

COMMENTS

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BY BRIAN MARSCHHAUSER

Compass Westchester, in a lawsuit submitted Tuesday, Feb. 24, takes aim at a “patently dysfunctional” Yorktown Town Board that it says acted illegally and arbitrarily when it failed to approve a sober living residence at 482 Underhill Ave.

More specifically, the lawsuit accuses Democrat Councilmembers Vishnu Patel and Susan Siegel of conspiring to stall the application for a special-use permit that, if approved, would have allowed Compass Westchester to house up to 14 recovering addicts at a time in its single-family home. On Jan. 20, Patel voted to deny the permit while Siegel voted to approve it. The application was rejected because the Town Clerk’s office requires three affirmative votes to pass any resolution.

Knowing how Patel would vote, the lawsuit accuses Siegel of casting a “grudging” vote to approve the facility to avoid being named in any lawsuit. Siegel and Patel both declined to comment on the matter because it is in litigation.

The lawsuit, written by attorney Bob Davis, is an Article 78 that seeks to nullify the Jan. 20 decision and direct the Town Board to approve the special-use permit. Compass Westchester also seeks compensation for attorneys’ fees. The lawsuit, which will be reviewed by a New York State court, states that Siegel, since being elected to the Town Board in November, has displayed a “negative bias” against the facility, citing her proposal to deny Compass Westchester on Dec. 2, 2014. The draft resolution, which “parroted” concerns shared by neighbors of the proposed sober living residence, leads Compass Westchester to believe that Siegel “actively campaigned” on the promise that she would vote against the home.

Upon the submission of the application, Compass Westchester states it “...found themselves caught in a ‘perfect storm,’ between a vocal group of neighbors opposing the sober living residence and a dysfunctional Town Board with less than its full complement of members with two sharply divided factions—a situation which, as in this case, has regularly deadlocked the Board and prevented it from taking action,” according to the lawsuit.

Additionally, the lawsuit criticizes Patel for his “bizarre” behavior leading up to and after the Jan. 20 vote.

“Patel, who was at every meeting regarding the application, uttered nary a single substantive word about the application, other than on a couple of occasions offering what can only be characterized as nonsensical rants...” the lawsuit states.

Supervisor Michael Grace, who voted to approve the facility, has repeatedly asked Patel to explain his position, saying a vote without basis will leave the Town vulnerable against a lawsuit. Patel, however, has responded only with “non-sequiturs,” according to the lawsuit.

“Patel never offered a single comment regarding the substance of the application,” the lawsuit states. “Nor did he ever ask a single question regarding the application, or express any issues he had with the application, despite many entreaties of the Supervisor to do so.”

Since the application was rejected, Compass Westchester co-owner Tom McCrossan said he plans to open the facility without Town Board approval, arguing that it is an “as-of-right” use consistent with the Town’s definition of “family”—“One or more persons occupying a dwelling unit and living as a single

housekeeping unit with kitchen facilities and other rooms used in common.”

In February, Siegel put forth a draft resolution to change the definition of “family.” Under Siegel’s proposal, a house with five or more unrelated adults would have to apply for a special-use permit as a “Community Residential Facility”—a new term she coined.

The lawsuit also states that Siegel “curiously” never joined Grace in asking Patel to explain his vote.

“Clearly, Members Siegel and Patel hoped this stalemate would delay the application, pending Member Siegel pushing forward her proposed amendments to the Zoning Code once two more Board Members, who she anticipated would agree with her position, would be elected to fill out the five-member board,” the lawsuit alleges.

Compass Westchester states it came under a “full-scale attack” from the neighbors of the facility almost immediately after submitting its application. The lawsuit states the protest was a “classic ‘NIMBY’—not in my backyard-scenario.”

“Initially...much of the opposition focused on sensationalized and unfounded fears about having ‘those people’ in the neighborhood,” the lawsuit states. “For example, neighbors spread false claims that sexual predators would reside on the Property, warned that there was a school bus near the Property, and asked the Board how they would be ‘protected’ from the prospective residents.”

Shortly after, the lawsuit alleges, the neighbors changed course and “opted for the more ‘politically correct’ stance that the Board should not allow a ‘commercial’ use in a residential neighborhood.”

“With their initial arguments having been amply refuted, the few vocal neighbors remaining actively involved in the proceedings commenced a ‘nitpicking’ campaign of ‘technical’ complaints...” the lawsuit states.

A group of neighbors opposed to the facility declined to comment on the lawsuit, saying, “The record speaks for itself.”

Compass Westchester had originally offered up 20 conditions that would it would follow in the event of an approval. Those conditions included annual review of the facility by the Town Board as well as on-site drug testing and screening of all employees and residents. Compass Westchester is now asking the permit be issued without these conditions.

“The conditions...were offered by (Compass Westchester) at the outset of the review process in good faith and solely to appease the discriminatory and spurious opposition of the neighbors,” the lawsuit states. Compass Westchester’s “attempt to mitigate the unfounded concerns of the neighbors and certain Board Members in the interest of obtaining the expeditious approval to which they were legally entitled by offering conditions, not only went unheeded, but was met with only more malicious attacks by the neighbors and the resultant pandering to the neighbors by certain Board Members.”

A White Plains court will open the hearing 9:30 a.m. Tuesday, March 17. Yorktown must respond to the lawsuit by March 12.