

The following is a summary of the minutes of the Special Town Board Meeting held by the Town Board of the Town of Riverhead at Town Hall, 200 Howell Avenue, Riverhead, New York on Thursday, November 17, 2016 at 10. a.m.

PRESENT

Sean Walter	Supervisor
John Dunleavy	Councilman
James Wooten	Councilman
Jodi Giglio	Councilwoman
Timothy Hubbard	Councilman

ALSO PRESENT:

Diane Wilhelm	Town Clerk
Daniel McCormick	Deputy Town Attorney

The Supervisor opened the meeting at 10:05 a.m. with the pledge of allegiance. Two resolutions were considered for adoption as follows.

Resolution #859

Councilman Dunleavy: “Approves Final Site Plan Application of J. Petrocelli Development Associates (Preston House), so moved”

Councilman Wooten: “Seconded”

Supervisor Walter: “Moved and seconded. Vote please.”

The Vote: “Hubbard, yes; Giglio, yes; Wooten, yes; Dunleavy, yes; Walter, yes. Resolution adopted.”

Resolution #837

Councilman Dunleavy: “I make a motion to untable resolution #837 - Resolution to Authorize the Removal and Disposal of Scrap Water Service Materials for the Riverhead Water District, so moved.

Councilman Wooten: “Seconded”

Supervisor Walter: “Moved and seconded to untable. Vote please.”

The Vote: “Hubbard, yes; Giglio, yes; Wooten, yes; Dunleavy, yes; Walter, yes. Resolution #837 is untabled.”

Resolution #837

Supervisor Walter: “Can we get a motion to accept the resolution?”

Councilman Dunleavy: “I make a motion to move resolution #837 - Resolution to Authorize the Removal and Disposal of Scrap Water Service Materials for the Riverhead Water District, so moved.

Councilman Wooten: “Seconded”

Supervisor Walter: “Moved and seconded. Vote please.”

The Vote: “Hubbard, yes; Giglio, yes; Wooten, yes; Dunleavy, yes; Walter, yes. Resolution adopted.”

PUBLIC HEARING

The attached minutes of the Public Hearing were recorded and transcribed by Flynn Transcription Services

Meeting Adjourned 10:47 a.m.

TOWN OF RIVERHEAD

COUNTY OF SUFFOLK STATE OF NEW YORK

-----X.

PUBLIC HEARING

ALLEGED UNSAFE BUILDING

212 TROUT BROOK LANE, RIVERHEAD

-----X

November 17, 2016
10:07 a.m.

200 Howell Avenue
Riverhead, New York

B E F O R E:

SEAN M. WALTER - Supervisor

JAMES WOOTEN - Councilman

JOHN DUNLEAVY - Councilman

JODI A. GIGLIO - Councilwoman

TIM HUBBARD - Councilman

DIANE WILHELM - Town Clerk



ORIGINAL

1 A P P E A R A N C E S :

2

3 RIVERHEAD TOWN ATTORNEY
4 200 HOWELL AVENUE
5 RIVERHEAD, NEW YORK 11901

6
7 BY: DANIEL P. MCCORMICK, ESQ.

8

9 BERKMAN, HENOCH, PETERSON, PEDDY &
10 FENCHEL, P.C.

11 100 Garden City Plaza
12 Garden City, New York 11501

13

14 BY: EILEEN M. RYAN, ESQ.

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1 (Town Exhibit 1, STRUCTURAL
2 INSPECTION REPORT, was marked for
3 identification.)

4 (Town Exhibit 2, NOTICE OF
5 UNSAFE/UNSECURED STRUCTURE, was marked
6 for identification.)

7 (Town Exhibit 3, NOTICE FOR PUBLIC
8 HEARING, was marked for
9 identification.)

10 (Town Exhibit 4, NEWS REVIEW
11 AFFIDAVIT OF PUBLICATION, was marked
12 for identification.)

13 (Town Exhibit 5, CERTIFIED DEED
14 FOR SUBJECT PROPERTY, was marked for
15 identification.)

16 SUPERVISOR WALTER: It is the
17 public hearing was scheduled for 10:00
18 a.m., it is now 10:07 a.m. I will open
19 the public hearing to consider all
20 interested persons regarding the
21 alleged unsafe structure located at 212
22 Trout Brook Lane, Riverhead, New York,
23 Suffolk County, Suffolk, New York,
24 Suffolk County tax map number
25 0600-85-2-95.19 pursuant to Chapter

1 217, part 4 of the Riverhead Town Code.
2 Our public hearing is now officially
3 open. Anybody that is going to
4 testify, because we do have a court
5 stenographer here, we ask you that you
6 speak clearly. We're going to let
7 Mr. McCormick lead the hearing.

8 MR. MCCORMICK: Thank you,
9 Mr. Supervisor. Mr. Dunleavy, do you
10 have a question?

11 COUNCILMAN DUNLEAVY: Yeah, no, I
12 just wanted to -- this is the structure
13 that had the fire?

14 MR. MCCORMICK: Yes, sir.

15 COUNCILMAN DUNLEAVY: And both
16 residents are deceased now?

17 MR. MCCORMICK: My understanding
18 is that Mr. Schaller is deceased. I'm
19 unaware of where Mrs. Schaller is at
20 the present time.

21 SUPERVISOR WALTER: Please
22 proceed.

23 MR. MCCORMICK: Thank you.
24 Marshal Zitek, if you can let us know
25 when the Power Point presentation is

1 available?

2 SUPERVISOR WALTER: Is anybody
3 representing the owner or the bank
4 here?

5 MR. MCCORMICK: I did have
6 contact, Mr. Supervisor, with a woman
7 named Eileen Ryan from Berkman, Henoch.
8 She represented that she was the bank's
9 attorney. That was about a month ago,
10 I have attempted to contact her, left
11 messages as well as e-mails. To date
12 she has not responded.

13 MR. SUPERVISOR: Is there an
14 Eileen Ryan in the room by any chance?
15 Okay. They have notice then,
16 constructive and/or served upon them?

17 MR. MCCORMICK: Yes. I also sent
18 them by e-mail a copy of the notice of
19 violation as well as the public hearing
20 notice date, so they've been apprised
21 of that, and I had oral conversation
22 regarding the same as well.

23 SUPERVISOR WALTER: Thank you.
24 Please proceed.

25 MR. MCCORMICK: Thank you.

1 Marshal Zitek, are you prepared to go
2 forward at this time?

3 MARSHAL ZITEK: Yes.

4 MR. MCCORMICK: Thank you. For
5 the record, again, this is a Chapter
6 217 unsafe structure action, and this
7 involves a property known as 212 Trout
8 Brook Lane in Aquebogue. Good morning,
9 Fire Marshal Zitek.

10 MARSHAL ZITEK: Good morning.

11 MR. MCCORMICK: For the record,
12 what is your title, sir?

13 MARSHAL ZITEK: Chief Fire Marshal
14 for the Town of Riverhead.

15 MR. MCCORMICK: How long have you
16 been the Chief Fire Marshal?

17 MARSHAL ZITEK: Five years.

18 MR. MCCORMICK: And what is the
19 nature of your duties regarding your
20 role as fire marshal?

21 MARSHAL ZITEK: Among by duties,
22 we inspect commercial properties
23 throughout the Town for compliance with
24 Town Code, State Code, and Property
25 Maintenance Code from the State. We

1 also do plans review as well as site
2 plan review as well as site inspections
3 to make sure that the buildings that
4 are being constructed or renovated are
5 being done so according to the plans as
6 well as to accepted building practices.

7 MR. MCCORMICK: And what is the
8 nature of your training that you
9 received pursuant to your duties as
10 fire marshal?

11 MARSHAL ZITEK: I am a state code
12 enforcement officer, I have been for
13 fourteen years. We go through
14 twenty-four hours of in-service
15 training every year in order to
16 maintain that certification.

17 MR. MCCORMICK: And do you also
18 receive recertification and retraining
19 on an annual or periodic basis?

20 MARSHAL ZITEK: I do.

21 MR. MCCORMICK: And do you also
22 have practical experience with regard
23 to building construction and building
24 trade?

25 MARSHAL ZITEK: I do. I spent

1 twenty years in construction prior to
2 becoming a fire marshal.

3 MR. MCCORMICK: I would ask that
4 he be declared an expert witness in
5 this particular area at this time, Mr.
6 Supervisor?

7 SUPERVISOR WALTER: Absolutely.
8 Sir, do you have a copy of his resume
9 that you'd like to submit into the
10 record.

11 MR. MCCORMICK: We will add that
12 as well.

13 COUNCILMAN HUBBARD: Counselor, I
14 just have a quick question. Mr. Zitek,
15 you mentioned commercial, but I assume
16 that you're also qualified to inspect
17 residential?

18 MARSHAL ZITEK: That's correct.
19 Primarily we do commercial, we do fire
20 investigations in residential or if
21 we're called in to assist in
22 residential, yes.

23 MR. MCCORMICK: May I proceed?

24 SUPERVISOR WALTER: Yes, please.

25 MR. MCCORMICK: Marshal Zitek, did

1 there come a time when you were
2 directed to a location known as 212
3 Trout Brook Lane?

4 MARSHAL ZITEK: Yes.

5 MR. MCCORMICK: When was the first
6 time pursuant to your official duties
7 that you had occasion to go to that
8 location?

9 MARSHAL ZITEK: First time was
10 March 4, 2013. There was a structure
11 fire at that location, and I assisted
12 along with Fire Marshal Andruszkiewicz
13 in doing the fire investigation.

14 MR. MCCORMICK: And how would you
15 describe the nature of the fire at that
16 time?

17 MARSHAL ZITEK: There was a lot of
18 damage to the house structurally. The
19 house is unsound, and it was boarded up
20 afterwards because there was a lot of
21 structural damage from the fire itself
22 as well as the fire suppression
23 activities.

24 MR. MCCORMICK: Subsequent to that
25 date, sir, did you have occasion to

1 come back to that location for another
2 site inspection?

3 MARSHAL ZITEK: I did. I was
4 requested back to the scene on February
5 28, 2016 by Riverhead Police. They had
6 received complaints of juveniles in the
7 building. The sector officer requested
8 that I respond to assist him in
9 resecuring the building.

10 MR. MCCORMICK: Did you, in fact,
11 engage in that activity?

12 MARSHAL ZITEK: Yes. We made the
13 building was clear. There was obvious
14 signs that people had been in the
15 building, empty bottles, cans, food
16 stuffs, as well as graffiti in the
17 interior of the building.

18 MR. MCCORMICK: And with respect
19 to that location of 212 Trout Brook,
20 how do you know that actually to be 212
21 Trout Brook Lane in Riverhead?

22 MARSHAL ZITEK: I checked the with
23 the assessor's office as well as the
24 Suffolk County Tax Map in order to
25 ascertain the tax map number.

1 MR. MCCORMICK: And did you also
2 determine who the deeded owner was for
3 the assessor records?

4 MARSHAL ZITEK: I did.

5 MR. MCCORMICK: And who did you
6 know that to be?

7 MARSHAL ZITEK: That was Brian
8 Schaller and I believe it was Elizabeth
9 M. Schaller is the -- was the other
10 name on the assessor's tax.

11 MR. MCCORMICK: And did you have
12 occasion to again revisit that
13 particular location known as 212 Trout
14 Brook Lane after the date you just
15 alluded to?

16 MARSHAL ZITEK: I did. I was
17 there on Wednesday, March 2, 2016 to
18 post the structure as an unsafe
19 structure.

20 MR. MCCORMICK: Was that based on
21 your previous observations as well as
22 the fire that you had observed at the
23 time of that fire back in 2013?

24 MARSHAL ZITEK: It was.

25 MR. MCCORMICK: And what, if any,

1 other action did you take at that
2 particular time?

3 MARSHAL ZITEK: After posting the
4 building, we attempted to contact and
5 locate the owners during process which
6 we discovered that Mr. Schaller was
7 deceased and also learned that
8 Elizabeth M. Schaller had died
9 approximately a year ago.

10 MR. MCCORMICK: Marshal Zitek, I'm
11 showing you what's been previously
12 marked for identification as Town
13 Exhibit 1. Can you identify that
14 document. Sir?

15 MARSHAL ZITEK: Yes, this is my
16 structural inspection report on 212
17 Trout Brook Lane.

18 MR. MCCORMICK: And within the
19 document, sir, there are photos marked
20 1 through 9, are you familiar with
21 those photos?

22 MARSHAL ZITEK: I am.

23 MR. MCCORMICK: Did you, in fact,
24 take those photos?

25 MARSHAL ZITEK: I did.

1 MR. MCCORMICK: Did you take those
2 photos at the dates that are indicated
3 adjacent to the photos within that
4 particular report?

5 MARSHAL ZITEK: I did.

6 MR. MCCORMICK: Regarding the
7 photos, do those photos clearly and
8 accurately reflect and depict the scene
9 as you observed on the dates in
10 question?

11 MARSHAL ZITEK: They do.

12 MR. MCCORMICK: Now, with respect
13 to the actual structural report, is it
14 within the normal course of business
15 for the Riverhead Fire Marshal to draft
16 and produce such a report?

17 MARSHAL ZITEK: It is.

18 MR. MCCORMICK: And with respect
19 to Exhibit Number 1, did you, in fact,
20 draft and produce this particular
21 report pursuant to your duties as the
22 Riverhead Town Chief Fire Marshal?

23 MARSHAL ZITEK: I did.

24 MR. MCCORMICK: I'd ask,
25 Mr. Supervisor, this be admitted both

1 as a business record and that
2 concomitantly each of the photos marked
3 1 through 9 be admitted as well as part
4 of this particular report.

5 SUPERVISOR WALTER: Absolutely.

6 And if Counsel for the --

7 AUDIENCE MEMBER: This is Eileen
8 Ryan.

9 SUPERVISOR WALTER: Okay. Well,
10 please provide a copy to Eileen Ryan,
11 Counsel for the bank, I presume.

12 MR. MCCORMICK: I will. You are
13 Ms. Ryan?

14 MS. RYAN: Yes.

15 MR. MCCORMICK: Mr. Supervisor, if
16 she could formally put her appearance
17 on the record? I would ask -- and I
18 also note respectfully that the time is
19 10:16 --

20 MS. RYAN: I apologize, I went to
21 the wrong building. This is my first
22 time I'm here. Are you Mr. McCormick?

23 MR. MCCORMICK: I am Mr.
24 McCormick.

25 MS. RYAN: Good morning.

1 MR. MCCORMICK: Very nice to meet
2 you.

3 MS. RYAN: You too.

4 MR. MCCORMICK: If you could
5 kindly put your --

6 MS. RYAN: Eileen Ryan with
7 Berkman Henoch, 100 Garden City Plaza,
8 Garden City, and we represent Ditek,
9 who -- could I just go? Ditek is the
10 servicer of the loan, not the note
11 holder, so I just want to put that out
12 there, and not the record owner of the
13 property either.

14 MR. MCCORMICK: Could you provide
15 documentation subsequent to today's
16 hearing regarding that particular
17 representation?

18 MS. RYAN: Absolutely.

19 MR. MCCORMICK: Okay. Thank you.

20 SUPERVISOR WALTER: You can take a
21 seat. We're going to question our fire
22 marshal, enter the information into the
23 record, give you a copy of the
24 information, and then we'll allow you,
25 if you'd like to, to question our fire

1 marshal as well.

2 MR. MCCORMICK: Right. And for
3 edification, Mr. Supervisor, Ms. Ryan,
4 we did start timely on this matter.
5 Here's where we are in the hearing at
6 this time: I've called Chief Fire
7 Marshal Craig Zitek, who is my sole
8 witness with respect to today's matter.
9 I've introduced the structural
10 inspection report as well as nine
11 photos marked 1 through 9, which are
12 actually contained within this
13 document. So when you go through that
14 document you'll see all the exhibits
15 which have been entered to this moment
16 in time.

17 MS. RYAN: So forgive me if I have
18 this procedurally all wrong, but just
19 to kind of put this out there so I
20 don't waste anybody's time, we're not
21 kind of contesting the status of the
22 property. The lienholder, we want to
23 go in there and complete the demolition
24 and then repair whatever it is to get
25 up to code. Like I said, the problem

1 so far has been that Fannie Mae is the
2 note holder. We have been requesting
3 permission to enter the property and
4 approval to get all the repairs done
5 since April 28th of this year. I think
6 they've gone back and forth four or
7 five times. Fannie keeps requesting
8 information. The last round of info
9 that Fannie Mae requested from, again,
10 my client, the loan servicer, was about
11 the insurance proceeds, like, whatever
12 happened when this fire happened, and
13 just kind of making sure from the loan
14 servicer that all of the insurance
15 money was allocated properly. From all
16 my experience, I think that we'll get
17 the approval from Fannie. And like I
18 said, my client, Ditek, certainly wants
19 to go in and fix the property. So I
20 don't know if that kind of cuts short
21 any --

22 SUPERVISOR WALTER: Not really.
23 What's going to happen is we're going
24 to make a decision as to whether the
25 house has to be demolished. We will

1 then issue, not today, but we will
2 issue an order to have the house
3 demolished and put it on the tax bill.
4 If Fannie gets of its rear end faster,
5 surely they could get the house
6 demolished at a savings compared to
7 what it's going to cost to have it put
8 on the tax bill, but make no mistake
9 about it, if we issue a decision to
10 have the house demolished, we're going
11 to proceed to have the house
12 demolished, which means we issue an
13 RFP, we select a vendor, and whoever
14 gets there first, if we issue it --

15 MS. RYAN: And what kind of time
16 line is it usually? In other words,
17 how long would I have to keep going
18 back and forth with Fannie Mae to try
19 to get approval --

20 SUPERVISOR WALTER: Oh, you're
21 going to have less than sixty days I
22 think. I think we might actually light
23 that fire under Fannie's rear end. No
24 pun intended.

25 COUNCILMAN DUNLEAVY: If you could

1 give us an address and people you're
2 contacting at Fannie Mae?

3 MS. RYAN: Okay. So I don't have
4 a direct contact at Fannie.

5 COUNCILMAN DUNLEAVY: Maybe our
6 attorney will also notify them.

7 MS. RYAN: That is -- the property
8 preservation at Ditek has been the one
9 in communication with Fannie, and like
10 I said, I just got updates of the
11 contact that they made trying to get
12 the approvals.

13 SUPERVISOR WALTER: Okay. Well,
14 we're going to proceed, and if we
15 determine the house has to be torn
16 down, we will issue the order that the
17 house will be torn down. We will do a
18 bid, get a price, and as I said, if we
19 get there first, then we're going to
20 tear it down and put it on your tax
21 bill, if we so make that decision. If
22 you get there first, you're going to
23 get a building permit and take care of
24 the demolition of the house, so let's
25 proceed with the fire marshal.

1 MR. MCCORMICK: Right. And for
2 clarification, Ms. Ryan, I'll be
3 available as a liaison between your
4 office and the Town Board.

5 MS. RYAN: Again, I apologize if
6 that was incorrect procedurally, I just
7 wanted to let you guys know that we're
8 not contesting anything, they want to
9 fix it.

10 MR. MCCORMICK: And we so much
11 appreciate the information you gave us
12 today. Thank you very much. So
13 Mr. Supervisor, I'll proceed?

14 SUPERVISOR WALTER: Please
15 proceed.

16 MR. MCCORMICK: Fire Marshal
17 Zitek, with respect to your structural
18 inspection report, did you have
19 occasion to transfer the contents of
20 that report into a Power Point
21 presentation?

22 MARSHAL ZITEK: I have.

23 MR. MCCORMICK: Would you like to
24 present that for purposes of
25 edification regarding the Town Board

1 and the public at large in the meeting
2 today?

3 MARSHAL ZITEK: I would.

4 MR. MCCORMICK: And are you
5 pursuing this particular avenue for
6 purposes of illustration?

7 MARSHAL ZITEK: Yes.

8 SUPERVISOR WALTER: Go ahead, see
9 if it works.

10 MR. MCCORMICK: Please proceed,
11 Fire Marshal Zitek.

12 MARSHAL ZITEK: Thank you. So
13 this is a Power Point presentation
14 summing up my structural report for 212
15 Trout Brook Lane. I was there on March
16 23rd and again on June 7th completing
17 this report. Again, my qualifications,
18 I've been Chief Fire Marshal for five
19 years, Fire Marshal for eleven years, a
20 New York State code enforcement officer
21 for thirteen years, active member of
22 the fire service for thirty years, and
23 I have twenty years experience in
24 construction. Again, my duties include
25 inspecting buildings and properties for

1 compliance with Town Code, New York
2 State Uniform Building and Fire
3 Prevention Codes and Property
4 Maintenance Codes as well as reviewing
5 building plans and site plan
6 applications and then site inspections
7 during construction to make sure that
8 everything is complied with.

9 This is the house at 212 Trout
10 Brook Lane in Aquebogue as depicted on
11 March 2, 2016. Unfortunately it's a
12 little hard to see the photos here with
13 the lights, but some background on it,
14 it's a single family residence, two
15 story wood frame structure with a full
16 basement on approximately one-half acre
17 of land. There was a fire on March 4,
18 2013 which did considerable structural
19 damage to the house. The floors, the
20 walls, and the stairs are all unsound.
21 There is a large hole in the roof from
22 the fire where it vented as well as the
23 interior now is open to snow, rain,
24 sun, and wind and their effects on the
25 house. Both Mr. Schaller and Elizabeth

1 M. Schaller are deceased, and we have
2 had complaints through Riverhead PD of
3 unauthorized entry, mainly by
4 juveniles, in the house. I was there
5 last on Sunday, February 28th to assist
6 the sector officer in making sure the
7 building was clear and to resealing
8 it, and while inside we did find
9 graffiti, empty bottles and cans, food
10 stuffs, wrappers, and so forth.

11 This is the rear of the house, and
12 as you can see there's a large hole in
13 the roof here where the fire vented
14 from the fire back in 2013, and that
15 hole has continued to grow in size.
16 When I looked at it today, it is I want
17 to say at least half again the size
18 that it is depicted in this picture.

19 This is the south side of the
20 house above the garage. The window
21 here is missing, there's open framing
22 and all that's exposed here. I've seen
23 squirrels running up and down the
24 garage roof in that area. We've had
25 complaints from the neighbors of rats,

1 raccoons, and other vermin in and out
2 of the house. I have seen squirrels
3 during my inspections there running in
4 and out of the building as well as in
5 the summertime there's numerous
6 insects, wasps, bees, and so forth
7 flying in and out of the building as
8 well.

9 This is the front roof from the
10 front of the house, and there is a
11 large sag that has developed in this.
12 Again, this is back in March, and when
13 I went there back in June, I'm sorry,
14 this picture is not very good, but this
15 rift has grown now, and it's gone down
16 to this porch roof as well. When I was
17 by there this morning, there is now a
18 very large belly down here in this
19 porch roof where it's continuing to sag
20 and deteriorate.

21 Standing on the front porch, this
22 would be the front door, and you can
23 see right up through to that hole in
24 the rear roof, you can see right on up.
25 You can see the char and the damage

1 from the fire. This opening allows the
2 wind as well as rodents to get in, but
3 it also allows the wind to blow through
4 there, which creates wind sheer and
5 uplift on the building which was never
6 designed for.

7 This is a closer look, the same
8 shot. In between the roof rafters here
9 you can see the charring and the damage
10 to the rafters. We have a number of
11 the porch ceiling rafters are all
12 missing. In between these rafters
13 right here for the roof, this area that
14 you see here is the remainder of the
15 roof deck. Normally, my experience,
16 that's half inch or five-eighths
17 plywood that's laid across, and you can
18 see here that it's been completely
19 burned away by the fire. As well as
20 the charring on these rafters that we
21 see here and going up here, there's at
22 least a quarter inch to a half inch
23 deep on either side of those rafters.
24 Those rafters are only an inch and a
25 half in thickness, so now you've

1 reduced that from an inch and a half of
2 structural material from what it was
3 designed to support, now we're down to
4 an inch or a half inch of structural
5 material left there to support. When
6 it was originally was designed, it had
7 an inch and a half to support it.

8 Again, just another picture, you
9 can see, again, where the roof deck
10 here is missing, where it's been all
11 burned through. We have a number of
12 rafters that are broken. There are two
13 in this picture where they've broken
14 now and are starting to sag down, no
15 longer able to support the weight of
16 the roof. As well as the deck has
17 numerous holes in it, the railings are
18 missing as well as the boards
19 themselves where they used to be tight
20 you can now see there are gaps in
21 between. When I walk on this deck, I
22 make sure that I'm walking on one of
23 the girders underneath because I worry
24 about going through it.

25 Also, just to go back, if I can,

1 when you site up these, these rafters,
2 I forgot to mention, now they are
3 starting to warp and twist back and
4 forth again due to their exposure, due
5 to the weight that they're holding,
6 they're beginning to buckle.

7 So our issues are the structural
8 damage, the charred wood has no
9 structural strength. The framing
10 members are no longer able to support
11 the loads that they were designed to
12 support initially, the weight, the
13 spans. All right? The mechanical
14 fasteners, the nails, the screws that
15 we used to hold those joists and that
16 framing together are now not as secure
17 as they had been because now they're
18 into charred wood and not as deeply
19 into the wood as they had been when the
20 building was built. We have exposure
21 sure problems. We have water saturated
22 wood by the water, the rain, the snow
23 being able to get in there. Wet wood
24 does not have the structural strength
25 that the kiln dried wood when the house

1 was built would have had. So now
2 you're losing strength there. The sun,
3 the heat, the cold also degrade the
4 strength of the framing members of the
5 structural members, the heating and
6 cooling causing things to expand and
7 contract, fasteners start to work
8 loose, the wood itself, the charring,
9 it all breaks off. We have mold,
10 fungi, insects, again, all working on
11 these structural members, what's left
12 of the house, and then of course the
13 wind loads created by the openings in
14 the house. There's wind sheer as well
15 as lift that the house was never
16 designed or intended to have to deal
17 with.

18 We also have the unauthorized
19 entry. Juveniles in the building,
20 cans, bottles, things like that.
21 They're at risk because the house is
22 covered in soot, all that soot has
23 toxins. We're getting into the colder
24 time of year now, so any homeless are
25 going to be looking for places that

1 they can hole up for the winter to get
2 out of the weather and all. So they're
3 going to be in there, and that puts our
4 first responders at risk because
5 knowing that even though the building
6 is posted as being unsafe, they will
7 most likely enter and search, make sure
8 that there is no one in there should
9 there be an additional fire, or
10 collapse, or other emergency at the
11 building.

12 New York -- the 2010 New York
13 State Fire Code defines an unsafe
14 structure as any structure that is
15 found to be dangerous to the life,
16 health, property, or safety of the
17 public, or contains such unsafe
18 equipment or so damaged, decayed, or
19 dilapidated that it is structurally
20 unsafe, or that partial or complete
21 collapse is possible, and I believe
22 this structure fits that definition.
23 Also the 2010 Code defines imminent
24 danger as when there is an imminent
25 danger of failure or collapse of the

1 building or structure, which endangers
2 life. Again, this building is already
3 starting to decay and to collapse, and
4 I believe we have an imminent danger of
5 further collapse, and again, it puts
6 anybody who may enter that building
7 whether authorized or not at risk. And
8 our Town Code Chapter 217, part 4 on
9 unsafe structures and buildings, any
10 building or structure and danger
11 conditions on property which are
12 structurally unsafe, dangerous or
13 unsafe to the public, or which in
14 relation to the existing use constitute
15 a hazard in safety or in health by
16 reasons of inadequate maintenance,
17 dilapidation, or obsolescence, or
18 abandonment all fall under this.

19 So in conclusion, the building was
20 damaged by a fire in 2013. There was
21 damage to the floors, the walls, the
22 stairs, the roof, et cetera. There's a
23 large hole in the roof, which continues
24 to grow and allows the weather,
25 rodents, insects into the building.

1 The roof is already sagging, and we
2 have numerous broken rafters, as well
3 as we have rafters that are buckling
4 and will most likely continue to
5 buckle. We have exposure to the
6 elements, the wind loads, the uplift
7 created by the openings where the wind
8 can just blow through the building. We
9 have reduced strength of the water
10 soaked wood. The building continues to
11 deteriorate. Every time I have been
12 there to examine the building, it seems
13 to be worse than the time before. It
14 has become a harborage for rodents and
15 insects. As I said, I have seen
16 insects and squirrels going in and out
17 of the building. I've had complaints
18 from the neighbors about raccoons and
19 rats and so forth as well as well as
20 the cat, the family cat is still there.
21 One of the neighbors feeds the cat and
22 takes care of it, and I have seen the
23 cat around the house, although I have
24 not seen it actually go into the
25 structure. Again, it puts our first

1 responders at risk due to unauthorized
2 entry by other persons. It's my
3 conclusion that this building is unsafe
4 and in imminent danger of collapse. My
5 recommendation is that the building be
6 demolished.

7 SUPERVISOR WALTER: Thank you.
8 Mr. McCormick, do you have any other
9 questions?

10 MR. MCCORMICK: I do. Thank you.
11 Marshal Zitek, you are being shown
12 Exhibit Number 2 for identification.
13 Can you identify that document?

14 MARSHAL ZITEK: Yes. This is the
15 notice of violation that a copy of
16 which I posted on the building as well
17 as mailed certified copy to the last
18 known owners and address.

19 MR. MCCORMICK: Which, for the
20 record, is 212 Trout Brook Lane in
21 Riverhead, correct?

22 MARSHAL ZITEK: That's correct.

23 MR. MCCORMICK: And what was the
24 date that you sent that document?

25 MARSHAL ZITEK: That document was

1 sent on August 2, 2016.

2 MR. MCCORMICK: And did you
3 include a copy of that notice in the
4 envelope that's contained in Exhibit 2?

5 MARSHAL ZITEK: It is. The
6 envelope is still -- it's still in
7 there unopened.

8 MR. MCCORMICK: And did you also
9 send it by return receipt requested?

10 MARSHAL ZITEK: I did.

11 MR. MCCORMICK: Did you receive
12 that return receipt requested card back
13 in the mail?

14 MARSHAL ZITEK: I did not, however
15 I did receive the envelope back on
16 August 8th as being unable to be
17 delivered.

18 MR. MCCORMICK: And you've kept it
19 in your possession since it was
20 returned to you?

21 MARSHAL ZITEK: That's correct.

22 MR. MCCORMICK: There were also
23 two photos attached to Exhibit 2 in the
24 back regarding your posting; is that
25 correct?

1 MARSHAL ZITEK: Those were the
2 photos of the house with the posting on
3 it.

4 MR. MCCORMICK: And that was done
5 pursuant to Riverhead Town Code
6 requirements, correct?

7 MARSHAL ZITEK: Correct.

8 MR. MCCORMICK: The photos in the
9 back of Exhibit 2, do those fairly and
10 accurately represent the scene as
11 depicted on the date you actually
12 posted those notices?

13 MARSHAL ZITEK: They do.

14 MR. MCCORMICK: I'd ask that this
15 be Exhibit 2 admitted into evidence.

16 SUPERVISOR WALTER: Absolutely.
17 Thank you. Just provide a copy to
18 Counsel.

19 MR. MCCORMICK: I will. I'll make
20 copies of everything. Marshal Zitek,
21 I'm not showing you Exhibit 3 marked
22 previously for identification. Can you
23 identify that document?

24 MARSHAL ZITEK: This is the
25 hearing notice that was posted on the

1 house as well as sent again to the last
2 known property owners.

3 MR. MCCORMICK: Again, for the
4 record, that was Brian and Elizabeth
5 Schaller at 212 Trout Brook Lane in
6 Riverhead?

7 MARSHAL ZITEK: That's correct.

8 MR. MCCORMICK: As was the other
9 document?

10 MARSHAL ZITEK: Correct.

11 MR. MCCORMICK: And did you
12 receive that back in the mail?

13 MARSHAL ZITEK: I did.

14 MR. MCCORMICK: Did you receive it
15 back in the mail in an unopened state?

16 MARSHAL ZITEK: I did.

17 MR. MCCORMICK: And you sent that
18 by return receipt requested as well?

19 MARSHAL ZITEK: Yes, that's
20 correct.

21 MR. MCCORMICK: There are photos
22 also accompanying that particular
23 exhibit?

24 MARSHAL ZITEK: Yes.

25 MR. MCCORMICK: Did you take those

1 photos as well?

2 MARSHAL ZITEK: I did.

3 MR. MCCORMICK: Do those photos
4 fairly and accurately represent the
5 scene as depicted regarding the posting
6 of this respective notice of hearing
7 violation?

8 MARSHAL ZITEK: They do.

9 MR. MCCORMICK: And the public
10 hearing for today's date, November
11 17th?

12 MARSHAL ZITEK: Correct.

13 MR. MCCORMICK: I'd ask likewise
14 that this exhibit be admitted into
15 evidence at this time, Mr. Supervisor?

16 SUPERVISOR WALTER: So admitted
17 with copies to Counsel for the bank.

18 MR. MCCORMICK: Thank you.
19 Exhibit 4 previously marked for
20 identification. Mr. Supervisor and
21 Town Board, this is the affidavit of
22 publication with the News Review
23 indicating today's hearing date of
24 November 17th. I'll likewise make a
25 copy available for Ms. Ryan as well,

1 but I'd ask that this be admitted into
2 evidence formally pursuant to our
3 hearing requirements as Exhibit 4.

4 SUPERVISOR WALTER: So admitted
5 with copy to Ms. Ryan.

6 MR. MCCORMICK: Lastly as the
7 exhibits, Exhibit 5 previously marked
8 for identification. This is a copy of
9 the certified deed regarding 212 Trout
10 Brook Lane in Riverhead still
11 indicating as per the Suffolk County
12 clerk's office that the actual owners
13 of record are still Brian J. Schaller
14 and Elizabeth M. Schaller, 212 Trout
15 Brook Lane, Riverhead, New York. I ask
16 that this be admitted as Exhibit
17 evincing that Mr. and Mrs. Schaller are
18 still the deeded owners of the property
19 pursuant to our code requirements.

20 SUPERVISOR WALTER: So admitted
21 with copies to Ms. Ryan.

22 MR. MCCORMICK: Yes, I will do
23 that as well. Just a couple of more
24 questions for Marshal Zitek. Regarding
25 the structure in question, in your

1 opinion, is there any way to actually
2 repair or save the structure as it
3 presently exists?

4 MARSHAL ZITEK: I don't believe
5 so. At this time I believe it's too
6 far gone.

7 MR. MCCORMICK: When you say too
8 far gone, damage to the --

9 MARSHAL ZITEK: There's too much
10 damage from the fire as well as the
11 exposure to the elements over the
12 years.

13 MR. MCCORMICK: Are you also
14 requesting pursuant to your
15 recommendation that the building be
16 demolished, pursuant to costs, that
17 those costs be assessed against the
18 property with respect to the bidding
19 process and any third party that is
20 contracted to remove the structure?

21 MARSHAL ZITEK: Correct.

22 MR. MCCORMICK: Thank you. I have
23 no further questions of Marshal Zitek
24 at this time.

25 SUPERVISOR WALTER: I'm going to

1 ask one question, open it to the Board,
2 and then allow the opposing Counsel, if
3 you wish, to inquire of our witness.
4 You said you believe it too far gone,
5 are you saying in your expert opinion
6 or --

7 MARSHAL ZITEK: I'm sorry, let me
8 rephrase that, the building is too far
9 gone, yes.

10 SUPERVISOR WALTER: So in your
11 expert opinion it has to be --

12 MARSHAL ZITEK: Demolished, yes.

13 SUPERVISOR WALTER: Does Counsel
14 have any questions?

15 COUNCILMAN DUNLEAVY: I have one
16 question. Do you know that the firm
17 this lady represents is taking care of
18 the house now? They were not notified,
19 that's all I'm saying. I know you sent
20 it to the residence, which nobody lives
21 there, so no one is going to get that
22 mail. But did you know --

23 SUPERVISOR WALTER: They were
24 notified, that's how she got here.

25 MR. MCCORMICK: For the record,

1 Councilman, I actually notified --

2 COUNCILMAN DUNLEAVY: No, no, but
3 he's saying that all these certified
4 letters were sent to the house. I'm
5 asking was anything sent to this lady's
6 firm?

7 MR. MCCORMICK: The answer is no,
8 and pursuant to our Town Code
9 requirements, we are required to
10 actually notify the deeded owner of the
11 property and publish, which the
12 exhibits speak to, with regard to
13 today's hearing. When I learned that
14 there was a foreclosure process
15 involved, and I learned that Berkman
16 Henoch was involved, that's how I came
17 to contact Ms. Ryan about a month ago
18 when I learned that information, hence
19 her appearance today with regard to
20 both the public notice and a copy of
21 Fire Marshal Zitek's inspection report.

22 COUNCILMAN DUNLEAVY: I know what
23 our code says, but for the courtesy,
24 that's all I'm saying, for the courtesy
25 I think they should have been notified.

1 MR. MCCORMICK: I did notify.

2 COUNCILMAN DUNLEAVY: You said
3 that you knew that they did represent,
4 that's all.

5 SUPERVISOR WALTER: Okay. Thank
6 you. Are there any other questions
7 from Town Board Members?

8 COUNCILMAN HUBBARD: Mr. Zitek,
9 was the fire suspicious in nature, or
10 was there a cause determined?

11 MARSHAL ZITEK: I believe the
12 cause was a candle from what I recall.
13 I could get the report out and go back
14 and look, but as I recall, I believe it
15 was a candle.

16 MR. MCCORMICK: And for
17 edification, Councilman Hubbard,
18 Mr. Schaller did not succumb in this
19 fire. To my understanding, his death
20 was unrelated to the fire at all. One
21 other point though, regarding
22 Mrs. Schaller, to my understanding, we
23 had anecdotal evidence that Mrs.
24 Schaller might have been in
25 Pennsylvania. I just want to clarify,

1 Marshal Zitek, do you have information
2 that Mrs. Schaller is actually deceased
3 as well? Because our last
4 investigation shows she may have been
5 in Pennsylvania.

6 MARSHAL ZITEK: Elizabeth M.
7 Schaller from what I -- I don't have
8 all my notes with me, but that was
9 Brian Schaller's mother, she died
10 approximately a year ago was what I had
11 learned. The ex-wife -- actually I
12 don't think it's even -- it's not his
13 ex-wife, I believe they're still
14 married, but she was down in North
15 Carolina or South Carolina I believe
16 from talking to the neighbors, and I'd
17 have to go look back through my notes
18 on that.

19 MR. MCCORMICK: You don't have any
20 evidentiary documentation to that
21 effect today, correct?

22 MARSHAL ZITEK: No, I don't.

23 COUNCILMAN WOOTEN: I would hope
24 that she is if she's not.

25 SUPERVISOR WALTER: I'm going to

1 leave it open for written comment, you
2 can research the Social Security
3 records to see if there's a record of
4 death. It may be the same person, it
5 may not be in Social Security records,
6 but you can try.

7 All right. If there's no other --

8 COUNCILMAN WOOTEN: Just one quick
9 question, the building right now is
10 secured as best it can be at this
11 point?

12 MARSHAL ZITEK: At this point,
13 yes, although I can't get around to the
14 rear of the building anymore because
15 the gates have been screwed shut. So I
16 know the front of the building is
17 secure, but I don't know whether the
18 glass door where the kids had gotten in
19 the last time is still secure from when
20 I resecured it back in February or not.

21 COUNCILMAN WOOTEN: I'm just
22 concerning if we have a heavy snowfall
23 or something, it could --

24 MARSHAL ZITEK: Exactly.

25 SUPERVISOR WALTER: Ms. Ryan,

1 would you like to inquire of our
2 witness?

3 MS. RYAN: I would not. Like I
4 said, we're not contesting the Fire
5 Marshal's report or what's needed for
6 the property.

7 SUPERVISOR WALTER: Okay. So what
8 we're going to do is keep this on a
9 short leash. Does any of the residents
10 wish to be heard? We ask you, you can
11 come up, you can take as much time as
12 you need, but I don't know that we need
13 repetitive information. I think we
14 have the sum and substance of the
15 building.

16 MS. HECHT: Hi, my name is Kira
17 Hecht, I live at 226 Trout Brook Lane,
18 which is the house immediately next to
19 him in the cul-de-sac. My house
20 adjoins Brian's property. You have all
21 the information in regards to it.
22 There are an abundant amount of
23 raccoons. I have animals, I have two
24 young children. At nighttime, we have
25 to be very, very careful for the

1 raccoons. The property has been being
2 maintained, we're assuming it's by the
3 bank, only the front of the house
4 because the gates were being
5 repetitively ripped down. My husband
6 is actually the one that secured the
7 gates shut in order to try to deter
8 people from going back there. We
9 monitor it. The boards have not been
10 ripped down at all in the back.

11 However, the house has been boarded up
12 numerous times by the fire marshal or
13 the bank, we're not quite sure who does
14 that. So there is a problem. If it
15 does snow this year, the roof will fall
16 in. We have a lot of children in the
17 area, as you know, it's a very big
18 residential area, so we are concerned
19 for the residents and whatnot there.
20 It's been three years, so unfortunately
21 we think it's time. Thank you.

22 SUPERVISOR WALTER: Thank you.

23 Does anybody else wish to be heard from
24 the neighborhood? State your name and
25 address.

1 MS. BURNETT: My name is Joan
2 Burnett, I live at 245 Trout Brook
3 Lane. I'm actually a title examiner at
4 the Suffolk County Center, and I
5 checked out the -- you know, the
6 foreclosure action that's been begun,
7 and just for the record, the mortgage
8 has been assigned a few times, and the
9 last time I checked it, it was a bank
10 in Arizona, so that was about four,
11 five months ago, I'm not sure when
12 exactly it changed over. It might be
13 Ditek now, but as far as trying to get
14 in touch with banks or somebody along
15 the way to try to help, you know, keep
16 records of the building, it was a
17 little difficult, even for myself as a
18 title examiner trying to figure out
19 well, whose got, you know, rights to it
20 at the moment, you know. Again, Brian
21 Schaller was deceased, and what we had
22 understood was that his mother had been
23 deceased also, and that his ex-wife or
24 former wife, whatever, is living in
25 Georgia I believe, so it's difficult.

1 She was never on the deed anyway or the
2 mortgage, so just a little bit of
3 information. And it really is an
4 eyesore.

5 SUPERVISOR WALTER: I think we're
6 going to move quickly. Does anybody
7 else wish to be heard? All right. So
8 what I'm going to do, we're going to
9 keep this on a short leash, I'm going
10 to allow it to be open, I'm going to
11 close the public comment portion. I'm
12 going to leave it open for written
13 comments to Monday, November 28th, 4:30
14 in the town clerk's office. I expect a
15 resolution to be drafted and discussed
16 on Thursday, December 1st, and if the
17 Board is inclined to demolish the
18 house, I'm going to have the resolution
19 presented to the Town Board to be voted
20 on December 6th at the 2:00 Town Board
21 meeting. I would also direct that a
22 bid spec be prepared, if it appears
23 that we're going to be taking this
24 down, to have a bid spec also ready to
25 go December 6th for the tear down. And

1 I thank you all for coming, so we'll
2 close the public comment portion and
3 leave it open for written comment as
4 stated. Thank you.

5 Can I get a motion to adjourn the
6 Town Board meeting and go into work
7 session?

8 COUNCILWOMAN GIGLIO: Motion?

9 SUPERVISOR WALTER: Second. All
10 in favor? Aye.

11 COUNCILMAN WOOTEN: Aye.

12 COUNCILMAN DUNLEAVY: Aye.

13 COUNCILMAN HUBBARD: Aye.

14 COUNCILWOMAN GIGLIO: Aye.

15 SUPERVISOR WALTER: Opposed,
16 abstentions? Motion carries, we are
17 going to go into work session.

18 (Whereupon the meeting was
19 adjourned at 10:44 a.m.)
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