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June 6, 2016

City of Portland

ATTN: Anne Machado

389 Congress Street

Portland, ME 04101

Re: 481 Danforth Street

Enforcement Action

Dear Ms. Machado:

I know this is a busy time in your office (an understatement). The 481 Danforth Street enforcement action is an emergent circumstance for my client, Ken Thomas.

I represent Ken Thomas (hereinafter “Ken”). The property located at 481 Danforth Street, Portland is in the R-4 residential district. 481, LLC is the owner of the property. The sole member owner is Alex Feddersen, at least nominally. The property has been the residence of Ken Thomas and he has leased spare units through the AirBnB platform since January 2015.

The subject property at 481 was a legal 2-unit when acquired in 2013 and the occupant(s) went to considerable expense to expand to 3 units, thus permitting the current 3 residential units.

If the enforcement action is not rescinded, the Landlord and the Tenant will suffer substantial economic loss. Enforcement will destroy Mr. Thomas’ reputation with AirBnB which will make it impossible for him to use the ArBnB format at any location, in any zone, in the City. Moreover, Mr. Thomas has proposed to purchase the property, a transaction which is in part dependent upon cash flow, just as with any rental in the city. I will need to resolve the question of legal use one way or the other.

The owner is registered with the City of Portland under the unit registration program.

Until recently, Mr. Feddersen and Mr. Thomas were partners. The couple separated in August 2015 and the lease arrangement was designed to allow the couple to separate pending settlement of their affairs. Ken Thomas has applied for financing to purchase the property from 481, LLC.

Attached is a copy of a letter recently forwarded to the owner in which the Zoning Department seeks to enjoin the AirBnB as an impermissible use in the R-4 zone. The textual arguments are strong based on my reading of the definitions as set forth in the ordinance. I have serious concerns about the enforcement action, however.

The Housing Committee and City officials have held several meetings with property owners to discuss regulation of AirBnB. Portland is not the only City struggling with regulation of this form of residential use. According to the minutes of the meeting, the committee agreed not to regulate AirBnB out of existence, but that the City should study and recommend new regulation. According to David Brenerman the committee was leaning toward allowing owner occupied AirBnB operations as an alternative to an outright ban promoted by at least one interest group.

Mr. Thomas has been active in these meetings and favors regulation as a means to legalize the use, and to allow for rules that will prevent the kinds of abuses and nuisances that have cropped up in other municipalities around the country. He assesses and remits the 8% room and lodging tax and he is active in the association of AirBnB owners. He believes that appropriate regulation will drive out competition from unsavory and unscrupulous operators who are not owner occupied.

That said, I am concerned that a change in the zoning ordinance or new policy may be in development that might allow Mr. Thomas some relief from a strict reading of the Ordinance.

Further, I know that there are dozens of listing for AirBnB throughout the City, all of them in the various residential zones on the peninsula I am unaware of any other enforcement action against this type of use, and I am concerned about selective enforcement. I can only conclude that this action, against 481, LLC is the beginning of a wide-ranging crackdown.

I am not writing to change City policy or to request a text amendment. Only the Housing Committee and the Council can do that. However, because of the economic consequences to my client, and the unique location of the 481 Danforth building, I want to discuss a stay of enforcement and a possible contract zone. A zoning change may be appropriate given the location of the property abutting the business zone and its separation from the other residential properties I the west end.

I look forward to discussing the matter with you.

Regards,

Paul S. Bulger

PSB/cmk

Enclosure

cc: Ken Thomas (w/encl.)