

NEWS RELEASE

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SERIOUS QUESTIONS RAISED ABOUT SETTLEMENT OF CALVERTON MANOR LAWSUIT

November 7, 2012: Amidst talk of a potential settlement on Calverton Manor's lawsuit against the Town of Riverhead raising objections to the rezoning of their property as a result of the Riverhead Comprehensive Plan adopted in 2004, another perspective calls into question the rationale behind such an agreement and who it would really benefit. The Riverhead Neighborhood Preservation Coalition (RNPC) says it is raising these issues now largely because its leaders suspect that Riverhead Town Board members may not be aware of all the implications of this agreement and may be operating under faulty or, at least, incomplete information on which to base this critical decision.

According to repeated statements by Riverhead Town Supervisor Sean Walter, the Town is moving towards a settlement because the developer's case is strong and losing the suit would put the entire master plan at risk. The RNPC questions this premise. The Supervisor has sited the town's failure to submit the final master plan to the Suffolk County Planning Commission, but according to the RNPC, this does not pose the strong threat being claimed. "There's a simple remedy that would invalidate this legal argument: the Town can simply correct the oversight," notes RNPC President Dominique Mendez. The former administration took several actions in an attempt to address procedural errors formerly uncovered as a result of similar disputes. "If the previous administration did, in fact, fail to correct an old oversight then the Town can and should correct it now and submit proof of that to the court. That would eliminate the supposed smoking gun without undermining the Town's zoning and enabling commercial sprawl in Calverton."

Despite past assurances by Supervisor Walter to Calverton Civic leaders that this is the last pending lawsuit of this type, it has been recently reported that there is another pending lawsuit making similar claims. This one is pursued by Lizem Associates disputing zoning on 179 acres a few miles west of the Calverton Manor property. According to Rex Farr, long-time President of the Greater Calverton Civic Association, "We're all extremely worried now that it's clear this isn't the only lawsuit. Instead of resolving the issue once and for all, as we were told, I now believe that an agreement will almost surely set precedent and lead to more unnecessary giveaways to developers. After all, by settling Calverton Manor the Town puts itself in the position to have to

settle the Lizem lawsuit and reinstate the old zoning there to allow additional development on that huge parcel too. By a series of its own actions, the Town Board could completely undermine and override the comprehensive plan in this small area. It makes me sick to think of what Calverton will look like if we go in this direction.” The Town Board is also currently contemplating the rezoning of 25 acres of Agricultural Protection Zone land that lies just outside the Calverton border, in Riverhead, to enable a dense senior community/assisted living facility to be built. This project is known as Concordia and the developer is GenRac.

Some in the RNPC suggest that it is possible and even likely that Town Board members may be unaware of these implications and may not have an accurate picture of the strength of the Calverton Manor case and the ability they themselves have to weaken it. According to Ms. Mendez, “In addition to correcting any procedural errors, the Town should move to strike Theresa Elkowitz’s affidavit from the suit due to a conflict of interest because she cannot fairly represent the Town while at the same time representing a property owner in litigation against the Town.” Ms. Elkowitz, a repeated contributor to Supervisor Walter’s campaign, testified in her affidavit that “egregious deficiencies” in Riverhead Town’s SEQRA process justify setting aside the entire comprehensive plan, a plan that her firm is currently seeking to update in relation to the EPCAL property. Mendez adds, “Furthermore, the argument that submitting a site plan prior to the adoption of a change of zone in any way entitles Calverton Manor to anything is utter nonsense because site plan submittal does not vest a developer with any rights to zoning. Though developers and those who take up their cause may claim and imply otherwise, it is settled law, as any competent planner or zoning lawyer knows full well.”

“If the Town really wants to protect the zoning enacted as a result of the comprehensive plan then they’d stick to their guns,” adds RNPC co-founder Phil Barbato. The Calverton Manor suits were filed in 2004 and 2005 and, according to Barbato, “as far as we know, all the developers have ever done is try to settle these old suits, not litigate. It’s eerily reminiscent of a well-known developer strategy: file a suit making some threatening claims and keep talking to, pressuring and donating to the officials until they agree to give you what you want. There’s no real intent to pursue what is almost inevitably a weak case in court; it’s simply a backdoor tactic for subverting zoning. And they use it because it works if the Town Board lets it. Unfortunately, generations of residents and competing commercial interests are the one’s who are repeatedly being sold out.”

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