

# Staten Island Sunday Advance

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"WE ARE EXTREMELY CONFIDENT THAT A RULING WILL FORCE CITY PLANNING TO ISSUE SCHOOL SEAT CERTIFICATIONS IMMEDIATELY. WE BELIEVE ... THE CITY CAN AND WILL BE LIABLE IN DAMAGES TO ANYONE WHOSE PROJECT HAS BEEN HELD UP DUE TO THIS UNLAWFUL ACTIVITY."

— R. RANDY LEE, A LAWYER AND CHAIRMAN OF THE BOARD FOR THE BUILDING INDUSTRY



"I'D RATHER SEE THEIR [THE BUILDING INDUSTRY'S] ENERGY WORKING WITH COMMUNITY LEADERS, ELECTED OFFICIALS AND CITY PLANNING TO COME UP WITH A RATIONAL PLAN, INSTEAD OF BEING NEGATIVE ALL THE TIME."

— DENNIS SARLO, CHAIRMAN OF COMMUNITY BOARD 3

## Builders to sue over school seat law

Zoning laws allow City Planning to withhold new housing approvals when seats are at capacity

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Staten Island builders say they are taking the city to federal court over South Richmond's school seat certification process — a unique zoning tool on the books for more than 20 years which they now say is unconstitutional.

In what is shaping up to be a precedent-setting battle, the Building Industry Association of New York City said it plans to sue over the law which requires builders to obtain school seat approvals for their homes.

Members of the trade association said they will argue that the school seat requirement in South Richmond — created in 1975 as a safeguard for an anticipated population boom in the area south of Bay Terrace — is a violation of the U.S. Constitution.

"We have to go ahead with this. We have no choice," Edward Lauria, president of the Grasmere-based builders group, said.

There have been renewed calls for a lawsuit ever since the City Planning Department announced earlier this month that there will be no more school seat certifications issued to builders until the end of October.

City Planning put a hold on school seats — a ban which has affected the pending construction of 800 homes throughout South Richmond — after Board of Education figures showed there were no more school seats in

the district.

Lauria said builders on the South Shore are at a disadvantage because of the unique requirement, which is not mandated in other parts of the city where school overcrowding is severe.

"It should be equal application under the law," he said. "You don't provide one thing in the city and not in another part of the city. You don't make it illegal to smoke in Brooklyn and not in the Bronx."

Association members said the lawsuit will most likely name Mayor Rudolph Giuliani, City Planning Commissioner Joseph Rose and the Board of Education — the agencies responsible for calculating and doling out the certifications.

R. Randy Lee, a lawyer and chairman of the board for the Building Industry, said law firms from around the country have been interviewed to handle the case. A Manhattan firm that specializes in constitutional and land use law is being interviewed tomorrow and a final selection is expected to be made this week.

Lee estimated the suit will cost builders anywhere from \$100,000 to \$250,000.

"In no way should anybody think that this is a bluff," he added.

Lee said the city has not lived up to its own promise in the original South Richmond Special Zoning text to provide infrastructure improvements on the South Shore to match development.

But he said it's the city's refusal to count 900 seats in



City Planning Commissioner Joseph Rose

seat certifications that is illegal.

So far, City Planning and the Giuliani administration have not counted PS 56 in a formula used to determine the number of available seats in the South Richmond district — even though schools under construction can be considered as seats certifiable for builders.

"We are extremely confident that a ruling will force City Planning to issue school seat certifications immediately," Lee said last week.

"We believe that what the city has done is create what is known as a temporary taking, and that the city can and will be liable in damages to anyone whose project has been held up due to this unlawful activity," he added.

Melanie Meyers, general counsel for City Planning, defended the process.

"I think City Planning and the administration read the [zoning] provision differently than the builders. The issues are infrastructure and sufficient capacity in schools."

Ms. Meyers said that under the zoning resolution, City Planning can withhold seats in schools under construction if the district is already at capacity.

Civic leaders say the latest move by builders is an outrageous attempt to do away with the only safeguard against school overcrowding in the fastest-growing area in the city.

"They are selling the children down the river," said Lorraine Sorge, co-chair of the Advocates for Best Community Schools (ABC'S), a group created to fight overcrowding in South Shore schools.

"I think the builders should hide their heads in shame. There is no other place in this country that builds homes knowing that there are no school seats for the children to sit in," she added.

Dennis Dell'Angelo, co-chair of the ABC'S group, agreed.

"All these builders with all their millions and millions of dollars should help the community out. What they are doing is obscene ... They have no moral integrity."

Dell'Angelo and Mrs. Sorge also have criticized the city for playing a numbers game with its school seats formula.

The two worked on a proposed text amendment that would have prevented the city from counting seats in schools that have not yet opened. That measure was shot down in the City Council in May on a technicality.

## Zoning District was drawn up in '75 to handle expected population boom

The Special South Richmond Zoning District was drawn up in 1975 to prepare for the inevitable population boom that the South Shore expected to see in coming years.

The special district is protected by zoning regulations that force builders to apply to the City Planning Department for one school seat for every two housing units they build from Bay Terrace to Tottenville.

The process works this way: The city Board of Education compiles reports on a sporadic basis which show how many seats are available in public elementary and intermediate schools. The City Planning

Department then uses these reports to dole out the seats to builders.

City Planning will not certify more than 100 seats at a time to a single builder, since it is unlikely the builder will construct more than that number of units in a year. If builders do not use the seat certifications in one year's time, the permit for each one not used is revoked.

As the permits expire, the pool of available seats fluctuates each month.

For certification purposes, available seats in public elementary and intermediate schools are lumped together.

Others say the latest move is just a ploy to draw attention to the pending release of the South Shore Zoning Study that City Planning has been working on for more than a year.

"The present leadership for the Building Industry is engaging in a propaganda public relations campaign because they are worried about the zoning study coming out," said Dennis Sarlo, chairman of Community Board 3.

"I'd rather see their [the Building Industry's] energy working with community leaders, elected officials and City Planning to come up with a rational plan, instead of being negative all the time," Sarlo added.

In fact, builders have expressed concern recently over the South Richmond study, which is expected to make sweeping zoning recommendations for the South Shore. Some have said the latest hold on school seats is another attack on development.

William DiBiasi, director of communications for the Building Industry, blamed the Board of Education for the citywide school seat crunch.

"The community has a justified gripe and the builders have a justified gripe. We are the community of South Richmond. The Board of Education likes nothing better than to pit us against each other," he said.

More than 100 homes were approved this summer just before a July Board of Ed report showed a deficit of 56 school seats in the district.

Douglas Brooks, executive director of the Staten Island Office of City Planning, has said the deficit appeared when the Board of Education began using October 1996 school enrollment figures. Prior to last month, education officials were using enrollment numbers from 1995.

Spokesman Philip Russo said the Board of Ed typically uses the new enrollment figures in the summer, after the school year has ended and officials have time to tally those numbers.

"There is nothing out of the ordinary," Russo said of the latest calculations. "[Builders] are operating under the same rules and regulations in the South Richmond district that they have been for years."

The largest project stalled by the school seat certification ban is the Bloomingdale Woods development — a 350-unit development for Pleasant Plains, City Planners have said.

For South Shore builder Otto Savo — whose company, Dora Homes, is awaiting school seats for two separate projects — this will affect his bottom line.

Savo needs additional certifications to build more than 100 colonial homes in his Covington Park development in Huguenot, and 22 more homes in Tottenville.

"Instead of the city building schools, they are doing the opposite and are killing the economy," Savo said.