

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

**Draft #1 (04/08/2014)**

**MINUTES OF THE SPECIAL MEETING**

**April 7, 2014**

**Mantoloking Borough Offices**

**340 Drum Point Road**

**Brick, New Jersey**

A Special Meeting of the Mayor and Council was held this day at the Mantoloking Borough Offices, 340 Drum Point Rd., Brick, New Jersey.

**CALL TO ORDER:** Council President Gillingham called the meeting to order at 5:30 p.m.

**OPEN PUBLIC MEETING STATEMENT: Council President Steve Gillingham**

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.

**ROLL CALL**

**Present:** Council President Steve Gillingham, Councilwoman Beth Nelson, Councilmen Peter R. Strohm, Chris Nelson, Robert S McIntyre

**Absent:** Mayor George C. Nebel, Councilman James J. Brown

**Also Present:** Deputy Borough Clerk Lynne Hazelet, Borough Attorney Edwin J. O'Malley, Jr.

**PLEDGE OF ALLEGIANCE** The Council President led the assembly in the Pledge of Allegiance.

**PRIVILEGE OF THE FLOOR** The Council President opened the meeting for public comment and questions about the agenda. Several audience members had comments.

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

Councilman Strohm moved the following resolution. The motion was seconded by Councilwoman B. Nelson and approved by the following roll-call vote:

**AYE:**

Councilmen	Gillingham Strohm C. Nelson McIntyre
Councilwoman	Nelson

**NAY:** None

**ABSTAIN:** None

**RESOLUTION NO. 04/07/2014 - 01: CONSIDERATION OF ADOPTION OF SUPPLEMENTAL DISASTER CONTROL ACT CONCERNING STEEL REVETMENT/EASEMENTS**

See attached resolution

**MAYOR AND COUNCIL COMMENT**

None

**PUBLIC COMMENTS PERIOD**

None

**NEXT MEETING**

Workshop Council Meeting, Wednesday, April 16, 2014 at 8:30 am at the Temporary Borough Hall, 340 Drum Point Road, 2<sup>nd</sup> Floor, Brick, NJ

Regular Council Meeting, Tuesday, April 22, 2014 at 5:30 p.m. at the Mantoloking Yacht Club, 1224 Bay Avenue, Mantoloking, NJ

**ADJOURNMENT**

There being no further business for this meeting, it was motioned by Councilman P. Strohm to adjourn. The motion was seconded by Councilwoman B. Nelson and approved by unanimous voice vote at 5:44 p.m.

Respectfully submitted,

Lynne A. Hazelet  
Deputy Borough Clerk

**RESOLUTION PURSUANT TO N.J.S.A. App. A:9-51.5  
BOROUGH OF MANTOLOKING  
OCEAN COUNTY, NEW JERSEY**

**RESOLUTION**

**AUTHORIZING THE BOROUGH OF MANTOLOKING, AND THE NEW JERSEY DEPARTMENT OF ENVIRONMENTAL PROTECTION, AND THE REPRESENTATIVES THEREOF, TO ENTER UPON AND TAKE POSSESSION OF THAT PORTION OF THE REAL PROPERTY(IES) SHOWN ON THE CURRENT TAX MAP OF THE BOROUGH OF MANTOLOKING, THE BLOCK(S) AND LOT(S) OF WHICH ARE APPENDED HERETO IN APPENDIX A, FOR THE PURPOSE OF REPAIR, RESTORATION, REPLACEMENT AND/OR CONSTRUCTION OF FLOOD HAZARD RISK REDUCTION MEASURES**

**WHEREAS**, Superstorm Sandy caused extensive damage to life and property in the municipalities along much of the Atlantic Coast of New Jersey, including the Borough of Mantoloking (hereinafter "the Municipality"); and

**WHEREAS**, the damage caused to the Municipality and the State of New Jersey ("the State") by Superstorm Sandy included, among other things, significant erosion of coastal sand dunes and shorelines resulting in near total destruction of the coastal properties and significant damage to properties facing the bay area, as well as damage to public infrastructure owned and maintained by the State of New Jersey; and

**WHEREAS**, due to the damage that the Municipality and State sustained as a result of Superstorm Sandy, the Municipality has passed Ordinance #630 authorizing the acquisition of certain interests in properties by negotiation, purchase, condemnation or eminent domain in furtherance of Executive Order 140 ; and

**WHEREAS**, in response to the devastation from Superstorm Sandy, the United States Congress has appropriated funds for the creation, improvement, and reconstruction of flood hazard risk reduction measures across New Jersey's coastline, including in the Municipality; and

**WHEREAS**, the Municipality is in the process of a shore protection project in conjunction with the New Jersey Department of Environmental Protection ("DEP"), and/or other federal/state entities, the purpose of which is the creation, improvement, and/or reconstruction of flood hazard risk reduction measures in the Municipality for the protection of the Municipality and the property and citizens thereof; and

**WHEREAS**, as part of the design of these flood hazard risk reduction measures, governmental entities have identified all property interests that must be obtained for construction of the flood hazard risk reduction measures, and these required property interests include a perpetual easement for the construction of a protective revetment; and

**WHEREAS**, some owners of the property where easements are necessary for the flood hazard risk reduction measures voluntarily provided the needed property interests to the Municipality and/or other public entities but, due to inadvertent ministerial deficiencies in the manner that the Deeds of

Easement for Construction of Protective Revetment ("the Deeds") were executed, the Deeds cannot be recorded; and

**WHEREAS**, those property owners who in good-faith provided the Deeds which can not be recorded ("the Property Owners"), along with their respective properties (collectively, the "Properties") as identified on the tax map of the Municipality, are listed in Appendix A to this Resolution; and

**WHEREAS**, (except for Block 1, Lots 4 and 4.01 and Block 2, Lots 3, 3.01, 4 and 4.01) the Deeds executed by the Property Owners for the Properties listed in Appendix A to this Resolution are attached hereto as Exhibit B; and

**WHEREAS**, Superstorm Sandy has compromised, damaged and/or destroyed existing flood hazard risk reduction measures that have previously protected the Municipality from flooding caused by tidal waters; and

**WHEREAS**, the Municipality's governing body has decided that repairing, restoring, replacing, and/or constructing the flood hazard risk reduction measures at, upon, and/or around the Properties is necessary for the protection of the public health, safety, and welfare, as well as the protection of the Properties, the surrounding properties, the affected residences, and the subject neighborhood, and that the flood hazard risk reduction measures will allow the Municipality and the region as a whole to be more resilient and better able to withstand the next storm and its aftermath; and

**WHEREAS**, using public funds, federal and/or state entities intend to begin construction of the flood hazard risk reduction measures in the Municipality in April 2014; and

**WHEREAS**, the flood hazard risk reduction measures currently planned to be constructed in the Municipality are scheduled to proceed in two stages, the first stage consisting of a steel sheet pile revetment (the "Revetment"), and the second stage consisting of a replenished beach and engineered sand dune (the "Beach and Dune Project") that will enhance the effectiveness of the Revetment; and

**WHEREAS**, that project cannot proceed until the Municipality provides to federal and/or state entities perpetual easement(s) for the easement area on each of the Properties as set forth in the Deeds attached to Appendix B to this Resolution, and thus failure to provide the necessary easement(s) before the construction of the flood hazard risk reduction measures will delay, increase the cost of, and potentially frustrate the project's construction; and

**WHEREAS**, the potential delay and increase in cost is a matter of urgency and importance, and would result in substantial harm to the public health, safety, and welfare; and

**WHEREAS**, on October 27, 2012 the Governor issued Executive Order No. 104, wherein he declared a state of emergency because of Superstorm Sandy, and expressly reserved the right to utilize and employ all available resources of the State government and each and every political subdivision of the State, whether of persons, properties, or instrumentalities, and to commandeer and utilize any personal services and any privately owned property necessary to protect against the declared emergency; and

**WHEREAS**, on September 25, 2013 the Governor issued Executive Order No. 140, wherein he declared that the construction of flood hazard risk reduction measures along New Jersey's coastline,

including in the Municipality, is necessary to protect the public health, safety, and welfare from future natural disasters, and that reliance on certain statutory authority for the acquisition of property, including but not limited to N.J.S.A. App. A:9-51.5, is necessary for such efforts; and

**WHEREAS**, in Executive Order No. 140, the Governor ordered that no municipality, county, or other agency or political subdivision of the State shall enact or enforce any order, rule, regulation, ordinance, or resolution, which will or might in any way conflict with the provisions of Executive Order No. 140, or which will in any way interfere with or impede its achievement; and

**WHEREAS**, pursuant to N.J.S.A. App. A:9-51.5, if the Municipality, which borders the Atlantic Ocean, finds that there exists a threat or danger to life and property by reason of the damage to or the destruction of sand barriers and other natural or manmade barriers which protect the Municipality, and that it is necessary to the health, safety, and welfare of the Municipality to repair, restore, replace, or construct such flood hazard risk reduction measures, then the Municipality may, by resolution, as an exercise of the police power of the State, designate properties required for the purpose of providing such protective barriers and authorize the appropriate municipal or government officials or agencies or the representatives thereof to enter upon such property within ten (10) days of the passage of such a resolution (or a shorter period of time if the Municipality finds that a shorter time is necessary for the public safety and interest) to take control and possession thereof, and to do such acts as may be required without first paying any compensation therefor; and

**WHEREAS**, the passage of such a resolution would enable the project for the flood hazard risk reduction measures to continue without delay in the Municipality;

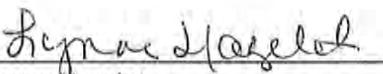
**NOW, THEREFORE, BE IT RESOLVED**, by the Borough Council of the Borough of Mantoloking, County of Ocean, New Jersey as follows:

1. Pursuant to N.J.S.A. App. A:9-51.5, the Municipality finds that there is a threat or danger to life and property caused by Superstorm Sandy due to the compromise of, damage to and/or destruction of flood hazard risk reduction measures that protect the Municipality and the State; and
2. The portion(s) of the real property(ies) identified in Appendix B ("the Properties") and a portion of Block 1, Lots 4 and 4.01; Block 2, Lots 3 and 3.01 and Lots 4 and 4.01, are hereby designated as property required for control and possession by the Municipality, its representatives and any other governmental entities or agencies, or the representatives thereof, in order to construct and maintain the first stage of the flood hazard risk reduction measures (i.e., the Revetment) for the protection of the public health, safety, and welfare, as well as the protection of the Properties, the surrounding properties, the affected residences, and the subject neighborhood, and that the flood hazard risk reduction measures will allow the Municipality and the region as a whole to be more resilient and better able to withstand the next storm and its aftermath; and
3. Pursuant to N.J.S.A. App. A:9-51.5 and the terms of the Deeds, the Municipality hereby authorizes the DEP and their representatives, including any other designated state and/or federal entities, to enter the Properties within ten (10) days of the passage of this Resolution to take control and possession thereof, and permits the DEP and their representatives to do such acts as may be required to repair, restore, replace, and/or construct the flood hazard risk reduction measures as contemplated in the project for the Municipality; and

4. Pursuant to N.J.S.A. App. A:9-51.5, the Municipality hereby declares it has taken a perpetual and assignable easement and right-of-way for the Revetment in, on, over, and across that land of the Properties described in Appendix A in favor of itself and the State of New Jersey for purposes of construction, preservation, patrol, operation, maintenance, repair, rehabilitation, and replacement of the flood hazard risk reduction measures, pursuant to the terms of the Deeds attached to this Resolution as Appendix B; and
5. A certified copy of this Resolution certified by the Clerk of the Municipality shall be recorded with the Ocean County Clerk's Office and recorded in the book for deeds; and
6. A copy of this Resolution shall also be provided to the owners of record via certified mail, return receipt requested, and regular mail, at their last known address within two (2) business days of the date of this Resolution; and
7. To prevent a delay in the project and any resulting costs, entry upon and possession of the Properties may be made without first paying any compensation therefor; and
8. In accordance with N.J.S.A. App. A:9-51.7, the owners of the Properties retain the right to obtain just compensation, if any, for the possession of the Properties, subject to all appropriate setoffs for benefits conferred on the property by the flood hazard risk reduction measures; and
9. To ensure that the owners of the Properties receive the just compensation, if any, required by N.J.S.A. App. A:9-51.7 and/or any other applicable law, the Municipality will proceed under the negotiation and valuation provisions of the Eminent Domain Act of 1971, N.J.S.A. 20:3-1 *et seq.* to value the impact of the Revetment and Beach and Dune Project on the affected property owners if requested by the any Property Owners; and
10. In accordance with Executive Order No. 140, the Municipality will cooperate with the Office of Flood Hazard Risk Reduction Measures within the DEP for any negotiation or valuation proceedings under the Eminent Domain Act of 1971, N.J.S.A. 20:3-1 *et seq.*, and will make that Office a party to any legal proceedings instituted in connection with the Municipality's efforts to obtain the real property interests contemplated by this Resolution.

#### CERTIFICATION

I, Lynne Hazlet, Deputy Clerk of the Borough of Mantoloking, Ocean County, New Jersey, do hereby certify the foregoing to be a true copy of a Resolution passed by the Borough Council of the Borough of Mantoloking at a Special Council Meeting held in the Mantoloking Temporary Administrative Offices, 340 Drum Point Road, Brick, New Jersey, at 5:30 p.m. on April 7, 2014, at which time a quorum was present.

  
Lynne Hazlet