

**DRAFT #1 (02/03/2013)**

**THE BOROUGH OF MANTOLOKING**  
**MAYOR AND COUNCIL**

**MINUTES OF THE REGULAR BUSINESS MEETING**  
**DECEMBER 17, 2012**

The regular monthly meeting of the Mayor and Council was held this day in the Brick Branch of the Ocean County Library meeting room, 301 Chambers Bridge Road, Brick, New Jersey with the following actions:

- 1. CALL TO ORDER:** Mayor Nebel called the meeting to order at 4:30 p.m.
  
- 2. OPEN PUBLIC MEETING STATEMENT:** Mayor Nebel read the following statement:  
*In compliance with the provisions of the New Jersey Open Public Meetings Act, adequate notice of this meeting of the Mantoloking Borough Council has been advertised in the manner provided by law.*
  
- 3. ROLL CALL**  
**Present:** Mayor George C. Nebel, Council President Steve Gillingham, Councilmen Donald S. Ness, Peter R. Strohm, Stanley F. Witkowski and Councilwoman Ann Elizabeth Nelson  
  
**Absent:** Councilman Brown  
  
**Also Present:** Municipal Clerk Irene H. Ryan, Borough Attorney Edwin J. O'Malley, Jr., Chief Financial Officer Michelle Swisher, Christopher Nelson, OEM Coordinator Robert S. McIntyre, Jr., Dune Inspector Robert Mainberger, Police Chief Mark Wright and Police Lt. Barcus
  
- 4. PLEDGE OF ALLEGIANCE:** The Mayor led the assembly in the Pledge of Allegiance.
  
- 5. PRIVILEGE OF THE FLOOR:** The Mayor opened the meeting for public comment and questions about the agenda. No comments were made.
  
- 6. MINUTES OF PREVIOUS MEETINGS:**  
**RESOLUTION NO. 12/17/2012 - 01: APPROVAL OF MINUTES**  
Councilwoman Nelson moved that the minutes of the Regular Meeting of November 19, 2012, Closed Session of November 19, 2012 and Special Meeting of December 5, 2012 be approved as distributed. The motion was seconded by Councilman Gillingham and approved by unanimous voice vote.

**7. COMMITTEE REPORTS AND RECOMMENDATIONS**

**FINANCE COMMITTEE, COUNCILMAN WITKOWSKI**

A. Councilman Witkowski introduced the Municipal Finance Officer Michelle Swisher who presented the monthly finance report.

**B. Action Items:**

Councilman Witkowski moved the following six (6) resolutions. The motion was seconded by Councilman Gillingham and approved by unanimous voice vote.

**RESOLUTION NO. 12/17/2012 – 02: ACCEPTANCE OF THE REPORT OF THE MUNICIPAL FINANCE OFFICER October 31, 2012**

**WHEREAS**, the Chief Finance Officer has presented a report on the status of the 2012 municipal budget as of October 31, 2012; and

**WHEREAS**, that report indicates the following status as of that date:

ACCOUNT	BUDGET	EXPENDED YEAR TO DATE	ENCUMBERED	BALANCE
2012 Current Year Appropriation	\$4,049,321.94	\$ 3,231,162.90	\$ 53,527.25	\$ 764,631.79
2011 Appropriation Reserves	\$ 447,532.84	\$ 154,986.11	\$ 87.76	\$ 292,458.97
Capital	\$1,185,452.26	\$ 425,209.52		\$ 760,242.74

ACCOUNT	REVENUE THIS MONTH	REVENUE YEAR TO DATE
Cash Receipts	\$ 413,375.59	\$7,927,652.08

now, therefore, be it

**RESOLVED**, the Mayor and Council of the Borough of Mantoloking, Ocean County, New Jersey accept the above referenced and summarized report and directs that a copy be attached to and made part of the minutes of this meeting.

**RESOLUTION NO. 12/17/2012 – 03: PAYMENT OF BILLS FOR THE MONTH OF DECEMBER 2012**

**WHEREAS**, the Municipal Finance Officer has presented a list of bills in the total amount of **\$750,590.36** and

*recommended that they be paid, now, therefore, be it*

**RESOLVED**, the Mayor and Council of the Borough of Mantoloking, Ocean County, New Jersey approve payment of the above referenced bills and directs that a copy be attached to and made part of the minutes of this meeting.

**RESOLUTION NO. 12/17/2012 – 04: REQUESTING A TAX REFUND OF OVERPAYMENT OF TAXES DUE TO A TAX APPEAL – DONNA WALSH**

**WHEREAS**, a State Tax Court Judgment has been favorably awarded to Donna Walsh, Block 41, Lot 3, for the fiscal year 2011; and,

**WHEREAS**, such judgment has resulted in an overpayment of 2011 property taxes in the amount of \$6,004.46, plus interest calculated from the date of the judgment Oct 5, 2012 thru December 17, 2012 in the amount of \$61.42

**NOW THEREFORE BE IT RESOLVED**, by the Mayor and Council of the Borough of Mantoloking, County of Ocean, State of New Jersey, that the Chief Financial Officer be hereby authorized to issue a check in the amount of \$6,065.88 for said overpayment to Waters, McPherson, McNeill, PC Attorneys for Donna Walsh, 300 Lighting Way, PO Box 1560, Secaucus, NJ 07096 for the property known as 1513 Ocean Ave, Mantoloking, NJ 08738.

**BE IT FINALLY RESOLVED**, that a certified copy of this Resolution be forwarded to the Tax Collector, Chief Financial Officer and property owner.

**RESOLUTION NO. 12/17/2012 – 05: REQUESTING APPROVAL OF A CASH ADVANCE AS A DIRECT RESULT OF HURRICANE SANDY**

**WHEREAS**, the Borough of Mantoloking was hit with a devastating hurricane on October 29, 2012. The storm was so destructive that all residents were evacuated from the barrier island and as of this date have not been able to return, and

**WHEREAS**, all Borough Employees and Police were displaced from their offices as a result of the hurricane, were without supplies and were forced to move those offices to a temporary location

**WHEREAS**, certain supplies and provisions were needed to make that move and to provide a smooth transition to the new temporary location. Supplies such as moving boxes, tape, postage stamps and a new post office box were all essential supplies to the smooth transition and

**WHEREAS**, the aforementioned transactions were cash transactions, the Chief Financial Officer upon consultation with the State of New Jersey felt that it was in the best interest of the Borough to have a cash advance in the amount of \$400.00 to provide for these transactions,

**NOW THEREFORE BE IT RESOLVED**, that the Mayor and Council of the Borough of Mantoloking memorialize the issuance of check #25458 in the amount of \$400.00 as a cash advance for supplies needed to provide for the continuance of the government of the Borough of Mantoloking.

**RESOLUTION NO. 12/17/2012 – 06: AUTHORIZING A SPECIAL EMERGENCY APPROPRIATION IN THE AMOUNT OF \$2,000,000.00 TO COVER THE COSTS OF EXTRAORDINARY EXPENSES FOR THE REPAIR AND RECONSTRUCTION OF STREETS AND ROADS, SEWER SYSTEMS, AND ALL OTHER PUBLIC PROPERTY DAMAGED, INCLUDING DEBRIS REMOVAL, AND FOR ALL OTHER EXPENSES ASSOCIATED WITH HURRICANE SANDY, IN THE BOROUGH OF MANTOLOKING, IN THE COUNTY OF OCEAN, STATE OF NEW JERSEY IN ACCORDANCE WITH N.J.S.A. 40A:4-54**

**WHEREAS**, N.J.S.A. 40A:4-54 provides that a municipality may make a special emergency appropriation and issue “special emergency notes” to finance certain extraordinary expenses for the repair and reconstruction of municipal streets, roads, sewer systems, damages to public property resulting from a flood or hurricane where such expenses were not foreseen at the time of adoption of the annual budget; and

**WHEREAS**, the Borough of Mantoloking, in the County of Ocean, State of New Jersey (the “Borough”), has suffered substantial damages from Hurricane Sandy that were unforeseen and must make this emergency appropriation to meet certain extraordinary expenses incurred, or to be incurred, as a result of Hurricane Sandy to protect public property, health, safety and welfare.

**NOW THEREFORE, BE IT RESOLVED BY THE MAYOR AND COUNCIL OF THE BOROUGH OF MANTOLOKING, IN THE COUNTY OF OCEAN, NEW JERSEY**, with the affirmative concurrence of not less than two-thirds of all members thereof, AS FOLLOWS:

**Section 1. Declaration of Emergency.** A special emergency appropriation is hereby made for extraordinary expenses for the repair and reconstruction of municipal streets, roads, sewer system, damages to public property, debris removal, and all other expenses associated with Hurricane Sandy in the amount of \$2,000,000.00, incurred or to be incurred by the Borough as a result of Hurricane Sandy, which expenses are required to protect or promote public property, health, safety and welfare and were unforeseen at the time of adoption of the annual budget. In accordance with N.J.S.A. 40A:4-54 et seq., such emergency appropriation shall be provided for in the budget of the next succeeding five (5) years by the inclusion of not less than \$400,000.00 per year.

**Section 2. Filing with the Division of Local Government Services.** The statement required by the Local Finance Board has been filed with the Clerk and a copy will be transmitted to the Director of the Division of Local Government Services. Two (2) certified copies of this resolution will be filed with the Director of the Division of Local Government Services; however, no approval is required from the Local Finance Board in this particular instance as approved by the Division.

**Section 3. Determination of Additional Matters.** All other terms of the issuance of the special emergency notes authorized by this Resolution, including, without limitation, the dates thereof, the rates of interest to be paid thereon, the provisions for redemption prior to maturity thereof, and the place or places for payment thereof, shall be determined by subsequent resolutions of the Borough of Mantoloking, as permitted by Section 40A:4-55 of the local Budget Law.

**Section 4. Repeal.** All resolutions or parts thereof to the extent inconsistent herewith are hereby repealed and rescinded. In addition, this Resolution shall repeal, supersede and replace in all respects Resolution #11/19/2012-04 of 2012 previously adopted by the Mayor and Council of the Borough of Mantoloking on November 19, 2012.

**Section 5. Effective Date.** This resolution shall take effect immediately upon adoption, this 17<sup>th</sup> day of December, 2012.

**RESOLUTION NO. 12/17/2012 – 07: AUTHORIZING THE ISSUANCE OF A \$2,000,000.00 SPECIAL EMERGENCY NOTE FOR THE BOROUGH OF MANTOLOKING, IN THE COUNTY OF OCEAN, STATE OF NEW JERSEY FOR EMERGENCY REPAIRS AND RELATED EXPENSES RESULTING FROM DAMAGES CAUSED BY HURRICANE SANDY; AND MAKING CERTAIN AUTHORIZATIONS, DETERMINATIONS AND COVENANTS IN CONNECTION WITH THE FOREGOING**

**WHEREAS**, the Local Budget law, constituting Chapter 4 of Title 40A of the New Jersey Statutes, as amended and supplemented (the “Local Budget Law”), provides that a municipality may adopt a resolution authorizing special emergency appropriations to cover the cost of extraordinary expenses for the repair, reconstruction of streets, roads or bridges, or other public property damaged by flood or hurricane, including debris removal, where such expenses were not anticipated or foreseen at the time of adoption of the annual budget; and

**WHEREAS**, on December 17, 2012 the Mayor and Council of the Borough of Mantoloking, County of Ocean, State of New Jersey (the “Borough”) did adopt Resolution #12/17/2012-02 of 2012 authorizing a special emergency appropriation in the amount of \$2,000,000.00 to cover the costs to repair and reconstruct damages to streets, roads, sewer systems, other public property, including debris removal, and all other expenses caused by Hurricane Sandy; and

**WHEREAS**, in accordance with Section 55 of the Local Budget Law, the Borough is required to adopt a resolution setting forth the amount appropriated and other terms and conditions associated with the issuance of “Special Emergency Notes”.

**NOW THEREFORE, BE IT RESOLVED BY THE MAYOR AND COUNCIL OF THE BOROUGH OF MANTOLOKING, COUNTY OF OCEAN, STATE OF NEW JERSEY** (with the affirmative concurrence of

not less than two-thirds of all members thereof), **AS FOLLOWS:**

**Section 1. Authorization of the Notes.** The issuance and sale of negotiable “Special Emergency Notes” of the Borough in an aggregate principal amount of \$2,000,000.00 , to be designated “Borough of Mantoloking, Special Emergency Notes of 2012 (the “Notes””, are hereby authorized and approved for the purpose of funding the cost of repairs and reconstruction of streets, roads, sewer systems, other public property , including debris removal, and other expenses incurred by the Borough as a result of damages caused by Hurricane Sandy, in accordance with the terms of Resolution #12/17/2012-02.

**Section 2. Form and Terms of the Notes.** The following matters in connection with the Notes are hereby determined:

- a) The Notes shall be substantially in the form annexed hereto as Exhibit “A” and shall be executed on behalf of the Borough by the signatures of the Mayor, the Chief Financial Officer, and the Borough Clerk, under the affixed, imprinted or reproduced seal of the Borough.
- b) The Notes shall be dated the date of delivery thereof, may be renewed from time to time, but at least 1/5<sup>th</sup> of all such notes, including renewals thereof, shall mature and be paid in each year such that all notes and renewals thereof shall have matured and be paid no later than the last day of the fifth year following the date of this Resolution.
- c) The Chief Financial Officer is hereby authorized to sell and award the Notes at not less than par and accrued interest, if any, either by public sale or negotiated private sale as determined by the Chief Financial Officer. The Chief Financial Officer shall report in writing to Mayor and the Council, at the next meeting thereof, the amount, description, interest rate and maturities of the Notes, the price obtained and the name of the purchaser, and such report shall be entered in full on the minutes of such meeting.
- d) The Mayor, the Chief Financial Officer and the Borough Clerk of the Borough of Mantoloking are hereby severally authorized and directed to determine all matters in connection with the Notes not determined by this, a prior or a subsequent resolution and their signatures upon any document reflecting any such determination, including the Notes, shall be conclusive as to such determinations.

**Section 3. Tax Covenants.** The Borough covenants that it will not take any action, or fail to take any action if any such action or failure to take action would adversely affect the exclusion from gross income of the interest on any obligations issued hereunder Section 103 of the Internal revenue Code of 1986, as amended (the “Code”). The Borough will not directly or indirectly use or permit the use of any proceeds of any obligations issued hereunder or any other funds of the Borough, or take or omit to take any action, that would cause such obligations issued hereunder to be “arbitrage bonds” within the meaning of Section 148(a) of the Code. To that end, the Borough will comply with all requirements of Section 148 of the Code to the extent applicable to any obligations issued hereunder. In the event that at any time the Borough is of the opinion that for purposes of this Section 3 it is necessary to restrict or limit the yield on the investment of any proceeds of any obligations issued hereunder held by or on behalf of the Borough, the Borough shall take such action as may be necessary to effect such restriction.

Without limiting the generality of the foregoing, the Borough shall pay or cause to be paid from time to time all amounts required to be rebated to the United states pursuant to Section 148(f) of the Code and any temporary, proposed or final Treasury Regulations as may be applicable to any obligations issued hereunder and such notes from time to time. This covenant shall survive payment in full or defeasance of any obligations issued hereunder.

Notwithstanding any provision of this Section 3, if the Borough obtains an opinion of nationally recognized bond counsel or recognized Borough Attorney to the effect that any action required under this Section is no

longer required, or to the effect that some further action is required, to maintain the exclusion from gross income of the interest on any obligations issued hereunder pursuant to section 103 of the Code, the Borough may rely conclusively on such opinion in complying with the provision hereof, and the covenants hereunder shall be modified to the extent set forth in such opinion without further action by the Borough.

**Section 4. General Obligation Pledge.** The Notes are direct, unlimited obligations of the Borough and full faith, credit and taxing power of the Borough are hereby irrevocably pledged for the payment of principal of and interest on the Notes when due and payable. The Borough shall levy ad valorem taxes upon all the taxable property within the Borough for the payment of principal and interest on the Notes without limitation of rate or amount.

**Section 5. Ratification of Prior Actions; Authorization to Effect Settlement.** All actions heretofore taken and documents prepared or executed by or on behalf of the Borough by the Mayor, Borough Council, The Borough Clerk, the Chief Financial Officer or by the Borough's professional advisors, in connection with the issuance and sale of the Notes including, without limitation, solicitation from financial institutions of proposals to purchase the Notes, are hereby ratified, confirmed, approved and adopted. The Mayor, the Chief Financial Officer and the Borough Clerk are hereby authorized and directed to determine all matters and execute all documents and instruments in connection with the Notes not determined or otherwise directed to be executed by the Local Budget Law, or by this or any subsequent resolution, and the signatures of the Mayor, the Chief Financial Officer and the Borough Clerk on any such document or instrument shall be conclusive as to such determinations. Settlement of the sale of the Notes shall be as soon as is practicable.

**Section 6. Repeal.** All resolutions or parts thereof to the extent inconsistent herewith are hereby repealed and rescinded.

**Section 7. Effective Date.** This Resolution shall take effect immediately upon adoption, this 17<sup>th</sup> day of December 2012.

**PUBLIC SAFETY COMMITTEE, COUNCILMAN GILLINGHAM:**

**A. Reports of the Public Safety Committee:** Councilman Gillingham presented the report of the Municipal Court. Reports of the Police Department, Fire Company and Emergency Management were not submitted.

**B. Action Items:**

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

**RESOLUTION NO. 12/17/2012 – 08: APPROVING SHARED SERVICES AGREEMENT WITH BRICK TOWNSHIP FOR USE OF THE BRICK TOWNSHIP MUNICIPAL COURT ROOM**

**WHEREAS**, the Township of Brick is willing to permit the Borough of Mantoloking to utilize the Brick Township Municipal Courtroom for Mantoloking Borough Council Meetings and Municipal Court sessions and

**WHEREAS**, the attached Shared Services Agreement, which has been reviewed and approved by counsel, is deemed appropriate to memorialize the terms of Agreement.

**IT IS NOW, THEREFORE**, this 17<sup>th</sup> day of December, 2012, RESOLVED by the Mayor and Council of the Borough of Mantoloking, Ocean County, New Jersey, as follows:

1. The Borough of Mantoloking shall accept the proposed terms of Agreement;
2. The Mayor and Clerk are authorized to execute the Agreement;
3. A copy of this Resolution shall be forwarded to the Brick Township Clerk.

**RESOLUTION NO. 12/17/2012 – 09: APPROVE ROSTER OF 2013 COUNCIL MEETINGS**

The following is the schedule of Regular Council Meetings for 2013 and the tentative Organization meeting for 2014 for the Borough of Mantoloking. All meetings are held at the Borough Hall Temporary Offices, 340 Drum Point Road, Brick, NJ, at 4:30 p.m., unless otherwise noted.

**ORGANIZATION MEETING:** Monday, January 7, 2013 at Brick Library

**REGULAR MEETINGS:** Tuesday, January 22, 2013  
Monday, February 25, 2013

Monday, March 18, 2013  
Monday, April 15, 2013  
Monday, May 20, 2013  
Monday, June 17, 2013  
Monday, July 15, 2013  
Monday, August 19, 2013  
Monday, September 16, 2013  
Monday, October 21, 2013  
Monday, November 25, 2013  
Monday, December 16, 2013

**2014 Organization Meeting:** Monday, January 6, 2014 (TENTATIVE)

**PUBLIC WORKS COMMITTEE, COUNCILWOMAN NELSON**

**A. Reports of the Public Works:** Councilwoman Nelson presented the report of the Construction Official. Reports of the Public Works Superintendent and Land Use Officer were not submitted.

**B. Action Items:**

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

**RESOLUTION NO. 12/17/2012 – 10: APPROVING SHARED SERVICES AGREEMENT BETWEEN THE BOROUGH OF MANTOLOKING AND BAY HEAD TEMPORARY STORAGE OF DEBRIS**

**WHEREAS**, the attached form of Shared Services Agreement has been reviewed and approved by counsel; and

**WHEREAS**, the proposed Shared Services Agreement for temporary storage of debris has been approved by the New Jersey DEP; and

**WHEREAS**, the Agreement does not obligate the Borough of Mantoloking to provide remuneration; and

**WHEREAS**, the availability of a debris storage facility is a matter of necessity and in the public interest.

**IT IS NOW, THEREFORE**, this 17<sup>th</sup> day of December, 2012, RESOLVED by the Mayor and Council of the Borough of Mantoloking, Ocean County, New Jersey, as follows:

1. The Mayor is authorized to execute the proposed Shared Services Agreement;
2. The public generosity of Bay Head is noted with sincere appreciation;
3. A copy of this Resolution shall be forwarded to the Borough of Bay Head.

**RESOLUTION NO. 12/17/2012 – 11: 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:*

<b>Name</b>	<b>Position</b>	<b>Effective Date</b>	<b>Salary</b>
<i>Carl Brazinski</i>	<i>Public Works Laborer</i>	<i>12/12/12 – 05/01/13</i>	<i>\$13.00/hour</i>
<i>Michael Dreher</i>	<i>Special Police Officer</i>	<i>12/12/12 – 05/01/13</i>	<i>\$13.00/hour</i>

**RESOLUTION NO. 12/17/2012 – 12: RATIFICATION OF EMERGENCY AWARD OF CONTRACT FOR EMERGENCY ROADWAY REPAIRS AND RECONSTRUCTION - IEW CONSTRUCTION GROUP, INC.**

**WHEREAS**, the Municipal Engineer has confirmed that damage to the Borough Street infrastructure constitutes a present risk to the health and well-being of persons in the Borough; and

**WHEREAS**, the Engineer has solicited and obtained proposals for the project, pursuant to a detailed request for proposals, to which five (5) potential providers responded; and

**WHEREAS**, the proposal of IEW Construction Group, Inc. to provide the specified services for the sum of \$431,095.00 was the lowest responsive bid; and

**WHEREAS**, IEW Construction Group, Inc. will provide the required services immediately; and

**WHEREAS**, funds are available and a Certificate of Funds Availability has been filed; and

**WHEREAS**, the Mayor has, on behalf of the Borough, executed the emergency Contract with IEW Construction Group, Inc.

**IT IS NOW, THEREFORE**, this 17<sup>th</sup> day of December, 2012, **RESOLVED** by the Mayor and Council of the Borough of Mantoloking, Ocean County, New Jersey, that emergency award of the Roadway Repairs and Reconstruction Contract to IEW Construction Group, Inc. is in the public interest and that the award and Contract execution by the Mayor are now hereby approved and ratified.

**DUNE & BEACH RENOURISHMENT COMMITTEE, COUNCILMAN STROHM**

**A. Report of the Dune & Beach Renourishment Committee and Ocean County Block Grant Program**

**B. Action Items: None**

**MUNICIPAL SERVICES COMMITTEE, COUNCILMAN BROWN** (Absent)

**A. Councilman Brown will present the reports of the Municipal Services Committee.**

**B. Action Items: None**

**MANTOLOKING COMMITTEE, COUNCILMAN NESS**

**A. Councilman Ness will present the reports of the Mantoloking Committee and the Environmental Commission.**

**B. Action Items: None**

**8. MAYOR AND COUNCIL COMMENTS**

No comments were made.

**9. PUBLIC COMMENTS PERIOD**

After a presentation on the progress of the Storm Sandy recovery by Special Counsel Christopher Nelson, numerous questions and comments were made by members of the public.

**10. NEXT MEETING** Organization Meeting and a Special Meeting on Monday, January 7, 2013 at 4:30 p.m.

**11. ADJOURNMENT**

There being no further business for this meeting, it was moved by Councilwoman Nelson to adjourn. The motion was seconded by Councilman Strohm and was approved by unanimous voice vote at 5:33 p.m.

Respectfully submitted,

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