

Board Meeting

September 27, 2007

A Special Public Hearing was held by the Board of Trustees held at the Municipal Building, 14 Baker Street, Patchogue, New York on September 27, 2007.

The meeting was called to order at 7:00 p.m. by Deputy Mayor McGiff with Trustees Dean, Devlin, Krieger, Village Attorney Snead and Village Clerk Seal present. Mayor Pontieri arrived at 7:15 p.m. Trustee Hilton was not present.

The flag salute was made.

Deputy Mayor McGiff read the safety message.

Deputy Mayor McGiff stated we are here for the continuation of eminent domain proceedings on 1-15 and 17 West Main Street, Patchogue, New York.

Village Clerk Seal read: Please take notice that the continuation of a public hearing of the Village Board of Trustees will be held at Patchogue Village Hall, 14 Baker Street, Patchogue, New York at 7:00 o'clock in the evening on September 27, 2007, pursuant to Article 2 of the Eminent Domain Procedure Law for the Village to consider the acquisition of certain fee interests of real property located at 1-15 and 17 West Main Street in Patchogue, New York, also known as District 204, Section 9, Block 5, Lots 25.2 25.3 and at 26 on the land and tax map of Suffolk County, ratifying a vesting map and making determinations and findings in connection with said fee interest acquisition required for the removal of substandard (blighted) and dangerous conditions and related public purposes, at which hearing the Village Board will afford a reasonable opportunity to all persons interested to be heard concerning the public use, benefits and purposes to be served by the acquisition of said fee interests for the project, the general effects of the project on the environment and residents of the Village and such other factors as may be relevant thereto. Please take further notice that those property owners who may subsequently wish to challenge condemnation of their property via judicial review may do so only on the basis of issues, facts, and objections raised at the aforementioned public hearing. By order of the Board of Trustees. Signed Patricia Seal, Village Clerk.

Mr. Mahoney stated: As Ms. Seal noted, this is a continuation of a hearing which was commenced July 31st and is continued now for a second time. I wanted to introduce a few other exhibits for the record.

Exhibit J. A survey and assessment of certain properties located in downtown Patchogue to determine if they qualify as an urban renewal area pursuant to New York State Urban Renewal Law as prepared by Phillips, Preiss, Shapiro Associates dated June, 2007, and it is indicated that it is prepared for the Village of Patchogue.

Exhibit K. A June 13, 2006, inspection of the subject premises we have discussing these last couple of months, 1-15 West Main Street and 17 West Main Street, Patchogue. Inspection was done by John Poulos, Chief Fire Marshal and James Carlson, Building Inspector Village of Patchogue.

Exhibit L. A letter dated September 17, 2007, to the Honorable Paul Pontieri, Mayor of the Incorporated Village of Patchogue. The letter has been signed on September 17th by Salvatore Garafalo, Chief Fire Marshal, Town of Brookhaven. That includes several other attachments in which they indicate an inspection on Sept. 12th of the JM Furman Realty Corp. building as well as premises owned by the Fur-Conksmith Corporation

Exhibit M. A letter dated September 24, 2007, to John J. Roe III and Morton Ruden which among other things notifies them of tonight's hearing.

Village Attorney Snead asked: Those exhibits on Sept. 17th was that related also to the owners of the building called the “Gutte Building?”

Mr. Mahoney stated: Yes.

Village Attorney Snead asked: The second one was J.M. Furman Corporation regarding 1 West Main Street?

Mr. Mahoney stated: Yes.

Village Attorney Snead asked: the first one was James Furman Realty Corp. regarding 48-60 North Ocean Avenue.

Mr. Mahoney stated: Yes.

Michael Jovishoff stated: I am a senior associate with the planning and consulting firm of Phillips Preiss Shapiro Associates. I have a Masters Degree in city and regional planning. I have 20 years of experience as a planner. I have worked for Phillips Preiss Shapiro Associates for approximately 20 years. I actually am a licensed professional planner in the state of New Jersey. The state of New York does not require a license, only New Jersey does. I have extensive experience in preparation of redevelopment plans, both in New York and New Jersey.

Mr. Mahoney asked: Mr. Jovishoff did there come a time when anyone at the Village of Patchogue asked you to consider blight issues in downtown Patchogue?

Mr. Jovishoff stated: Yes. My firm was retained to evaluate a portion of downtown Patchogue just immediately north of Main Street and my assignment was to determine if there are properties within this area which meet the definition of blighted under the NYS Urban Renewal Law. The Urban Renewal Law provides a municipality with the power to designate properties in an urban renewal area. And with that, of course, goes with certain powers of acquisition through eminent domain.

Mr. Mahoney asked: Did you undertake a study?

Mr. Jovishoff stated: Yes. The purpose of the study was to determine as defined in the Urban Renewal Law if any properties within that area according to the Urban Renewal Law substandard and an unsanitary area. The bottom line of our conclusion is that, in fact, there are several properties located in this area, and I will describe this area in a minute, that do meet this criteria.

Mr. Mahoney asked: What steps did you take in preparing your study?

Mr. Jovishoff stated: The Urban Renewal Law does not provide the criteria or the individual factors once you take into consideration above and beyond the statement that the property is unsanitary and substandard.

Mr. Roe stated: I object to this testimony since the Urban Renewal Law does not set forth standards. I don't think this witness should testify with respect to any standards since there are none in the Urban Renewal Law, I don't think this testimony is relevant.

Mr. Jovishoff stated: To continue. As I said, there are no specific standards above and beyond the statement of unsanitary and substandard. However, our experience has shown that there are factors and we have established for the purpose of this study ten factors of criteria we utilize in evaluating these properties.

Mayor Pontieri asked: Mr. Jovishoff, are these standards that you use in evaluating all projects?

Mr. Jovishoff stated: Yes. These standards are used in evaluating all projects we do in New York. And in fact, these standards are derived and are specifically noted in a parallel New Jersey redevelopment statute. These standards that we are using are accepted standards for evaluating properties to determine if they are blighted. I will summarize the criteria: physical deterioration and substandard site conditions; physical or economic obsolescence to the property; excessive coverage or overcrowding of improvements on the property or faulty placements of improvement on the property; health, building and other code violations; the absence of utilization or under utilization of the property; an unaesthetic condition; activities or conditions which are a nuisance to the community such as noise, odors or traffic; illegal activity on the property; a lack of maintenance on the property; and to some extent non-conformance with zoning or community plans for the area which the property is located. In terms of our methodology, we conducted a field survey of the study area. And this included a review or a survey of property exteriors and, where accessible, interiors. From this information we evaluated each of the properties in the study area against these ten criteria that I referred to. The properties that did qualify under one or more of the criteria were further evaluated based on any Village municipal records that may have been available for that property regarding fire, building code inspections, etc., to determine if there was a presence of any condition or problems that were not apparent from a visual inspection. The study area that we surveyed that was assigned to us.

Mr. Roe asked: I would like to know if the witness is reading from a statement and if so, I would like to get a copy of that statement.

Mr. Jovishoff stated: Those are my notes; my outline. The actual statement and report has been submitted to you already. These are in fact just my notes.

Mr. Mahoney asked: Mr. Jovishoff, did you in fact prepare a report?

Mr. Jovishoff stated: Yes. I had prepared a report and a report has been submitted which is document submitted as Exhibit J.

Mr. Roe stated: I am going to object to that. It is neither dated nor signed and no qualifications. I am going to object to its entry and consideration by this board.

Mr. Jovishoff stated: Let me just review the study area we considered to start with. The study area consists of entire tax block 5 that is outlined in black and also a small portion of tax block 7 which would be several properties on the east side of North Ocean Avenue. Generally, the study area is bounded to the south by West Main Street, to the east by North Ocean Avenue, but as I indicated there are several properties on the east side of North Ocean Avenue that were included in the study area and to the north by Lake Street, and to the west by West Avenue. The study area, as you are well aware, is developed with shops, upper floor offices which for the most part front on Main Street, to the rear fronting on Lake Street are municipally owned and privately owned parking lots. The buildings on Main Street are predominantly two stories in height. The study area zoning as indicated on Figure 2 (and all the figures that you see here are in the report). The bulk of the study area is zoned D3-Business. There is a small portion that is in the D2 district and that would be on the west side of the block. It's a half a block, roughly. There is a small portion of the block that is zoned C-Residence which is on the northwest portion of the block adjacent to Lake Street. And there is also a small portion that is zoned E-Industrial right on the corner. This is not developable for industrial purposes. It is below the requirements of zoning in terms of size. There is also a very small portion on block 5

and that is actually the drive-through to the bank. The D2 and D3 business districts permit a full range of retail uses. This includes personal services and office uses also. Based on our survey of the 19 study area properties, we identified 5 properties or property assemblages that meet one or more of the criteria that I described. The remainder, approximately 14 properties, are generally in good to excellent condition and are generally fully or mostly occupied. I would like to go over the qualified properties for you. Give you a description of the properties as well as conclusions or findings about the property.

The first property I would like to discuss is block 5, lot 16. On figure 3 the properties that we have determined we consider blighted or meet the requirements of Urban Renewal are shaded. The order I am doing this is clockwise. It is a relatively random order.

The first is block 5, lot 16. It is an unimproved lot on the west side of Havens Avenue. It extends from West Main Street to Lake Street and has frontage on all three streets, Lake Street, West Main Street and Havens Avenue. The northerly two thirds of the property are partially paved. The pavement is broken. It is rutted in areas. And the southern portion of the property is partially grassed. There is a partial fence around it. The property, in general, is observed as being poorly maintained. There were no records on construction or zoning permit violations that were available from the Village on this property. In my opinion, the property meets the criteria as follows. It is poorly maintained. It has deteriorated. The property appears to be unused. It presents an unaesthetic condition, a poor visual image, particularly when you view this property within the context of the general good condition and the general development of West Main Street. Finally, the poor condition, in my opinion, indicates that there is an ongoing disinvestment. The property is vacant and relatively unmaintained and has been for an extended period of time according to the information I have. And the absence of improvements, the lack of use, does not support the West Main Street corridor or does it support the intent of the zoning.

The next property is block 5, lot 14. That would be the property immediately adjacent and to the west of the I just read, the vacant lot. That property is occupied by a small commercial building that is set back approximately 80 feet from West Main Street. There is a large paved area between the building on West Main Street and our inspection indicates the building is not actively used. There is some evidence that portions of the building is used for dead storage. The building and property are in fair condition. The interior appears to be in fair condition also. Again, in this case there are no records of construction or zoning permits or violations on the property that we were able to review. The property, in my opinion, meets the criteria for the following reasons: dead storage, does not represent an effective use of the property in my opinion particularly again when viewed in the context of the active main street, commercial area. The structure itself is set back 80 feet from West Main Street with parking in the front. This is an outmoded, out of date configuration for the type of retail development along Main Street that currently exists and that the zoning promotes along West Main Street. The property is well below the aesthetic standards of the surrounding West Main Street and the commercial corridor generally. Again finally, the poor configuration and lack of use does not support the West Main Street corridor or the intent of zoning in the area.

The next property is block 5, lot 15. That is a small property located just north of Lot 14. It fronts on Lake Street. It is occupied by an abandoned garage-type building that I have been told was originally used for selling produce. The building is abandoned, vacant, it is sealed. The building occupies almost the entire property except for a small setback it has from Lake Street. The condition of the building is poor to fair. Again, there were no records on construction or zoning violations for this property. This property, in my

opinion, meets the criteria for the following reasons: The property has been vacant for an extended period. It is within one block of West Main Street corridor. It is adjacent to an existing commercial development on Havens Avenue. As such in its present condition, it fails to make any contribution to the vitality of the commercial corridor. The property itself again within the type of development and within the context of zoning is outmoded. It is out of date in terms of its functionality. And the property is below the aesthetic standards of the West Main Street corridor. It does not support the intent of the zoning of West Main Street either.

The next property is block 5, lots 25.2, 25.3 and 26. It is an assemblage of three tax lots under common ownership.

Mr. Mahoney asked: Mr. Jovishoff, is that the property which is the subject of tonight's hearing?

Mr. Jovishoff stated: That is correct.

Mr. Roe stated: It would appear since I have a copy of this report that Mr. Jovishoff is merely reading into the record what is already in evidence and I would object to his further testimony. I think it is irrelevant. What is set forth in the report appears to be what is testified to.

Mayor Pontieri stated: I think for the public's purpose and for the purpose of this board, I think we would like some questions to be answered.

Mr. Jovishoff stated: My purpose here is to summarize the report because the report is already in the record. This property is located on the west side of North Ocean Avenue. It fronts on Main Street to the south. It has frontage on North Ocean Avenue also. There is also a small amount of frontage on Lake Street at the north end. In our evaluation we evaluated the three lots as a single property assemblage. It is improved with several buildings that are joined together that were formerly Swezey's Department Store. The buildings occupy the entire assemblage, the entire three lots. The north avenue façade is no less than 340 feet in length. It is entirely windowless. It is the building on North Ocean Avenue and is built right up to the property line. It should be noted that the sidewalk there is exceedingly narrow because of that. The building is vacant. It is unused and has been for an extended period of time. The condition of the assemblage indicates a minimal level of maintenance and it contrasts significantly with the superior conditions of the adjacent properties along Main Street. In this case we were able to obtain some records from Village officials. A fire department 2006 inspection was reviewed and that report found numerous and serious structural defects and deficiencies in the building systems. The inspection report specifically stated that certain roof areas had water leaks which have damaged structural elements of the building. That the structural support walls exhibit cracks and holes from interior to exterior. That is certain areas flooring in the basement has decayed and flooring in some areas were improperly placed. The report also stated there were several supporting joists that were missing or damaged in the basement. And there were improper alterations to the building were also cited in the report.

Mr. Mahoney stated: Mr. Jovishoff, I am going to show you Exhibit K which I want marked into the record. Is that the fire department 2006 report that you referred to?

Mr. Jovishoff stated: Yes, it is.

Mr. Mahoney asked: Do you consider yourself a fire expert?

Mr. Jovishoff stated: No, I am not a fire expert, but I relied on the expertise of a Village official Chief Fire Marshal who is an expert in his field. This property also, in my opinion, meets the criteria of the Urban Renewal Law and the criteria I have applied to it for the following reasons. The property is in exceptionally poor condition. This is evidence by the code violations and the identified structural deficiencies that I just referred to from the 2006 report. The property has seen little if any new investment in either maintenance or improvement over an extended period of time. The property has deteriorated to such a point that reuse of the building is probably not feasible. And that demolition is probably the only option for redevelopment of this property. The interior is a line of levels of different spaces pretty much because it is three buildings that have been joined together and the previous use was a department store. As such from a practical standpoint, the building is not reusable for any modern retail office use.

Mr. Roe stated: He said he was never in the building.

Mr. Jovishoff stated: I have relied on the inspection report and my conversations with the fire marshal regarding the building. From a practical standpoint the property is not, in my opinion, reusable for any modern retail or office use of the type that one would find on West Main Street. As such, the property is physically and economically obsolete in my opinion. And as a vacant, underutilized property, it provides no benefits to the community. On the other hand, it is more than just a nuisance to the adjoining properties and to the community. The presence of a building that has been vacant and deteriorated for an extended period of time and that is located probably in one of the major intersections, if not the major intersection along the main street downtown corridor, represents from a planning standpoint a significant detriment to its viability of the Village and the viability of the main street downtown. It is ultimately, in my opinion, a deterrent to the redevelopment of the properties along Main Street. In its present condition it does not support the intent of the Village to maintain commercial development in the Main Street corridor which is expressed in the area as commercial zoning.

The next property is a property that fronts on Lake Street adjacent to the rear of the Swezey building. That would be block 5, lot 24. It also has frontage adjacent to the municipal parking lot. This property is improved with a classical style brick and masonry building formerly used as a library as well as a modern glass fronted structure which is adjoining to the east. It is vacant and has been vacant for an extended period of time. The condition of the building is generally good and there are no Village records concerning either construction, zoning permits or violations. However, I do believe that property also meets the criteria for the following reasons. It is vacant. It has been unused for several years and it makes no contribution to the vitality of West Main Street. In its present configuration it is sort of a hybrid of a classic library building and a modern office building. It has relatively limited reuse potential and in that sense it is outmoded and outdated. The building lacks reasonable reuse. In that it lacks reasonable reuse, it does not support the Main Street corridor and it doesn't support the zoning in the area.

The last property is block 7 to the east, across North Ocean Avenue, Lots 38 and 39. That would be those properties on the corner of Oak. It is opposite the Swezey building. It is again an assemblage of two lots. It consists of a one story garage type commercial building which is boarded up and vacant and in poor condition and an adjoining vacant two store commercial building which shows some evidence of some renovation work. However, the interior of that building is stripped down and it is in poor condition. There were no records on this building on construction, zoning permit or violations either. The property also meets the criteria for these reasons. The property is in poor condition despite what appears to be attempts at renovation. Any potential reuse of this sort of assemblage of two diverse buildings would be very limited. As such, it is an outmoded structure. It is out of date. It is vacant for an extended period representing an

underutilization of the property itself. And again, this is in particular within the context of the vibrant and active Main Street corridor. Property is unaesthetic. It provides a very poor visual image which creates a disruptive and unharmonious appearance along North Ocean Avenue. Again, this property does not support the Main Street corridor or the intent of the zoning.

Mr. Mahoney asked: Did you reach any conclusions as to the study area as a whole and the subject Swezey premises?

Mr. Jovishoff stated: Yes, I did. The findings from the study indicate that the five properties or property assemblages that exist, I believe, meet one or more of the criteria and as such can be qualified as being substandard and unsanitary. As such, these properties, in my opinion, meet the urban renewal law for designation as urban renewal areas. To a varying degree these properties have negative influences on their neighbors, negative influence on downtown and on the community as a whole. However, I would argue that one of these properties, namely the Swezey property, exerts an inordinate negative influence on the Main Street corridor and that's because it has been, just to repeat what I had said before, it has been vacant for an extended period, it has no potential for reuse and there has been no effort to renovate; it is in exceptionally poor condition. And importantly from a planning perspective, its location at a major intersection magnifies its blighting influence on the entire commercial area.

Mr. Mahoney asked: Mr. Jovishoff do you have an independent opinion as to whether the Swezey property is a fire hazard?

Mr. Jovishoff stated: My opinion is based on, as indicated in my report, based on the reports...

Mr. Roe stated: Objection because he is not qualified to speak on it.

Mr. Mahoney stated: So noted; which is what he just testified to.

Mr. Jovishoff stated: It is based on a report of a qualified expert, the Chief Fire Marshal, a Village official who is responsible for making those evaluations.

Mr. Mahoney asked: Does a property have to be a fire hazard to be blighted in your opinion?

Mr. Jovishoff stated: No it doesn't. And in most cases in my experience, fire hazard is rarely a condition that is quoted that is found in properties that are blighted. In most cases, it's the type of thing that I have indicated: having a negative impact, being deteriorated and being unaesthetic or visually poor resulting in a negative impact on surrounding properties.

Mr. Mahoney asked: So is it your opinion that the properties at 1-15 Main Street and 17 Main Street in the Village of Patchogue are blighted?

Mr. Jovishoff stated: Yes. It is my opinion.

Mr. Roe stated: I would like to ask Mr. Jovishoff a couple of questions.

Mr. Mahoney stated: Mr. Mayor, I would object to Mr. Jovishoff being subject of cross examination. The property owner is entitled under Article 2 of the EDPL to call his own witnesses if he wishes, but there is no provision for cross examination of our witness under these circumstances. So, I would object.

Mr. Roe stated: Notwithstanding, I think there are some factual things that are not in this report.

Mayor Pontieri stated: Mr. Roe, why don't you make the statement on that and we will not have the cross examination.

Mr. Roe stated: It would appear that Mr. Jovishoff did not examine all the records available to the Village. There are a number of letters available from the property owner as well as the property owner's engineer and architect that are on file that apparently have not been examined by this witness. These letters and documents indicate that the items listed by Mr. Jovishoff and in the report of the Fire Marshal have been addressed and cured.

Mayor Pontieri stated: I know that based upon subsequent reports that its being done, some of that stuff that has been indicated but had not been made available to Mr. Jovishoff.

Mr. Roe stated: Yes. And in response to that I would like those Exhibits entered into evidence. I submitted today at the Village this afternoon, and I would like it marked into evidence, the letter and attachments addressed to the Board and the Mayor. Those attachments relate to the inspection this week by Gary Canella which indicates that all of the indications indicated in the Fire Marshal's report which is Exhibit L. And in response to Exhibit K and possibly Exhibit L, I would ask that the Board consider the letter I addressed and hand delivered today to which is attached Mr. Canella's report of this week. The report of another employee of the property owner indicating that the conditions have been cured. Each and every item listed in the Brookhaven Town Fire Marshal's report has been addressed and cured. I would like that to be noted for the record.

Mr. Mahoney stated: Mr. Roe, I'm sorry. Your letter of September 27th, is that Exhibit N now?

Mr. Roe stated: Yes. And all of its attachments, my letter and all of its enclosures.

Village Attorney Snead stated: Mr. Mayor, just for the record. There is a letter from Mr. Roe dated September 27th. One attachment includes a telefax transmittal of Sept. 26th from Roe Wallace Esteve Taroff Taitz. It is a two page attachment. There is a five page attachment from Gary Canella Associates dated Sept. 26th, 2007. There is a letter from Joel M. Furman dated Sept. 27th with a number of invoices, copies of checks, totaling five pages. And there is a hand-written summary report of five pages which appends six pages of what look like fire code. Mr. Roe, who drafted this hand-written summary?

Mr. Roe stated: John Kirschenhiter.

Village Attorney Snead stated: And that constitutes the balance of Exhibit N.

Mr. Mahoney asked: Mr. Roe, do you have an application for this evening?

Mr. Roe stated: I do. This is the third time we have been here dealing with this issue. My letter asked for an adjournment of this matter until Nov. 21. The contract of sale now in force and effect calls for a closing on Nov. 19th. And at that point and time we will have no further involvement with this property. So I would ask the court to adjourn this matter until Nov. 21. The purchaser has asked for an extension of time to do additional Phase 2 studies. He has presently asked for an adjournment until October 22 and I recited that in my letter. And so I would ask that the Board adjourn the matter for further

hearings until Nov 21. That will at least permit us to get through the chaos remaining in the next two months before this property is sold.

Mr. Mahoney stated: Mr. Mayor the condemner joins in the application to the extent that we have not had the opportunity to review the material contained in Exhibit N and other issues regarding fire hazards at the subject premises. So we would join in the application as we wish to keep the record open. I don't know if we agree to such a late date, but I would join in the application for a short adjournment.

Mayor Pontieri stated: What I would like, as was noted by Deputy Mayor McGiff, the buyer to extend the time for due diligence until October 22nd. What I would like to do is ask this Board to wait until October 25th. On the 25th, update us on the status at that point and it may be a short meeting of coming in, finding the status that we are at, and then the continuation at that point. But I would prefer at some point in the middle here to have the ability to question and get information on October 25th. Do you any objection to the 25th.
Mr. Roe.

Mr. Roe stated: Certainly I have an objection. It's a short date. I am certainly not of the mind to run up my client's legal fees.

Mayor Pontieri stated: In an effort to keep the process moving and to making sure we are all on the same page, I think it is incumbent on this Board to be kept informed as the process goes along. And hopefully, that meeting will be more of just an update at that point.

Mr. Roe stated: This is the Phase I study and the engineering study. And these studies do not support what Mr. Jovishoff has indicated. One of these days you will get to read all this stuff.

Trustee Crean stated: Mr. Mayor, I would agree with a meeting somewhere in the middle here. October 25th seems to be a good date. It will be shortly right after their extended time to complete their environmental assessment of the property, it would allow this board to complete their review of the most recent report that we have gotten from the Brookhaven Town's Fire Marshal, allow us to review the attachments that we have just received this evening which Mr. Roe stated Sept. 27th, and it is my opinion to keep the public's interest again in the forefront to make sure we stay on track here and that we look to reconvene on Oct. 25th.

Mr. Mahoney stated: I agree with Mr. Crean. I think the 25th is as far as we could go back in good conscience. If anything, it would be an earlier date as far as I am concerned. I think Oct. 25th is as far back as we should go.

Upon a motion made by Deputy Mayor McGiff, seconded by Trustee Krieger, and unanimously carried, the Board agreed to adjourn the meeting until October 25, 2007, at 7 p.m. at 14 Baker Street, Patchogue, New York.