

# VICTOR TOWN BOARD MEETING TUESDAY FEBRUARY 8, 2022

A Special Meeting of the Victor Town Board was held on Tuesday February 8, 2022 in the Veterans Memorial Room.

**Supervisor Marren** called the special meeting to order @ 7:00PM.

All were asked to sign in and please turn off all cell phones, electronic devices and please conduct any private conversations in the hallway or outside.

## Flag Salute

**PRESENT:** Supervisor Jack Marren                      Councilman Drew Cusimano  
                    Councilman Guinan                                      Councilman Kahovec

**Supervisor Marren** declared Councilman Condon necessarily absent

**ALSO, PRESENT:** Karen Bodine - Town Clerk; Frank Pavia and Munesh Patel- Town Attorneys; Wes Pettee - LaBella Associates; Rich O'Donnell – Finance Director; David Nankin; and Cecilia Bonaccio- Attorney for Wilmorite.

## RESOLUTIONS:

**Attorney Frank Pavia** gave an overview of the Eminent Domain Process and the Findings and Determination resolutions to be considered for adoption. The proposed acquisition is approximately 8.40 acres with a vacant 93,000 square foot building. A full Environmental Assessment Form was completed with no significant impacts to the environment.

**Councilman Kahovec** pointed out Part 1 Sec C3 Zoning where it should be noted the same as Part 1 Sec 2B as a Town-designated Route 96/51 Overlay Zoning District. Frank will make the change.

**Attorney Munesh Patel** gave a brief overview of the Determination and Findings resolution and explained the next steps that will follow in this process once the two proposed resolutions are adopted by the Board. A brief synopsis of the EDPL Findings will be sent to the assessment billing owner on record or their attorney of record and a brief synopsis will be published in two consecutive issues of the Daily Messenger Newspaper. Any person aggrieved by the EDPL Findings may file a petition within 30 days after the completion of the EDPL Findings Publication.

## **RESOLUTION NO. 71-2022**

### **RESOLUTION DETERMINING THAT ACQUISITION OF PROPERTY A 700 EASTVIEW DRIVE MALL WILL NOT HAVE A POTENTIAL SIGNIFICANT ADVERSE IMPACT ON THE ENVIRONMENT**

On motion of Councilman Cusimano, seconded by Councilman Kahovec, the following resolution was adopted:    4 Ayes   0 Nays (Marren, Cusimano, Kahovec, Guinan)

Roll Call Vote:

Supervisor Marren	aye	Councilman Cusimano	aye
Councilman Kahovec	aye	Councilman Guinan	aye

WHEREAS, on November 8, 2021, the Town Board duly adopted a resolution authorizing the commencement of all steps necessary for the acquisition of approximately 8.4 acres of real property, along with a 93,000 square foot building and adjoining and/or nearby parking fields and other related improvements, located at 700 Eastview Mall Drive, Victor, New York, Tax Parcel No. 6.00-1-12.60 (the "Property"), including if a voluntary transfer of all or a portion of the Property is not consummated, condemnation proceedings, all relating to the Town Board's efforts to facilitate the productive re-use of the Property, which is vacant and underutilized, through municipal and/or economic development uses in connection with the public use, benefit and/or purpose of advancing the general prosperity and economic welfare of the residents of the Town by returning the Property to both a productive, economic use thereby, among other things, promoting employment and increasing the economic and tax base of the Town, while also utilizing the Property for a future, Town-related public purpose and use, all of which have not yet been formulated or conceptualized (collectively referred to as the "Project"); and

WHEREAS, pursuant to and in accordance with the New York Eminent Domain Procedure Law ("EDPL"), on November 22, 2021, a duly-noticed public hearing regarding the Project was held at the Town of Victor Town Hall, 85 East Main Street, Victor, New York (the "November 2021 Hearing"); and

WHEREAS, in accordance with the EDPL and pursuant to the New York State Environmental Quality Review Act, Article 8 of the New York Environmental Conservation Law and the regulations promulgated thereto at 6 N.Y.C.R.R. Part 617 (collectively referred to as "SEQRA"), the Town Board must satisfy the applicable requirements set forth in SEQRA, as necessary, prior to making a final determination on whether to undertake the Project; and

WHEREAS, the Town Board has identified the Project as an Unlisted Action pursuant to SEQRA, and the Town Board has caused to be prepared, with the input of its consultant and counsel, a Full Environmental Assessment Form ("FEAF") for the Project, including the preparation of Parts 1, 2 and 3 of the FEAF, as well as reviewing other information concerning the Project and the potential impacts associated with the Project; and

WHEREAS, the Town Board has considered the potential impacts on the environment that may be posed by the Project by undertaking a thorough review and examination of: (i) the completed FEAF, including Parts 1, 2 and 3, as well as the EAF Mapper results for the Property; (ii) written and verbal comments submitted at the November 2021 Hearing; and (iii) other supporting information and materials available

concerning the Project, including documents and information on file with the Town of Victor; and

WHEREAS, based on the information contained in the completed FEAF and the other information summarized above and below herein, comprising the administrative record in this matter, the Town Board determines that the Project will not result in a potential significant adverse environmental impact as specified below.

NOW, THEREFORE, BE IT RESOLVED BY THE MEMBERS OF THE TOWN BOARD OF THE TOWN OF VICTOR AS FOLLOWS:

(1) The Project is classified as an Unlisted Action pursuant to SEQRA as that term is defined in 6 N.Y.C.R.R. § 617.2(al) of the SEQRA regulations, and each of the Whereas Clauses in this Resolution is incorporated by reference as specific findings of this Resolution and shall have the same effect as the other findings herein. Based on a thorough and comprehensive review by the Town Board of the FEAF, including Parts 1, 2, and 3, the EAF Mapper results, comments made and submitted at the November 2021 Hearing, and other documents concerning the Project, the Town Board hereby finds that the Project will not result in a potential significant adverse environmental impact requiring the preparation of an environmental impact statement. Thus, the Town Board, having conducted an uncoordinated review of the Project pursuant to 6 N.Y.C.R.R. § 617.6(b)(1) of the SEQRA regulations, issues a Negative Declaration for the Project pursuant to 6 N.Y.C.R.R. § 617.7.

(2) The Town Board has considered the Project pursuant to the parameters and criteria set forth in SEQRA, including but not limited to, those parameters set forth in 6 N.Y.C.R.R. §§ 617.1 and 617.3 of the SEQRA regulations.

(3) The Town Board has considered the significance of the potential adverse environmental impacts of the Project by: (i) carefully reviewing and examining the responses to the Part 1 of the FEAF, including the information in the EAF Mapper results, and completing the analyses set forth in Parts 2 and 3 of the FEAF for the Project, together with examining other available supporting information and documents concerning the Project including comments associated with the November 2021 Hearing, to identify the relevant areas of environmental concern with respect to the potential impacts to air, groundwater and surface water, wetlands, land, historic, archaeological and other recognized and/or protected resources, threatened or endangered species, community character, potential cumulative impacts, if any, and other potential impacts as required by the applicable SEQRA regulations; (ii) considering the criteria set forth in 6

N.Y.C.R.R. § 617.7(c) of the SEQRA regulations; and (iii) thoroughly analyzing the identified areas of relevant environmental concern.

(4) The Town Board has not identified a potential significant adverse environmental impact associated with the Project. Based on its thorough review, the Town Board approves, adopts and incorporates the responses to the FEAF, including Parts 1, 2 and 3 thereof, and finds that the Project will not result in a potential significant adverse impact on the environment for the following reasons:

(i) Air Quality: The Project will not result in a potential significant adverse impact to air quality. The Project does involve any physical change to the Property, but simply involves a change in title to the Property.

(ii) Groundwater, Stormwater and Wetlands: The Project will not have a potential significant adverse impact on groundwater, stormwater, and/or wetlands. The Project does not involve any physical change or impact to the Property, but simply a change in its title.

(iii) Impacts to Land: The Project will not have a potential significant adverse impact on land because it is limited to the acquisition of title to the Property by condemnation. No physical disturbance or action shall be taken at the Property as result of the Project. The Project does not entail new, non-rehabilitative and/or non-renovation construction or site disturbance, or any impact to the physical, structural and/or property conditions existing at the Property. Moreover, any future municipal and/or economic development uses at the Property have not been presently formulated or conceptualized.

(iv) Traffic: There will be no potential significant adverse impact on traffic resulting from the Project. Again, the Project involves the mere transfer of title to the Property and no physical change or impact. When future development of the Property is identified and proposed, traffic concerns will be evaluated at that time based on any plans proposed for the municipal and/or economic development uses at the Property in accordance with applicable laws including SEQRA.

(v) Noise, Odors and Light: The Project will not have any potential significant adverse impacts on noise, odor or light. No odor, noise or light impacts will be generated because of the acquisition of title to the Property.

(vi) Solid Waste Production: The Project will not result in the production of solid waste since it involves the mere acquisition of title to the Property.

(vii) Soil Erosion and Drainage: The Project will not result in soil erosion, or result in drainage different than what currently exists at the Property. All stormwater management facilities currently existing at the Property will remain unaltered. As a result, the Project will not result in a potential significant adverse impact relative to soil erosion or drainage.

(viii) Vegetation and Wildlife: The Property consists of previously disturbed land with a vacant 93,000 square foot commercial building and a large amount of impervious parking areas located thereon. The Project will not result in or require a disturbance to vegetation or wildlife (to the extent they exist) at the Property. The Property is neither home to, nor will the Project interfere with, the movement of any migratory wildlife. Additionally, there exists no records of rare or state-listed protected animals or plants, or significant natural communities at the Property or in its vicinity. Based on the foregoing, the Project will not result in a potential significant adverse impact to vegetation or wildlife.

(ix) Critical Environmental Area Pursuant to 6 N.Y.C.R.R. § 617.14(g): The Property neither adjoins nor is located in a designated critical environmental area.

(x) Conflict with Community's Plans or Goals: The Property consists of previously disturbed land with a vacant 93,000 square foot commercial building and a large amount of impervious parking areas located thereon within the Eastview Mall complex where similar retail and commercial uses exist. The Property is also located within the Town's Route 96/51 Overlay Zoning District, and the acquisition of the title to the Property is consistent with the district's applicable zoning goals and provisions. As a result, the Project will not result in a potential significant adverse impact relative to officially approved or adopted community plans or goals.

(xi) Historical, Archaeological, Architectural or Aesthetic Resources: The Property is a developed, vacant commercial property. It does not include any unusual or unique land forms, and it neither contains nor is located near any officially designated scenic or aesthetic resources. Additionally, there exists no important historic properties in close proximity to the Property. The EAF Mapper and other information available indicate that no recognized historical or archeological resources are present at the Property. Lastly, the Project will simply result in the transfer of title to the Property and will not have an impact on any existing architectural or aesthetic resources. As such, the Project does not present a potential significant adverse impact to historical, archaeological, architectural or aesthetic resources.

(xii) Energy: The Project will not result in an increase in energy usage or a change in the quantity of energy currently used at the Property. For the reasons stated above, the Project involves the mere acquisition of title to the Property, and does not involve the development of any new structures or uses on the Property.

(xiii) Hazard to Human Health: There will be no significant adverse impact resulting from the Project on human health or safety. The Project does not involve any development or other physical disturbance associated with the Property, but rather involves only a mere change in title to the Property. As such, the Project does not present an impact to human health and safety because no development or other work or action will take place on the Property.

(xiv) Open Space and Agricultural Land: The Project does not present a potential significant adverse impact to agriculture, open space and public recreation. No agricultural, open space, and/or public recreation properties exist on or near the Property.

(xv) Movement of People: The Project will not result in an increase in the number of persons visiting the Property. The Property is adjoined by existing, well-traveled internal roads located within the Eastview Mall complex. The Project will therefore not adversely impact existing traffic patterns along and on surrounding the roads since it involves the mere acquisition of title to the Property.

(xvi) Public Services: The Project will not create a significant and/or adverse demand for public services.

(xvii) Potential for Multiple Environmental Impacts: For the reasons set forth above and as supported by the administrative record before the Town Board, the Project will not result in multiple changes to the environment which, when considered together, result in a potential substantial adverse impact on the environment.

(xviii) Cumulative Impacts and Subsequent Review: There will be no significant adverse environmental impacts associated with potential cumulative impacts. There are no simultaneous actions being taken at the Property in conjunction with Project, or simultaneous actions being taken at other properties located in the proximity of the Property. Moreover, the Project merely involves a change in title to Property without any physical impact or change to the Property. Any potential impacts of future municipal and/or economic development uses of the Property will be reviewed pursuant to SEQRA, the applicable zoning code provisions of the Town, and other applicable laws and/or regulations when such future uses are specifically identified and proposed.

As such, there is no improper segmentation associated with the SEQRA review of the Project. The Project is limited to an acquisition of title to the Property, which is being done in connection with the Town's efforts to return the underutilized Property to municipal and/or economic development (or other productive) uses. There are no additional actions, segments or steps associated with the Project in addition to the acquisition of title to the Property. Because no specific future uses or actions are currently proposed for the Property, an assessment of the potential impacts of such future uses and actions is speculative. Any future use of the Property will be subject to a review pursuant to the Town's applicable zoning code provisions, including but not necessarily limited to, site plan review. An independent assessment pursuant to SEQRA of potential environmental impacts of a future proposed use of the Property shall be completed at that time when the use is formulated and proposed, and such review shall be no less protective of the environment.

(5) This Resolution has been prepared in accordance with Article 8 of the New York Environmental Conservation Law by the Town Board of the Town of Victor, 85 East Main Street, Victor, New York 14564.

(6) Copies of this Resolution and the completed FEAF shall be placed on file in the offices of the Town of Victor Town Clerk where the same shall be available for public inspection during business hours.

(7) The Town Board, and/or any person whom it may designate or has designated for such purpose, is authorized to file this Negative Declaration in accordance with applicable provisions of the law, and this Resolution shall constitute a Notice of Negative Declaration. The requirements of SEQRA have therefore been satisfied.

(8) This Resolution shall take effect immediately.

**RESOLUTION NO. 72-2022**  
**RESOLUTION AUTHORIZING THE ADOPTION AND PUBLICATION BY THE TOWN BOARD OF THE TOWN OF VICTOR OF THE DETERMINATION AND FINDINGS (AS DEFINED BELOW) UNDER SECTION 204 OF THE NEW YORK EMINENT DOMAIN PROCEDURE LAW CONCERNING THE PROPOSED CONDEMNATION OF CERTAIN REAL PROPERTY LOCATED AT 700 EASTVIEW MALL DRIVE, TOWN OF VICTOR, CONSISTING PRINCIPALLY OF APPROXIMATELY 8.40 ACRES IN CONNECTION WITH THE PROJECT (AS DEFINED IN THE DETERMINATION AND FINDINGS)**

On motion of Councilman Kahovec, seconded by Councilman Guinan, the following resolution was adopted: 4 Ayes 0 Nays (Marren, Condon, Kahovec, Guinan)

Roll Call Vote:

Supervisor Marren	aye	Councilman Cusimano	aye
Councilman Kahovec	aye	Councilman Guinan	aye

WHEREAS, the Town of Victor (the "Town") is a municipal corporation with the authority, pursuant to subdivision 2 of Section 64 of the Town Law of the State of New York, as amended (hereinafter called the "Legislation"), to acquire in the manner provided by the EDPL (as define below), any lands or rights therein, either within or outside the Town boundaries, required for any public purpose; and

WHEREAS, the Town Board of the Town of Victor (the "Town Board") desires to exercise the Town's power of eminent domain for the "acquisition" of all or a portion of certain "real property" (as such quoted terms are defined in the New York Eminent Procedure Domain Law (the "EDPL")) located in the Town of Victor, Ontario County, New York comprising of approximately 8.40 acres of real property located at the situs at the Eastview Mall (located at 7979 Pittsford-Victor Road in the Town of Victor, Ontario County, New York, and referred to herein as the "Eastview Mall") of the former, and now vacant, approximately 93,000 square foot Lord & Taylor's department store and existing Lord & Taylor's improvements, adjoining and/or nearby parking fields and related improvements located at 700 Eastview Mall Drive (identifiable by Tax ID#: 6.00-1-12.600) (collectively, the "Parcel"), all in connection with the Project (as defined in the hereinafter defined Determination and Findings); and

WHEREAS, in accordance with the EDPL, the Town Board conducted a duly noticed public hearing on November 22, 2021 at 7:00 p.m. to inform the public and to review the public use, benefit or purpose to be served by the Project, the proposed location of the Project and its general effect on the environment and the residents of the locality, and at the public hearing, the public was provided an opportunity to provide any comments (such hearing record hereinafter referred to as the "November 2021 Hearing"); and

WHEREAS, by resolution adopted prior hereto on February 8, 2022, the Town Board, in accordance with the EDPL and pursuant to the New York State Environmental Quality Review Act, Article 8 of the New York Environmental Conservation Law and the regulations promulgated thereunder at 6 N.Y.C.R.R. Part 617 (collectively referred to as "SEQRA"), issued a Negative Declaration determining that the Project will not result in a

potential significant adverse impact to the environment, thereby satisfying the applicable requirements set forth in SEQRA as necessary; and

WHEREAS, the Town Board, having considered the foregoing, now desires to adopt and publish the Determination and Findings in accordance with the EDPL and any applicable laws, rules or regulations.

NOW, THEREFORE, BE IT RESOLVED BY THE MEMBERS OF THE TOWN BOARD OF THE TOWN OF VICTOR AS FOLLOWS:

Section 1. The Town Board, pursuant to Section 204 of the EDPL, hereby: (i) adopts the determination and findings in the form presented at this meeting with such changes as approved by counsel to the Town (the "Determination and Findings") as more fully set forth in Exhibit A annexed hereto and made a part hereof; and (ii) authorizes its members, officers, employees and agents of the Town (including counsel to the Town) to (A) publish a brief synopsis of the Determination and Findings; (B) mail notice of such brief synopsis to the owner(s) of the Parcel (and/or their attorney of record); and (C) take all steps appropriate to comply with applicable provisions of the EDPL and all other applicable laws, rules or regulations to implement this Resolution.

Section 2. This Resolution shall take effect immediately.

#### EXHIBIT A

Form of Determination and Findings

Attached Hereto

DETERMINATION AND FINDINGS OF THE TOWN OF VICTOR ADOPTED PURSUANT TO SECTION 204 OF THE NEW YORK EMINENT DOMAIN PROCEDURE LAW FOR THE ACQUISITION OF CERTAIN REAL PROPERTY LOCATED AT 700 EASTVIEW MALL DRIVE IN THE TOWN OF VICTOR, ONTARIO COUNTY, NEW YORK COMPRISING ONE (1) TAX PARCEL OF APPROXIMATELY 8.40 ACRES.

#### Overview and Background

The Town of Victor (hereinafter referred to as the "Town") is a municipal corporation with the authority, pursuant to subdivision 2 of Section 64 of the Town Law of the State of New York, as amended (hereinafter called the "Legislation"), to acquire

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in the manner provided by the EDPL (as defined below), any lands or rights therein, either within or outside the Town's boundaries, required for any public purpose.

Eastview Mall, LLC, for itself and/or on behalf of its affiliates and/or other entities to be formed (collectively, the "Company"), has requested the Town Board of the Town of Victor's (the "Town Board") assistance with respect to the acquisition of the Parcel (as defined below) in connection with the Project (as defined below).

The Town Board desires to exercise the Town's power of eminent domain for the "acquisition" of all or a portion of certain "real property" (as such quoted terms are defined in the New York Eminent Procedure Domain Law, herein the "EDPL") located in the Town of Victor, Ontario County, New York comprising of approximately 8.40 acres of real property located at the situs at the Eastview Mall (located at 7979 Pittsford-Victor Road in the Town of Victor, Ontario County, New York, and referred to herein as the "Eastview Mall") of the former, and now vacant, approximately 93,000 square foot Lord & Taylor's department store and existing Lord & Taylor's improvements, adjoining and/or nearby parking fields and related improvements located at 700 Eastview Mall Drive (identifiable by Tax ID#: 6.00-1-12.600) (collectively, the "Parcel"), all in connection with future potential project(s) (collectively, the "Project") consisting of: the proposed acquisition of the Parcel all as may be needed in order to promote, attract, facilitate, maintain and continue, and in connection with, the productive reuse and redevelopment by the Town and/or the Company (and/or their respective municipal and/or economic development projects, contemporaneously or in stages pursuant to the EDPL, in connection with serving the public use, benefit or purpose described herein.

The Parcel was formerly occupied by the now bankrupt Lord & Taylor's department store, thus the Parcel is currently vacant and underutilized, and is physically a large part of Eastview Mall as it was an anchor store that previously generated significant foot traffic at that wing of Eastview Mall which provided economic stimulation to the surrounding tenants at that wing of Eastview Mall. Now the Parcel is vacant and is not generating tax revenue nor customer traffic (and tax revenue therefrom) for the surrounding tenants, and the Town Board, prior to the November 2021 Hearing, was not aware of any redevelopment and/or reuse of the Parcel by its owner. The longer the Parcel remains vacant, the more likely such vacancy will have an adverse domino effect on the non-anchor stores in that wing of Eastview Mall (and possibly other areas), as such non-anchor stores rely on the foot traffic generated by large anchor stores previously occupied at the Parcel. Preventing such inevitable domino effect from the underutilized status of the Parcel is critical to maintaining Eastview Mall's status as a super-regional and premier shopping and entertainment destination, which, in turn, serves as one of the Town's chief economic and tax revenue drivers (and the County of Ontario). Of importance is the statement by the representative of the Parcel owner at the November 2021 Hearing (as defined

below) that the current state of the market has resulted in the Parcel owner receiving "many of these [anchor] boxes back earlier than planned" (p. 34). As compared to the Company, any relevance the Parcel owner's experience in the industry of repurposing anchor store space might have is greatly diminished by the fact it is apparently tasked with repurposing numerous anchor store spaces nationwide, any one of which may take priority over repurposing the Parcel. The Company has faced similar anchor store vacancies at the Company's Marketplace Mall located in the nearby Town of Henrietta. The Company similarly requested a condemning authority to assist in the redevelopment and reuse of such vacancies. In the end, and without condemnation having to be ultimately used, the Company was able to deliver a regionally significant and transformative user to Marketplace Mall as the University of Rochester Medical Center is currently developing an approximately \$240 million, approximately 330,000 square-foot, Orthopaedics & Physical Performance Center at the Marketplace Mall.

The Town Board is proposing to acquire the Parcel for the purpose of furthering economic development in the Town, including, as appropriate, complementing any public purpose contemplated by the Town & Village of Victor, New York Comprehensive Plan (August 24, 2015), which is incorporated into this record by reference (the "Comprehensive Plan") as described further herein, thus carrying out the public purpose of the Town under the Legislation and the Comprehensive Plan to promote, among other things, the public health and general welfare in the process of growth in the Town (p. 8.12). The proposed acquisition of the Parcel is within the Town Board's statutory authority and will fulfill its statutory purposes.

The Comprehensive Plan identifies Eastview Mall not only as a regional shopping center but as a major and valuable economic driver in the Town (and surrounding communities including the County of Ontario) as evidenced by its significant size (and surrounding complex of commercial development), sales tax revenues and employment opportunities (p. 6.14), and lies at the heart of the Town's commercial development (p. 4.6). As a result, multiple plazas and other retail outlets, restaurants, offices, corporate headquarters and similar uses have developed within the areas surrounding Eastview Mall (p. 6.14). As such, preservation and promotion of Eastview Mall's status as a regional shopping and entertainment destination is critical to advancing the economic developmental objectives set forth in the Comprehensive Plan, including reinforcing the Town as a tourism and regional destination (pp. 6.30, 7.7 and 7.8). The Comprehensive Plan puts forward several community goals and objectives, including fostering economic development (p. 6.4), and the economic development strategies thereunder (A) provide guidance on not only creating new and maintaining existing employment opportunities, but also on how essential it is to preserve and enhance the Town's (and surrounding community) sense of place and human capital to continue the Town's economic success (p. 6.4); and (B) promote the reuse of existing vacancies and underutilized property as undeveloped properties

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("greenfields") are a finite resource (6.23) and thereby preserving green space. Also, the proposed redevelopment and reuse of the Parcel would be consistent with the Comprehensive Plan's goal of low impact development by limiting sprawl and enhancing natural systems (p. 5.11 and 5.12). Thus, the acquisition of the Parcel and the redevelopment/reuse thereof is fully consistent with the Comprehensive Plan.

No alternative locations exist in the Town that are being considered for the Project.

#### The Public Hearing and Comment Period

In accordance with the EDPL, on November 22, 2021 at 7:00 p.m., a duly noticed public hearing (the "November 2021 Hearing") was held at the Town of Victor Town Hall located at 85 East Main Street in the Town to inform the public and to review the public use, benefit or purpose to be served by the Project, the proposed location of the Project and its general effect on the environment and the residents of the locality. At the November 2021 Hearing, the public was provided an opportunity to provide any comments.

The comments received at the November 2021 Hearing have been reviewed, made part of the record, and accorded full consideration by the Town Board.

Below is a summary of certain of the comments received at the November 2021 Hearing:

- (i) A Commenter claimed that the notice of the November 2021 Hearing was ambiguous as it failed to adequately specify the property being condemned.
- (ii) A Commenter claimed that the notice of the November 2021 Hearing failed to detail the nature and scope of the Project and is therefore facially deficient.
- (iii) A Commenter claimed that the notice of the November 2021 Hearing indicates that the Parcel will be transferred to the Company after it has been condemned.
- (iv) A Commenter claimed that the proposed condemnation will not serve any public use, benefit or purpose.
- (v) A Commenter claimed that the economic development goals sought to be achieved by the Town's acquisition of the Parcel are not being applied in "good faith," are "illusory," and thus do not advance a valid public purpose, because the current property owner of the Parcel is

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equally as capable of advancing the public purposes sought to be advanced by the acquisition described herein.

- (vi) A Commenter claimed that the Town's acquisition of the Parcel will promote predominantly private, not public, interests, in violation of the New York State and United States Constitutions (as set forth in *Kelo v. City of New London*, 545 U.S. 469, 477 (2005)), and the EDPL, because it would simply effectuate the transfer of private property from one private owner to another, with any attendant benefits flowing to the private transferee, not the public.
- (vii) A Commenter stated that the Town failed to fulfill its obligations under SEQRA (as defined herein) by issuing the notice of the November 2021 Hearing without first: (1) determining whether SEQRA applies to the condemnation; or (2) determining whether the condemnation is a Type I, Type II or Unlisted action.
- (viii) A Commenter questioned whether, because the public purpose to be served by the proposed acquisition of the Parcel by the Town is illusory, the Town even has authority under the EDPL to acquire the Parcel by condemnation.

The EDPL does not require that the Town Board address in its determination and findings every specific concern or objection raised at the November 2021 Hearing. The Town Board's responses to certain of the comments that were received at the November 2021 Hearing are summarized below, and in some cases as more fully set forth in the Determination and Findings (as defined below):

- (i) In response to comment that the notice of the November 2021 Hearing was defective for failing to adequately specify the property being condemned, the Town Board adequately described the Parcel for purposes of the EDPL notice as such notice set forth the approximate location of the Parcel and described such location with reasonable specificity with address and tax parcel identification number. The EDPL does not require that the Town Board describe the location of the Parcel with a metes and bounds description. In addition, the procedures outlined in the EDPL have long been held to satisfy the procedural and substantive due process requirements of the federal and New York State Constitutions, and because the Town Board has complied with each and every requirement of the EDPL, due process has been satisfied. Furthermore, as discussed herein, the Town Board has adequately

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described the Parcel and provided the public with a forum and an opportunity to present their views on the Project.

- (ii) In response to the comment that the notice of the November 2021 Hearing (and the Town Board's November 8, 2021 resolution authorizing the commencement of proceedings under the EDPL) was defective for failing to detail the nature and scope of the Project, the Town Board adequately described the Project for purposes of the EDPL notice as such description thereof may be brief, and there is no requirement under the EDPL that every aspect of a project, or its implementation, be contained within such description. Further, the EDPL sets forth the required contents of the notice of the November 2021 Hearing whereas, by contrast, the contents of the Town's November 8, 2021 resolution, which merely stated the Town Board's intent to commence condemnation proceedings, has no bearing on whether the notice of the November 2021 Hearing satisfied the requirements of the EDPL, which it did for the reasons stated herein.
- (iii) In response to the comment that the notice of the November 2021 Hearing indicates that the Parcel will be transferred to the Company after it has been condemned, there is no such statement in the notice of the November 2021 Hearing and, in any event, any such action would not be prohibited by the Legislation and/or the EDPL.
- (iv) In response to the comment that proposed condemnation will not serve any public use, benefit or purpose, the EDPL simply requires that the determination to exercise eminent domain power be rationally related to a conceivable public purpose. As set forth herein, the Town Board's proposed acquisition of the Parcel serves a public purpose because it, among other things, furthers general prosperity in the Town, advances employment opportunities, expands the tax base of the Town and the County of Ontario and contributes towards economic redevelopment/reuse of the Parcel.
- (v) In response to comments that the economic development goals sought to be achieved by the Town Board's acquisition of the Parcel are "illusory" because the current owner is equally as capable of advancing the public purposes sought to be advanced, the mere fact that an individual is ready, willing and able to participate in redevelopment of underutilized property does not prohibit the Town from acquiring such

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property for its own public purposes, provided it satisfies the requirements set forth in the EDPL which it has for the reasons set forth herein As stated above and as compared to the Company, any relevance the Parcel owner's experience in the industry of repurposing anchor store space might have is greatly diminished by the fact it is apparently tasked with repurposing numerous anchor store spaces nationwide any one of which may take priority over the Parcel.

- (vi) In response to comments regarding the Town's compliance with constitutional requirements as set forth in *Kelo v. City of New London*, 545 U.S. 469, 477 (2005), although eminent domain cannot be used as a mere pretext for conferring benefits upon purely private entities and persons, the Determination and Findings set forth herein demonstrate that the Town's acquisition is rationally related to a conceivable, non-illusory public purpose. The fact that private interests might be benefited by the acquisition does not render it unconstitutional where, as here, the Town's acquisition will serve a public purpose.
- (vii) In response to comments that the Town Board violated the EDPL by failing to conduct a SEQRA review prior to the November 2021 Hearing, the EDPL does not require that a SEQRA review be completed prior to the public hearing. Prior to the approval of the Determination and Findings, the Town Board has conducted a SEQRA review, as set forth more fully set forth in the Town Board SEQRA Resolution (as defined herein). The Town Board also evaluated the general effect of the Project on the environment as discussed below.
- (viii) In response to comments suggesting that the Town does not have the authority to acquire the Parcel by condemnation, the Town, pursuant to subdivision 2 of Section 64 of the Town Law of the State of New York, as amended, is authorized to acquire in the manner provided by the EDPL, any lands or rights therein, either within or outside the Town boundaries, required for any public purpose. As more fully set forth herein, the proposed acquisition of the Parcel by the Town will further its municipal purposes, which are also public purposes in and of themselves, and the acquisition is therefore within the authority of the Town.

## VICTOR TOWN BOARD MEETING TUESDAY FEBRUARY 8, 2022

At a duly noticed and special meeting on February 8, 2022, in addition to the above findings, the Town Board makes the following specific determination and findings (collectively, the "Determination and Findings") concerning the Project pursuant to EDPL Section 204:

I. The Public Use, Benefit or Purpose to Be Served by the Project [EDPL § 204(B) (1)].

The proposed acquisition of the Parcel in connection with the undertaking of the Project will serve a public use, benefit and/or purpose because it will advance the overall general prosperity and economic welfare of the residents of the Town by returning the vacant and underutilized Parcel to productive use thereby advancing the public purpose of the Town under the Legislation by: (i) combating economic stagnation through stimulating, promoting and/or supporting new and/or existing economic revitalization and redevelopment efforts, (ii) advancing employment opportunities, (iii) increasing, broadening, diversifying and strengthening the Town's (and the County of Ontario) economic and tax base, (iv) enhancing the overall diverse use, functionality and/or attractiveness of Eastview Mall and surrounding area, (v) attracting and retaining new, diverse and/or expanded industry, community, municipal, business and/or other commercial activity thereby promoting economic revitalization, employment, less development on previously undisturbed locations/spaces, and by attracting, accommodating and/or retaining new, diverse and/or expanded tenant(s) and/or end user(s) to the Parcel such action would, among other things, attract additional visitors to Eastview Mall to the benefit of all existing tenants/users of Eastview Mall (and the surrounding businesses in the area), increase sales tax revenues and decrease the negative impacts associated with large "greyfields" and/or vacant buildings within the Town, (vi) promoting a future undefined municipal use of a portion of the Parcel; and/or (vii) as appropriate, may include, but not limited to, complementing and/or advancing any other public purpose or use contemplated by the Comprehensive Plan.

II. Location of the Project and Reasons for Selection of that Location [EDPL § 204(B)(2)].

The location of the Project is in the Town of Victor, Ontario County and identifiable by the following street address and tax identification number: 700 Eastview Mall Drive (identifiable by Tax ID#: 6.00-1-12.600). Such location was determined based upon the request of the Company to the Town to assist in the redevelopment and reuse of the Parcel. There are no alternate locations in connection with the Project.

III. General Effect of the Project on the Environment and Residents of the Locality [EDPL § 204 (B)(3)].

## VICTOR TOWN BOARD MEETING TUESDAY FEBRUARY 8, 2022

By resolution duly adopted on February 8, 2022 (the "Town Board SEQRA Resolution") and the completed Full Environmental Assessment Form ("FEAF"), including Parts 1, 2 and 3 of the FEAF for the Parcel and any attachments thereto (including the EAF Mapper), the Town Board, pursuant to Article 8 of the New York Environmental Conservation Law and the regulations promulgated thereunder at 6 N.Y.C.R.R. Part 617 (collectively known hereafter as "SEQRA"), declared that the Project constituted an "Unlisted Action" pursuant to 6 N.Y.C.R.R. § 617.2(al), and found that: (i) the Project will not have a potential significant adverse impact on the environment; and (ii) no environmental impact statement pursuant to SEQRA is needed to be prepared for the Project. Such determination of the Town Board constituted the adoption of a Negative Declaration pursuant to SEQRA, and no further SEQRA review is required for the Project. The Town Board SEQRA Resolution and the FEAF, together with any other documents and information on which it was based, are incorporated herein by reference and is made a part hereof.

The Town's proposed acquisition of the Parcel will not have a potential significant adverse impact on the environment. At this time, the Project entails the mere change in title of the Parcel; no specific future uses or actions have been formulated and/or specifically identified for the Parcel other than what is identified herein. Although the Town Board has been informed by the Company of a potential reuse and redevelopment of the Parcel, no application(s) have been submitted to the Town (or any relevant state and local agencies), and regardless of such potential reuse and redevelopment coming to fruition, the Town is proposing to undertake the Project for the purpose of the ultimate redevelopment and reuse of the Parcel. Therefore, any assessment of the potential environmental impacts associated with the future uses of the Parcel is speculative. However, any future use of the Parcel shall be subject to the Town's zoning code provisions, including but not necessarily limited to, site plan review. A separate assessment of potential significant adverse environmental impacts pursuant to SEQRA for a future proposed use of the Parcel will be completed at that time, when the use is specified, and such review shall be no less protective of the environment.

The acquisition and future re-use of the Parcel will positively impact the residents of the Town by advancing the creation of additional job opportunities, expanding the tax base in the Town and otherwise supporting the general prosperity and economic welfare of the Town's residents.

IV. Other Relevant Factors [EDPL § 204 (B)(4)].

The Town Board has given due consideration to the comments received at the November 2021 Hearing. In addition, the Town Board has taken into account public opinion and concerns, if any, expressed through the SEQRA process associated with the Project.

Conclusion

Based on due consideration of the foregoing, the Town Board hereby makes its Determination and Findings in accordance with the EDPL in connection with the acquisition of the Parcel by condemnation in connection with the undertaking of the Project.

Dated: February 8, 2022

**ADJOURNMENT:**

With no further business to come before the Board tonight, motion was made by Councilman Guinan, seconded by Councilman Cusimano to adjourn the Special Town Board meeting at 7:27PM.

Respectfully submitted,

Karen C. Bodine  
Town Clerk