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Minutes of a Community Development Agency meeting held by the Town Board of the Town of Riverhead, at Town Hall, 200 Howell Avenue, Riverhead, New York, on Thursday, December 20, 2001, at 4:03 P.M.

**Present:**

Robert Kozakiewicz,	Chairman
Edward Densieski,	Member
James Lull,	Member
Christopher Kent,	Member
Philip Cardinale,	Member

**Also Present:**

Barbara Grattan,	Town Clerk
Scott DeSimone, Esq.,	Town Attorney
Andrea Lohneiss,	Director

Chairman Kozakiewicz called the meeting to order at 4:03 p.m.

Chairman Kozakiewicz: "Take up the CDA portion, the time being 4:03 p.m."

Resolution #25

Andrea Lohneiss: "Resolution 25 authorizes the Chairman to execute documents relating to New York State Department of Transportation Real Property Appropriation."

The DOT notified the Town that they intend to take a very small portion, .29 acres, of the property within the fence at Calverton for flooding reduction or flooding control purposes. They've offered the Town based on an appraisal, \$6,400."

Chairman Kozakiewicz: "Is there a motion?"

Member Lull: "So moved."

Member Kent: "Seconded."

Chairman Kozakiewicz: "Motion by Member Lull, second by Member Kent."

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The Vote: "Densieski, yes; Cardinale, yes; Kent, yes; Lull, yes; Kozakiewicz, yes. The resolution is adopted."

Chairman Kozakiewicz: "We also have I think a- that's not the-"

Barbara Grattan: "This is the old one, I don't have the new one. No one has given it to me."

Andrea Lohneiss: "The Supervisor has it."

Chairman Kozakiewicz: "I thought I had an amended version. And I probably quickly lost it."

Member Densieski: "Which one are you looking for, Bob?"

Chairman Kozakiewicz: "The Swezeys."

Member Densieski: "This one here?"

Chairman Kozakiewicz: "That's the old one as well."

Member Densieski: "So what's wrong with this one?"

Chairman Kozakiewicz: "There was some additional wording that needed to be changed. Okay, here it is, I'm sorry."

Member Kent: "Oh, you have it? Great. I was just going to do it again."

Chairman Kozakiewicz: "Hopefully, that has everything."

Andrea Lohneiss: "The change that was made by the Town Attorney is on the second page, the second Therefore Be It Resolved, the second paragraph is added."

Chairman Kozakiewicz: "I think- just one note. I think you wanted it to be one paragraph?"

Member Kent: "It doesn't have to be. I'm just going to re-read it how it's going to be."

Chairman Kozakiewicz: "Okay."

Member Kent: "That's fine."

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Chairman Kozakiewicz: "Okay. With the amended language. Go ahead."

Andrea Lohneiss: "Okay, Resolution #24 was tabled on- "

Chairman Kozakiewicz: "So it has to be taken off the table?"

Andrea Lohneiss: "November 20<sup>th</sup>."

Chairman Kozakiewicz: "Is there a motion?"

Member Kent: "So moved to take it off the table."

Member Densieski: "Second to take it off the table."

Chairman Kozakiewicz: "Okay. Vote."

Andrea Lohneiss: "This resolution extends time for Swezeys."

Chairman Kozakiewicz: "Right."

Andrea Lohneiss: "To comply with the conditions of their agreement that was dated November, 1998, regarding the property on East Main Street."

Chairman Kozakiewicz: "Yeah. This is the vote to take it off the table. All right?"

Andrea Lohneiss: "Okay."

Chairman Kozakiewicz: "So the vote would be just on that aspect unless you want to vote and move on in one fell swoop, guys."

Member Cardinale: "Let's vote to take it off."

Chairman Kozakiewicz: "Okay, vote to take it off the table then."

The Vote: "Densieski, yes; Cardinale, yes; Kent, yes; Lull, yes; Kozakiewicz."

Andrea Lohneiss: "Okay."

Councilman Cardinale: "Now, before we vote, on the first whereas, on the first Resolve, the Town Board hereby agrees to forbear

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execution. I would suggest that we should state, shall forbear execution. We're not agreeing with anyone in this resolution. We're simply taking an action."

Chairman Kozakiewicz: "Okay."

Member Cardinale: "And therefore- "

Chairman Kozakiewicz: "So that hereby agrees comes out and it says shall instead."

Member Cardinale: "And therefore the next Town Board if it doesn't- could reverse this resolution. It's not an agreement."

Chairman Kozakiewicz: "Okay, okay. Any other discussion? Okay, vote on the resolution as amended to reflect that wording."

Andrea Lohneiss: "Do you need a motion? A motion?"

Member Densieski: "A motion to move Resolution 24 for the CDA."

Chairman Kozakiewicz: "Yes."

Member Cardinale: "As amended."

Chairman Kozakiewicz: "As amended. Is there a second?"

Member Kent: "Seconded."

Chairman Kozakiewicz: "Okay. Moved by Member Densieski with the amendment and seconded by Member Kent."

The Vote: "Densieski."

Member Densieski: "I don't think anybody in town is happy- I don't think anybody in town is happy about having to add the time, the amount of time that Swezeys has to start their building but I think if we didn't extend it, we'd probably end up in court the same amount of time that we're giving them anyway and that would just cost us more money."

I can't imagine what downtown Riverhead would be like without Swezeys. For all the years when nobody would come to downtown Riverhead, Swezeys not only did business down there, I think they flourished and I still think they're going to flourish once again and

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I'm hoping that Swezeys does stay and come to Riverhead. So I'm going to vote yes."

The Vote (Cont'd.): "Cardinale."

Member Cardinale: "During the discussion with Swezeys' representatives, our town counsel asked a pertinent point. They asked will you agree that if we forbear execution as of November 7<sup>th</sup> of this year to revert the property to us, that you will not give us an argument one year from now? In fact, that in legal terms is called an estoppel and we had asked them through our attorney to give us a legal assurance that they would consider themselves stopped from bringing up defenses to the reversion of the property a year from now if they did not build. They declined to do that. I found that very troubling.

On the other hand, I agree with what Ed just said that practically speaking everyone in the town hopes that they will go ahead and substantially complete construction within the next year. Although I think most people on this Board believe that will not happen.

So it's a question of whether it's better to engage in litigation now or give it a shot and see what they can do in the next 12 months because they've already told us we'll be engaging in some litigation probably then if we want that reverted without cost to us. On balance, I'm going to vote yes and hope that something good will happen here."

The Vote (Cont'd.): "Kent."

Member Kent: "Yes. My vote is consistent with that. I have great hope that they will come. If they don't, I don't know who will. They persevered through some hard times on Main Street and I hope they can be persistent and develop this parcel as they intended to originally. We have added language that the agreement remains- all of the terms of the agreement except for the expiration remain in full force and effect and I have spoken to counsel regarding this- private counsel regarding this, and they do not feel that their equitable defenses such as that they spent "x" amount of dollars, will be very convincing in court. So I feel pretty strong that this extension on the term is for an additional time only and will not grant them any additional rights. So with that understanding, I will vote yes."

The Vote (Cont'd.): "Lull."

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Member Lull: "Yes. And we're now down to 11 months. Yes."

The Vote (Cont'd.): "Kozakiewicz."

Chairman Kozakiewicz: "For the reasons that have been put forth by the other members, I also vote yes. Swezeys is synonymous with Riverhead. I hope that their attentiveness as they've shown in the last couple months continues and that they will, in fact, follow up as they have stated. Some of the other indications we received from them are evidence of good faith on their part and my hope is that we will see a revised plan after they square away with the architect by February or March, to the ARB, and that they will fulfil that. And I think we will get a good idea in the first quarter of where we stand with Swezeys. But I believe that balancing the factors it makes sense to extend them this courtesy if you will, and as pointed out by other members we are still maintaining and adhering to all of our prior rights with the exception of the expiration date or the date when we are forbearing on taking action on the reverter. So, yes."

Andrea Lohneiss: "Resolution 24 is adopted as amended."

Chairman Kozakiewicz: "Any other business?"

Andrea Lohneiss: "No."

Chairman Kozakiewicz: "All right. We'll close the CDA portion, the time being 4:11 p.m."

Meeting adjourned: 4:11 p.m.

*Barbara Lutton*  
Crown Clerk

Adopted

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Town of Riverhead Community Development Agency

Resolution # 25

Authorizes Chairman to Execute Documents Relating to New York State Department of Transportation Real Property Appropriation

~~COUNCILMAN LULL~~

Member \_\_\_\_\_ offered the following resolution,

which was seconded by Member ~~COUNCILMAN LULL~~ \_\_\_\_\_:

**WHEREAS**, pursuant to Section 30 of the Highway Law and Eminent Domain Procedure Law as amended, the New York State Department of Transportation (DOT) has identified property (.29 acres) owned by the Town of Riverhead Community Development Agency (CDA) and located within lands formerly owned by the U.S. Navy and now referred to as the Calverton Enterprise Park, which it has been determined is necessary for the construction of drainage improvements to address flooding on Route 25; and

**WHEREAS**, the DOT has undertaken an appraisal and has offered the CDA \$6,400 based on its "highest approved appraisal."

**THEREFORE, BE IT RESOLVED**, based upon review by the Town Attorney and recommendation to the CDA Board that the proposed taking by the DOT is not likely to encumber redevelopment of the Calverton Enterprise Park due to its size and location within the Pine Barrens Core Area, the CDA hereby authorizes the Chairman to execute the Agreement of Adjustment and any and all documents required for closing of this transaction.

**AND BE IT FURTHER RESOLVED**, that the Town Clerk shall provide a certified copy of this resolution to Community Development Agency Director Andrea Lohneiss, Town Attorney Dawn Thomas, and Judy Jacobsen, New York State DOT, State Office Building, 250 Veterans Memorial Highway, Hauppauge, NY 11788-5518.

The Vote:

Member Densieski	<u>yes</u>
Member Cardinale	<u>yes</u>
Member Kent	<u>yes</u>
Member Lull	<u>yes</u>
Chairman Kozakiewicz	<u>yes</u>