

# Suit attacks historic buildings law

By JESS FASANO

The owners of a home classified as a Tier 1 historic building under the town's Historic Building Preservation Law is suing the town with the aim of having the law annulled.

Camillo and Denise Santomero filed the lawsuit against the Town of Bedford and its town board in Westchester Supreme Court Aug. 14. The law firm of Shamberg Marwell Hollis Andrey-cak & Laidlaw P.C., in Mount Kisco, is representing the Santomeros.

The town board adopted amendments to the Historic Building Preservation Law by a 3-1 vote in April, following a contentious public hearing.

The amended law details a tiered property classification system for buildings worthy of historic designation. Tier 1 includes buildings constructed in 1900 or earlier and are substantially intact. Tier 2 designates buildings of historic or architectural importance to the town, but are less significant or intact than those in Tier 1. Both tiers are subject to regulations.

Substantially compromised properties that still contribute to the historic character of the town are categorized as "unregulated."

During the April public hearing, people spoke both in favor and opposition to the law's amendments, with some calling on officials to repeal the law entirely.

P. Daniel Hollis, a partner in the law firm representing the Santomeros, spoke on their behalf at the public hearing. He requested the board not adopt the amendments, and instead, create a voluntary process for owners of historic homes to register their properties.

Mr. Hollis raised the concern that subjective standards may be used when

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— TOWN SUPERVISOR CHRIS BURDICK

determining which properties to include in the historic buildings survey. According to Mr. Hollis, the amended law also placed too much discretion in the commission and its designation of historic properties. He advised the board of impending litigation should the amended law be passed.

The amendments were part of an overhaul of the pre-existing law that was passed in 2003. Officials deemed the pre-existing law as being too stringent and complex, and regulating too many properties while vesting excess authority in the Historic Building Preservation Commission.

The amended law was the result of a five-year effort by the HBPC and the town board, which included four public information sessions, five work sessions and the services of outside consultants who prepared a survey of the town's historic properties. The survey is included as an appendix to the law.

The Santomeros' lawsuit describes the amended law as "overbroad and vague," and claims it violates the "due process clause of the constitutions both of the United States and New York state." In the lawsuit, the Santomeros are also seeking for the designation of their property on Guard Hill Road as a historic building to be removed, among other judgments.

Town Supervisor Chris Burdick said this week that town officials and counsel have reviewed the lawsuit and found the Santomeros' allegations to be without merit.

"We feel that the law has been very carefully fashioned after significant public input," Mr. Burdick said. He also noted that multiple notifications about the amendments to the law were sent to property owners who would be directly affected.

According to Mr. Burdick, a stipulation in the law allows for property owners whose homes are subject to regulation to appeal for the reclassification or declassification of their home as a historic building. He said the Santomeros have not attempted to challenge the tier classification of their home prior to filing the lawsuit.

"We're not going to repeal the law," Mr. Burdick stressed.

Town Attorney Joel Sachs affirmed Mr. Burdick's position, saying he does not believe the lawsuit "has any legal basis at all."

According to Mr. Sachs, such preservation laws have been upheld throughout New York state. He reiterated that Bedford property owners who are dissatisfied with the designation of their historic home are entitled to a site visit and meeting with the Historic Building Preservation Commission. The HBPC is tasked with reviewing the property and making a recommendation to the town board as to whether the home's designation warrants a change.

Since the amended law was enacted, 17 owners of historic properties have appealed their home's designation. According to the commission's chairman,

John Stockbridge, the HBPC visited 13 of the 17 properties as of Monday, Aug. 28. Of the 13, Mr. Stockbridge said the HBPC is recommending to the town board that two homes be reduced in classification from Tier 1 to Tier 2, one home be moved from Tier 2 to unregulated and one home be declassified. The town board has final say regarding changes to the designation of historic homes.

According to Mr. Stockbridge, the HBPC was expected to have completed its site visits to all 17 properties by Aug. 30.

Mr. Stockbridge noted the designation changes would be discussed with the town board at a public meeting.

Town board member Don Scott, who was the only board member who opposed the adoption of the amended law, had advocated for extending the April public hearing. Mr. Scott said on Wednesday that he would have supported the law if the board had more time to react to statements made at the public hearing prior to adopting it. Mr. Scott also explained that it would have been prudent for town officials to further discuss the potential risk of litigation after Mr. Hollis's statement on behalf of the Santomeros at the April public hearing.

Mr. Scott said he "can live with" the law that was passed, but believes the manner by which it was adopted was "a bad process."

As of Monday, Mr. Sachs said the town was in the process of gathering documents to present its affidavit to the court, and had not yet issued a response to the Santomeros' lawsuit. He noted the town has until Sept. 22 to respond, although the plaintiffs' attorneys indicated the possibility of granting an extension.