

COUNCIL OF THE TOWN OF LEONARDTOWN
Ordinance No. 143

Date Introduced on First Reading: February 9, 2009

Date Adopted on Second Reading: March 9, 2009

Date Effective: April 16, 2009

1 **AN ORDINANCE** concerning

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3

PROPERTY ACQUISITION

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5 **FOR** the acquisition of certain property and riparian rights for the continued revitalization of the
6 Leonardtown Wharf Property.

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8 **EXPLANATORY STATEMENT:** On July 9, 2001, the Commissioners of Leonardtown
9 passed Resolution #4-01 approving the designation of the Leonardtown Wharf Property as a
10 *Community Legacy* area. A portion of the Leonardtown Wharf Property has been developed for
11 a public use and/or a public benefit, however the remainder of the Leonardtown Wharf Property
12 remains undeveloped and the Commissioners of Leonardtown believe that the undeveloped
13 portion of the Leonardtown Wharf Property is a blight on the area and detracts from the recently
14 completed Leonardtown Wharf Project. It is their desire to continue development in the area of
15 the recently completed Leonardtown Wharf project and it is their belief that a key element of the
16 area's revitalization efforts requires that the property return to public ownership.

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It is the intention of the Commissioners of Leonardtown that a long-term goal is for some of the property in question be used for certain types of commercial establishments in keeping with the Town's overall plans for the waterfront area and they hereby declare that the property in question is needed for a public use and/or a public benefit, to wit continued revitalization of the Leonardtown Wharf area, including, but not limited to, land to be designated for use as a public park. They have also determined that previously reserved riparian rights are needed for a public use and/or a public benefit, to wit the continued revitalization of the Leonardtown Wharf Property.

In addition, the Commissioners of Leonardtown feel that it is imperative to ensure the safety and well being of the citizens of the Town so that the project is designed to provide for, among other things, including but not limited to, adequate parking, pedestrian safety and traffic flow.

Authority for this action is contained in §2(b)(24) of Article 23A of the Annotated Code of Maryland which gives the municipality the right "[t]o acquire by conveyance, purchase or condemnation real or leasehold property needed for any public purpose..." In addition, §2(b)(37)(i)(1) of Article 23A of the Annotated Code of Maryland provides in part that a

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36 municipal corporation may “acquire, within the boundary lines of the municipal corporation,
37 land and property of every kind, and any right, interest, franchise, easement or privilege therein,
38 by purchase, lease, gift, condemnation or any other legal means, for development or
39 redevelopment, including, but not limited to, the comprehensive renovation or rehabilitation
40 thereof...”

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42 The Commissioners of Leonardtown have the additional authority to pass this Ordinance
43 as enumerated in §501(49) of Article 5 of the Charter contained in the Leonardtown Code which
44 indicates that the Commissioners may “acquire by conveyance, purchase, gift, real or leasable
45 property for any public purposes; to erect buildings and structures thereon for the benefit of the
46 town and its inhabitants; and to convey any real or leasehold property when no longer needed for
47 the public use, after having given at least twenty days public notice of the proposed conveyance;
48 to control, protect, and maintain public buildings, grounds, and property of the town.” The
49 Commissioners have the further condemnation authority as set forth in §§1201 and 1202 of
50 Article 12 of the Charter contained in the Leonardtown Code which states that “[t]he town may
51 condemn property of any kind, or interest therein or franchise connected therewith, in fee or as
52 an easement, within the corporate limits of the town, for any public purpose. Any activity,
53 project, or improvement authorized by the provisions of this charter or any other State law
54 applicable to the town is a public purpose. The manner or procedure in case of any
55 condemnation proceeding shall be that established by the Constitution and laws of the Maryland
56 Code.”

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58 The specific property and riparian rights to be acquired are as follows:

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60 1. All that piece or parcel of land situate, lying and being in the Third Election
61 District, St. Mary’s County, State of Maryland, being the same land Ronald A.
62 Russo and Barbara J. Russo obtained from RAR Associates Development
63 Corporation, by deed dated the 13th day of May, 2008, recorded in the Land
64 Records of St. Mary’s County, in Liber 3169, Folio 800, and being described as
65 follows:

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67 Adjusted Parcel, containing 26,010 square feet or .60 acres (Tax Map 133, Parcel
68 327) as shown on a subdivision plat known as Leonardtown Landing Water Front,
69 Phase 2, recorded in the Land Records of St. Mary’s County, Maryland in Liber
70 EWA 60, at Folio 113.

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72 Together with all rights, ways, privileges, appurtenances, and advantages, to the
73 same belonging or appertaining.

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75 Subject to covenant, easements and restrictions of record.

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77 Together with the buildings and improvements thereupon erected, made or being
78 and all and every, the rights, alleys, ways, waters, privileges, appurtenances and
79 advantages to the same belonging or in anywise appertaining.

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81 2. All that piece or parcel of land situate, lying and being in the Third Election
82 District, St. Mary's County, State of Maryland, being the same land Ronald A.
83 Russo and Barbara J. Russo obtained from RAR Associates Development
84 Corporation, by deed dated the 13th day of May, 2008, recorded in the Land
85 Records of St. Mary's County, in Liber 3169, Folio 800, and being described as
86 follows:

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88 Adjusted Parcel, containing 51,545 square feet or 1.18 acres (Tax Map 133,
89 Parcel 328) as shown on a subdivision plat known as Leonardtown Landing Water
90 Front, Phase 2, recorded in the Land Records of St. Mary's County, Maryland in
91 Liber EWA 60, at Folio 113.

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93 Together with all rights, ways, privileges, appurtenances, and advantages, to the
94 same belonging or appertaining.

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96 Subject to covenants, easements and restrictions of record.

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98 Together with the buildings and improvements thereupon erected, made or being
99 and all and every, the rights, alleys, ways, waters, privileges, appurtenances and
100 advantages to the same belonging or in anywise appertaining.

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102 The Deed for Parcel #2 indicates that there is 51,545 square feet or 1.18 acres (Tax Map
103 133, Parcel 328), however since construction of the Leonardtown Wharf Project there has been
104 additional land gained on this parcel through accretion; this additional land is to be included in
105 the acquisition.

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107 In addition, Parcel # 2, above, has been assessed as having a structure thereupon,
108 however, upon visual examination of said parcel there is no standing structure. Any structure
109 having been on said parcel has deteriorated to such extent as to constitute a serious and growing
110 menace to the public health, safety and welfare. Said structure remnants are likely to continue to
111 deteriorate unless corrected and the continued deterioration of the structure remnants will
112 contribute to the blighting or deterioration of the area immediately surrounding the structure
113 remnants. The owner of the structure remnants has failed to correct the deterioration thereof.

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115 Parcels #1 and #2, above, are declared to be blighted areas in need of rehabilitation for
116 the public good and welfare.

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118 3. The 245 square feet, more or less, contained within the boundaries of Parcel #2,
119 above, and shown as a hatched area on the southeasterly corner of said Parcel #2
120 on the Subdivision Plat for Leonardtown Landing Waterfront Phase 2, 3rd
121 Election District, St. Mary's County, Maryland and recorded among the Land
122 Records of St. Mary's County, Maryland at EWA Liber 60, Folio 113, which 245
123 square feet, more or less, overlaps the land conveyed unto John A. Moulds and
124 Jean E. Moulds by R. Bascom Broun, III and Dorothy L. Broun, by Margaret E.
125 Densford, her attorney-in-fact, by deed dated the 29th day of March, 1985,
126 recorded in the Land Records of St. Mary's County, at Liber MRB 212, Folio

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127 261. The description in the Deed to St. Mary's Ice and Fuel, Incorporated from
128 Southern Maryland Electric Cooperative, Inc., dated the 5th day of May, 1952,
129 recorded among the Land Records of St. Mary's County, Maryland at Liber 37,
130 Folio 39, predecessor in title to Parcel #2, above, and the description in the Deed
131 to John A. Moulds and Jean E. Moulds, as referenced above, overlap.

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133 Because there is an apparent cloud on the title of said 245 square feet of land,
134 more or less, it has been included separately herein so that clear title may be
135 acquired.

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137 4. All riparian rights and easements reserved by RAR Associates Development
138 Corporation in a Deed dated the 29th day of September, 2005, recorded in the
139 Land Records of St. Mary's County, Maryland in Liber 2639, Folio 778, when it
140 transferred to Leonardtown Landing Homeowners Association, Inc. the following:

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142 Being known and designated as the OUT-PARCEL as set forth and shown on the
143 Plat entitled, "Subdivision Plat – Leonardtown Landing, Phase 1," which Plat is
144 recorded among the Land Records of St. Mary's County, Maryland in Plat Book
145 E.W.A. No. 57, Folio 54, Sheets 1, 2, 3 and 4. The real property hereinabove
146 described shall also be referred to as the "Out-Parcel."

147
148 Being part of the property described in a deed dated the 10th day of May, 2004
149 and recorded among the Land Records of St. Mary's County, Maryland in Liber
150 No. 2277, Folio 698, which was granted and conveyed by St. Mary's Ice and
151 Fuel, Inc. unto RAR Associates Development Corporation.

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153 The specific reserved rights to be acquired are as follows:

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155 Any and all riparian rights that currently exists as of the 29th day of September,
156 2005, and that may exist from time to time thereafter belonging, emanating or
157 appertaining to the Out-Parcel as a result of the Out-Parcel being riparian lands,
158 including but not limited to (i) all riparian rights and privileges in and to the
159 waters bordering upon, bounded by, fronting upon, abutting or adjacent and
160 contiguous to the Out-Parcel; (ii) access to the waters bordering upon, bounded
161 by, fronting upon, abutting or adjacent and contiguous to the Out-Parcel; (iii) the
162 right to build, own, maintain, repair, replace, sell and/or lease wharves, piers,
163 slips, docks and/or any other improvements, structures and/or facilities into the
164 waters bordering upon, bounded by, fronting upon, abutting or adjacent and
165 contiguous to the Out-Parcel; (iv) use of the waters bordering upon, bounded by,
166 fronting upon, abutting or adjacent and contiguous to the Out-Parcel without
167 transforming same and to consume the water bordering upon, bounding by,
168 fronting upon, abutting or adjacent and contiguous to the Out-Parcel; (v) the right
169 to make improvements into the waters bordering upon, bounded by, fronting
170 upon, abutting or adjacent and contiguous to the Out-Parcel to preserve access to
171 all such waters or protect the Out-Parcel against erosion; (vi) all riparian rights in
172 and to any natural accretion to the Out-Parcel, to reclaim fast land lost by erosion

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or avulsion and to extend therein all of the riparian rights and easements herein reserved by RAR Associates Development Corporation; (vii) the right to construct, own, repair, maintain and operate any improvements, structures and/or facilities of any kind whatsoever not otherwise mentioned previously herein into the waters bordering upon, bounded by, fronting upon, abutting or adjacent and contiguous to the Out-Parcel; (viii) access to and the right to exercise all of the riparian rights herein described and reserved in the Deed dated the 29th day of September, 2005, and recorded among the Land Records of St. Mary's County, Maryland in Liber 2639, Folio 778, into and onto any and all submerged land belonging to or otherwise appurtenant to the Out-Parcel; and (ix) any and all riparian rights not otherwise mentioned in said Deed that exists and/or may exist as a result of the Out-Parcel being riparian lands.

An irrevocable and perpetual non-exclusive easement (hereinafter referred to as the "Easement") in, over and through all of that portion of the Out-Parcel shown and designated on the Plat as "Walkway Easement (Private)" ("the Easement Area") for pedestrian and vehicular ingress and egress to and from the waters bordering upon, bounded by, fronting upon, abutting or adjacent and contiguous to the Out-Parcel and the nearest public or private street or road so as to allow RAR Associates Development Corporation and its successors and assigns to use, enjoy and exercise all of the riparian rights as described in said Deed.

Any costs and expenses in regards to the riparian rights and easements reserved including, but not limited to, the construction, installation, repair and replacement of any and all improvements, structures and facilities shall be at the sole cost, expense and liability of RAR Associates Development Corporation and its successors and assigns and shall be undertaken only in accordance with all applicable laws, ordinances, rules and regulations of each governmental entity having jurisdiction over such actions.

The rights reserved being subject, however, to all matters of record affecting the Out-Parcel, including, without limitation, the rights and privileges granted by RAR Associates Development Corporation under that certain Boat Slip Right of First Offer Agreement dated as of the 29th day of September, 2005, and recorded among the Land Records of St. Mary's County, Maryland at Liber 2639, Folio 773.

5. The Boat Slip Right of First Offer granted to Sturbridge Homes by RAR Associates Development Corporation in an Agreement dated the 29th day of September, 2005, and recorded among the Land Records of St. Mary's County, Maryland at Liber 2639, Folio 773.

The perpetual and continuing right of first offer to be acquired is as follows:

If any boat slips are constructed at any time adjacent, or in connection with riparian rights appurtenant, to the Burdened Parcel (each a "Boat Slip), and

219 Grantor desires from time to time to license, lease, or otherwise convey any right
220 to use or ownership interest (other than a security interest of Grantor's lender) in
221 ("Transfer"), a Boat Slip, then Grantor shall deliver written notice (a "Slip
222 Availability Notice") of the availability of such Boat Slip to each owner of a
223 Benefited Parcel that does not lease, use, occupy or own a Boat Slip on the date of
224 delivery of a Slip Availability Notice (an "Eligible Owner"), along with a form of
225 written agreement containing the terms and conditions under which a Boat Slip is
226 offered for Transfer (a "Boat Slip Agreement"). If Grantor receives a Boat Slip
227 Agreement executed by an Eligible Owner before the twenty-first (21st) day after
228 Grantor's delivery of the applicable Slip Availability Notice and form Boat Slip
229 Agreement, then Grantor shall execute the first such Boat Slip Agreement so
230 received and shall deliver the same to the Eligible Owner. If no executed Boat
231 Slip Agreement is received by Grantor within the aforementioned time period,
232 then Grantor shall have the right to enter into such Boat Slip Agreement with any
233 entity. The rights of Grantee and obligations of Grantor hereunder are continuing
234 and ongoing and shall run with the Burdened Parcel and each Benefited Parcel.
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236 6. The Deed of Easement by and among Sturbridge Homes of Southern Maryland,
237 LLC, Leonardtown Landing Homeowners Association, Inc., and RAR Associates
238 Development Corporation dated the 14th day of July, 2005, and recorded among
239 the Land Records of St. Mary's County, Maryland at Liber 2622, Folio 369.
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241 The grant of easement to be acquired is as follows:
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243 Effective upon the acquisition by RAR of a fee simple interest in and to the
244 Adjacent Property, and subject to the conditions set forth in this Agreement,
245 Sturbridge and the HOA grant and convey to RAR an irrevocable and perpetual
246 non-exclusive easement ("Easement") in, over and through the Roadbed for the
247 following purposes: (i) vehicular and pedestrian ingress and egress over the entire
248 length of the Roadbed in all directions; and (ii) the installation, maintenance and
249 replacement of all utilities of every kind whatsoever, including but not limited to,
250 electric, telephone, cable, television, water, gas, drainage, sanitary sewer lines and
251 facilities, pressure valves and grinder pumps, and all other utilities that may be
252 needed by RAR for the development of the Adjacent Property into a residential
253 subdivision of single family homes only, and (iii) to the extent necessary for RAR
254 to so develop the Adjacent Property, to enter and use the area of the Sturbridge
255 Property within five (5) feet of the Roadbed for the purpose of tying into existing
256 utilities located within such Roadbed, provided such entry and usage do not
257 unreasonably interfere with the use of the Sturbridge Property by Sturbridge,
258 owners of the Finished Lots, or the HOA. RAR shall have and hold the Easement
259 as appurtenant to the Adjacent Property. If RAR acquires a fee simple interest in
260 the Adjacent Property, the provisions of this Agreement shall be binding upon and
261 inure to the benefit of the successors in title to all or any portions of the Adjacent
262 Property; and by accepting a deed of all or any portion of the Adjacent Property,
263 the grantee of such deed shall be deemed to have consented to perform the
264 obligations and to pay the amounts due as are allocated by the HOA to the

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grantee's property under this Agreement. Notwithstanding the above, not more than six (6) residential units to be located on the Adjacent Property may benefit from the easement rights granted under this Agreement.

Good faith efforts to purchase said property and property rights have been unsuccessful.


SECTION I: BE IT ORDAINED BY THE COUNCIL OF THE TOWN OF LEONARDTOWN that the Town Planner is authorized to begin developing a Concept Plan for said property and property rights not inconsistent with the purpose of continued revitalization in the public interest.

SECTION II: AND BE IT FURTHER ORDAINED, that the Town Attorney is hereby authorized to initiate condemnation proceedings to acquire said property and property rights.

SECTION III: AND BE IT FURTHER ORDAINED, that this Ordinance shall become effective twenty (20) days following approval by the Mayor or passage by the affirmative vote of four-fifths of the whole Council after veto by the Mayor.

SEAL

COMMISSIONERS OF THE TOWN OF LEONARDTOWN



Walter Wise, Vice President



Daniel Burris, Councilmember



Thomas R. Collier, Councilmember



Robert C. Combs, Councilmember



Leslie E. Roberts, Councilmember

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ATTEST:



Laschelle E. Miller, Town Administrator

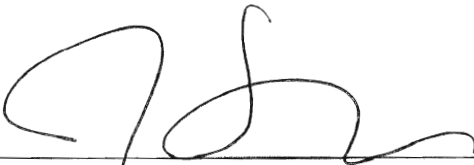
Date March 9, 2009

This Ordinance was presented to the Mayor for his approval or disapproval pursuant to §210 of the Charter of the Town of Leonardtown this 2nd day of March, 2009.



Laschelle E. Miller, Town Administrator

In accordance with §210 of the Charter of the City of Town of Leonardtown, I hereby [(Approve) or (Disapprove)] Approve this Ordinance this 2nd day of March, 2009.



J. Harry Norris, III, Mayor