



June 19, 2017

Dr. Barry A. Weinstein, Supervisor  
Town of Amherst  
5583 Main Street  
Williamsville, NY 14221

Re: Resolution 2017-773 – Westwood Mixed  
Use Neighborhood Project

Dear Supervisor Weinstein and Councilmembers:

This letter is being submitted on behalf of Mensch Capital Partners, LLC (“Mensch”) for the purpose of expressing its serious concerns and strong objections regarding Resolution 2017-773 as included on the agenda of the meeting of the Town Board to be held later today.

The resolution states the Town Board is authorizing hiring special counsel to represent the Town on matters involving the Westwood Project, “...including but not limited to condemnation issues, eminent domain issues, land redevelopment issues, etc., and litigation involving the same.”

As the Town Board is aware, Mensch proposes to redevelop the Project Site, which currently consist of a contaminated brownfield, as an approximately 250 million dollar mixed use neighborhood that has several components, including single-family homes, patio homes, townhouses, senior living, apartments, significant park and green space, and the Westwood Neighborhood Center, which consists of residential living over neighborhood retail and restaurants, a hotel, professional office space and new public gathering spaces (the “Project”).

The review process for the Project began nearly three years ago in July of 2014 and during the lengthy review process, Mensch has at all times been proactive in incorporating input from a wide range of stakeholders including the Planning Board, the public, town departments and committees and a wide range of involved and interested agencies. The review of the Project remains pending before the Planning Board and the Town Board has not yet held the required public hearing to consider the merits of the pending request to amend the zoning classification of portions of the Project Site in furtherance of the Project.

Resolution 2017-773 indicates the Town Board may attempt to exercise eminent domain powers to acquire all of a portion of the privately owned Project Site. Mensch strongly objects to any mention of condemnation and eminent domain in Resolution 2017-773. Both condemnation and eminent domain are defined as the taking of private property by a governmental agency for a “public purpose”. It is inconceivable that the use of eminent domain to acquire the privately owned Project Site, consisting of a contaminated brownfield that would generate substantial annual property taxes benefitting the Town, the Williamsville School District and other taxing

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jurisdictions upon approval and completion of the Project, could serve any legitimate “public purpose”.

A valid question the Town Board should answer before considering adoption of Resolution 2017-773 is why would there be any consideration of spending taxpayer funds to acquire the privately owned Project Site via eminent domain when Mensch is proposing to permanent preserve 83.3 acres of the approximately 170 acre Project Site as Permanent Open Space (48.7% of the Project Site), including nearly 45 acres of publicly accessible parkland. The Project Sponsor has repeatedly advised the Town of its willingness to donate the nearby 45 acres of publicly accessible parkland to Town, so why would the Town Board consider attempting to use eminent domain to pay for the acquisition of privately owned property Mensch is willing to donate to the Town at no cost?

Both the United States and New York Constitutions require a governmental agency exercising eminent domain to pay the owner of privately owned property “fair compensation” for acquisition of property via eminent domain. The use of taxpayer funds to acquire the privately owned Project Site would clearly not be in the best interests of the Town’s taxpayers and would require the Town to not only spend millions of dollars to provide the required fair compensation to Mensch, but would also require the Town incur millions of dollars of clean-up costs in the event the Town’s future use of the Project Site was anything other than its current use, which is an enclosed brownfield not accessible by the public. The use of eminent domain to acquire the Project Site and leave it as its current condition as a contaminated brownfield not accessible to the public would categorically not serve any public purpose and in fact would be an abuse and misappropriation of the use of scarce taxpayer funds.

Please be advised that in the event the Town Board attempts to acquire all or portions of the privately owned Project Site via eminent domain, Mensch will be left with no choice but to pursue all available legal remedies to contest such a bad faith decision, which will be both time consuming and expensive to both parties and clearly would not be in the best interests of the Town’s taxpayers.

As is the case with the review of any proposed project, Mensch is requesting and is entitled to a fair review of the Project on its merits in accordance with the procedures specified in the Town’s Zoning Code, NYS Town Law and the State Environmental Quality Review Act (“SEQRA”). Mensch has at all times during the past nearly three years encouraged and facilitated public input regarding the review of the Project and will continue to do so as the review process continues.

While the Town has the ability to retain special counsel to assist in the review the Project, Resolution 2017-773 should not be adopted by the Town Board in the absence of it first being amended to include language stating as follows:

“NOW, THEREFORE BE IT RESOLVED, that pursuant to Town Law § 20(2), the Town Board hereby establishes an approved list of special counsel to be employed at the request of the Town Attorney on an as-needed basis to represent the Town and/or assist the Town Attorney, on matters involving Westwood, including land redevelopment issues, the required environmental review of

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Westwood pursuant to the State Environmental Quality Review Act (“SEQRA”) and any future litigation.”

Please feel free to contact me at 510-4338 or via e-mail at shopkins@hsr-legal.com if you have any questions regarding this letter or Mensch’s position regarding Resolution 2017-773.

Sincerely,

HOPKINS SORGI & ROMANOWSKI PLLC



Sean W. Hopkins, Esq.

cc: Dr. Deborah Bruch Bucki, Councilmember  
Ramona D. Popowich, Councilmember  
Steven D. Sanders, Councilmember  
Fran Spoth, Councilmember  
Marjory Jaeger, Town Clerk  
Stanley J. Sliwa, Esq., Town Attorney  
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