

2/27/17 Westchester County Bus. J. (N.Y.) 1
2017 WLNR 8779900

Westchester County Business Journal (USA)
Westfair Communications Feb 27, 2017

February 27, 2017

Volume 53; Issue 9

Building goes up, tensions arise in Mount Vernon

Bill Heltzel

A lawsuit over a dispute between property owners in Mount Vernon has exposed allegations of heavy-handed government and noncompliant development.

On the surface, the lawsuit is a private dispute between Blue Rio LLC, the developer of La Porte Apartments at 203 Gramatan Ave., and Frank DeLeonardis, owner of a vacant building at 177 Gramatan Ave.

But the petition filed in state Supreme Court in White Plains on Feb. 3 suggests a greater controversy. Without naming the city of Mount Vernon as a defendant, it paints a picture of city officials improperly using the private dispute to hold up construction.

"It's extraordinary," said Blue Rio attorney Andrew G. Celli Jr. "The city is putting its thumb on the scale until we pay."

"They have genuine site safety issues," responded Mount Vernon Mayor Richard Thomas, whose actions Blue Rio is questioning. "I look forward to an apology from them immediately."

Manhattan developer Peter Fine, the principal in Blue Rio and Atlantic Development Group, is building La Porte next to Hartley Park in downtown Mount Vernon. The 14-story building includes 159 subsidized workforce apartments and 20,000 square feet of retail space.

Last July, during a topping out ceremony, Fine said La Porte could open by September 2016. Now, according to the lawsuit, he needs at least four more months to finish the job.

One theory about the delays, Celli said, is incompetent city oversight because of high turnover since Thomas became mayor last year. More suspiciously, relations went seriously awry, he said, after a private consultant that Thomas had introduced to the developer asked for work. Blue Rio declined.

"Suddenly, Mayor Thomas' interest in shutting down the project became very extreme," said the developer's attorney. Celli would not identify the consultant.

He said the city also ceded authority for building inspections to a company owned by a relative of a political supporter of Thomas. That company was "essentially living on our property" and "seeking violations."

He said several inspectors and city officials have told Blue Rio representatives that Thomas directed them to seek violations and "shut us down."

Thomas denied introducing Fine to a consultant. He defended the use of a private company to inspect the project to "make sure taxpayers are getting the value they deserve."

The mayor said he became concerned about La Porte in September after the federal Occupational Safety and Health Administration fined the contractor for serious safety violations. That triggered a "hard inquiry." City inspectors had not flagged the violations and files were missing, Thomas said, and he restructured the building department.

Inspectors who went back in October or November found more safety violations, such as missing fire extinguishers.

"Every time we discuss code, they cry foul," Thomas said. "These are the laws. All we ask is they follow them."

"It's a shame that they're trying to resort to rumor and innuendo."

Blue Rio is asking the court to grant a license that will allow its engineers, contractors and consultants to enter DeLeonardis' building to protect it during final La Porte construction.

Blue Rio claims that DeLeonardis is making an "extortionate demand" for \$40,000 to allow access to his roof. DeLeonardis says the fee is reasonable because Blue Rio used his building without permission and damaged it.

Blue Rio offered \$1,500 for access to the roof, \$10,425 to repair damages and \$1 million in liability insurance. But DeLeonardis wants \$20,000 for access, \$20,000 for repairs and a \$5 million liability insurance policy.

DeLeonardis bought Mount Vernon's former Sears store in 2001, renovated it and leased it to Westchester Community College.

The college moved out three years ago and the building has been vacant ever since. Recently, he said, two potential tenants have shown an interest in leasing it.

DeLeonardis said he gave the developer a key and permission to enter his building only for the purpose of placing materials to protect the roof from damage during construction. Blue Rio claims it had permission to use the roof as a staging area for construction.

DeLeonardis inspected the building in July and discovered damages. A drain on the roof had clogged, allowing water to leak into several rooms. Grout and mortar were splattered in many places on the roof, stairs and mechanical equipment. Soot stained the stucco on the exterior facades.

A contractor estimated that repairs would cost \$23,355. Blue Rio said it could do the same work for \$10,425.

For six months DeLeonardis pressured the developer to make repairs. Some work was done, he said, but it was shoddy.

He said the city showed little interest in his complaints until December, when Curtis Woods became the new building commissioner and Woods and Thomas inspected his building.

Blue Rio claims DeLeonardis "caused" the city to issue stop work orders and threatened to cause future stop work orders if his demands were not met.

On Dec 13, the lawsuit says, a "swarm" of city inspectors beset the project but issued no violations. On Dec 30, Woods shut down the site "without explanation." On Jan. 4, the stop work order was partially lifted to allow for interior work.

Woods, according to the lawsuit, told Blue Rio representatives that Thomas directed him to stop work and that another order would be issued if the developer did not settle with DeLeonardis.

"I am sure you realize," DeLeonardis wrote to the developer on Jan. 9, that a stop work order "can be reimposed."

The letter was meant to pressure the developer, DeLeonardis said, but he has no special influence with city officials. "I was just making a statement. It's at their option. If they don't listen to me, the city could impose a full stop work order."

He said Blue Rio is using a false implication of special clout with city officials to persuade the court to intervene.

"They have genuine site safety issues," Thomas said of the La Porte Apartments developer. He said his whole team is looking at this building to make sure that Mount Vernon is developed responsibly. "Whatever allegations they're trying to swing this way are fundamentally and categorically false."

The lawsuit also cites pending applications for permits for fire alarms, mechanical work and a generator that were filed in May and June. Woods, according to the lawsuit, told Blue Rio that the permits are "still under review."

City attorney Lawrence A. Porcari said there was no "swarm" of inspectors at the site. The permits are still under review because the building is still under construction, the city has received complaints about the project and the developer's "legal firefight" with DeLeonardis is slowing the process, he said.

Blue Rio also has asked for a permit to allow tenants to move in floor-by-floor during construction. The request is standard, Celli said.

Porcari, however, said the request is unusual and granting it would expose tenants to safety risks. "My office would never agree to that. The fire commissioner would never agree to that," he said. "It's not happening."

If not for interference, Celli said, La Porte would be open. Delays have stopped 90 families from moving in and a Dollar Store from opening and hiring workers and paying sales taxes, he said.

"This is a great loss for the city of Mount Vernon." The city needs more economic activity but it is "protecting an empty building where no economic activity is taking place," said Celli, referring to the DeLeonardis building.

A \$40,000 payment is a small price to pay for access to his building, DeLeonardis said in a Jan. 19 letter to the construction company.

"All of this could have been avoided," he said, "if I had been treated with respect over the last seven months."

BY BILL HELTZEL

bheltzel@westfairinc.com

---- **Index References** ----

Company: Atlantic Dvlpmnt

News Subject: (Accidents & Injuries (1AC02); Fires (1FI90); Health & Family (1HE30))

Industry: (Commercial Construction (1CO15); Commercial Real Estate (1CO51); Construction (1CO11); Housing (1HO38); Real Estate (1RE57))

Language: EN

Other Indexing: (Blue Rio LLC) (Peter Fine; Hartley Park; Lawrence Porcari; Curtis Woods; Andrew Celli Jr.; Alan Richard Havelock Thomas; Alan Thomas; Frank DeLeonardis)

Keywords: Liability insurance; Attorneys; Construction; Violations; Contractors; Economic activity; Permits

Word Count: 1277