation of people’s voting rights.
- Constitutional violations – including compensatory and punitive damages for the violation of individuals’ rights.
- Election Law violations – the result of prior elections, within the stature of limitations, could be challenged.
- Personal liability of the elected officials – Upon election to office, the Mayor and Commissioners take a sworn oath, which states in part ***“I, do swear, that I will support the Constitution of the United States....”*** Given that the Federal District Court’s opinion is an interpretation of the Constitution, failure to follow such interpretation, with actual knowledge that you are not doing so, could mean that the elected officials fiduciary duty to the Town has been breached, thereby attaching personal liability to the actions or in this case, the non action of the elected officials.
- Criminal Liability – It is not beyond reason to consider that the Town’s continued inaction on this subject, despite prior knowledge that it is illegal, to cause the Justice Department to view such inaction as a willful and intentional act to violate Federal law and as a consequence, some type of criminal liability could exist and be applied to anyone with a fiduciary responsibility associated with Town Elections.

More importantly, the Town’s failure to correct the violation, could be viewed as a willful violation of Federal law, and as such, would likely not be covered by the Town’s insurance policies. The defense of such a suit, or the compensatory and punitive damages awarded from such suit, would be paid for by the Town, which is the taxpayer, and or the individuals evolved in this illegal practice. Furthermore, if the Town or elected officials were to somehow believe that they were above the Constitution of the United States, what decisions, ordinances or laws would they be capable of making in violations of the Equal Protection Clause?

Unreasonable search and seizure....., women or minorities not being able to vote? What additional abuses could occur?

We want to make it clear to all Town property owners, especially our community based businesses, that we greatly appreciate and applaud your contributions to our community, and recognize your feelings of being disenfranchised by this federal court decision. We also recognized that you must and will continue to have a voice in this community. As evidenced by our recent efforts with the Great Rising Sun Chamber of Commerce, we are committed to improving the business climate of our community and to enhance the image of our business corridor. In the coming days and thru a joint effort with the Chamber, we will be installing several new street banners along main street and the Town square to celebrate Sunfest and to show case our community during this annual festive event. More importantly, we are spearheading and sponsoring an economic development and community revitalization program, which the stakeholders or voice of this effort will be the business community. We are clearly on our way to improved parks, paved streets, safer sidewalks and new sewer and water infrastructure, but despite these recent accomplishments and all the goodwill established, the timing of this decision does not cast the Town in a positive light. However, we would like to assure you of our continued commitment to work shoulder to shoulder with our business community during these tough economic times and to continue our efforts at moving our Town towards economic prosperity.

In closing, we hope that you will understand this issue and recognize the difficulties faced, but more importantly we hope that you will give us a chance to prove that we are working with you, and not against you.

Sincerely

Mayor and Commissioners
Town of Rising Sun.

