

ORDINANCE NO. 2023-3371

**TOWNSHIP OF MIDDLETOWN
COUNTY OF MONMOUTH**

**ORDINANCE ESTABLISHING FAIR MARKET VALUE FOR PROPERTY IDENTIFIED AS
BLOCK 1045, LOT 12 (490 RED HILL ROAD), BLOCK 1045, LOT 2 (NUT SWAMP
ROAD), BLOCK 1045, LOT 3 (1114 NUT SWAMP ROAD), AND BLOCK 1045, LOT 4
(DWIGHT ROAD) WITHIN THE TOWNSHIP OF MIDDLETOWN AND AUTHORIZING
ACQUISITION OF THESE PROPERTIES BY PURCHASE OR EMINENT DOMAIN FOR
THE PURPOSE OF MAINTAINING OPEN SPACE AND ENHANCING PUBLIC
RECREATIONAL OPPORTUNITIES**

WHEREAS, the Township of Middletown (the "**Township**"), pursuant to the provisions of the "Local Lands and Buildings Law," N.J.S.A. 40A:12-1 et seq. and the "Eminent Domain Act of 1971," N.J.S.A. 20:3-1 et seq., has determined it necessary to acquire lands and premises identified as Block 1045, Lot 12 (490 Red Hill Road), Block 1045, Lot 2 (Nut Swamp Road), Block 1045, Lot 3 (1114 Nut Swamp Road), and Block 1045, Lot 4 (Dwight Road) on the official tax map of the Township (collectively, the "**Property**"), which is necessary for maintaining open space and enhancing public recreational opportunities; and

WHEREAS, in the November 3, 2020 general election, Township voters approved an increase of the annual collection rate to the Middletown Open Space, Recreation, Floodplain Protection, Farmland and Historic Preservation Trust Fund ("**Trust Fund**") from two cents per \$100 in equalized valuation to three cents per \$100 in equalized valuation to enhance open space and recreation opportunities in the Township; and

WHEREAS, on April 19, 2021, pursuant to N.J.S.A. 40:12-15.7(b), the Township Committee adopted Ordinance No. 2021-3307 to implement the voter-approved increase to the annual collection rate of the Trust Fund; and

WHEREAS, in calendar year 2022, the Township began collecting this increased tax to bolster the Trust Fund and build financial resources to enhance open space and recreation opportunities within the Township; and

WHEREAS, on March 22, 2023, pursuant to N.J.S.A. 40:55D-89, the Township Planning Board adopted the 2023 Master Plan Reexamination Report and Amended Housing Master Plan Element and Open Space, Recreation and Conservation Master Plan Element (collectively, the "**Reexamination Report**") as part of its 10-year state-mandated reexamination of its master plan and to incorporate amendments addressing affordable housing, open space, and recreation sites within the Township; and

WHEREAS, on April 3, 2023, pursuant to N.J.S.A. 40:55D-89, the Township Committee adopted Resolution No. 23-125 to adopt and endorse the Reexamination Report adopted by the Planning Board to promote smart growth and planning principles that are in the best interests of the public; and

WHEREAS, the Township's Reexamination Report seeks to promote realistic opportunities for the development of affordable housing in suitable locations with access to infrastructure, jobs, and public transportation while preserving the Township's few remaining environmentally-sensitive open and wooded spaces and promoting enhanced recreation opportunities where appropriate; and

WHEREAS, the Township has designated several areas of the Township that have access to infrastructure, jobs, and public transportation in need of redevelopment to facilitate inclusionary and other 100% affordable housing projects in these areas; and

WHEREAS, Block 1045, Lot 12 is an undeveloped, partially-wooded lot, adjacent to an existing conservation easement, with environmentally-sensitive steep slopes, and is necessary to enhance open space and/or recreation opportunities within the Township; and

WHEREAS, Block 1045, Lots 2, 3, and 4 comprises an undeveloped, environmentally-sensitive, wooded site with steep slopes, mature trees, and wetlands, that lacks access to sewer infrastructure, jobs, and public transportation, and is necessary to preserve for open space and/or recreation opportunities within the Township; and

WHEREAS, to the best of the Township's knowledge, Block 1045, Lot 12 is owned by Gomez, Ruben & Alvarez, Marco A; and

WHEREAS, to the best of the Township's knowledge, Block 1045, Lots 2, 3, and 4 are owned by The Franklin at Middletown, LLC; and

WHEREAS the Township hired an independent appraiser to evaluate the Property in order to determine the fair market value for purposes of acquiring the Property; and

WHEREAS, the Property was appraised by Gagliano & Company (the "**Appraiser**") and determined to have an aggregate fair market value of \$1,260,000 comprised of \$520,000 for Block 1045, Lot 12 and \$740,000 for Block 1045, Lots 2, 3, and 4.

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

Pursuant to the provisions of the “Local Lands and Buildings Law,” N.J.S.A. 40A:12-1 et seq. and the “Eminent Domain Act of 1971”, N.J.S.A. 20:3-1 et seq., the Township hereby authorizes and directs the acquisition of Block 1045, Lots 2, 3, 4, and 12 by either purchase or eminent domain for open space and public recreational purposes. This authorization and direction includes all lots or any one or more lots comprising Block 1045, Lots 2, 3, 4, and 12.

SECTION 2. Cost of Acquisition

The Township hereby accepts the aggregate valuation of \$1,260,000, comprised of \$520,000 for Block 1045, Lot 12 and \$740,000 for Block 1045, Lots 2, 3, and 4 (the “**Cost of Acquisition**”) established by the Appraiser as having been performed in a competent manner and in accordance with applicable law as establishing the fair market value of the Property. The Chief Financial Officer of the Township is hereby authorized and directed to pay the Cost of Acquisition as well as to pay the Township’s costs connected with title reports, appraisal reports, attorneys’ fees, professional consultants’ fees, and other costs necessary for the acquisition of the Property by way of purchase or eminent domain.

SECTION 3. Authority of Agents

The Mayor, Township Administrator, Chief Financial Officer, Spiro Harrison & Nelson LLC, 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 acts necessary to negotiate in good faith and to take by eminent domain (including the institution of any necessary legal proceedings) to acquire title to Block 1045, Lots 2, 3, 4, and 12.

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.