

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

In re

CITY OF DETROIT, MICHIGAN,

Debtor.

Chapter 9

Case No. 13-53846

Hon. Steven W. Rhodes

Expedited Consideration Requested

**MOTION OF THE CITY OF DETROIT FOR SITE VISIT BY COURT IN
CONNECTION WITH THE HEARING ON CONFIRMATION OF
THE CITY'S PLAN OF ADJUSTMENT**

At a status conference before this Court on May 15, 2014, counsel for the City proposed that the hearing on confirmation of the City's Plan of Adjustment include a site visit, via bus tour, of certain locations in the City that are relevant to the Court's consideration of the City's Plan (the "Site Visit").

Following the hearing, it was the City's understanding that the objectors to the Plan (the "Objectors") agreed in principle to a Site Visit.

The City accordingly drafted and submitted to the Objectors a proposed protocol for the Site Visit, modeled after the protocol used in *In re Charles Street African Methodist Episcopal Church of Boston*, Case No. 12-12292

(FJB) (Bankr. D. Mass.). In that case, Chief Bankruptcy Judge Bailey toured the debtors' properties that were the subject of the bankruptcy case, accompanied by counsel for the debtor, counsel for an objecting bank and a court reporter, with the stenographic record of the site visit subsequently admitted into evidence. *Id.*, Docket No. 420 (Oct. 16, 2012) (attached hereto as Exhibit 6-A).

It is now apparent that certain of the Objectors not only will not agree to the City's proposed protocol, but will not agree to a Site Visit at all, necessitating the filing of this Motion.

ARGUMENT

Federal courts have the "inherent power" to permit the finder of fact a "view of places or objects outside the courtroom." *United States v. Moonda*, 347 Fed. Appx. 192, 201 (6th Cir. 2009) (citation and quotation marks omitted). Such on-site views or visits "are generally accepted when they are necessary to an understanding of the litigation and the requisite information cannot be introduced any other way." *United States v. Simmons*, 174 Fed. Appx. 913, 917-18 (6th Cir. 2006) (citation and quotation marks omitted). Courts have found that site visits may be particularly helpful in giving context to other evidence, including expert testimony. *See, e.g., Moore v. United States*, 54 Fed. Cl. 747, 748 (Fed. Cl. 2002); *United States v. Sargent County Water Resource Dist.*, 876 F. Supp. 1090 (D.N.D. 1994).

The decision whether to conduct a site visit “is entrusted to the sound discretion of the trial court.” *Moonda*, 347 Fed. Appx. at 201 (citation and quotation marks omitted); *see also Northwestern National Casualty Co. v. Global Moving & Storage, Inc.*, 533 F.2d 320, 323 (6th Cir. 1976) (“The trial court has discretion whether to permit a view of premises that are the subject of litigation.”).

If any case ever warranted a Site Visit, this one does. Throughout the confirmation hearing, the Court will hear testimony, from both fact and expert witnesses, regarding the City’s finances, the problems it currently faces and how it intends to solve them. The Court will be faced with extensive facts and figures, numbers and projections. But this is not a typical business reorganization, where a review of the balance sheet and income statement gives the Court all the information it needs. This is a case about a city of 700,000 living, breathing human beings and the conditions they must face every day. It is a case about government, business and community coming together to try to rebuild a great American city.

In order to be able to put into context the evidence that it will hear, the Court needs to experience what the witnesses will describe. Witnesses will testify about the planned reinvestment in the City of \$1.4 billion over the next ten years, in areas ranging from blight remediation and public safety to transportation, recreation and public works – but in the courtroom, these are mere abstractions. To

give meaning to the testimony, the Court must see what this reinvestment means for the people of Detroit.

For example, the Court will hear ample testimony about the problem of blight in the City. But no amount of testimony or even photographs can fully express the devastating impact that blight has had on Detroit's neighborhoods, or convey to the Court what it is like for Detroit residents to have to walk down half-empty streets of burnt-out buildings and abandoned dumping-ground lots. Without that context, the City's plan to spend \$440 million on blight remediation has little meaning.

The Court will hear about the challenges faced by Public Safety and the City's plan to invest nearly \$430 million to address those challenges. But in-court testimony is not a substitute for seeing first-hand the deplorable condition of the precincts, firehouses, vehicles and equipment used by men and women who risk their lives on a daily basis for the safety of Detroit's residents. Seeing that as part of a Site Visit gives critical context to the City's proposed expenditures.

The Court will hear from witnesses about the need to attract businesses to the City, to stem the flow of population loss and to stabilize the City's tax base. In order for the Court to have a full understanding of how those goals can and will be accomplished as the City emerges from bankruptcy, the Court needs to see and experience the planned reinvestments by the City and its

business and community partners. For instance, descriptions of the M-1 Rail may be helpful, but cannot adequately take the place of a tour of the planned rail to see how it will connect Midtown and Downtown Detroit and the economic boost it will give to the businesses and residents along the route. The Court may hear testimony about the redevelopment of Downtown, but a view of energy and vitality of areas such as Campus Martius gives a context and understanding that cannot be replicated in the courtroom. Much will doubtless be said at the confirmation hearing regarding the Detroit Institute of Arts. But the Court cannot fully appreciate the vital role that this world-class institution plays in the cultural life of the City – and will play in its renaissance – without actually visiting it.

The Objectors that oppose the Site Visit want the Court to view this case as an abstract numbers game and to ignore the human element. A Site Visit puts front and center the needs of the people who live and work in Detroit – needs that the City must meet if it is to survive.

Accordingly, the Court should exercise its discretion to conduct a Site Visit in accordance with the proposed protocol attached hereto as Exhibit 6-B.

CONCURRENCE

Counsel for the City sought the concurrence of counsel for the Objectors in the relief sought in this motion, but such concurrence was not obtained.

CONCLUSION

For the reasons stated herein, the City respectfully requests that the Court enter an order, in the form attached hereto as Exhibit 1, ordering that a Site Visit take place as part of the hearing on confirmation of the City's Plan.

Dated: June 6, 2014

Respectfully submitted,

/s/ Robert S. Hertzberg
Robert S. Hertzberg (P30261)
Deborah Kovsky-Apap (P68258)
PEPPER HAMILTON LLP
4000 Town Center, Suite 1800
Southfield, MI 48075
Telephone: (248) 359-7300
Fax: (248) 359-7700
hertzbergr@pepperlaw.com
kovskyd@pepperlaw.com

- and -

Thomas F. Cullen, Jr.
Gregory M. Shumaker
Geoffrey S. Stewart
JONES DAY
51 Louisiana Avenue, N.W.
Washington, D.C. 20001.2113
Telephone: (202) 879-3939
Facsimile: (202) 626-1700
tfcullen@jonesday.com
gshumaker@jonesday.com
gstewart@jonesday.com

**ATTORNEYS FOR THE CITY OF
DETROIT**

EXHIBIT 1
Proposed Order

**UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

-----X
In re : Chapter 9
CITY OF DETROIT, MICHIGAN, : Case No. 13- 53846
Debtor. : Hon. Steven W. Rhodes
-----X

**ORDER FOR SITE VISIT BY COURT IN CONNECTION WITH
THE HEARING ON CONFIRMATION OF
THE CITY’S PLAN OF ADJUSTMENT**

This matter having come before the Court on the motion of the Debtor, City of Detroit, for a site visit by the Court in connection with the hearing on confirmation of the City’s Plan of Adjustment (the “Site Visit Motion”)¹ and the Court being otherwise fully advised in the premises;

IT IS HEREBY ORDERED that the Court will conduct a Site Visit on the first day of the hearing on confirmation of the City’s Plan of Adjustment, in accordance with the proposed protocol for the Site Visit filed as Exhibit 6-B to the Site Visit Motion (the “Site Visit Protocol”); and

¹ Capitalized terms not otherwise defined herein shall have the meanings given to them in the Site Visit Motion.

IT IS FURTHER ORDERED that the City shall propose, in its sole discretion and subject only to the Court's final approval, the locations to be included in the Site Visit, and shall file, under seal, the list of such locations as Exhibit A to the Site Visit Protocol at least one week prior to the date of the Site Visit; and

IT IS FURTHER ORDERED that the time spent on the Site Visit shall not count against any party's allocation of time for the confirmation hearing.

EXHIBIT 2
Notice of Motion

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

In re

CITY OF DETROIT, MICHIGAN,

Debtor.

Chapter 9

Case No. 13-53846

Hon. Steven W. Rhodes

NOTICE OF MOTION AND OPPORTUNITY TO RESPOND

PLEASE TAKE NOTICE that on June 6, 2014, the Debtor, City of Detroit, filed its *Motion for Site Visit by Court in Connection with the Hearing on Confirmation of the City's Plan of Adjustment* (the "**Motion**") in the United States Bankruptcy Court for the Eastern District of Michigan (the "**Bankruptcy Court**").

PLEASE TAKE FURTHER NOTICE that your rights may be affected by the relief sought in the Motion. You should read these papers carefully and discuss them with your attorney, if you have one. If you do not have an attorney, you may wish to consult one.

PLEASE TAKE FURTHER NOTICE that if you do not want the Bankruptcy Court to grant the Debtor's Motion, or you want the Bankruptcy Court to consider your views on the Motion, within **17 days**¹ you or your attorney must:

¹ Concurrently herewith, the Debtor has filed a motion seeking to shorten the notice period and expedite the hearing, if any, on the Motion. If that motion is granted, the Court will enter an order on the docket setting the deadline to respond to the Motion.

1. File a written objection or response to the Motion explaining your position with the Bankruptcy Court electronically through the Bankruptcy Court's electronic case filing system in accordance with the Local Rules of the Bankruptcy Court or by mailing any objection or response to:²

United States Bankruptcy Court
Theodore Levin Courthouse
231 West Lafayette Street
Detroit, MI 48226

You must also serve a copy of any objection or response upon:

Jones Day
51 Louisiana Avenue, NW
Washington, DC 20001
Attn: Gregory Shumaker and Daniel Moss

-and-

Pepper Hamilton LLP
Suite 1800, 4000 Town Center
Southfield, Michigan 48075
Attn: Robert Hertzberg and Deborah Kovsky-Apap

2. If an objection or response is timely filed and served, the clerk will schedule a hearing on the Motion and you will be served with a notice of the date, time and location of the hearing.

PLEASE TAKE FURTHER NOTICE that if you or your attorney do not take these steps, the court may decide that you do not oppose the relief sought in the Motion and may enter an order granting such relief.

² A response must comply with F. R. Civ. P. 8(b), (c) and (e).

Dated: June 6, 2014

Respectfully submitted,

/s/ Robert S. Hertzberg
Robert S. Hertzberg (P30261)
Deborah Kovsky-Apap (P68258)
PEPPER HAMILTON LLP
4000 Town Center, Suite 1800
Southfield, MI 48075
Telephone: (248) 359-7300
Fax: (248) 359-7700
hertzbergr@pepperlaw.com
kovskyd@pepperlaw.com

Corinne Ball
JONES DAY
222 East 41st Street
New York, New York 10017
Telephone: (212) 326-3939
Facsimile: (212) 755-7306
cball@jonesday.com

Thomas F. Cullen, Jr.
Gregory M. Shumaker
Geoffrey S. Stewart
JONES DAY
51 Louisiana Avenue, N.W.
Washington, D.C. 20001.2113
Telephone: (202) 879-3939
Facsimile: (202) 626-1700
tfcullen@jonesday.com
gshumaker@jonesday.com
gstewart@jonesday.com

**ATTORNEYS FOR THE CITY OF
DETROIT**

EXHIBIT 3
Brief (Not Applicable)

EXHIBIT 4
Certificate of Service

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MICHIGAN

SOUTHERN DIVISION

In re

CITY OF DETROIT, MICHIGAN,

Debtor.

Chapter 9

Case No. 13-53846

Hon. Steven W. Rhodes

CERTIFICATE OF SERVICE

I hereby certify that on June 6, 2014, I electronically filed the Motion of the City of Detroit for Site Visit by Court in Connection with the Hearing on Confirmation of the City's Plan of Adjustment, which sends notice by operation of the Court's electronic filing service to all ECF participants registered to receive notice in this case.

Dated: June 6, 2014

/s/ Robert S. Hertzberg
Robert S. Hertzberg (P30261)

EXHIBIT 5
Affidavits (Not Applicable)

EXHIBIT 6A
Documentary Exhibit

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MASSACHUSETTS
EASTERN DIVISION

-----X
:
In re : **Chapter 11**
:
CHARLES STREET : **Case No. 12-12292 (FJB)**
AFRICAN METHODIST EPISCOPAL :
CHURCH OF BOSTON :
:
Debtor. :
:
-----X

AGREED ORDER REGARDING DEBTOR CHARLES STREET AME’S MOTION IN LIMINE TO EXCLUDE APPRAISAL REPORTS OR, IN THE ALTERNATIVE, FOR JUDICIAL SITE VISIT OF THE ROXBURY RENAISSANCE CENTER

Upon the motion (the “Motion”) of Debtor Charles Street African Methodist Episcopal Church of Boston (“Charles Street AME” or the “Debtor”) and it appearing that this Court has jurisdiction to consider the Motion pursuant to 28 U.S.C. §§ 157 and 1334; and it appearing that venue of the Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and it appearing that the Motion is a core proceeding pursuant to 28 U.S.C. § 157(b); and it appearing that proper and adequate notice of the Motion has been given; and the parties having agreed to a resolution of the Motion;¹

IT IS HEREBY AGREED AND ORDERED THAT:

1. The Motion is GRANTED in part as follows:

¹ Capitalized terms defined in the Debtor’s Fifth Modified First Amended Plan of Reorganization, and not otherwise defined herein, are used herein with the meanings so defined.

a. On Tuesday, November 6, 2012, the Court shall conduct a site visit of the Church Building, the RRC Property, the Storefronts, the Milton Parsonage House, the Old Parsonage House, and the Parking Lot.

b. The Court, counsel² for the Debtor, and counsel for OneUnited Bank shall meet in the lobby of the Church Building, located at 551 Warren Street, Roxbury, Massachusetts, at 10:30 a.m. on Tuesday, November 6, 2012.

c. The Court, counsel for the Debtor and counsel for OneUnited Bank shall tour the lobby of the Church Building, then the Sanctuary, then the Sarah Gorham Society Room, and then the anteroom adjoining the Lobby.

d. The Court, counsel for the Debtor, and counsel for OneUnited Bank shall proceed to the RRC Property. The walkthrough of the RRC Property shall proceed according to the schedule set forth in Exhibit A to this order.

e. Upon completion of the walkthrough of the RRC Property, the Court, counsel for the Debtor, and counsel for OneUnited Bank shall proceed to the Storefronts. The walkthrough of the Storefronts shall proceed according to the schedule set forth in Exhibit A to this order. In lieu of a walkthrough of the *basement* of the Storefronts, a set of photographs taken on the afternoon of October 2, 2012 and previously exchanged among counsel shall be admitted in evidence.

f. The Court, counsel for the Debtor and counsel for OneUnited Bank shall then proceed to the Old Parsonage House and tour it without commentary. The Court, counsel for the Debtor and counsel for OneUnited Bank shall then proceed to the Parking Lot, and then to the Milton Parsonage House, again touring (as guided by the text of Exhibit A) without commentary.

² As used in this Order, "counsel" shall include a paralegal.

g. During the site visit, no statements by counsel shall be permitted other than statements by Debtor's counsel identifying the name of each room visited in the Church Building, the RRC Property and the Storefronts. The name of each room to be visited in the RRC Property and the Storefronts is listed on the schedules set forth in Exhibit A to this Order. The only rooms to be announced in the Church Building are the Lobby, the Sanctuary, the Sarah Gorham Society Room and the anteroom.

h. Casual dress (*i.e.*, work clothes, not business casual) not suited to the courtroom is allowed.

i. A stenographic record of statements made during the site visit shall be taken. The transcript of the stenographic record shall be admitted in evidence.

2. This Court shall retain jurisdiction to hear and determine all matters arising from or related to the implementation and enforcement of this Order.

Dated: October 16, 2012
Boston, Massachusetts


UNITED STATES BANKRUPTCY JUDGE

EXHIBIT 6B
Documentary Exhibit

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

In re

CITY OF DETROIT, MICHIGAN,

Debtor.

Chapter 9

Case No. 13-53846

Hon. Steven W. Rhodes

PROPOSED PROTOCOL FOR SITE VISIT

On the first day of the Confirmation Hearing, the Court¹ shall conduct a site visit (the “Site Visit”) of the locations set forth on Exhibit A hereto, filed under seal.

Counsel for the Debtor² and counsel for the Objectors³ (the “Site Visit Counsel”) shall be permitted to participate in the Site Visit.

¹ The Court will be accompanied by a court reporter, videographer and such U.S. Marshals or other security personnel as may be required.

² Counsel for the Debtor may include up to 3 attorneys.

³ Counsel for the Objectors shall consist of one attorney per Objector. For purposes of this Order, “Objectors” shall mean and include Financial Guaranty Insurance Company, Syncora Guaranty Inc., National Public Finance Guarantee Corporation, Assured Guaranty Municipal Corp., the Trustee for the Detroit Water and Sewerage Department (“DWSD”) Bondholders, the Ad Hoc Committee of DWSD Bondholders, a representative of the COPs Holders, the non-settling Public Safety Unions, and any retiree association or retirement system that, after conclusion of balloting, becomes an objecting party.

The Debtor shall arrange, at its sole expense, a tour bus sufficient to accommodate the Court and the Site Visit Counsel.

The tour bus shall meet the Court and the Site Visit Counsel on the first day of the Confirmation Hearing, at a time and place to be pre-determined by the Court and Site Visit Counsel. To avoid possible disruption of the Site Visit, the time and place from which the tour bus will depart shall not be made public.

The Court and the Site Visit Counsel shall tour the locations set forth on Exhibit A by driving to and stopping in front of each such location to permit a viewing of the exterior of the location; *provided, however*, that the Court in its discretion may elect to exit the tour bus and conduct a walkthrough of any of the locations, accompanied by the court reporter, videographer and the Site Visit Counsel; *and provided further* that the Court and the Site Visit Counsel shall conduct a walkthrough of the Detroit Institute of Arts according to the schedule set forth on Exhibit A.

The duration of the Site Visit shall be three hours, subject to extension in the discretion of the Court.

During the Site Visit, no statements by the Site Visit Counsel shall be permitted other than (1) statements by Debtor's counsel identifying each location and the purpose for which the Debtor included such location as part of the Site Visit, and (2) answers to any questions posed by the Court.

Counsel for the Debtor and counsel for the Objectors shall agree in advance on the language to be used by Debtor's counsel to describe each location included in the Site Visit.

A stenographic and video record of statements made during the Site Visit shall be taken. The transcript of the stenographic record and the video of the Site Visit shall be admitted in evidence.

All Site Visit Counsel shall maintain the same silence and decorum on the tour bus as they would do in the courtroom.

Time spent on the Site Visit shall not count against any party's allocated time at the Confirmation Hearing.