

January 11, 2018

VIA REGULAR MAIL AND CERTIFIED MAIL-RRR

214 Kinderkamack, LLC
10 Devon Road
Boonton Township, NJ 07005
(Block 419, Lots 2, 3 and 4)

Dolores Della Volpe, Trustee
3724 Freshwater Drive
Jupiter, FL 33477
(Block 419, Lot 6.01)

**RE: NOTICE OF APPRAISAL, ENVIRONMENTAL AND
ENGINEERING INSPECTIONS ON THE FOLLOWING PROPERTIES:
Block 419, Lots 2 (15 Lincoln Blvd)
Block 419, Lot 3 (9 Lincoln Blvd)
Block 419, Lot 4 (214 Kinderkamack Rd); and
Block 419, Lot 6.01 (190 Kinderkamack)**

Dear Sir or Madam:

This firm represents the Borough of Emerson (hereinafter, the "Borough"). This correspondence is sent to you as an owner and/or interest holder concerning the above-referenced properties (hereinafter, the "Properties").

We are in receipt of an email dated January 5, 2018 from attorney, Richard P. De Angelis, Esq. (attached hereto as Exhibit A) responding to our letter of that same day (attached hereto as Exhibit B). Mr. De Angelis continues to deny our appraiser access to the Properties to perform a preliminary inspection as permitted by N.J.S.A. 20:3-16.

Please be advised that the Borough has an absolute right to a preliminary entry of the property under N.J.S.A. 20:3-16. Specifically this statute provides:

Prior to the commencement of any action, a prospective condemnor and its employees and agents, during reasonable business hours, may enter upon any



property which it has authority to condemn for the purpose of making studies, surveys, tests, soundings, borings and appraisals, provided notice of the intended entry for such purpose is sent to the owner and the occupant of the property by certified mail at least 10 days prior thereto. No tests, soundings or borings shall be made on property in which there exists a pipeline or other underground utility installation except in the presence of a representative designated by the public utility owning or using the same. If an action to condemn is not commenced within 2 years after such preliminary entry, any damages sustained as a result thereof, shall be paid by the condemnor to the person or persons so damaged. The amount of such damages, if any, and the person or persons entitled thereto, shall be determined by the court in a summary action pursuant to the rules. **(Emphasis added.)**

The Borough has determined to proceed with the appraisal process and will perform such appraisal. Our appraiser intends do so on January 24, 2018 between 11 am and the end of business that day, for the sole purpose of making a very general visual inspection of the properties, but will not inspect any portion of the properties that are not otherwise available and accessible to the "general public."

In accordance with N.J.S.A. 20:3-16, you and your tenants will be given the opportunity to accompany the appraiser for that inspection of your property and to provide the appraiser any information you or your Tenants believe is relevant in determining the value. Based on Mr. De Angelis's letter of January 5, 2018 and his email of that same day we assume you will not participate in the inspection, but by copy of this letter we are advising your Tenants of this inspection and inviting these "occupants" to participate in the inspection and provide any information that would be helpful in determining the value of the properties.

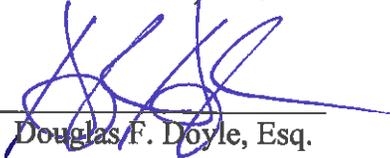
In that regard we ask from both you and your Tenants (by copy of this letter) that current copies of the leases be provided to our office on or before the date of the inspection.

Thereafter, and with the limited access that will be provided the Borough intends to determine the fair market value of the Properties in order to engage in bona fide good faith negotiations with the owner(s) and/or interest holder(s) of each of the Properties. The Borough, after appraisal will present an offer, together with a copy of the appraisal report and will then engage in bona fide negotiations with you in an effort to purchase the Properties.

In addition, at the same time, the Borough will have an environmental engineer present to assess any potential environmental and/or structural issues that may affect the fair market value of the Properties.

Please respond directly to me at the following address: Douglas Doyle, Esq., DeCotiis, FitzPatrick, Cole & Giblin, LLP, Glenpointe Centre West, 500 Frank W. Burr Blvd., Teaneck, New Jersey (201)347-2128.

Very truly yours,
**DECOTIIS, FITZPATRICK,
COLE & GIBLIN, LLP**

By: 
Douglas F. Doyle, Esq.

DD/km

cc: Richard P. DeAngelis, Esq. (via electronic mailing)
Robert Hoffmann, Borough Administrator

123 Lincoln LLC (DBA: Cinar Turkish Restaurant 4) (via regular & certified mail)
58 Ware Road
Upper Saddle River, NJ 07458

Cinar Turkish Restaurant 4 (via regular & certified mail)
214 Kinderkamack Road
Emerson, NJ 07630

Ranch Cleaners (via regular & certified mail)
Billy Chung
190 Kinderkamack Road
Emerson, NJ 07630

Business Owner of Ranch Cleaners (via regular & certified mail)
190 Kinderkamack Road
Emerson, NJ 07630

Cork & Keg (via regular & certified mail)
Dominic Scala
188 Kinderkamack Road
Emerson, NJ 07630

EXHIBIT A

Susan Hasenbalg

From: Richard DeAngelis [RDeAngelis@mckirdyriskin.com]
Sent: Friday, January 05, 2018 4:39 PM
To: Susan Hasenbalg
Cc: Robert Hoffmann; Douglas Doyle; John Stone
Subject: RE: Letter to 214 Kinderkamack LLC and Dolores Della Volpe, Trustee

Mr. Doyle,

If the Borough administration pursues the course of action outlined in your letter it will be a waste taxpayer money. Any appraisals obtained under the circumstances described in your letter will not be worth the paper on which they are printed.

NJSA 20:3-16 affords a condemnor the right of preliminary entry. If the Borough feels it has the proper authority to condemn the properties, it may assert that claimed right by way of a proper application to the court. Of course my clients would oppose such action for the reasons stated in my earlier letter, but at least the Borough would be following the appropriate procedure (As an aside, it was an application for preliminary entry per NJSA 20:3-16 that brought the *DeRose* matter before the court).

We note also that the Borough has not even adopted an ordinance to authorize the acquisitions as is required by law. So again, I encourage the Borough to rethink its position.

Very truly yours,



Richard P. De Angelis, Jr.

T (973) 539-8800 | F (973) 964-5559 | rdeangelis@mckirdyriskin.com
McKirdy, Baskin, Olson & DellaFelle, P.C.
Attorneys at Law
159 South Street, Morristown, New Jersey 07960
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From: Susan Hasenbalg [mailto:SHasenbalg@decotiislaw.com]
Sent: Friday, January 05, 2018 4:09 PM
To: Richard DeAngelis <RDeAngelis@mckirdyriskin.com>
Cc: Robert Hoffmann <rhoffmann@emersonnj.org>; Douglas Doyle <DDoyle@decotiislaw.com>; John Stone <JStone@decotiislaw.com>
Subject: Letter to 214 Kinderkamack LLC and Dolores Della Volpe, Trustee

Mr. DeAngelis –
Please see the attached letter from Doug Doyle. Thank you.

Sue

DECOTIIS

DeCotlis, FitzPatrick, Cole & Gilpin, LLP

**Sue Hasenbalg, Assistant to:
Douglas F. Doyle, Esq., William Maria, Esq.
and Jonathan L. Williams, Esq.**

Glenpointe Centre West
500 Frank W. Burr Boulevard
Teaneck, NJ 07666

Direct dial: 201-928-1100 Ext. 6217

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Thank you very much.

EXHIBIT B

—LAW OFFICES—
DECOTIIS
DeCotiis, FitzPatrick, Cole & Giblin, LLP

NEW YORK
NEW JERSEY

GLENPOINTE CENTRE WEST
500 FRANK W. BURR BOULEVARD, SUITE 31
TEANECK, NEW JERSEY 07666

DOUGLAS F. DOYLE, ESQ.
DDOYLE@DECOTIISLAW.COM
201.347.2128

TELEPHONE: (201) 928-1100
TELEFAX: (201) 928-0588
WWW.DECOTIISLAW.COM

January 5, 2018

VIA REGULAR MAIL AND CERTIFIED MAIL-RRR

214 Kinderkamack, LLC
10 Devon Road
Boonton Township, NJ 07005
(Block 419, Lots 2, 3 and 4)

Dolores Della Volpe, Trustee
3724 Freshwater Drive
Jupiter, FL 33477
(Block 419, Lot 6.01)

**RE: NOTICE OF APPRAISAL, ENVIRONMENTAL AND
ENGINEERING INSPECTIONS ON THE FOLLOWING PROPERTIES:
Block 419, Lots 2 (15 Lincoln Blvd)
Block 419, Lot 3 (9 Lincoln Blvd)
Block 419, Lot 4 (214 Kinderkamack Rd); and
Block 419, Lot 6.01 (190 Kinderkamack)**

Dear Sir or Madam:

This firm represents the Borough of Emerson (hereinafter, the "Borough"). This correspondence is sent to you as an owner and/or interest holder concerning the above-referenced properties (hereinafter, the "Properties").

We are in receipt of a letter dated January 5, 2018 from your attorney, Richard P. De Angelis (attached hereto as Exhibit A) responding to our letter of December 29, 2017 (attached hereto as Exhibit B) and denying our appraiser access to your property.

Please be advised that the Borough has determined to proceed with the appraisal process and will perform such appraisal. Inasmuch as the properties (and businesses thereon) permit the "general public" to enter the property our appraiser intends do so on January 18, 2018 between 11 am and the end of business that day, for the sole purpose of making a very general visual inspection of the properties, but will not inspect any portion of the properties that are not otherwise available and accessible to the "general public."



In accordance with N.J.S.A. 20:3-16, you will be given the opportunity to accompany the appraiser for that inspection of your property and to provide the appraiser any information you believe is relevant in determining the value.

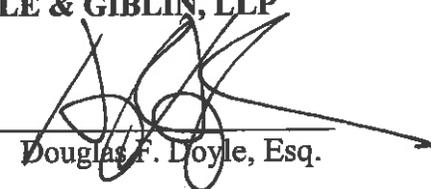
Thereafter, and with the limited access that will be provided the Borough intends to determine the fair market value of the Properties in order to engage in bona fide good faith negotiations with the owner(s) and/or interest holder(s) of each of the Properties. The Borough, after appraisal will present an offer, together with a copy of the appraisal report and will then engage in bona fide negotiations with you in an effort to purchase the Properties.

In that regard, kindly let the undersigned know if you would like to meet with the appraiser on January 18, 2018 when he makes a visual inspection of both the exterior and the interior of your property only those areas otherwise available and accessible to the "general public."

In addition, at the same time, the Borough will have an environmental engineer present to assess any potential environmental and/or structural issues that may affect the fair market value of the Properties.

Please respond directly to me at the following address: Douglas Doyle, Esq., DeCotiis, FitzPatrick, Cole & Giblin, LLP, Glenpointe Centre West, 500 Frank W. Burr Blvd., Teaneck, New Jersey (201)347-2128.

Very truly yours,
**DECOTIIS, FITZPATRICK,
COLE & GIBLIN, LLP**

By: 
Douglas F. Doyle, Esq.

DD/km

U.S. Postal Service™
CERTIFIED MAIL® RECEIPT
Domestic Mail Only

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- Certified Mail Restricted Delivery \$
- Adult Signature Required \$
- Adult Signature Restricted Delivery \$

Postage \$

Total Postage and Fees \$ **6.77**

Sent To **214 Kinderkamack, LLC**
Street a **10 Devon Road**
City, St **Boonton Township, NJ 07005**

PS Form 3800, April 2015 PSN 7530-02-000-9047 See Reverse for Instructions

(electronic mailing)
strator

EXHIBIT A



McKIRDY
RISKIN
OLSON
DELLAPELLE
ATTORNEYS AT LAW

January 5, 2018

Via Email & Lawyers Service

Douglas F. Doyle, Esq.
DeCotiis, FitzPatrick, Cole & Giblin, LLP
Glenpointe Centre West
500 Frank W. Burr Boulevard
Teaneck, NJ 07666

**Re: 214 Kinderkamack, LLC
Block 419, Lots 2, 3 & 4**

**Dolores Della Volpe, Trustee v. Borough of Emerson, et al.
Block 419m Lot 6.01**

Dear Mr. Doyle:

We write in behalf of the owners of the properties listed above (the "Properties") in response to your correspondence dated December 29, 2017 for the Borough of Emerson (the "Borough") requesting permission to enter the Properties under *N.J.S.A. 20:3-16* for the purpose of conducting appraisal and environmental inspections. For the reasons set forth below, the Borough's request is denied and therefore the Borough's consultants will not be permitted entry for inspection.

As the challenges to both the 2004 and 2017 blight designations remain pending under Docket Nos. BER-L-1660-17 and BER-L-1855-17, the Borough does not have the authority to acquire the Properties under the Local Redevelopment and Housing Law, *N.J.S.A. 40A:12A-1 et seq.* ("LRHL").

Nor does the Borough have the power to acquire the properties under the Fair Housing Act, *N.J.S.A. 52:27D-301 et seq.* ("FHIA") for purposes of turning them over to a private developer for the development of 125 market units and 13,000 sf of retail space notwithstanding the 22 unit set aside for affordable housing. The FHA does not permit – nor does it even contemplate – such an arrangement.

Finally, contrary to your assertion that "the Borough has determined to pursue the purchase and/or acquisition of the above-referenced Properties for public purposes" there has been no such determination pursuant to *N.J.S.A. 40A:12-5(a)(1)* and therefore, the Borough lacks the proper authority to proceed with the requested inspections.



**McKIRDY
RISKIN
OLSON
DELLAPELLE**
ATTORNEYS AT LAW

Douglas F. Doyle, Esq.
January 5, 2018
Page 2

While the Borough may file a summary action to compel entry, perhaps it would be in the best interests of Borough taxpayers to await the outcome of the pending litigation.

Be guided accordingly.

Very truly yours,

**McKIRDY, RISKIN, OLSON
& DELLA PELLE, P.C.**

RICHARD P. DE ANGELIS

C: Anthony F. Della Pelle, Esq.
214 Kinderkamack, LLC
Dolores Della Volpe, Trustee
(*all via email*)

EXHIBIT B

—LAW OFFICES—
DECOTIIS
DeCotiis, FitzPatrick, Cois & Giblin, LLP

GLENNPOINTE CENTRE WEST
650 FRANK W. BURN BOULEVARD, SUITE 301
TEANECK, NEW JERSEY 07666

TELEPHONE: (201) 928-1100
TELEFAX: (201) 928-0588
WWW.DECOTIISLAW.COM

DOUGLAS F. DOYLE
DDOYLE@DECOTIISLAW.COM
TEL 347.373.22

December 29, 2017

VIA REGULAR MAIL AND CERTIFIED MAIL-RRR

214 Kinderkamack, LLC
10 Devon Road
Boonton Township, NJ 07005
(Block 419, Lots 2, 3 and 4)

Dolores Della Volpe, Trustee
3724 Freshwater Drive
Jupiter, FL 33477
(Block 419, Lot 6.01)

**RE: NOTICE OF APPRAISAL, ENVIRONMENTAL AND
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Block 419, Lot 4 (214 Kinderkamack Rd); and
Block 419, Lot 6.01 (190 Kinderkamack)

Dear Sir or Madam:

This firm represents the Borough of Emerson (hereinafter, the "Borough"). This correspondence is sent to you as an owner and/or interest holder concerning the above-referenced properties (hereinafter, the "Properties").

Please be advised that the Borough has determined to pursue the purchase and/or acquisition of the above-referenced Properties for public purposes pursuant to its authority under the Local Redevelopment Housing Law, N.J.S.A. 40A:12A-1 et seq. ("LRHL"), and the Fair Housing Act, N.J.S.A. 52:27D-301 et seq. ("FHA").

Be further advised that pursuant to the FHA specifically, N.J.S.A. 52:27D-325, the acquisition of the above-referenced Property is necessary and useful to meet the Borough's constitutionally mandated affordable housing obligation. The Borough, in an effort to satisfy this constitutionally mandated obligation, has included the Properties in its settlement with Fair Share Housing Corporation ("FSHC"), which settlement has been approved by the FSHC, Special Master Mary Beth Lonergan and is scheduled for a fairness hearing on January 24, 2018. The



December 29, 2017

PAGE 2

Borough will be required to exercise all of its lawful authority to purchase and/or acquire the Properties, as part of its settlement with FSHC and in accordance with the FHA.

The Borough intends to determine the fair market value of the Properties in order to engage in bona fide good faith negotiations with the owner(s) and/or interest holder(s) of each of the Properties. The Borough, after appraisal will present an offer, together with a copy of the appraisal report and will then engage in bona fide negotiations with you in an effort to purchase the Properties.

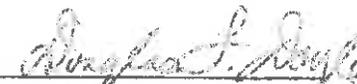
In that regard, kindly let this correspondence serve as formal notice that the Borough is requesting to enter upon the Properties to conduct an appraisal in accordance with N.J.S.A. 20:3-6, through its agent, Robert McNerney & Associates during reasonable business hours, for the purpose of conducting an appraisal. Furthermore, in accordance with N.J.S.A. 20:3-16, you will be given the opportunity to accompany the appraiser during the inspection of your property to provide the appraiser any information you believe is relevant in determining the value.

In addition, at the same time, the Borough will have an environmental engineer present to assess any potential environmental and/or structural issues that may affect the fair market value of the Properties.

In order to coordinate with you, the scheduling of the appraisal and environmental and structural engineers, the Borough will schedule the inspectors on a Tuesday, Wednesday or Thursday during the week of January 8th or January 15th, but no later than Thursday, January 18, 2018. Kindly advise my office as to what day would be convenient for you.

Please respond directly to me at the following address: Douglas Doyle, Esq., DeCotiis, FitzPatrick, Cole & Giblin, LLP, Glenpointe Centre West, 500 Frank W. Burr Blvd., Teaneck, New Jersey (201)347-2128.

Very truly yours,
**DECOTIIS, FITZPATRICK,
COLE & GIBLIN, LLP**

By: 
Douglas F. Doyle, Esq.

DD/km

cc: Richard P DeAngelis, Esq. (via electronic mailing)

Susan Hasenbalg

From: Susan Hasenbalg
Sent: Friday, January 05, 2018 4:09 PM
To: 'Richard DeAngelis'
Cc: Robert Hoffmann; Douglas Doyle; John Stone
Subject: Letter to 214 Kinderkamack LLC and Dolores Della Volpe, Trustee
Attachments: SPrinter20818010515370.pdf

Mr. DeAngelis –
Please see the attached letter from Doug Doyle. Thank you.
Sue

DECOTIIS

DeCotris, FitzPatrick, Cole & Giblin, LLP

**Sue Hasenbalg, Assistant to:
Douglas F. Doyle, Esq., William Harla, Esq.
and Jonathan L. Williams, Esq.**
Glenpointe Centre West
500 Frank W. Burr Boulevard
Teaneck, NJ 07666
Direct dial: 201-928-1100 Ext. 6217

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Thank you very much.*