

September 18, 2018

Mensch files lawsuit to force Town of Amherst to comply with its Laws and Procedures

Legal filing also claims Amherst Town Board has violated Open Meetings Law

Mensch Capital Partners, LLC, (“Mensch”) owners of the former Westwood Country Club in Amherst, filed a lawsuit today (Sept. 18, 2017), against the Town of Amherst (“Town”) and the Amherst Town Board, asking the Supreme Court of the State of New York to compel the Town of Amherst to comply with its own laws and procedures regarding the proposed Westwood Neighborhood project.

The Mensch lawsuit claims that despite good-faith efforts by Mensch to work with the Town Engineer and the Planning Board, The Amherst Town Board and Town Attorney have coordinated numerous illegal actions designed to accelerate the processing of Mensch’s Rezoning Application to ultimately reject the Westwood Project before the end of this calendar year. Most recently, on Aug. 14, 2017, the Town Board adopted Resolution 2017-934, which scheduled a public hearing on both the Westwood Rezoning Application and the DGEIS for Sept. 18, 2017, in violation of the Town’s own laws and procedures.

“Pursuant to Town law, we argued the hearing could not be conducted until the Planning Board has issued its recommendation and the applicant has requested a public hearing,” said Dennis C. Vacco, a partner with Lippes Mathias Wexler Friedman, LLP, who represents Mensch. “Judge Joseph R. Glownia determined that he would not prevent the meeting from going forward tonight based upon the fact that Mensch can thereafter challenge any decision or action which results from the meeting. Judge Glownia has scheduled a hearing on our lawsuit challenging the legality of the Town’s actions for a Preliminary Injunction on September 27, 2017.

“Our lawsuit is motivated by our intention to make sure the Town Board complies with the requirements in the Amherst Town Code. Complying with the Town Code ensures a fair and open review of our project and is in the best interests of all parties,” said Andrew J. Shaevel, Mensch’s managing partner.

According to Shaevel, “Mensch has spent significant time and energy addressing the root cause of Amherst’s sanitary sewer system capacity issues. “Our engineering consultants continue to work collaboratively with the Town, the Town’s Engineering Department and the Department of Environmental Conservation. The systemic sewer issues, if not resolved, will likely prevent any further development in northern and western Amherst, notably including the State University of New York at Buffalo North Campus.”

Vacco said the lawsuit also alleges the Town Board engaged in a series of illegally convened executive sessions, in violation of the State Open Meetings Law. “On each of these occasions, the Town Board violated the legal prerequisite to executive session by

providing vague descriptions rather than identifying the ‘general area or areas of the subject or subjects to be considered.’ Further, it appears that the Town Board, at the direction of the Town Attorney, has abused its use of executive sessions to develop a strategy to accelerate and ultimately reject the Westwood Project.

“As further evidence of the Town Board’s non-compliance with its own laws and procedures, the Town Board voted to hire outside counsel with regard to the Westwood Project (Resolution 2017-773), to have its new lawyers then hire additional consultants (Resolution 2017-907) so their work could be shielded by attorney-client privilege, and then required Mensch to pick up the bill (Resolution 2017-908), which demands Mensch to pay \$100,000 to reimburse the Town for the work of these lawyers and consultants.” Vacco said “Each of these actions is illegal based on current Town law.”

Vacco concluded by saying, “Mensch has every right to expect the Town to process their re-zoning application in compliance with law and based on the same procedures, fairness and open-mindedness that it considers every other application. The Town’s actions are disappointing and heavy handed because they are the product of secret closed door meetings and violate the Town Code. Amherst residents deserve better.”

Mensch’s proposed Westwood Neighborhood Project is an innovative mixed-use, \$250 million redevelopment project, and the first of its kind in Western New York.