



CITY OF PONTIAC
OFFICE OF THE EMERGENCY MANAGER
LOUIS H. SCHIMMEL

47450 Woodward Avenue
Pontiac, Michigan 48342
Telephone: (248) 758-3133
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Dated: July 26, 2013

ORDER NO. S-305

RE: Condemnation of Phoenix Center Garage

TO: Sherikia Hawkins, City Clerk

The Local Financial Stability and Choice Act (Act 436 of 2012/MCL 141.15411, et. seq.) in Section 10 empowers an Emergency Manager to issue orders to the appropriate local elected and appointed officials and employees, agents, and contractors of the local government a Manager considers necessary to accomplish the purposes of the Act and any such orders are binding on the local elected and appointed officials and employees, agents, and contractors of the local government to whom they are issued.

Section 12(1) of the Act provides that “[a]n emergency manager may take 1 or more of the following additional actions with respect to a local government that is in receivership, notwithstanding any charter provision to the contrary: (ee) [t]ake any other action or exercise any power or authority of any officer, employee, department, board, commission, or other similar entity of the local government, whether elected or appointed, relating to the operation of the local government. The power of the emergency manager shall be superior to and supersede the power of any of the foregoing officers or entities.”

WHEREAS, the City of Pontiac, granted easements for the non-exclusive right to use the Plaza area for what is known as the Phoenix Center Garage and the sidewalks adjacent thereto and any other sidewalks located on the Plaza for ingress and egress for pedestrian traffic and vehicles between improvements or any of them and the adjacent public streets, and any pedestrian ways and the corridors, walkways, bridges, and hallway in accordance with a Declaration of Easements filed May 19, 1980, in Liber 7788 p. 1-27 (“Easement Rights”) in favor of adjacent office building that are currently owned by Ottawa Towers II, LLC, a Michigan Limited Liability Company and North Bay Drywall, Inc., Profit Sharing Plan and Trust, a California Pension and Profit Sharing Trust (collectively the “Towers”); and,

WHEREAS, because of criminal activity in the Phoenix Center Garage, significant maintenance and repairs that the City of Pontiac cannot afford to pay for, the large cost of operating the garage, the lack of access to the downtown off Auburn St., Orchard Lake Rd and Saginaw St. and the concerns about the safety of those persons who use the garage, it is necessary to acquire the easement rights of the Towers for the public purpose of demolishing the Phoenix Center Garage in the interest of public health, safety and welfare; and,

WHEREAS, the City has determined that a good faith offer be made to Tower owners pursuant to MCL 213.55(1); for the loss of the easement rights.

It is hereby ordered:

1. That the City determines it is necessary to take the Easement Rights set forth in the Declaration of Easement filed May 19, 1980 recorded in Liber 7788, pp. 1-27 from the Tower owners set forth below for the public health, safety and welfare based on the reasons set forth above.
2. That good faith written offers be made to the Tower owners pursuant to MCL 213.55(1) for the

easement rights described above for properties located in the City of Pontiac, County of Oakland and State of Michigan:

- a. Ottawa Towers II, LLC whose legal description is as follows:

Town 3, North, Range 10 East, Section 32, Assessor's Plat NO 130 part of Lot 1, all of Lots 2 & 3, part of Lots 4 to 8 including & part of Lots 15 & 15, also part of Vacant Auburn Avenue all described as beginning at a point distant North 14 degrees 22 minutes 45 seconds West 79.00 feet; from Northwest corner of Lot 16; thence North 14 degrees 30 minutes 01 seconds West 144.67 feet; thence North 75 degrees 27 minutes 55 seconds East 128.00 feet; thence North 14 minutes 32 minutes 05 seconds West 2.42 feet; thence North 75 degrees 27 minutes 55 seconds East 64.00 feet; thence South 14 degrees 32 minutes 05 seconds East 2.42 feet; thence North 75 degrees 27 minutes 55 seconds East 124.91 feet; thence South 14 degrees 32 minutes 05 seconds East 181.79 feet; thence North 85 degrees 36 minutes 10 seconds West 6.48 feet; thence along CURVE TO LEFT, RAD 648.70 feet; CHORD BEARS South 84 degrees 54 minutes 44 seconds West 213.77 feet; distance of 214.75 feet; thence South 75 degrees 25 minutes 42 seconds West 100.00 feet to beginning.

Also Identified as: Tax ID # 14-32-227-002 and 31 Judson Street

- b. North Bay Drywall, Inc. and Profit Sharing Plan & Trust whose legal description is as follows:

All that part of lots 5, 6, 7, 8, 10 and 11 of Assessors Plat Number 65; also part of lots 31 thru 39 including Assessors Plat Number 114; part of lot 7 Sub of 0.L.18, 22 and 23; also part of vacant Dawson Alley described as beginning at a point located Northerly 79 feet along the Easterly line of Saginaw Street and South 75°24'42" West 249.58 feet along the Northerly right-of-way line of proposed Judson Street from the Northwest corner lot of lot 16 of Assessors Plat Number 130; thence South 75°25'42" West 108.89 feet along the Northerly line of said Street; thence North 31°27'19" West 451.91 feet along the Easterly line of West Wide Track to the South line of Orchard Lake Avenue; thence along said South line 25 feet and North 75°47'56" East 173.34 feet; thence along a curve to the Right 51.05 feet, Delta equals 13°00'00", Radius 225 feet, chord bears North 82°17'56" East 50.94 feet; thence North 88°47'56" East 48.06 feet; thence South 14°32'05" East 66.56 feet; thence South 75°27'55" West 54.58 feet; thence South 14°32'05" East 341.81 feet to the point of beginning. Containing 1.79 acres.

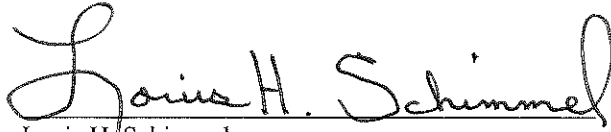
Also Identified as: Tax ID # 14-32-226-020 and 51111 Woodward Avenue.

3. That Mayor Leon Jukowski is hereby, pursuant to my authority under Act 436 of Public Act 2012 Section 9(2), authorized to make written good faith offers provided for in Section 2 of this Order in an amount that he determines will comply with the requirements of MCL 213.55(1), to allow two weeks for a response to the good faith offers, and to carry out any and all acts necessary and reasonable under the Uniform Condemnation Procedures Act of Michigan and Michigan law to carry out the City's power of eminent domain to condemn the Easement Rights of the Tower owners.

The Order shall have immediate effect.

Copies of the documents referenced in this Order are to be maintained in the offices of the City Clerk and may be reviewed and/or copies may be obtained upon submission of a written request consistent with the requirements of the Michigan Freedom of Information Act and subject to any exemptions contained in that state statute and subject to any exemptions allowed under that statute (**Public Act 442 of 1976, MCL 15.231, et. seq.**).

This order is effective as indicated and is necessary to carry out the duties and responsibilities required of the Emergency Manager as set forth in the Local Financial Stability and Choice Act (Act 436 of 2012/MCL 141.15411, et. seq.) and the contract between the Local Emergency Financial Assistance Loan Board and the Emergency Manager.

A handwritten signature in black ink that reads "Louis H. Schimmel". The signature is written in a cursive style with a large initial "L".

Louis H. Schimmel
City of Pontiac
Emergency Manager

cc: State of Michigan Department of Treasury
Mayor Leon B. Jukowski
Pontiac City Council