

Relevant Excerpts from Dromore Deposition of Paul Feiner

Relevant Excerpts from Dromore Deposition of Paul Feiner, February 9, 2011, sworn to and signed by Feiner on March 29, 2011.

Testimony regarding Feiner's lack of familiarity with the Town's procedures for adopting and amending the Town's Official Zoning Map

Q. Historically when the Town Board amended the zoning ordinance and the zoning map, you indicated that happened a couple of times during your tenure, correct?

A. Yes.

Q. Were public hearings conducted?

A. I don't remember.

Q. You don't?

A. I don't know.

Feiner Tr. at 145-146.

Q. In order to amend the zoning map, you would have to do it by legislation, correct?

A. I would really have to speak with the town attorney. I'm not sure how you change the map.

Q. Based upon 19 years of experience you have no --

A. We've only done maps -- it's very infrequently. So I don't really remember.

Feiner tr. at 138-139.

Q. Let's go back to 2007, January, February period of time, did you become aware that there came a point in time that the town took the position and changed the zoning status of the Troys' Dromore Road property?

A. I don't really -- you know, I don't really remember. I don't really remember to be honest.

Q. Do you recall that the town in that period of time took the position that the Troys' Dromore Road property's zoning status was incorrect?

A. No, I don't really remember.

Q. Did you ever sign an official 2007 zoning map for the town?

A. You know, I remember once or twice my tenure somebody came up and said, will you sign the zoning map. But I don't really remember the year it was or the details.

Q. Do you recall signing one in 2007?

A. I don't know if it was 2007. I don't know when. But I do know that I've signed zoning maps in the past.

Feiner Tr. at 134-35.

Q. Did there come a time that the town enacted what is now known as the 2007 zoning map of the Town of Greenburgh?

A. No, I don't really remember the details of that.

Q. Well, do you know if there is now a 2007 zoning map?

A. I don't really -- know that -- I don't really know, you know.

Q. And you didn't review that with respect to preparing for this lawsuit?

A. I didn't review anything as you can tell.

Feiner Tr. at 131.

Q. To your knowledge did there come a time that the zoning status of the Troys' property was changed from the CA zone to a residential zone?

A. I don't remember really.

Q. You do know that that's the subject of the lawsuit?

A. You know, I really haven't paid much attention to this lawsuit to be honest.

Q. So you don't know if that's the subject of the lawsuit?

A. To be honest, you know, I didn't really -- I haven't really spent, you know, more than, you know, practically no time on this.

Feiner Tr. at 129-39.

Q. Based upon your 19 years of experience as the town supervisor, who has the authority to amend zoning maps?

A. I'm not really -- you know, I'd have to really ask the town attorney. I'm not sure.

Feiner Tr. at 128.

Q. To your knowledge, who, if anyone, from the town was involved in the investigation of the zoning status of the Troys' property at Dromore Road?

A. I don't really remember the circumstances around that.

Feiner tr. 125-126.

Q. Now, do you have any knowledge of what the zoning status of the Troys' property was under the 2006 town's zoning map?

A. No.

Feiner Tr. 123-24.

Q. Now, based upon your experience as the town supervisor what is the process by which the town adopts an official zoning map?

A. You know, I don't really -- you know, I don't really know what the process is.

Q. You've been supervisor since 1991, right?

A. Right.

Q. So during that period of time series of official zoning maps have been amended and enacted, correct?

A. I'm not sure if it's a series. I don't remember how many.

Q. But there's been at least one?

A. I would say there's been at least one.

Q. And that involved a public process, right?

A. I'm not sure of the process that, you know, is used. I'm not sure what -- how the process works. I'm not sure really. Everything's public that we do.

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Feiner Tr. Tr. at 62-63.

Q. Is the process of enacting an official Zoning map for the town done in public?

A. You know, I know that the code amendments are done at public meetings and there's public hearings and all that. I don't really remember the public discuss -- you know, the processes that, you know, that evolve into finalizing a zoning map. I know at times, you know, I'm asked to sign the maps. You know, I think I've signed once or twice. But it's -- I don't really remember seeing it on agendas of the town board. But that doesn't mean that it's on agendas. I just don't -- it's not something that, you know, I put on my resume that there was a zoning map discussion.

Q. Based upon your experience as the supervisor of the Town of Greenburgh, the town zoning map is an important document, correct?

A. You know, I really have done -- had so little dealings with the zoning. Because, you know, you have the zoning board that -- you know, maybe I've seen the -- I really haven't looked at the -- I don't look at the zoning maps frequently. You know, I just recall, you know, a while back signing a zoning map. But that's basically -- that's the extent of my involvement with, you know, zoning maps. We get so many different issues and so many different things to vote on that I don't even really recall if this goes before the town board, needs approval.

Q. Is the zoning map, according to the town code that we looked at a moment ago, the final authority with respect to the zoning status of property, correct?

A. You know, I would really want to just confer with the town attorney.

Q. So you don't know?

A. I don't know.

Feiner Tr. 65-67.

Q. Have you ever read the provision in the code that we just referenced? [Referring to the Town's Official Zoning Map]

A. I don't recall. You know, I've looked at the code. But I've never focused on that.

Q. So you've never focused on Exhibit 1 that we marked for identification?

A. Right. I might have skimmed it but you know it's never been something that I really needed to refer to frequently at all.

Feiner Tr. 68.

Even when the relevant section of the Town Code was read to him, Feiner wasn't familiar with it.

Q. Let me show you what we marked as Plaintiff's Exhibit 1, I'll represent to you it's a copy of 285-7 of the town code of the Town of Greenburgh and ask you to look at 285-7A and read it to yourself. [whereupon a five minute break was taken].

Q. Mr. Supervisor, have you had a chance to look at what we marked as Plaintiff's Exhibit 1?

A. Yes.

Q. Let me read into the record the following: It's styled zoning map.: "The boundaries of such districts and special building lines are hereby established as shown on the map entitled "Zon-

ing Map, Town of Greenburgh,” which map is annexed to and is hereby adopted and declared to be a part of this chapter and is hereafter referred to as the internal “Zoning Map.” Said zoning map may be amended in the same manner as any other part of this chapter. An official copy of said map, indicating the latest amendments shall be kept up to date in the office of the building inspector and in the office of the commissioner of community development and conservation for the use and benefit of the public. Said Official Zoning Map shall be the final authority as to the current zoning classification of any land within the boundaries of the unincorporated Town of Greenburgh.”

Q. Does that refresh your recollection that the town’s official zoning map is the final authority as to the current zoning classification of any land under the town code?

A. You know, I would have to ask the town attorney really for that.

Q. So you don’t know?

A. I don’t know.

Q. Based upon your 19 years of experience you don’t know whether or not the zoning map is the final authority with respect to the zoning status of property?

A. No.

Q. You don’t know?

A. I don’t know.

Feiner Tr. 53-56.

Q. Are you familiar with Section 264 of the Town Law [this is a state law]?

A. You’d have to show it to me.

Q. Okay, I’ll do that. I’ll show you Exhibit 24 which is a copy of section 264 of the town law. If you just go to second page 92, the last first full paragraph six lines down from the bottom it says: “Every town clerk shall maintain a separate file of filing cabinet for each and every map adopted in connection with the zoning ordinance or amendment and shall file herein every such map hereafter adopted. Said file or file cabinet shall be available at any time during the regular business hours for public inspection.” Do you have any familiarity with that provision of the law?

A. No.

Q. Do you have any familiarity at all with Section 264?

A. No.

Q. Do you know whether or not the town zoning maps were maintained by the town clerk?

A. No. I’m not sure who maintains it.

Feiner Tr. 56-57.

Testimony at the end of the deposition in which Feiner admits not looking at any files or preparing for the deposition upon the advice of counsel for the Troys, which advice Feiner says he followed.

Q. Now, so I'm clear, we can let you get back to your work, you have no knowledge whether or not the town board ever enacted a formal resolution amending the 2006 zoning map?

A. Right. I don't remember any of the details. And I'm not sure if it was administrative or if it was done by local law or whatever. I just remember as I said the conversation with Francis, you know, Francis Sheehan mentioning that he found, you know, an inaccuracy and the interpretation. That, I do remember.

Q. And you have no knowledge how that inaccuracy was corrected?

A. I don't really remember what we did or how we did it.

Q. To your knowledge did the town do anything?

A. You know I really wasn't paying -- you know, I mean something that I really remember what we did. I don't really know. **You know, you told me not to look at any of the files or do any preparation and I followed your advice.**

MR. HARRINGTON [counsel for the Troys]: Okay. We're done. Thank you. No more questions.

Feiner Tr. 148-49.

Testimony regarding the Troy affidavit and Feiner's July 13, 2007 press release which suggested he was siding with the Troys in their dispute with the Town. The Feiner press release, which was posted on the Town's website, on the town's email list, and on Feiner's blog, included several statements favorable to the Troys, such as asserting, six months after the map had been corrected in February 2007 to show that the property was in the R-20 single family zone, that the Troys' property was in fact in the CA zone, and that a proposed moratorium at the time on development along Central Avenue was specifically aimed at the Troys' Dromore property, which would have been impermissible. The press release and affidavit also personally attacked Bob Bernstein and Michelle McNally, accusing them, among other things, of trying to obtain the Dromore property to build a "village hall" in connection with "Edgemont's secession."

As shown below, Feiner denies writing he press release and having read the Troy affidavit -- even though his press release urges residents of the Town to read the affidavit in its entirety. Significantly, Feiner is never asked by Troys' counsel who gave him the Troy affidavit, which was filed not with him, but with the zoning board. The implication is that Richard Troy himself not only wrote the affidavit but, because the press release contains statements favorable to the Troys' position, which Feiner now disavows, that Troy himself wrote the press release and gave it to Feiner. It should be noted that even though Feiner, under oath, disclaimed any knowledge of the press release and the affidavit, on January 26, 2012, he posted a personal attack against Mr. Bernstein on the ECC Facebook page and on the scarsdale10583.com site, quoting from both the Troy affidavit and his original press release.

Q. Do you recall that there came a point in time that S&R commenced a proceeding with the zoning board of appeals and filed certain materials with the zoning board?

A. Yes.

Q. Do you recall that in conjunction with that Mr. Richard Troy filed an affidavit before the zoning board of appeals.

A. I don't recall.

Q. Mr. Supervisor, I'm showing you what we've marked as Exhibit 47 which is an affidavit dated Jul 9, 2007 from Richard Troy submitted to the zoning board of appeals, do you recall that there came a point in time that you saw this document?

A. I don't recall seeing this.

Q. Please take a moment and peruse it.

A. I don't really recall this at all.

Feiner Tr. 9-10.

Q. Do you recall there came a time in July '07 that you posted on your blog an entry with respect to an affidavit that was submitted by Mr. Troy to the Zoning Board of Appeals regarding Dromore Road?

A. I don't remember.

Feiner Tr. 10-11.

Q. Let me show you what we previously marked as Exhibit 22 and it is a July 13, 2007 blog entitled, "Extraordinary Secrecy, Favoritism, Violations of Open Meeting Law by Town Council" from yourself to GB list at CIT-e.NET, take a minute, please look at it, and let me know if you recognize that as a document that you posted on the Internet on our blog on or about that date?

A. I don't remember this.

Q. And do you recall posting this at some point?

A. I don't recall recall, you know this. But I see it says GB list.

Q. Who drafted this document?

A. You know, it's not my wording. So I don't really -- when I was reading this I said, I wonder who helped write because it's not my style of writing. I don't remember. I don't really know. I was just trying to think.

Q. So you don't know who wrote it?

A. No.

Q. But it was posted with your authority?

A. Right.

Q. Do you recall the reason why this was posted by you on the website?

A. I don't really recall.

Feiner Tr. 12-14.

Q. In this blog which we've marked as Exhibit 22, on the first page it says in pertinent part, and if you follow me please, five lines down in the first paragraph, "The Town's zoning map shows this property to be a CA-1 zone, which permits prescribed multifamily development" and I presume there should be a period.

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A. I see.

Q. At the time you wrote that what zoning map were you referring to?

A. I don't recall.

Q. Well the town maintains a formal zoning map, correct?

A. Yes.

Q. And it's referred to in the town code as the official zoning map, correct?

A. I'm not sure.

Q. And the zoning map reflected that the Dromore Road site as in the CA zone, correct?

A. I'm not really sure what zone it was.

Q. You're not sure now or weren't sure then?

A. Both.

Feiner Tr. 15-16.

Q. Now, even though you may not recall whether or not at the time the zoning map indicated it was in the CA zone do you have any reason to believe that that document was inaccurate with respect to the zoning status of the property as reflected by the zoning map?

A. You know, I don't recall writing this and I don't recall the amount of, you know, double-checking that took place at the time I posted this.

Q. Did you review any documents in preparation for this deposition?

A. No.

Q. Not a single document?

A. I didn't review any documents.

Q. Did you discuss this deposition with anyone other than Mr. Carolei?

A. No. [But see Tr. at 149.]

Q. How many times did you meet with Mr. Carolei?

A. Yesterday and

Q. For how long?

A. For about an hour. And today for about ten minutes.

Q. Other than that hour and ten minutes you haven't spoken to anyone else with respect to this deposition?

A. No.

Q. And you haven't reviewed a single document?

A. I haven't looked at one document.

Feiner Tr. 18-19.

Q. What I have a right to do and I'm going to ask you to do is try to refresh your recollection based upon a document that you generated from your website. Based on your review of the following sentence, does this refresh your recollection regarding your allegation that: "Councilpersons Bass and Sheehan operate in secret about matters in which the public has great interest." Does that refresh your recollection about what you were talking about at the time?

A. Yes. I remember that there was a meeting I wasn't invited. That's all I remember.

Q. And that was a meeting concerning the Dromore Road property, correct?

A. Right.

- Q. The next sentence says, "The moratorium, which was really directed only at the Dromore Road property, would have very significant effect on the Central Avenue area." Does that refresh your recollection that the town was considering the enactment of a moratorium with respect to the Central Avenue district area?
- A. We were talking about a moratorium.
- Q. Does the sentences that we just read refresh your recollection that a moratorium "was really directed only at the Dromore Road property."
- A. You know, my recollection is that it was not directed only at Dromore Road but was for the whole Central Avenue corridor.
- Q. Do you have any recollection then why your document says here, "The moratorium, which was really directed only at the Dromore Road property, would have very significant effect on the Central Avenue district"?
- A. I don't recall really.
- Q. Now, I know you say you don't recall reading Mr. Troy's affidavit but having seen it today does it refresh your recollection that there came a point that you received a copy of an affidavit generated by Mr. Troy that was submitted to the zoning board of appeals that alerted you to the fact about this secret meeting?
- A. I don't really remember receiving, you know, the affidavit or -- and definitely I don't remember reading it.
- Q. Does reviewing Exhibit 22 which refers to the affidavit refresh your recollection that you must have read it?
- A. I don't know if I -- it was really pertaining to the zoning board rather than the town board. So I don't really remember, you know. You know, I don't remember reading it to be honest.
- Q. Well, let's go to page four of Exhibit 22, last sentence, bottom of the page, it says: "I urge you to read the entire affidavit. You will be shocked and angry. And should show both your shock and anger to the four Councilpersons." Does that refresh your recollection that you read Mr. Troy's affidavit?
- A. I don't remember reading the affidavit. You know, if I said I read it -- I mean, this is couple of years -- you know, a number of years ago. You know, I'm not saying I didn't read it. But I don't remember.
- Q. You don't remember? But if you said in an email to the public that you read it and encouraged them to read it you would have read it, correct?
- A. I don't really -- you know, it doesn't really stand out, you know, as something that I remember reading. But again, you know, based on what I'm saying, I'm not saying I didn't read it because -- I just don't remember it.
- Q. And in preparation of this deposition you didn't look at anything?
- A. I didn't look at anything.
- Q. Have you ever looked at any documents with respect to the pending lawsuit?
- A. No. I really haven't spent any -- in fact, that was my concern. I really have spent very little time on this whole case. My guess is probably under an hour in my whole career. You know, practically nothing.

Feiner Tr. 25-30.

- Q. Let's look at page four of Exhibit 22, it says, first paragraph: "Second, instead of having public discussion, the discussions were limited to Bass, Sheehan and Bob Bernstein and Michelle

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McNally. The latter two are not elected officials. It has been noticed for some time Bernstein and McNally effectively run the Town Council, but this is the first time that this was been documented.” Do you recall writing that?

A. Again, it’s not my words so I don’t, you know -- you know, if it was posted it was posted under my name. But it it’s not my style of writing.

Q. Based upon your experience did Bernstein and McNally effectively run the town council for some time?

A. No definitely not.

Feiner Tr. 32-33.

Feiner was then asked about an op-ed that appeared in the *Journal News* under his byline which referenced the “Extraordinary Secrecy” press release he sent out on July 13, 2007 concerning the Dromore Road matter.

Q. First paragraph says: “I agree with much of the Tuesday editorial ‘How to chill speech,’ about the ethics law proposed by the town council. Your editorial also commented on an email I distributed entitled, “Extraordinary Secrecy, Favoritism, Violation of Open Meetings Law by the Town Council.”” Does that refresh your recollection that you in fact sent out what we previously marked as Exhibit 22? And I’m going to show it to you just so there’s no confusion. Does that refresh your recollection?

A. You know, again, I have no reason to deny having sent this out. I just don’t really remember sending it out. It doesn’t seem really the style of my writing. But you know, again, you know, I -- you know, I believe that if it came from paulfeinergreenburghny.com that it must come from me rather than somebody. So I don’t think anybody else sent it out.

Q. And that email is entitled “Extraordinary Secrecy, Violations of Open Meeting Law,” correct?

A. Right.

Q. You go on to say in Exhibit 49, the next sentence: “It happens that my disclosure of the events described in that e-mail was among the most important disclosures that I have made and it has received the significant public outpouring.” Do you recall saying that?

A. Actually, this might have also been written by somebody else. That’s not my style of writing also. But, again, it’s under my byline. So I approved it.

Q. Did you believe that the disclosure of your email, Exhibit 22, was in fact one of the most important disclosures that you had made as a public official?

A. You know, in my life I would say probably not. I don’t think this was the most impor--

Q. As of 2007?

A. I don’t really remember. You know, I don’t really remember, you know, writing that sentence.

Q. If you didn’t write it who would have?

A. I’m trying to think. You know, there might have been people who were advising me, you know, I might have talked to people. You know, I don’t really remember. I’m just trying to figure out -- you know, I just have to sort of jog my memory. I just don’t know whose style of writing this -- this or , you know, that.

Feiner Tr. 47-50.