

Somerville seizes supermarket's lease

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SOMERVILLE -- The borough has seized Pathmark's lease at the Downtown Somerville Shopping Center.

Colin Driver, the borough's director of economic development, said attorneys for Pathmark were served Friday with a "declaration of taking" -- a filing in the eminent domain process that officially transfers ownership of the property in question.

"To all intents and purposes, the borough now owns the lease," Driver said.

For two years, the supermarket has fought redevelopment plans at the shopping center between Veterans Memorial Drive and West Main Street. The center -- owned by JSM, a company of real estate developer Jack Morris -- is nearly vacant as other tenants have left voluntarily or in the face of court actions.

A recent series of rulings by Superior Court Assignment Judge Yolanda Ciccone granted the borough the right to take Pathmark's lease by eminent domain and set a preliminary value for that lease at about \$1.6 million -- \$3.4 million less than what Pathmark wanted.

The \$1.6 million has been placed in a Superior Court trust fund in Trenton. The document must also be filed with the court as well as the county clerk's office, according to Driver.

Based on Ciccone's decision, a court-appointed panel will set a final price for taking the lease.

Driver said the borough does not plan to evict Pathmark anytime soon.

"We've always welcomed and encouraged Pathmark to participate. Now, it's really in their court," Driver said. "The reason we did this was to stop this back and forth legal action and allow JSM to proceed with the project. Pathmark's building never was slated for demolition or anything else."

But Pathmark spokesman Rich Savner said the declaration of taking would ultimately result in the closing of the supermarket and "impact the lives of 125 people who work in that store and are employed by Pathmark."

"Our objective was to always be a part of this redevelopment project and to continue operating in the borough, and the fact is that there's a pretty good chance that won't happen and we're pretty disappointed about that," Savner said.

The next step, according to Driver, will be for JSM to file a motion in state Superior Court in Warren County seeking to remove an injunction against the project.

Ruling in May on a separate lawsuit between Pathmark and JSM, Judge John J. Coyle Jr. in Warren County placed a freeze on the redevelopment plans until the borough exercised its powers of eminent domain.

Coyle decided in his opinion that JSM breached its lease obligations by not formally notifying Pathmark about redevelopment steps at the center.

After buying the shopping center for \$12.5 million in 2002, JSM was named as the site's redeveloper in 2003. Plans for the center include a mix of retail, office and residential construction.

Borough officials and JSM agreed this month to a new revenue arrangement and other changes before the two sides redraft a two-year-old redevelopment plan for the site to reflect changed economic conditions.

The borough is bracing for additional court actions from Pathmark contesting the declaration of taking, Driver said.

Savner said the supermarket likely would decide how to proceed by early next week.

"We don't have too many options," Savner said. "We're still evaluating what those could be."

The supermarket has lodged appeals related to both the lawsuit with JSM and the eminent domain matter with Somerville, according to Savner.

Following a declaration of taking, property holders can broker a deal with the authority using eminent domain to stave off eviction or file an appeal in court and seek a stay, according to Timothy Duggan, an attorney familiar with redevelopment issues with the Princeton-based law firm of Stark & Stark.

Duggan said a stay is difficult to get, but several recent court decisions have favored property owners.

"The courts are taking a closer look at a lot of these redevelopment plans," Duggan said. "You do have an opportunity to get a stay if you can show you have a good case. If not, it's a matter of sitting down with the (redeveloper) to find out where they are on the time line."