

The Edgemont Community Council, Inc.

Founded in 1947 to determine community opinion on civic matters and coordinate community action thereon and to plan and promote the general welfare of the community embraced within Union Free School District #6.

Post Office Box 1161

Scarsdale, New York 10583

March 10, 2009

Ms. Rachel S. Pauley, Confidential Assistant for Legal Matters
Office of the Attorney General
Public Integrity Bureau
120 Broadway
New York, NY 10271

Re: Complaint #08-1645

Dear Ms. Pauley:

I am president of the Edgemont Community Council (the "ECC"), which is an umbrella group of civic associations representing about 3,000 households in the Edgemont section of the Town of Greenburgh in Westchester County. By resolution unanimously passed at our regular monthly meeting in February, 2009, I have been asked to register a formal complaint with you about the conduct of the Greenburgh Town Board in connection with its recent passage of a major zoning change which was adopted without notice, hearing or opportunity for public comment.

We also understand that a number of residents of the Fulton Park section of the Town have also written to complain. This letter should be considered with their letters.

The facts are as follows: On December 10, 2008, the Town Board held a public hearing on a zoning change for an individual developer to reclassify a single small parcel of land from two-story multifamily use to six-story multifamily use and to adopt a definition of "workforce housing." The zoning change was for the benefit of Westhab, a developer that needed the zoning change to build a large 28-unit multi-family dwelling on an undersized lot (0.7 acres) off Tarrytown Road, which is a state highway. Westhab, which had for 13 years operated a homeless shelter at the site, purchased the property for more than \$2 million apparently expecting that the zoning change would be granted. Without the zoning change to allow for greater density, Westhab maintained that it could not afford to develop the property.

For more than a year, the developer and the Town Supervisor Paul Feiner argued that Westhab's zoning change was in the public interest because Westhab's development was being built to satisfy the local demand for "workforce housing." "Workforce housing" usually connotes housing intended to appeal to gainfully employed, essential workers in the community, i.e.,

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police officers, firemen, teachers, nurses and medical technicians, and officer workers. Workforce families are generally younger and often include or plan to include children. Ideally, workforce housing aims at satisfying the housing needs of family households earning between 60% and 120% of Area Median Income (“AMI”) and is an income strata that is largely unserved and unaddressed by both Federal and State programs and thus largely left to individual municipalities and counties to deal with. See e.g., Urban Land Institute Policy Forum Report, June 25-26, 2002 (specifically defining “workforce housing” as housing for households earning between 60% and 120% of AMI).

In an effort to assure residents that Westhab intended to build its project for “workforce housing” and not very low income housing for the homeless, Supervisor Feiner promised residents in writing that Westhab’s project would not be for the homeless and would not offer Section 8 housing. The reason was that it would be inappropriate to construct high density extremely low income housing on such a small parcel of land that was inaccessible to most of the social services required by such tenants.

The Town’s proposed zoning change defined “workforce housing” as housing for tenants earning between 60% and 120% of Westchester’s area median income. However, because certain of Westhab’s funding was contingent on it offering at least 20% of its units to homeless families, Westhab asked that an exception be given to allow the definition to permit at least 20% of its units to be leased to homeless persons earning extremely low incomes, i.e., the very people in an income strata who are served by Federal and state programs. Thus, the proposal further provided that if 80% of the building’s tenants satisfy the income qualifications for such “workforce housing,” then the remaining 20% of the tenancy can earn as little as 30% of the median income.

The hearing was closed on December 10, but the record remained open for five business days.

Westhab, however, was not satisfied. On December 9, Westhab’s director met privately with the Town attorney and several town board members. He also met at a work session that same day with the entire board. Westhab informed the board that its private lenders were taking the position that in order to qualify for loans, all units had to be eligible for Section 8 vouchers, which would guarantee Westhab a market rate of return on its rent. Consequently, the definition of “workforce housing” had to be changed. Board members recognized at that meeting that any substantial change in the definition such as this would require a new notice and a new hearing. However, Feiner told the board that he opposed any delay in the matter and that, as far as he was concerned, this was to be a vote either “for affordable housing or against it.” The meeting was videotaped and made available on the Town’s website. However, residents were told at the December 10 hearing that, despite what occurred at the work session and private meeting with the developer on December 9, there had been no change in the definition of “workforce housing.” This hearing was also videotaped and is available on the Town’s website.

On December 18, 2008, after the record was closed, the Town Board announced that it would make a decision that night on the zoning change. However, when the matter came up for a vote, the definition for “workforce housing” was changed. Instead of requiring incomes between 60%

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and 120% of the area's median, which was the ULI definition, the new definition for "workforce housing" was a tenancy earning between 30% and 80% of the area median. There was no prior notice either of the change, or that any change would be made. The text of the change was not made public until a few minutes before the vote. Statutory requirements to notify the county's planning board in connection with zoning changes on property within 1000 feet of a state or county road were ignored. The meeting was videotaped and can be viewed on the Town's website.

The effect of the zoning change was that the entire Westhab project could now be leased to tenants having an income of as little as 30% of the area median. Because most of the units were studios and one-bedrooms, the likelihood was that all such units would be leased to tenants with extremely low incomes, and thus all units would be eligible for Section 8 vouchers. As a result of the change, the entire predicate for adopting the zoning change -- the need to increase density for economic reasons in order to accommodate the demand for "workforce housing" that would otherwise not be built -- had been abruptly turned on its head. The population to be served by Westhab's project would not be those in need of "workforce housing" as that term is usually defined -- but rather the population already supported by Federal and state low income housing programs which, because of the subsidies associated with these programs, ordinarily does not need a lucrative increase in zoning density in order to be economically viable. And needless to say, there is nothing in the public record to justify giving Westhab this economic windfall.

Residents attending the meeting expressed anger that the Town Board would adopt such a substantial change to the definition of "workforce housing" without prior notice and a new hearing. Residents who wanted to discuss the impact that such a change would have on their neighborhood were prevented from making any record.

At our regular monthly meeting in January, the ECC unanimously passed a resolution calling on the Town Board to rescind the zoning change within 30 days, i.e., by February 17, 2009. The Town Board ignored the resolution. As a result, at its February meeting, the ECC unanimously passed a second resolution directing me to write this letter.

We are concerned that if the Town Board is able to overlook state law when it comes to enacting zoning changes for this neighborhood, it will do likewise when it comes to enacting zoning changes for other areas of the town, including Edgemont.

The ECC therefore urges the State Attorney General's Bureau of Public Integrity to investigate this matter thoroughly and order that corrective action be taken.

Sincerely,



Robert B. Bernstein
President, Edgemont Community Council

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