

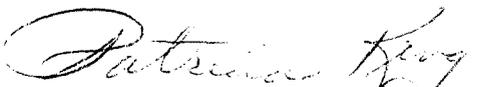
A regular meeting of the Elma Town Board was held on Wednesday, July 23, 2008, at 6:00 PM, Elma Town Hall, 1600 Bowen Road, Elma, New York, with the following members present:

| | |
|---------------------|----------------|
| Supervisor | Michael Nolan |
| Councilwoman | Susan Glowonia |
| Councilman | David Polak |
| Councilman | Dennis Powers |
| Councilman | Dean Puleo |
| Also: Town Attorney | Phyllis Todoro |

Councilman Polak made the motion and Councilman Powers seconded the motion to approve the following Town of Elma Town Board Findings as follows:
 The Town of Elma Town Board (hereinafter referred to as the "Board", pursuant to the terms of an Order of New York State Supreme Court (Sconiers, J.S.C.) granted June 6, 2008, and filed in the Erie County Clerk's Office on June 16, 2008 which order directed "that the Petitioner's (hereinafter referred to as "1093 Group, LLC") application for a variance from local law 1-2007 (hereinafter referred to as the Moratorium") is hereby remanded to the Town Board of the Town of Elma for the purposes of the Respondents issuing findings of fact based upon the hearing conducted on June 20, 2007", and after reviewing: Application of 1093 Group LLC for a variance that was filed with the Board on or about April 30, 2007 in connection with property located at the southwest corner of Bullis and Bowen roads and an April 30, 2007 letter to the Town Clerk from Ralph C. Lorigo, Esq. in support of the variance application; and after: Holding a public hearing on the variance application at a Board meeting of June 20, 2007, and after hearing attorney Ralph C. Lorigo, Esq. and E. Orwat speak in favor of the variance, and after hearing H. Markowski-Smith, M. Fanelli, J. Newton, D.Vienne, J. Glair, B. Heckaman, M. Natras with numerous residents from Pond Brook Townhouses, and J. Ronin speak against the variance applications; and after: Taking into account the legal authorities justifying the enactment and constitutionality of the Moratorium (See **Tahoe-Sierra Preservation Council, Inc., v. Tahoe Regional Planning Agency**, 535 US 302 [2002]; **Hasco Electric Corp. vs. Dassler**, 143 NYS2d 240 [Sup. Ct. Westchester Co. 1955]) and the legal requirement that variance applications from the strict terms of a Moratorium must meet the same standards as though the Moratorium were permanent (See **Held v. Giuliano**, 46 Ad2d558 [3rd Dept. 1975], and the concept that "vested rights" arise only where an owner has undertaken substantial construction and made substantial expenditures before the effective date of the Moratorium (See **Ellington Construction Corp. vs. Zoning Board of Appeals of the Incorporated Village of New Hempstead**, 77 NY2d 114 [1990]); and after: Taking into account the language of the Moratorium, including Section 7 thereof, which provides that "[s]hould any owner of property affected by this moratorium suffer an unnecessary hardship in the way of carrying out the strict letter of this moratorium, then the owner of said property may apply to the Town Board in writing for relief from strict compliance with this Moratorium upon submission of proof of such unnecessary hardship"; and after: Giving full consideration to all of the foregoing, including the assertions of 1093 Group, LLC that it would undergo an unnecessary hardship if it did not obtain a variance from the moratorium; the Board hereby finds: 1093 Group, LLC failed to produce evidence of an unnecessary hardship. The application of 1093 Group, LLC claimed unnecessary hardship primarily because of monies expended in pursuit of a special use permit that was pending when the Moratorium was adopted. No evidence was presented by 1093 Group, LLC that there would be a loss of a reasonable rate of return on the value of the property for which the variance was sought, and, indeed, the application reflects the fact that 1093 Group, LLC did not own said property. Nor was there any other evidence produced by 1093 Group, LLC showing any unnecessary hardship. In view of its finding that there is an insufficient proof of unnecessary hardship, the Board finds it need not engage in the balancing process set forth in Section 7 of the Moratorium which requires, if an unnecessary hardship is found, that the unnecessary hardship be balanced against factors set forth therein. Based on the findings set forth herein, the Board reaffirms its original determination to deny the application of 1093 Group, LLC for a variance from the Moratorium. Ayes-5. Noes-0. Carried.

Councilman Polak made the motion and Councilwoman Glowing seconded the motion to adjourn the meeting at 6:11PM. Ayes-5. Noes-0. Carried.

Respectfully submitted,
 Per notes taken by Town Attorney Phyllis Todoro


 Patricia King, Elma Town Clerk