

**MAYOR AND COUNCIL
BOROUGH OF MANTOLOKING
OCEAN COUNTY, NEW JERSEY**

Draft #1 (02/18/13)

**MINUTES OF THE SPECIAL MEETING
February 6, 2013**

A Special Meeting of the Mayor and Council was held this day in the auditorium of the G. Harold Antrim Elementary School, Pt. Pleasant Beach, NJ with the following actions:

CALL TO ORDER

Mayor Nebel opened the meeting at 3:35 p.m.

OPEN PUBLIC MEETING STATEMENT: Mayor Nebel

Councilwoman Nelson moved the following resolution:

RESOLUTION NO. 02/06/2013 – 01: TO AUTHORIZE THE MODIFICATION OF THE SPECIAL MEETING AGENDA OF FEBRUARY 6, 2013

Notice of this Special Meeting was timely provided by posting and notification of newspapers. However, emergent events necessitate the addition of two (2) agenda items which were not included in the notification:

1. The introduction, by title only, of a new Flood Damage Prevention Ordinance providing for adoption of the Advisory Base Flood Elevation Maps; and
2. The adoption of a Resolution providing for execution of a Debris Removal and Demolition Contract, pursuant to FEMA requirements.

Both of these issues are matters of urgency, in the public interest, so as to facilitate reconstruction and completion of debris removal and demolition.

The Governing Body could not have reasonably foreseen the need to amend or re-adopt the Flood Damage Prevention Ordinance until receipt of advice from the New Jersey DEP by letter dated February 4, 2013.

Similarly, on February 1, 2013, the Borough was advised that the County would not continue to provide the services of AshBrit and that the Borough must engage its own contractor for continuation of debris removal and demolition. The form of Resolution was mandated by FEMA. Adoption of the Resolution will insure immediate, continuing debris removal and demolition.

It was not foreseeable that the Borough would be obliged to undertake debris removal and demolition under a direct contract.

It is a statutory requirement that this modified Special Meeting Agenda be approved by vote of Council.

The motion was seconded by Councilman McIntyre and a roll call vote followed.

Nelson	Yes		
Gillingham	Yes		
McIntyre	Yes		
Brown	No		
Ness	Yes	Strohm	Absent

The resolution was approved by majority vote of Council members.

ROLL CALL Present: Mayor George C. Nebel, Council President Steve Gillingham, Councilwoman Elizabeth Nelson, Councilmen Robert S. McIntyre, James J. Brown and Donald S. Ness

Absent: Councilman Peter R. Strohm

Also Present: Municipal Clerk Irene H. Ryan, Borough Attorney Edwin J. O'Malley, Jr., Christopher Nelson, Borough Dune Inspector Robert Mainberger, Borough Engineer Lawrence Plevier, Planning Board Chairman Thomas McIntyre and Police Officer Stacy Ferris

PLEDGE OF ALLEGIANCE The Mayor led the assembly in the Pledge of Allegiance.

PUBLIC WORKS COMMITTEE - COUNCILWOMAN ELIZABETH NELSON

Councilwoman Nelson moved the following resolution:

RESOLUTION NO. 02/06/2013 – 02: EMERGENCY ROADWAY REPAIRS AND RECONSTRUCTION CONTRACT - PAYMENT NO. 1, IEW CONSTRUCTION GROUP, INC.

WHEREAS, the Borough has entered into a Contract with IEW Construction Group, Inc. to provide emergency roadway repairs and reconstruction; and

WHEREAS, the Contractor's Application for Payment No. 1 has been reviewed and recommended for payment by the Borough Engineer, Lawrence Plevier, P.E. in the sum of \$214,311.35, by letter dated January 31, 2013; and

IT IS NOW, THEREFORE, this 6th day of February, 2013, **RESOLVED** by the Mayor and Council of the Borough of Mantoloking that the Application for Payment No. 1 of IEW Construction Group, Inc. is hereby approved in the sum of \$214,311.35 and shall be paid forthwith from funds heretofore appropriated and shall be disbursed upon receipt, by the Chief Financial Officer, of appropriate documentation.

The motion was seconded by Councilman Gillingham and approved by unanimous voice vote.

PUBLIC SAFETY COMMITTEE – COUNCILMAN ROBERT MC INTYRE

Councilman McIntyre moved the following two (2) resolutions. The motion was seconded by Councilwoman Nelson and approved by unanimous voice vote.

RESOLUTION NO: 02/06/2013 – 03: APPOINTMENT OF PERSONNEL – HURRICANE RECOVERY EMERGENCY PART TIME HELP

RESOLVED, the Mayor and Council of the Borough of Mantoloking, Ocean County, New Jersey approves the following appointments with the terms and conditions indicated:

Name	Position	Effective Date	Salary
Lynn Mizer	OEM Clerical	01/29/12 – 05/01/13	\$13.00/Hour
Linda A. Stagliano	OEM Clerical	01/29/12 – 05/01/13	\$13.00/Hour

RESOLUTION NO. 02/06/2013 – 04: REGARDING PRIVATE PROPERTY DEBRIS REMOVAL AND DEMOLITION – GRANTING GOVERNING AUTHORITIES' RIGHT OF ENTRY ONTO PRIVATE PROPERTY WITHOUT OBTAINING PERMISSION OF

OWNER AND CONCERNING OTHER MATTERS TO FACILITATE RECOVERY FROM HURRICANE SANDY

WHEREAS, Hurricane Sandy struck the State of New Jersey, inflicting unprecedented damage throughout the State, and causing catastrophic flooding and damage to communities across the State of New Jersey, including the Borough of Mantoloking which has threatened the safety and security of the citizens of the Borough of Mantoloking, along with private property and public facilities;

WHEREAS, the Governor of the State of New Jersey on October 27, 2012, declared a state of emergency for the entire state pursuant to Executive Order No. 104, and such is currently still in effect **(a copy of said Executive Order is attached as Attachment A)**;

WHEREAS, the President of the United States declared a major disaster for the State of New Jersey, under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. §5121 *et seq.* (the “Stafford Act”) which, by subsequent amendments, includes all counties in the State;

WHEREAS, N.J.S.A. 40:48-2.13 confers upon the local governing authority, the Borough of Mantoloking, the power to remove debris from private property without a court order or the owner’s consent, if conditions constitute a health or safety hazard;

WHEREAS, N.J.S.A. 26:3-48, N.J.S.A. 26:3-49, N.J.S.A. 26:3-50, and N.J.S.A. 26:3-53 confer upon the local governing authority, the Borough of Mantoloking Board of Health, the power to remove debris from private property without a court order or the owner’s consent, upon due notice, if the debris is the cause of ill health or disease;

WHEREAS, the New Jersey Department of Health has issued a notice dated December 7, 2012, pursuant to N.J.S.A. 26:1A-26 (the “Commissioner’s Notice”), finding that certain kinds of accumulated storm-generated debris on public and private property constitute a public health hazard and are the cause of ill health or disease **(a copy of the Commissioner’s Notice is attached as Attachment B)**;

WHEREAS, the New Jersey Attorney General has issued an opinion letter addressed to the Federal Emergency Management Agency (FEMA), dated December 7, 2012, (the “Attorney General’s Letter”), stating that under New Jersey law a municipality has the power to authorize the removal of debris from its jurisdiction, without a court order or the owner’s consent, upon due notice, if conditions constitute a health or safety hazard **(a copy of the Attorney General’s Letter is attached as Attachment C)**;

WHEREAS, N.J.S.A. 40:48-2.13, N.J.S.A. 26:3-48, N.J.S.A. 26:3-49, N.J.S.A. 26:3-50, and N.J.S.A. 26:3-53 authorize the local governing authority to remove debris from private property following a hurricane, upon due notice, if the authority determines that such removal is necessary for the public welfare, or to protect the public from ill health or disease; and

WHEREAS, an emergency exists of the nature provided for in the Attorney General’s Letter referred to above, which triggers the local governing authority’s right of entry on private property when the landowner is not available to sign a Right of Entry form in order to remove debris in the public interest to eliminate an immediate threat to public safety, health, and welfare.

NOW THEREFORE, for the reasons recited above and in exercise of powers vested in us as the Town Council of the Borough of Mantoloking, we now hereby specifically find, determine and certify as follow:

1. Removal of Hurricane Sandy-generated debris from private property is necessary and in the public interest to eliminate immediate threats to life, public health and safety as determined by the Commissioner’s Notice.

2. Under N.J.S.A. 40:48-2.13, N.J.S.A. 26:3-48, N.J.S.A. 26:3-49, N.J.S.A. 26:3-50, and N.J.S.A. 26:3-53, the Borough of Mantoloking has the legal responsibility, duty and authority to remove debris from private property.
3. Based upon “1” and “2” above, we have determined to exercise these authorities to enter onto private property in order to abate the declared public health nuisance and safety emergency by removal of the hurricane-generated debris and the demolition of homes that have been declared structurally unstable.
4. We certify that before we initiate removal and demolition, when at all practicable, we will satisfy all the legal processes and receive all legal permissions to carry out these actions of debris removal and/or demolition on private property through the use of rights of entry with indemnity clauses signed by the property owner/those with legal interest in the property or we shall use a legal process for condemnation or nuisance abatement.
5. There may be circumstances where, because of the immediate urgency of the situation, the procedures of obtaining a Right of Entry or pursuing a condemnation proceeding, as set out in paragraph “4” above, may be too time consuming. We then will act under the auspices of the attached Attorney General’s Letter and the attached Commissioner’s Notice which together confirm the legal basis under law for the Borough of Mantoloking to proceed to remove the debris on these private properties utilizing its police power. We certify that the Borough of Mantoloking has a written process to determine which properties will require this extraordinary process to protect the public safety. In these circumstances, a reasonable period of time will be provided for public notification before private property debris removal will commence. During this period a homeowner may inform the Borough of Mantoloking that entry is denied. This request will be respected unless it is determined that protection of the public interest requires the Borough of Mantoloking action in which case the forgoing emergency process will take precedence.
6. The Borough of Mantoloking will recognize and respect all laws and regulations that concern historic preservation and environmental protection.
7. In the unusual circumstance that we desire to remove solitary standing walls as debris, I/we certify that: a) the Borough of Mantoloking and state law concludes that such solitary standing walls are defined as debris; b) the Borough of Mantoloking will have obtained a Right of Entry to the subject property that includes specific permission to remove the standing wall and that states that if there was insurance, the adjuster has inspected the property; c) the solitary wall has no historic significance; and d) the work necessary to remove the wall will not involve any additional contracting, equipment or any other change in the contract scope of work.
8. We determine that aggregating titled personal property such as cars, trucks, recreational vehicles, and boats in order to clear streets and make properties accessible for short and long term housing is necessary and in the public interest to abate a public health nuisance/emergency and certify that we have taken all appropriate action to declare so called “junk cars” a nuisance and to immediately remove them to a central, safe, and secure location for storage.
9. As required by section 407(b) of the Stafford Act (42 U.S.C. 5173(b)), [local government/local board of health] hereby agrees that it shall indemnify and hold harmless the Federal Government and its respective employees, agents, contractors, and subcontractors from any claims arising from debris removal. The Borough of Mantoloking hereby acknowledges that, in accordance with section 305 of the Stafford Act (42 U.S.C. § 5148), the Federal Government shall not be liable for any claim based upon the exercise or performance of or the failure to exercise or perform a discretionary function or duty on the part of a Federal agency or an employee of the Federal Government in carrying out the provisions of the Act.

11. To avoid duplication of benefits pursuant to section 312 of the Stafford Act (42 U.S.C. § 5155) the Borough of Mantoloking will obtain from private property owners, who participate in this debris removal program, information and documentation relating to insurance coverage, proceeds and settlements and provide this information and documentation to the New Jersey Office of Emergency Management and FEMA.
12. This Resolution shall apply to all private properties in the Borough of Mantoloking with the municipal addresses within areas that require debris removal in the public interest in order to eliminate immediate threats to life, public health, and safety.

FINANCE COMMITTEE – COUNCILMAN STEVE GILLINGHAM

Councilman Gillingham moved the following three (3) resolutions. The motion was seconded by Councilwoman Nelson and approved by unanimous voice vote.

RESOLUTION NO. 02/06/2013 – 05: AUTHORIZING AND ADOPTING A STANDARD TORT CLAIM NOTICE CLAIM FORM

WHEREAS, the Borough of Mantoloking is a member of the New Jersey Intergovernmental Insurance Fund (“NJIF”); and

WHEREAS, the NJIF and the Borough of Mantoloking have determined that it is reasonable and necessary to develop a standard form and procedure by which persons are required to notify the Borough of Mantoloking of claims which arise under the authority of the N.J.S.A. 59:L1-1, et seq. (“Tort Claims Act”);

NOW, THEREFORE, BE IT RESOLVED that the governing body of the Borough of Mantoloking hereby adopts the tort Claim Notice Form in the format attached hereto.

RESOLUTION NO. 02/06/2013 – 06: INTRODUCTION OF ORDINANCE NO. 617 – AMENDMENT TO CHAPTER XXX, LAND USE REGULATIONS OF THE BOROUGH OF MANTOLOKING CODE

WHEREAS, Superstorm Sandy on October 29, 2012 caused extraordinary destruction and damage to the infrastructure and housing stock of the Borough of Mantoloking and had significant social, emotional, and economic effect on residents, and

WHEREAS, the mayor and council are determined to take appropriate steps to mitigate the impact of the storm on homeowners, facilitate the rebuilding of the town, and reduce the possibility of the Sandy experience being repeated, and

WHEREAS, the storm resulted in government at all levels demonstrating an unprecedented amount of interest and taking many well-intentioned actions to help minimize flood damage potential and consequences in flood hazard areas, the most significant of which are:

1. The Federal Emergency Management Agency (FEMA) issued Advisory Base Flood Elevations (ABFE) designed to provide guidance to local municipalities in regard to the elevations they should require for buildings in flood hazard areas like Mantoloking. FEMA also announced several programs to provide substantial assistance with the cost of

elevating their homes to homeowners in municipalities where the ABFEs have been adopted.

2. The New Jersey Department of Environmental Protection (DEP) adopted emergency amendments to the Flood Hazard Area Control Act (FHACA) establishing rules to “ensure that buildings and other structures rebuilt in our battered coastal communities in the wake of Superstorm Sandy are constructed, reconstructed, and repaired to resist future severe flood events.” The DEP also extended its “permit-by-rule” to reconstruction, relocation, or elevation of buildings in coastal flood hazard areas.
3. Congress has enacted legislation (Biggert-Waters 2012) to bring flood insurance rates in line with actual risks and phase out federal subsidies. These changes threaten to increase insurance premiums for homeowners who do not comply with FEMA and DEP rules by as much as 400 percent. and

WHEREAS, the Mantoloking Planning Board/Board of Adjustment and mayor and council have reviewed these measures at some length with the guidance of the borough’s professional engineering staff and attorneys, and

WHEREAS, the mayor and council want to take the most responsible course of action available to protect the civil and property rights of Mantoloking citizens, constitute the least intrusion into individual and family decisions, allow for flexibility in the implementation of the rules, yet provide the best professional and technical assistance to help reduce potential damage in the next and subsequent storms, now, therefore, be it

RESOLVED, the Mayor and Council of the Borough of Mantoloking, Ocean County, New Jersey, hereby introduces on first reading the attached Ordinance entitled:

ORDINANCE NO. 617

**AN ORDINANCE AMENDING CHAPTER XXX, LAND USE REGULATIONS OF THE
MUNICIPAL CODE OF THE
BOROUGH OF MANTOLOKING, OCEAN COUNTY, NEW JERSEY**

which will, if approved for final passage after a public hearing at 4:30 p.m., Tuesday, February 26, 2013 at 401 Chambers Bridge Road, Brick Township, NJ:

1. Temporarily permit local homeowners to use boats and recreational vehicles as housing within the borough and employ a construction or storage trailer or similar resource on their properties while their homes are being repaired or replaced,
2. Incorporate the ABFEs promulgated by the Federal Emergency Management Agency into Mantoloking’s land use regulations except for the recommended but not required “Coastal A” zone designation with the understanding the borough will be filing an appeal or requesting FEMA to revisit the extent of the bayfront V zone and coastal AE zones and the required elevations and recommended construction in them. Establish the maximum first floor elevation in the Land Use Ordinance to be the ABFE plus one foot of “freeboard” for all ABFE zones with an additional two feet for structural members in V zones.

3. Recognize the unintended consequences of raising base flood elevations by replacing absolute building height limitations with a variable standard defined as the “vertical building envelope” reflecting two and one half stories and the distance between the buildings finished first floor level and the roof ridge line (32 feet for oceanfront properties and 30 feet for all others) and increasing permitted lot coverage to account for the additional steps required to access a higher building (200 sq. ft. in front, 200 sq. ft. in back, and 75 sq. ft. on one side.)
4. Adjust beachfront minimum front yard setbacks by replacing reference to the “scarp line” with a “dune reference/seawall line” and thereafter measuring the 60 feet front yard setbacks from the new line and make other adjustments in the bulk standards for a limited number of beachfront properties. and be it

FURTHER RESOLVED, this comprehensive resolution of introduction is hereby adopted, and be it

FURTHER RESOLVED, that copies of all ordinances introduced and all resolutions adopted shall be maintained on file for public examination at the office of the borough clerk, published on the borough’s website, www.mantoloking.org, and provided to anyone free of charge during regular business hours, M-F 8:30am –4:30pm, and be it

FURTHER RESOLVED, the borough clerk is directed to advertise and take all other steps required by law to conduct a public hearing on the proposed ordinance at the next regular business meeting of the mayor and council.

RESOLUTION NO. 02/06/2013 – 07: INTRODUCTION OF ORDINANCE NO. 618 – PROVIDING FOR ADOPTION OF REVISED MODEL FLOOD DAMAGE PREVENTION ORDINANCE

RESOLVED, the Mayor and Council of the Borough of Mantoloking, Ocean County, New Jersey hereby adopts on first reading (title only) the following Ordinance:

ORDINANCE NO. 618

AN ORDINANCE OF THE BOROUGH OF MANTOLOKING, OCEAN COUNTY, NEW JERSEY, PROVIDING FOR ADOPTION OF REVISED MODEL FLOOD DAMAGE PREVENTION ORDINANCE

FURTHER RESOLVED, that copies of all ordinances introduced and all resolutions adopted shall be maintained on file for public examination at the office of the borough clerk, published on the borough’s website, www.mantoloking.org, and provided to anyone free of charge during regular business hours, M-F 8:30am –4:30pm, and be it

FURTHER RESOLVED, the borough clerk is directed to advertise and take all other steps required by law to conduct a public hearing on the proposed ordinance at the next regular business meeting of the mayor and council.

MAYOR AND COUNCIL COMMENT

No comments were made.

PUBLIC COMMENTS PERIOD

After adjournment of this meeting, a presentation was made by Special Counselor Christopher Nelson and Dune Inspector Robert Mainberger, P.E. Numerous comments were made by the public.

NEXT MEETING Regular Meeting of Tuesday, February 26, 2013 – Brick Township Municipal Court, 401 Chambers Bridge Road, Brick, NJ

ADJOURNMENT

There being no further business for this meeting, it was moved by Councilman McIntyre to adjourn. The motion was seconded by Councilman Brown and approved by unanimous voice vote at 3:48 p.m.

Respectfully submitted,

Irene H. Ryan, R.M.C.
Municipal Clerk