

Lawsuit Challenges Port Chester's New Form-based Zoning Code

By Jananne Abel, Editor

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The socioeconomic impact of downtown development Port Chester's form-based zoning code allows for was not sufficiently quantified or mitigated, according to a legal action filed by Sustainable Port Chester Alliance, Port Chester/Rye Branch of NAACP and others on Sept. 21.

Feeling that they were not listened to during the lengthy hearing process that led up to the new form-based zoning code adopted by the Port Chester Board of Trustees on May 20, 2020, Sustainable Port Chester Alliance and the Port Chester/Rye Branch of the NAACP have filed an Article 78 proceeding in NYS County of Westchester Supreme Court in White Plains challenging that rezoning.

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The board met Wednesday night when this topic was discussed in closed session but held off on any decision until their regular monthly meeting on Monday, Oct. 5 when they will again meet in executive session to discuss the possibility of retaining a special counsel to defend the Village.

The Village's response is due to the Court by Oct. 8.

Port Chester Trustee Joan Grangenois-Thomas, who is also the volunteer executive director of Sustainable Port Chester Alliance, has agreed to abstain from any board discussions or actions relating to the Article 78.

The decision to proceed with the Article 78 was made by the entire Sustainable Port Chester Alliance membership, she explained in a Tuesday evening telephone call.

"We don't feel that the Village had actionable data to understand the magnitude of the socioeconomic impact that development would have on the downtown area," she said. "No one else was doing or saying anything about it, so after much debate, which we did not take lightly in the least, we decided that the Article 78 filing was necessary."

According to the 10-page legal document filed Sept. 21, one of Sustainable Port Chester Alliance's primary objectives is "to ensure that lower and middle income persons are not displaced from the Village by and through municipal use practices," and the NAACP "has actively opposed the challenged re-zoning for fear that its



Cover of Port Chester's form-based zoning code adopted by the Village Board of Trustees on May 20, 2020.

implementation will displace low and moderate income minority families and small businesses serving these residents.”

The Village's median household income is \$53,380 compared to the \$92,758 median income of Westchester County families, and immigrants comprise 45% of Port Chester's population, the document states. In addition, the Village is racially divided with three of its five census tracts in the southern half of the village being disproportionately Hispanic, one more racially diverse and one 60% Caucasian.

“The adopted rezoning allows for higher density residential and commercial uses,” states the Article 78.

The Findings Statement on the environmental impact of the new zoning code states that “it is anticipated that implementation of the Proposed Action would have adverse socioeconomic impacts with respect to Housing, Jobs and Employment (i.e., business displacement) and Environmental Justice,” the legal document argues. “However, the findings statement neither quantifies these impacts nor analyzes the disparate impact of these adverse impacts on minority group members.”

As far as housing and jobs, the Findings Statement “does not provide any mitigation measures, but proposes additional studies, completion of which should have preceded certification of the FGEIS (Final Generic Environmental Impact Statement) was complete.” That occurred on 9/25/20.

During the hearing process, members of the NAACP like Bryant Lewis asked about displacement of African American and Latino residents by the proposed zoning changes and if 10% affordable housing would meet the needs of displaced residents. President Tom Kissner worried about the impact of the new rezoning on renters and small businesses, the legal document narrates.

Sustainable Port Chester Alliance submitted an analysis of the DGEIS noting its deficient study of the rezoning's impact on renters, those in need of affordable housing and those running small businesses, it adds.

The Article 78 continues that “the County of Westchester Planning Department commented that the mitigation proposed by the GEIS is ambiguous and non-committal.”

In response, the Village committed to procuring a report within 60 days of the adoption of the Findings Statement and holding local conversations on the report and identifying specific measures to mitigate impacts to businesses that may be impacted.

“Rather than commit to specific mitigation measures implemented in a timely manner, the lead agency has impermissibly deferred substantive consideration of specific mitigation measures,” the legal document charges.

Pace University was commissioned by the Village to do a Commercial Displacement Study, billed as “a mitigation measure of the form-based code to research and provide a report on commercial displacement practices around the country.” The report has been completed and circulated for stakeholder and community comment by the Port Chester Office of Planning and Economic Development, according to an update by Eric Zamft, director of that department, at the Sept. 8 Board of Trustees meeting.

“What are we basing that on?” asked Trustee Grangenois-Thomas. “Anecdotal information? Do we have hard data so we can then make informed decisions? If we knew development would cause x amount of dollars in economic disruption, we could make a decision based on solid data.

“What exactly are we mitigating?” she added. “How do we know what the economic impact of that is? We know that people will be displaced, but that’s just what happens” is what has been said. “What a way to make a decision!

“We have the tools, the information is there,” Grangeniois-Thomas argued. “Why wasn’t that part of the discussion?”

“Make a decision based on data and hard numbers,” she added, “but that was never done. To mitigate it, we are hoping this is the plan that will work, but we don’t know.”

Village Failed to Take a Hard Look

“By failing to take a hard look at the effects of the rezoning on village demographic patterns and to propose concrete mitigation measures relating to these impacts, respondent failed to comply with SEQRA (State Environmental Quality Review Act),” the litigation concludes, adding that “respondent did not put itself in a position where it could meaningfully consider alternatives to the rezoning or measures that might mitigate the predictable effects of that agency action.”

Nor does it quantify the displacement implementation of the rezoning would cause.

Such review was required to comply with the environmental review process, the lawsuit argues.

“By failing to comply with the requirements of SEQRA... respondent acted in an arbitrary and capricious manner,” the document concludes.

The legal action is not asking to stop the new zoning from being effective, “so the status quo will continue until the judge makes a decision,” said Village Attorney Anthony Cerreto.

And it will not affect development applications going forward. “We’re going to continue to process the applications as we have been,” he said.

Grangeniois-Thomas said “there are other things that might hold up development in the Village. It will have everything to do with our current economic crisis.”

“The nature of an Article 78 is a fast-moving process by design,” she added. “It is not meant to drag on and on and on. It’s not about fiscal recompense. It is something that can move fairly quickly through the process.”

The Article 78 asks the Court to “annul the rezoning for respondent’s failure to comply with SEQRA, remand the matter back to the lead agency for further consideration, enter any other order the interests of justice and equity require and order respondent to pay petitioners’ reasonably incurred costs and disbursements as provided by law.”

Grangeniois-Thomas hopes “the Village really learns the lesson that we cannot enact such sweeping changes without doing the deep dive necessary to understand the impact and, for me, this is almost similar to the voting rights case, not recognizing there has been a sea change in demographics and making the necessary adjustments.”
