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City & Region

Affordable housing plan wins a victory in a divided City of Tonawanda

Clash over using closed school as affordable housing fierce

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It may sound strange, but the City of Tonawanda in May essentially overturned its own hard-fought appellate court victory over plans to transform a vacant former school into affordable housing.

The case offers an interesting study into what happens when different entities within a local government disagree on an issue, the resistance that housing projects for low-to-moderate income residents can face and the limited options available for reusing schools that close as enrollments shrink.

“I think they have to just look at what’s happening around Western New York with our population aging and schools closing,” said Rhonda Frederick, president and chief executive officer of People Inc., a human services agency. “What other use are they? They sit there like white elephants and become quite a detriment to a neighborhood.”

The city’s Zoning Board of Appeals opposed People Inc.’s plan to build 38 apartments in the former Highland Elementary School, and on three separate occasions in late 2012 and early 2013 denied the agency’s requested variances.

People Inc. and the building’s owner, an intermediary called S Spoth, LLC, filed a lawsuit against the zoning board in State Supreme Court.

Mark A. Doane, a member of the zoning board at the time, said the board’s opposition was meant to protect the character of the neighborhood.

He said the project would result in more traffic. There are no apartment complexes anywhere nearby, he said. And, the median household income of the tenants in the complex would be approximately 50 percent of the surrounding neighborhood and community.

“These types of numbers can have a deleterious effect on property owners looking to buy or sell property in the neighborhood,” according to Doane in court papers.

Doane left the zoning board in March to run for City Court Judge.

But Frederick — and city officials including the mayor and a majority of the Common Council — disagree.

“I feel that a \$10-million investment from People Inc. into Highland school would benefit residents that live in and around there far more than a dilapidated, vacant school building would,” Mayor Rick Davis said. “We’ve been down that road before here in the city, and it wasn’t pretty.”

He was referring to the former Kibler High School on Main Street, which fell into disrepair until it was rehabbed into senior apartments in the mid-2000s. Other eyesores, however, remain. The former Central School and Board of Education building are vacant, Davis said.

“There really aren’t too many reuses for an old school,” Davis said. “That’s the problem we run into here in the city.”

Highland is on a small plot of land, which further limits options, said Davis, who estimated the demolition costs at between \$500,000 and \$750,000.

Davis said he also worried about negative perceptions of the zoning board’s opposition to the project.

“It was starting to come across that we could be viewed as a city that discriminates based on income,” he said.

Justice Tracey A. Bannister in January 2014 ruled in People Inc.'s favor, but the zoning board instructed the city attorney to appeal.

On March 20 — and \$11,052 in legal fees for the city later — the state Appellate Division in Rochester reversed Bannister's decision.

"It is well settled that the determination whether to grant or deny an application for an area variance is committed to the broad discretion of the applicable local zoning board," the appellate court ruled.

But the issue was far from settled. The Common Council by a 3-2 vote on May 19 approved a citywide rezoning law that eliminated People Inc.'s need for the variances, effectively rendering the court battle moot.

"The fear was always that the building would become another Kibler and become a major blight on the community," said First Ward Councilman Charles Gilbert, who supported the rezoning along with Council President Carl Zeiss and Third Ward Councilman Jay Hall.

Gilbert said he recognized that as a separate entity within the city, the zoning board was entitled to appeal the lower court ruling.

"Not wanting to take away from the zoning board, we agreed to go forward with it and let them fight the fight that they wanted to fight," he said.

The Council members opposed to the rezoning said the Council was overstepping its bounds into the zoning board's domain.

"Why did we go through all this legal stuff, when they had won, just to come back and change this?" asked 2nd Ward Councilwoman Jackie A. Smilinich, who represents the Highland neighborhood, according to the May 19 meeting minutes.

Davis and Frederick applauded the rezoning.

"I think the Council had the best interests of not only the neighborhood but the whole city involved when they passed this ordinance zoning change that will now allow People Inc. to sink \$10 million into Highland school," Davis said.

Frederick said the rezoning now makes redevelopment of the school economically feasible for a developer.

Frederick said People Inc. hopes to start construction in November and complete it in a year. Design plans include 35 one-bedroom apartments and three two-bedroom apartments. Income eligibility guidelines will range from \$23,000 to \$41,000 per year, she said, with monthly rents ranging from between \$450 to \$675. She noted that People Inc. has renovated two other school buildings into affordable housing for seniors, in Lackawanna and Blasdell.

"They make great apartments," she said. "It's a great reuse of a building. They're not the easiest buildings to rehab into office space and those kinds of things but they make wonderful apartments."

People Inc. has faced resistance before in other communities, including over its senior housing projects in West Seneca and Orchard Park.

After a negative Town Board vote and a lawsuit in West Seneca, the courts agreed to let the project proceed and the doors first opened last year at Walnut Senior Living. The 47-unit complex already has more than 80 people on a waiting list. People Inc. celebrated the project's grand opening last month.

"People have totally changed their attitude and it was a great win for affordable housing," Frederick said. "I think they're going to see the same thing here. People who are going to move to the City of Tonawanda are people who have some roots there."

The Highland experience could be studied by other communities planning to close schools, including nearby Kenmore-Town of Tonawanda, which is scheduled to close three schools for the 2016-17 school year.

"I know Ken-Ton's going to go through it," Davis said. "I know other communities have gone through it trying to find a reuse for an old school. Some have been successful and others have not."