

The Edgemont Community Council, Inc.

Founded in 1947 to determine community opinion on civic matters and coordinate community action thereon and to plan and promote the general welfare of the community embraced within Union Free School District #6.

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January 27, 2012

Below are the e-mails between Geoff Loftus, ECC President, and GreenburghTown Supervisor Paul Feiner and Town Attorney Timothy Lewis, regarding the possible development of multi-family housing on Dromore Road, across the street from the Greenburgh Nature Center and adjacent to Edgemont High School's athletic fields.

Once again, the ECC finds itself urging Mr. Feiner, as well as the Town Board, to follow the Town's and New York State's laws and protect the interest of Greenburgh's taxpayers and voters.

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From: Geoff Loftus
To: Paul Feiner; Town Board; Town Attorney
Sent: Friday, January 27, 2012 11:32 AM
Subject: Dromore Road - Building Permit

Paul,

Thanks for calling me to let me know you do not support multi-family development on Dromore Road. Even if the Court is wrong, and we think he is, we still think the Town Board needs to correct the erroneous Zoning Map as soon as possible so to remove any uncertainty that may exist as to the correct zoning classification for that property. We do not understand why you are not moving quickly to get this done.

In addition, your note to John Lucido and Timothy Lewis does not go nearly as far as it should. Under New York state law, the filing of a notice of appeal by any political subdivision of the state, including a Town, automatically "stays all proceedings to enforce the judgment or order appealed from pending the appeal." The relevant state law is CPLR 5519(a)(1). Since the law in New York grants Towns an automatic stay of a court's rulings whenever the towns file a notice of appeal, I would think the proper instruction to Mr. Lucido is "Under no circumstances, while the Town's appeal is pending, should any permits be issued in respect of the Dromore Road property."

Similarly, I do not understand Mr. Lewis's email which, if I understand it correctly, means the Dromore application will continue to go forward while the appeal is pending. Thus, he writes, "Please note that a building permit will not and cannot be issued to S&R Development until SEQRA (State Environmental Quality Review) is initiated and completed and the Town Planning Board site plan approval process is commenced and completed." If the entire application is based on a court ruling that is automatically stayed pending appeal, why is the Town continuing to process the application and why is the Town Attorney then telling us that once these procedures are commenced and completed, a building permit

will be issued?

We need you to confirm our understanding that because an automatic stay is in effect, no building permit can legally be issued to develop that property for multifamily housing. Period. And we need you to confirm it publicly so that it's on the record, and the whole community knows what is going on.

Thanks, Geoff

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Geoff Loftus
President, Edgemont Community Council

From: Timothy Lewis
To: Geoff Loftus
Sent: Thursday, January 26, 2012 5:10 PM
Subject: RE: Dromore Road - legal status

Please note that a building permit will not and cannot be issued to S & R Development until SEQRA (State Environmental Quality Review) is initiated and completed and the Town Planning Board site plan approval process is commenced and completed.

Tim Lewis

From: Timothy Lewis
To: Geoff Loftus
Sent: Thursday, January 26, 2012 3:02 PM
Subject: RE: Dromore Road - legal status

FYI.-Please see § 5519 below.

Also, Mr. Loftus please be mindful that any statements included in emails, blogs, newspapers or periodicals suggesting that S & R's application is being opposed because of potential impacts to the Edgemont School District are not beneficial to the Town. The impact on the school district, whether it be the number of students or the make-up of students, is an impermissible factor for consideration. These types of articles are a real source of concern because they could be revealed and provide additional fuel for litigation.

Effective:[See Text Amendments]

Mckinney's Consolidated Laws of New York Annotated [Currentness](#)

Civil Practice Law and Rules ([Refs & Annos](#))

[Chapter Eight](#). Of the Consolidated Laws

[Article 55](#). Appeals Generally ([Refs & Annos](#))

§ 5519. Stay of enforcement

(a) **Stay without court order.** Service upon the adverse party of a notice of appeal or an affidavit of intention to move for permission to appeal stays all proceedings to enforce the judgment or order appealed from pending the appeal or determination on the motion for permission to appeal where:

1. the appellant or moving party is the state or any political subdivision of the state or any officer or

agency of the state or of any political subdivision of the state; provided that where a court, after considering an issue specified in question four of [section seventy-eight hundred three](#) of this chapter, issues a judgment or order directing reinstatement of a license held by a corporation with no more than five stockholders and which employs no more than ten employees, a partnership with no more than five partners and which employs no more than ten employees, a proprietorship or a natural person, the stay provided for by this paragraph shall be for a period of fifteen days; or

2. the judgment or order directs the payment of a sum of money, and an undertaking in that sum is given that if the judgment or order appealed from, or any part of it, is affirmed, or the appeal is dismissed, the appellant or moving party shall pay the amount directed to be paid by the judgment or order, or the part of it as to which the judgment or order is affirmed; or

3. the judgment or order directs the payment of a sum of money, to be paid in fixed installments, and an undertaking in a sum fixed by the court of original instance is given that the appellant or moving party shall pay each installment which becomes due pending the appeal and that if the judgment or order appealed from, or any part of it, is affirmed, or the appeal is dismissed, the appellant or moving party shall pay any installments or part of installments then due or the part of them as to which the judgment or order is affirmed; or

4. the judgment or order directs the assignment or delivery of personal property, and the property is placed in the custody of an officer designated by the court of original instance to abide the direction of the court to which the appeal is taken, or an undertaking in a sum fixed by the court of original instance is given that the appellant or moving party will obey the direction of the court to which the appeal is taken; or

5. the judgment or order directs the execution of any instrument, and the instrument is executed and deposited in the office where the original judgment or order is entered to abide the direction of the court to which the appeal is taken; or

6. the appellant or moving party is in possession or control of real property which the judgment or order directs be conveyed or delivered, and an undertaking in a sum fixed by the court of original instance is given that the appellant or moving party will not commit or suffer to be committed any waste and that if the judgment or order appealed from, or any part of it, is affirmed, or the appeal is dismissed, the appellant or moving party shall pay the value of the use and occupancy of such property, or the part of it as to which the judgment or order is affirmed, from the taking of the appeal until the delivery of possession of the property; if the judgment or order directs the sale of mortgaged property and the payment of any deficiency, the undertaking shall also provide that the appellant or moving party shall pay any such deficiency; or

7. the judgment or order directs the performance of two or more of the acts specified in subparagraphs two through six and the appellant or moving party complies with each applicable subparagraph.

(b) Stay in action defended by insurer. If an appeal is taken from a judgment or order entered against an insured in an action which is defended by an insurance corporation, or other insurer, on behalf of the insured under a policy of insurance the limit of liability of which is less than the amount of said judgment or order, all proceedings to enforce the judgment or order to the extent of the policy coverage shall be stayed pending the appeal, and no action shall be commenced or maintained against the insurer for payment under the policy pending the appeal, where the insurer:

1. files with the clerk of the court in which the judgment or order was entered a sworn statement of one of its officers, describing the nature of the policy and the amount of coverage together with a written undertaking that if the judgment or order appealed from, or any part of it, is affirmed, or the appeal is dismissed, the insurer shall pay the amount directed to be paid by the judgment or order, or the part of

it as to which the judgment or order is affirmed, to the extent of the limit of liability in the policy, plus interest and costs;

2. serves a copy of such sworn statement and undertaking upon the judgment creditor or his attorney; and

3. delivers or mails to the insured at the latest address of the insured appearing upon the records of the insurer, written notice that the enforcement of such judgment or order, to the extent that the amount it directs to be paid exceeds the limit of liability in the policy, is not stayed in respect to the insured. A stay of enforcement of the balance of the amount of the judgment or order may be imposed by giving an undertaking, as provided in paragraph two of subdivision (a), in an amount equal to that balance.

(c) Stay and limitation of stay by court order. The court from or to which an appeal is taken or the court of original instance may stay all proceedings to enforce the judgment or order appealed from pending an appeal or determination on a motion for permission to appeal in a case not provided for in subdivision (a) or subdivision (b), or may grant a limited stay or may vacate, limit or modify any stay imposed by subdivision (a), subdivision (b) or this subdivision, except that only the court to which an appeal is taken may vacate, limit or modify a stay imposed by paragraph one of subdivision (a).

(d) Undertaking. On an appeal from an order affirming a judgment or order, the undertaking shall secure both the order and the judgment or order which is affirmed.

(e) Continuation of stay. If the judgment or order appealed from is affirmed or modified, the stay shall continue for five days after service upon the appellant of the order of affirmance or modification with notice of its entry in the court to which the appeal was taken. If an appeal is taken, or a motion is made for permission to appeal, from such an order before the expiration of the five days, the stay shall continue until five days after service of notice of the entry of the order determining such appeal or motion. When a motion for permission to appeal is involved, the stay, or any other stay granted pending determination of the motion for permission to appeal, shall:

(i) if the motion is granted, continue until five days after the appeal is determined; or

(ii) if the motion is denied, continue until five days after the movant is served with the order of denial with notice of its entry.

(f) Proceedings after stay. A stay of enforcement shall not prevent the court of original instance from proceeding in any matter not affected by the judgment or order appealed from or from directing the sale of perishable property.

(g) Appeals in medical, dental or podiatric malpractice judgments. In an action for medical, dental or podiatric malpractice, if an appeal is taken from a judgment in excess of one million dollars and an undertaking in the amount of one million dollars or the limit of insurance coverage available to the appellant for the occurrence, whichever is greater, is given together with a joint undertaking by the appellant and any insurer of the appellant's professional liability that, during the period of such stay, the appellant will make no fraudulent conveyance without fair consideration as described in [section two hundred seventy-three-a of the debtor and creditor law](#), the court to which such an appeal is taken shall stay all proceedings to enforce the judgment pending such appeal if it finds that there is a reasonable probability that the judgment may be reversed or determined excessive. In making a determination under this subdivision, the court shall not consider the availability of a stay pursuant to subdivision (a) or (b) of this section. Liability under such joint undertaking shall be limited to fraudulent conveyances made by the appellant subsequent to the execution of such undertaking and during the period of such stay, but nothing herein shall limit the liability of the appellant for fraudulent conveyances pursuant to article ten of the debtor and creditor law or any other law. An insurer that pays money to a beneficiary of such a joint undertaking shall thereupon be subrogated, to the extent of the amount to be paid, to the

rights and interests of such beneficiary, as a judgment creditor, against the appellant on whose behalf the joint undertaking was executed.

CREDIT(S)

(L.1962, c. 308. Amended L.1963, c. 532, § 37; L.1965, c. 744, § 1; L.1975, c. 70, § 1; L.1979, c. 239, § 1; [L.1988, c. 184, § 5](#); [L.1988, c. 493, § 1](#).)

Current through L.2011, chapters 1 to 55, 57 to 521, 523 to 594, and 597 to 600.

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From: Paul Feiner

Sent: Thursday, January 26, 2012 12:01 PM

To: Timothy Lewis; Town Board; John Lucido

Subject: dromore road building permit

John: Before any building permit is issued re: Dromore Road, please provide the Town Board with the opportunity to review the request. We can schedule a work session on this as soon as a request for a permit is made. A number of residents have expressed concern that a building permit could be issued anytime and I want the Board to be aware of any request before actions are taken.

PAUL FEINER