

**PH 08-05-21 Eminent Domain**

**PUBLIC HEARING PURSUANT TO THE  
EMINENT DOMAIN PROCEDURE LAW §202  
Silver Realty LLC located on Route 9W, Town of Esopus, Ulster County,  
Tax Map number 64.1-1-16.**

**Aug 5, 2021**

**Supervisor Jared Geuss  
Councilman Evelyn Clarke  
Councilman Chris Farrell  
Councilman Kathie Quick  
Councilman Laura Robinson**

**Administrative Recorder: Holly A. Netter, Town Clerk, RMC**

**THIS MEETING WAS HELD IN PERSON AT 1 TOWN HALL WAY, ULSTER PARK NY, VIA ZOOM, TELEVISED LIVE ON CHANNEL 23 PUBLIC ACCESS AND LIVE-STREAMED ON “TOWN OF ESOPUS” FACEBOOK PAGE. PUBLIC COMMENT: CALL (845) 328-0483 TO LEAVE A VOICEMAIL OR EMAIL outreach@esopus.com FOR ASSISTANCE.**

**SUPERVISOR GUESS MADE A MOTION AT 6:34 PM TO OPEN THE PUBLIC HEARING PURSUANT TO THE EMINENT DOMAIN PROCEDURE LAW §202. THE MOTION WAS SECONDED BY COUNCILMAN QUICK. ALL MEMBERS PRESENT WERE IN FAVOR. MOTION CARRIED.**

In accordance with Article 2, Section 202 of the New York State Eminent Domain Procedure Law, **this Public Hearing was noticed in the Daily Freeman for 5 consecutive days 7/18, 7/19, 7/20, 7/21 & 7/22.** A letter was sent by certified mail to Silver Realty, LLC on 7/23/2021 to the attention of Orda Management Corp 225 Park Avenue South New York, NY 10003. Confirmation was received by the USPS that the delivery was made on 7/26/21.

The purpose of this hearing is to outline the Project purpose related to public need and public safety, it’s proposed location, and to provide other pertinent information, including sketches/maps and the property description of the property interest to be acquired. The Project is located in the Town of Esopus Ulster County, New York, and involves construction and maintenance of the water storage tank improvement for the Port Ewen Water District. The particular property, a portion of which is subject to the Eminent Domain taking, is owned by Silver Realty, LLC and located on Route 9W, Town of Esopus, Ulster County, Tax Map number 64.1-1-16.

## **PH 08-05-21 Eminent Domain**

All persons wishing to be heard will have an opportunity to be heard. Persons may appear in person or by agent and will be given the opportunity to present oral and written statements and to submit other documents concerning the Town of Esopus Water Supply and Distribution Improvements. Any property owner who may subsequently wish to challenge the condemnation of their property by judicial review may do so only on the basis of issues, facts and objections raised at the hearing.

Written comments may be submitted to the Town of Esopus Town Board for the period of seven (7) calendar days after the public hearing on August 5, 2021. Written comments must be received at the Town Hall Town Clerk's Office no later than 4 pm on August 12, 2021. As of 4 pm on August 12, 2021, the record shall be closed.

*Supervisor Guess Turned the meeting over to **John Davidson, Brinnier & Larios** for a presentation*

### **PORT EWEN WATER DISTRICT Eminent Domain Proceedings Town of Esopus, Ulster County, New York**

Date: August 5, 2021

We have been asked to prepare and present various exhibits in support of the Town's efforts to secure an access easement to the District's existing 2 MG finished water storage tank. The tank is located on Town-owned property on a hill to the south of Port Ewen...sandwiched between Route 9W and the Lakeshore Villas Apartment Complex. This first image [IMG 1] shows the location of the tank, with the existing tank property highlighted in red, and the proposed access easement shown in blue. This image was created by overlaying tax parcel information from the Ulster County Parcel Viewer onto a NYS GIS Aerial image, so the property lines on the image are only close approximations. This second image [IMG 2] was similarly prepared, and highlights other property that the Town also owns from Route 9W to the Lakeshore Villas Apartment Complex.

The proposed access easement shown in the previous images across the Silver Realty Property is approximately 860 feet long and 25 feet wide, as depicted by the hatched area on this map [MAP 1], and accompanied by this legal description. [DOC 1]. You will notice that both the map and description include the term construction easement, as the District plans to replace the existing 2 MG tank with a new 2 MG tank, which I'll discuss further in a moment.

The existing 2 MG tank was constructed and put into service in the mid-1970's [PIC 1]., and is a crucial component of the Port Ewen Water District, which supplies approximately 300,000

## **PH 08-05-21 Eminent Domain**

gpd to the District. Having the tank allows the Water Treatment Facility on River Road to be staffed and operated efficiently, as the tank assists in meeting peak domestic and fire-flow demands that exceed the finished water pumping capacity of the Water Treatment Facility. As the tank is crucial, by extension, the existing access road to the tank is also crucial and benefits the Port Ewen Water District. It allows District personnel to occasionally inspect, monitor, and maintain the water tank. Now some photographs of the existing access road.... [PIC 2] this first image is at the beginning of the access road at the Lakeshore Villas Apartment Complex, which incidentally has already given the Town the necessary access and construction easement across their property... [PIC 3] and here's a photograph showing the typical condition of the access road and the chain used by the Town to prevent unwanted vehicular access... [PIC 4] and this last photograph is taken at the tank site looking down the access road as it approaches the tank. As you can see, the tank site is fenced for security, with a lockable gate for access. As far as we know, the existing access road has been used since the tank was constructed, about 45 years ago. [GO BACK TO TANK PIC PG 5]

As previously mentioned, the proposed easement would also serve as a construction easement for the District's plans to replace the existing tank. The existing tank is a welded steel tank that has a protective coating, both inside and out, to prevent corrosion, but that coating has reached the end of its useful life. To re-coat the tank, a temporary tank would need to be installed, the existing tank would be drained and taken out-of-service, sandblasted, spot-repaired, and re-coated, all at a significant cost. And after 25-30 years, the re-coating process would be expected to be necessary again. In lieu of that re-coating alternative, the Town has previously determined that replacement of the tank with a new tank was the prudent decision, and those design efforts are proceeding. Once complete, the new tank will similarly benefit the customers of the Port Ewen Water District, and the proposed easement will allow for its construction, as well as for future access to the proposed tank for monitoring and maintenance purposes. [GO TO PAGE 9]

We have also considered alternative routes to access the tank property, and the following drawings reflect those efforts. This first drawing [MAP 2] shows three initial options... Options 1A, 1B, in the green border, and Option 2, in the blue border, which were chosen as primary candidates as the Town already owns property from Route 9W to the southern-end of the Lakeshore Villas Apartment Complex. Options 1A and 1B would begin at Route 9W, at the approximate location shown in the photograph, which would then conceptually run approximately 900 feet easterly to the tank site. Option 2 would conceptually begin from one of the parking lots at the southern-end of the Lakeshore Villas Apartment Complex, but there was no feasible grading determined or shown, as the road grade would have been greater than 25%, which is excessive and not viable.

The next drawing [MAP 3] shows a possible finished grading plan and profile for Option 1A. The objective of this option was to overcome the steepest section of the route, with minimal filling on the lower section closer to Route 9W, and to follow existing topography as much as possible. As is noted on the drawing, Option 1A was also considered not viable, as a portion of the road grade would have still been excessive, at almost 21%.

## **PH 08-05-21 Eminent Domain**

And this final drawing [MAP 4] shows a possible finished grading plan and profile for Option 1B. The objective of Option 1B was to mimic, or at least not exceed, the maximum slope of the existing access road on the Silver Realty property, at about 15%. Although we were able to meet that goal with a 14.8% road shown on the drawing, we also deemed Option 1B not viable...due to the amount and cost of fill required to build the access road, the extent of clearing and land disturbance, and the possibility that the finished grading would extend beyond the Town's property line. [GO BACK TO OPTIONS PAGE 9]

In addition to the reasons previously stated for deeming Options 1A and 1B not viable...we do have some other environmental, permitting, and practical concerns. First, the vegetation in the vicinity of the hydrant on Route 9W suggests that there might be hydric soils present, with a wetlands designation that would require further mitigation and possible wetlands replication if a new access road were constructed here. Secondly, and again for both options 1A and 1B, a new access road onto Route 9W would require a Highway Work Permit from the New York State Department of Transportation. Due to the curve in the road just south of the new access road location, the sight distance with northbound traffic may be a concern, and there's no guarantee that the NYSDOT would issue the Highway Work Permit. [BACK TO PAGE 11] And finally, with regards to Option 1B, the extent of fill in this area would create a situation where the existing 12" water line would be buried too deep for practical access, for fixing a water main break for instance, so a new water main would also need to be installed for reasonable future access, which would add even more cost to Option 1B.

### **PORT EWEN WATER DISTRICT**

#### **Eminent Domain Proceedings**

Town of Esopus, Ulster County, New York

#### Outline of Engineer's Presentation

Date: August 5, 2021

- Introduction and identification of tank site and Town properties. Two aerial images presented.
- Proposed Easement Map and Description.
- Existing tank role, existing access road with typical photographs (four).
- Existing tank condition, and proposed replacement tank.
- Alternative access routes 1A, 1B, and 2 via current Town-owned properties. Alternative 2 not viable due to excessive slope.
- Alternative 1A grading plan and profile. Alternative 1A not viable due to excessive slope.

## PH 08-05-21 Eminent Domain

- Alternative 1B grading plan and profile. Alternative 1B not viable due to possibility of fill material for proposed access road extending beyond lands owned by the Town, the considerable amount and cost of fill required, and amount of land that would be negatively impacted.
- Other environmental, practical, and administrative concerns for Options 1A and 1B.

John Davidson submitted copies of his presentation and all documents for the record.

*Don Kiernan, Water Superintendent said the original tank was built in 1970. Approximately 5 years ago they sent a diver into the tank, and it was determined it had 5-6 years left. In 1995 it was painted and cost \$130,000 today so few companies are doing this type of work the cost is prohibitive and it was determined the tank needed to be replaced. The access road is clearly the best option and has been utilized for the past 40 years to access the existing tank. The new tank will be erected adjacent to the old one. The easement is critical for proper maintenance of the tank and to provide water to the residents in the district.*

**Public Comment – None**

**SUPERVISOR GUESS MADE A MOTION AT 6:53 PM TO HOLD THE PUBLIC HEARING OPEN FOR THE SOLE PURPOSE OF ACCEPTING ANY OTHER WRITTEN COMMENTS. WRITTEN COMMENTS MUST BE RECEIVED AT THE TOWN HALL TOWN CLERK’S OFFICE BY 4 PM ON AUGUST 12, 2021. AS OF 4 PM ON AUGUST 12, 2021, THE PUBLIC HEARING SHALL BE CLOSED. COUNCILMAN LAURA ROBINSON SECONDED THE MOTION. ALL MEMBERS PRESENT WERE IN FAVOR; MOTION CARRIED.**

*Respectively submitted,  
Holly A. Netter  
Town Clerk, RMC*