

ORDINANCE NO. 2021-3324

**TOWNSHIP OF MIDDLETOWN
COUNTY OF MONMOUTH**

ORDINANCE ESTABLISHING FAIR MARKET VALUE AND AUTHORIZING AND DIRECTING THE ACQUISITION OF PROPERTIES LOCATED IN THE TOWNSHIP OF MIDDLETOWN DESIGNATED AS BLOCK 136, P/O LOT 7, BLOCK 265, P/O LOTS 31.03, 31.04, 62-68, AND 70, BLOCK 276, P/O LOTS 77.01, 77.022, 77.03 AND 78, BLOCK 133, P/O LOTS 11 AND 12, BLOCK 136, P/O LOT 5, BLOCK 137, P/O LOT 2.06, BLOCK 139, P/O LOT 7, BLOCK 26, P/O LOT 2.01 BY PURCHASE OR EMINENT DOMAIN

WHEREAS, the United States Army Corps of Engineers ("**USACE**") conducted an investigation and identified areas located in the Township of Middletown (the "**Township**") that were subject to significant coastal storm damage and tide-induced flooding; and

WHEREAS, the USACE's investigation resulted in the Raritan Bay and Sandy Hook Bay, Port Monmouth Feasibility Report for Hurricane and Storm Damage Reduction (the "**Feasibility Report**") dated September 25, 2000; and

WHEREAS, under Section 101 of the Water Resources Development Act of 2000, and based on the Feasibility Report, the United States Congress authorized a hurricane and storm damage reduction project in the Raritan Bay and Sandy Hook Bay, Port Monmouth, New Jersey; and

WHEREAS, the hurricane and storm damage reduction project included the Raritan Bay and Sandy Hook Bay, Port Monmouth, Phase II, NJ Flood Risk Management Project (the "**Project**"); and

WHEREAS, under public law 113-2, the Disaster Relief Appropriation Act of 2013, Chapter 4, Congress appropriated funds for this Project; and

WHEREAS, the USACE is now implementing the Project, which provides for hurricane and storm damage reduction and flood risk management and calls for certain improvements on the properties as identified below, including, but not being limited to the construction of a floodwall and/or levee, road closure gates, interior drainage structures and other related work; and

WHEREAS, portions of the properties set forth on **Exhibit A** and **Exhibit B** (each a "**Property**" and collectively the "**Properties**") have been identified as necessary components under the Project's Phase II Contracts 4b and 5; and

WHEREAS, the Township recognizes that coastal storm damage and tide-induced flooding in Port Monmouth is a significant concern that threatens the safety of life and property of the Township, its residents and all of the citizens of the State; and

WHEREAS, the Township intends to acquire portions of the Properties in order to facilitate the Project; and

WHEREAS, the Township engaged J. McHale & Associates, Inc., a qualified appraiser (the “**Appraiser**”), to conduct an independent appraisal of the Properties; and

WHEREAS, the Township retained Mr. McHale after reviewing, among other things, the quality of his work and has trust and confidence in Mr. McHale’s analysis and value conclusions; and

WHEREAS, the Township and the USACE have agreed that the Appraiser’s estimated fair market values of the required portions of the Properties pursuant to its appraisal reports shall be subject to the review and approval process required by the Project’s Phase II Contracts 4b and 5; and

WHEREAS, the Township recognizes that pursuant to current law it must enter into good faith negotiations with the owners of the Properties; and

WHEREAS, the Township needs to acquire portions of the Properties in as expeditious a manner as possible to facilitate the implementation of the Project.

NOW, THEREFORE, BE IT ORDAINED by the Township Committee of the Township of Middletown in the County of Monmouth, State of New Jersey, as follows:

Section 1. AUTHORIZATION TO ACQUIRE THE PROPERTIES

Pursuant to the provisions of the “Local Lands and Building Laws,” N.J.S.A. 40A:12-1 et seq., and N.J.S.A. 40:61-11, the Township is hereby authorized and directed to acquire by purchase or gift, the hereinafter described real property provided that the owner of record expresses the desire to convey the said real property to the Township or, in the alternative, the Township is hereby authorized to take, or condemn the real property hereinafter described pursuant to the provisions of the “Eminent Domain Act of 1971”, N.J.S.A. 20:3-1 et seq., as follows:

Portions of the Properties set forth in **Exhibit A** and **Exhibit B** attached hereto located in the Township of Middletown, for the dedication to the United States Army Corps of Engineers for the Project.

Section 2. AUTHORITY OF AGENTS

The Mayor, Township Administrator, Archer & Greiner, PC and/or any other attorneys retained by the Township for purposes of the Project, and such other officials, employees and agents of the Township, specifically including, but not limited to professional appraisers, environmental experts, consulting engineers, surveyors and similar professionals as are appropriate, are hereby authorized and directed to execute such documents and to perform all other acts necessary to negotiate in good faith or take, condemn (including the institution of any necessary legal action to acquire the real property including but not limited to action to gain necessary access to the real property for related purposes) or to acquire title to the real property set forth in **Exhibit A** and **Exhibit B** for dedication to the Project; and the Mayor and Township Clerk are hereby authorized and directed to execute any and all documents necessary for the acquisition of said real property; however, no settlement figure, purchase price or stipulation to purchase shall be binding on the Township or its agents until the Township Committee gives final approval to such figure or price by resolution upon receipt of the appraisal reports reviewed and approved pursuant to the Project's Phase II Contracts 4b and 5 in relation to each Property (the "**Cost of Acquisition**"). Further, no settlement figure, purchase price or stipulation to purchase in excess of the Cost of Acquisition set forth in the resolution approving the Cost of Acquisition for each Property shall be binding on the Township or its agents until the Township Committee gives final approval to such figure or price by resolution.

Section 3. COST OF THE ACQUISITION

The Chief Financial Officer of the Township is hereby authorized and directed to pay the purchase price and/or fair and just compensation to the owner of record in the amount of the Cost of Acquisition for each Property as valued by the appraisal reports issued by J. McHale & Associates, Inc., upon receipt of final approval required by the Project's Phase II Contracts 4b and 5 and the adoption of a resolution by the Township Committee memorializing the same, as well as to pay the Township's share of costs connected with title reports, appraisal reports, attorney's fees, professional consultant's fees, and other costs necessary for the general acquisition of any Property by way of condemnation of the real property.

Section 4. REPEALER

All ordinances or parts of ordinances which are inconsistent with the provisions of this ordinance are, to the extent of such inconsistency, hereby repealed.

Section 5. SEVERABILITY

Should any section, clause, sentence, phrase or provision of this ordinance be declared unconstitutional or invalid by a court of competent jurisdiction, such decision shall not affect the remaining portions of this ordinance.

Section 6. EFFECTIVE DATE

This ordinance shall take effect upon final passage, adoption and publication in the manner prescribed by law.

EXHIBIT A
CONTRACT 4b PROPERTIES

| <u>Block</u> | <u>P/O Lot</u> |
|---------------------|-----------------------|
| 136 | 7 (also in C5) |
| 265 | 31.03 |
| 265 | 31.04 |
| 265 | 62 |
| 265 | 63 |
| 265 | 64 |
| 265 | 65 |
| 265 | 66 |
| 265 | 67 |
| 265 | 68 |
| 265 | 70 |
| 276 | 77.01 |
| 276 | 77.022 |
| 276 | 77.03 |
| 276 | 78 |

EXHIBIT B
CONTRACT 5 PROPERTIES

| <u>Block</u> | <u>P/O Lot</u> |
|---------------------|-----------------------|
| 133 | 11 |
| 133 | 12 |
| 136 | 5 |
| 136 | 7 (also in C4b) |
| 137 | 2.06 |
| 139 | 7 |
| 26 | 2.01 |