

Palisades mall owners sue; want more retail space



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The Palisades Center wants to expand its retail space. The expansion would increase the center's retail space to 2.1 million square feet. (Video by Mark Vergari/The Journal News) Video by Mark Vergari/The Journal News

The expansion would increase the Palisades Center's retail space to 2.1 million square feet.



(Photo: Mark Vergari/The Journal News)

The owners of the Palisades Center are suing Clarkstown in a bid to override a decades-old restriction that is keeping them from turning 250,000 square feet of unoccupied space inside the mall into additional retail stores.

[EklecCo NewCo filed the lawsuit](#) in U.S. District Court on Tuesday after contending years of negotiations with Clarkstown officials over the West

Nyack mall failed to resolve the matter.

"Our lawsuit seeks to invalidate an illegal and unconstitutional restrictive covenant that was improperly imposed two decades ago by the Town Board," the mall ownership said in a statement. "The Town Board claims that the restrictions in that covenant require both the Town Board's approval and a public referendum before we can pursue our plan to improve Palisades Center."

COMMENTARY: Time to expand the mall?

The owners want the covenant erased to allow them to apply to the town Planning Board.

The expansion would increase the Palisades Center's retail space from 1.8 million square feet to about 2.1 million square feet. The developers built the mall with the extra retail space, which has been blocked off for nearly 20 years. Voters rejected expanding the mall's retail space once already.



A wall near the ice rink on the fourth floor blocks off unused space at the Palisades Center in West Nyack. (Photo: Mark Vergari/The Journal News)

EklecCo's lawsuit claims the Town Board forced the developer to agree to the restrictive conditions in 1996, when construction of the multimillion-dollar mall had started after it was approved by the Planning Board and receiving a zone change from the Town Board.

The town wanted three roads that were deemed flood-prone and dangerous closed down, leading to what EklecCo calls "illegal and unconstitutional restrictions and conditions, which were unrelated to any effects of the already-approved version of the mall."

The space in question is primarily located along the mall's north side above Lord and Taylor on the third and fourth floors next to the community rooms and ice rink, with other spaces scattered throughout the center.

The public defeated an expansion of the mall during a 2002 public referendum. The Journal News reported prior to the referendum that EklecCo spent nearly \$1 million to convince voters to support the plan, while a band of civic-environmental associations put together about \$8,000 to oppose it.

EklecCo attorney Craig Leslie said Wednesday that company officials have attempted to negotiate with town officials over the years, including with former Supervisor Alexander Gromack and his successor, George Hoehmann, a former councilman.



Unused space on the fourth floor of the Palisades Center in West Nyack. (Photo: Mark Vergari/The Journal News)

Town Attorney Lino Sciarretta said EklecCo has not formerly served the town with the lawsuit, but he's seen a copy and is familiar with the company's arguments. He said the company had filed notice to sue.

Sciarretta, who lived in Clarkstown when the company first proposed opening up closed retail space, said the legal action "has no merit and we will defend the town vigorously."

"Twenty years ago EklecCo agreed to a process and acquiesced to that public process," Sciarretta said. "Rather than follow that process they elected to enter litigation."

Leslie said the company felt it has strong legal grounds based on a U.S. Supreme Court in 2013 that found government land-use agencies cannot attach conditions to permit requirements unless the condition bears a "nexus" to the impact of the proposed project.

Sciarretta said he was familiar with the high court's decision and would reserve comment for the town's defense.

The mall opened in 1998 after more than a decade of battles between the owners and their supporters, including area unions, against opponents that included then-Supervisor Charles Holbrook and environmental and civic organizations.

Leslie said the town essentially told the mall's owners back in 1996 if they didn't agree to the restrictive covenant and dispose of the roads, the town would close down construction. EklecCo, which is affiliated with Pyramid Companies based in Syracuse, already had invested tens of millions of dollars into building the mall on former landfills adjoining routes 59 and 303 in West Nyack.

Leslie said the company would have faced financial ruin with any construction stoppage if it didn't agree with the town's conditions blocking the addition of more retail space.



Unused space on the fourth floor of the Palisades Center in West Nyack, is pictured, Aug. 17, 2016. This is the area above Lord and Taylor. The owners of the Palisades Center are suing Clarkstown in a bid to override a decades-old town-imposed restriction that is keeping them from turning 250,000 square feet of unoccupied space inside the property into additional retail stores.

(Photo: Mark Vergari/The Journal News)

Former Councilwoman Shirley Lasker said she recalls the mall owners proposing the restrictive covenant keeping the mall at 1.854 million square feet, blocking any expansion during a Town Board meeting in order to get ownership of the three roads. She opposed the expansion, and won election to the Town Board partially on her opposition to the mall.

She said the mall owners and supporters believed voters would approve an expansion, which didn't happen.

"Now they are trying to get around a public vote, which they proposed as part of the restrictive covenant," she said Wednesday. "What I think they should do is bring it up for a vote again and let the people decide. Maybe times have changed. My vote is No."

The lawsuit claims EklecCo has been harmed financially by not being able to expand based on the town's actions.

"They had us in a position where they were able to use their power of land use approval to compel us to do something that they would otherwise be unable to get us to do," Leslie said. "We tried to resolve this in way that would benefit town taxpayers but we were unable to reach an agreement."

EklecCo chief executive officer Stephen Congel maintained in a statement that the proposed retail expansion and interior improvements would comply with all zoning requirements, would have minimal impact on area roads, and would have little or no impact on the level of services currently provided to the mall by the town.

Congel also cited the financial benefits to the town, an argument the original developers used to get town approvals. He said the expansion would create 700 construction jobs and 500 permanent jobs, while generating several millions of dollars in permit fees, between \$5 million and \$7 million annually in sales taxes, and millions of dollars in additional property taxes.

Leslie said EklecCo's lawsuit seeks millions of dollars in damages from the town as well as legal fees.