

**RESOLUTION NO. 9 of 2020
RESOLUTION COMMENCING EMINENT DOMAIN**

In the matter of the Acquisition of Certain Fee Acquisitions for Use in Public Project.

WHEREAS, as part of the Watershed Protection and Partnership Programs of the New York City Watershed Memorandum of Agreement (“MOA”), New York City provided funding for the New Sewage Treatment Infrastructure Facilities Program (NIP) and the Community Wastewater Management Program to assist in the development of new sewage collection and treatment facilities in up to twenty-two (22) selected villages and hamlets in the NYC Watershed;

WHEREAS, the Hamlet of New Kingston, Town of Middletown, New York (“Town”) was identified in the MOA as one of the twenty-two (22) priority communities to receive funding for the study, planning, design and construction of a sewage collection system and/or the creation of a septic maintenance district in the Hamlet of New Kingston (the “Project”);

WHEREAS, subject to permissive referendum in the manner provided in Town Law Article 7, a majority of the property owners within the proposed service area of the Project voted in favor of the establishment of the New Kingston Sewer District;

WHEREAS, a certificate of the Town Clerk was filed pursuant to Town Law § 209-e(4) certifying the results of the special election held on June 29, 2019, stating that a majority of property owners in the proposed sewer district voted in favor of the establishment of the district, and per Town Board Resolution No. 14-2019, the Town formed the New Kingston Sewer District (“District”);

WHEREAS, due to an overwhelming predominance of small and otherwise problematic lots in the hamlet that could not meet design standards for individual on-site septic systems furthering demonstrable water quality problems. As a result, the community needs a community sewer system to ensure the health, safety and welfare of Town residents and businesses;

WHEREAS, design and construction of the proposed sewer system will be performed in conformance with New York State Department of Environmental Conservation Design Standards for Wastewater Treatment Works, 2014 (2014 NYSDEC Standards), New York State Department of Health Design Standards for Wastewater Treatment System (10 NYCRR Part 75 and Appendix 75-A), and the Rules and Regulations for the Protection from the Contamination, Degradation and Pollution of the New York City Water Supply and its Resources, 2010 (NYCWRR). Regulatory review and approval will be obtained prior to the initiation of construction;

WHEREAS, the Town of Middletown Town Board (the “Board”) has reviewed and considered the plans and schematics for the Project, as reflected in the SEQRA Report and the Preliminary Engineer’s Report Community Wastewater Management Program for the Hamlet of New Kingston, Town of Middletown, Delaware County, November 2018, including amendments thereto (“Engineer’s Report”), prepared by Lamont Engineers, which requires the Town to acquire certain property in the area of the District to accommodate the Project;

WHEREAS, the Board has determined that the Project is in the best interest of the Town and its residents and, as a result, that the contemplated acquisitions are in the best interests of the health, safety and welfare of the Town and its residents, as it is in the public's best interest that the Project be properly constructed and maintained;

WHEREAS, the Board has endeavored and will continue to endeavor to acquire any necessary acquisitions for the Project by voluntary compliance with land owners, but the Board acknowledges that voluntary compliance will not achieve all the necessary acquisitions requiring the Board to exercise its powers of Eminent Domain;

WHEREAS, a certain parcel is necessary for siting the community septic system (which will include, but not be limited to a manhole, a flow meter, an absorption bed dosing pump station and shallow absorption beds ("Treatment System"));

WHEREAS, access across a related parcel is necessary for ingress and egress to the Treatment System for access, installation, maintenance, operation and repairs to the Treatment System;

WHEREAS, Parcel 1 and Parcel 2 are owned by Michael Moriarty and Donna S. Hollon (collectively hereinafter the "Property Owner");

WHEREAS, in Resolution No. 1 of 2020, the Town Board authorized the subdivision of Tax Parcel No. 241.-1-1.1 into two parcels (Parcel 1 and Parcel 2);

WHEREAS, there is an existing deed of conservation easement affecting Parcel 1 and Parcel 2, which Property Owner conveyed to Watershed Agricultural Council of New York City Watersheds, Inc. ("WAC") by deed of conservation easement dated October 27, 2006, filed in the Office of the Delaware County Clerk's Office on November 2, 2006, and recorded in Deed Book 1158 at Page 261 ("WAC Easement"). The WAC Easement restricts use of Parcel 1 and Parcel 2 and requires WAC approval before the property can be subdivided for the Project;

WHEREAS, the following acquisitions are necessary for the Project;

- Fee Acquisition of a 21.7 acres portion of an 89.85 acres parcel identified on the Middletown Tax Map as Parcel No. 241.-1-1.1 ("Parcel 1")
- Permanent Easement for access to the Treatment System across adjacent parcel identified on the Middletown Tax Map as Parcel No. No. 241.-1-1.2 ("Parcel 2") including waiving WAC's approval over the granting of the access easement;
- Termination of a Watershed Agricultural Council Conservation Easement encumbering Parcel 1;

WHEREAS, the Board proposes a fee acquisition of Parcel 1 where the Treatment System will be located and termination of the WAC Conservation Easement which encumbers Parcel 1;

WHEREAS, the Board also proposes the acquisition of a required permanent access easement on Parcel 2 to install, inspect, operate, maintain and repair the Treatment System;

WHEREAS, the Town's acquisition of these property interests are integral to and necessary for implementing the Project. As stated above, the Project is necessary to protect the health and safety of the community and to protect the water supply to New York City;

WHEREAS, the proposed location for the Project was the product of a rigorous analysis that was performed in conjunction with the environmental review for the Project under the State Environmental Quality Review Act ("SEQRA");

WHEREAS, as part of the Preliminary Engineering Report investigation, on behalf of the Town, Lamont Engineers conducted an exhaustive search for a suitable system and locations for the community system;

WHEREAS, Parcel 1 and Parcel 2 were first identified as a potential site for the New Kingston community septic system in a 1999 study by New York State Environmental Facilities Report (1999 EFC Report) undertaken pursuant to Section 121 of the MOA ("Project Site"); and

WHEREAS, seven (7) years later in October 2006, WAC acquired an easement from Property Owner encumbering the Project Site;

WHEREAS, in October 2018, NYCDEP approved a Catskill Watershed Corporation ("CWC") Block Grant to fund the construction of a community septic system on the Project Site, and the Town of Middletown Board voted unanimously to move forward with the Project;

WHEREAS, formation of the District was also approved by an overwhelming majority of the property owners in the District in a public referendum held in 2019;

WHEREAS, CWC and Lamont met with WAC staff in February 2018, and met again at the Project Site in July 2019 to go over the entire project, including design and potential absorption field layout;

WHEREAS, WAC staff outlined the process that would need to be followed to comply with the WAC Easement, including WAC subdivision approval;

WHEREAS, the Town (through Lamont Engineers and the project attorney) worked with the Property Owner and WAC to develop a project design that met the objectives of all parties. Lamont Engineers, the Town and the Project attorney, Young/Sommer LLC, negotiated with the Property Owner on project design and fair compensation. In the fall of 2019, the Town believed that the Property Owner would approve of the project design and the proposed purchase price;

WHEREAS, during this same time, the Property Owner applied to WAC for approval to subdivide out Parcel 1. Notwithstanding WAC's statement of overall support for the Project, the WAC Easement Committee voted that the subdivision did not meet the standards set forth for an approvable subdivision in the WAC Easement;

WHEREAS, since the District was formed, the Town and CWC have attempted to negotiate a voluntary purchase for all or a portion of the project site without success;

WHEREAS, the Board has determined that further delay of this important public works project is not in the public interest, and therefore, has determined it must proceed with acquisition of the property, the access easement and terminate the WAC Easement on Parcel 1 by Eminent Domain;

WHEREAS, the Board has endeavored and will continue to endeavor to work with the Property Owner and WAC to agree on a purchase price for Parcel 1, the access easement and the termination of the WAC easement on Parcel 1 in order to avoid a dispute over compensation and potential litigation;

WHEREAS, the Board hereby determines that the contemplated acquisitions for the Project shall be pursuant to Article 2 of the New York State Eminent Domain Procedure Law;

WHEREAS, the Board had previously complied with the mandates of SEQRA for the entire Project including land acquisition.

NOW WHEREFORE, BE IT RESOLVED AS FOLLOWS BY THE TOWN OF MIDDLETOWN TOWN BOARD, DELAWARE COUNTY, NEW YORK:

THAT THE Town of Middletown Town Board hereby determines that further delay to achieve voluntary compliance to acquire certain properties in furtherance of the Project is not practicable and would prejudice the Project and thus authorizes the Town and its legal agents to acquire the lands or interests by use of Eminent Domain;

THAT THE Town of Middletown Town Board hereby determines, as reflected by the Project maps for the Project, acquisition of the following by Eminent Domain is necessary for the Project:

- Fee Acquisition of a 21.7 acre portion of an 89.85 acre parcel identified on the Middletown Tax Map as Parcel No. 241.-1-1.1 ("Parcel 1");
- Permanent Easement for access to the Treatment System across adjacent parcel identified on the Middletown Tax Map as Parcel No. No. 241.-1-1.2 ("Parcel 2") (including a waiver of WAC's approval for the access easement); and
- Termination of a Watershed Agricultural Council Conservation Easement encumbering Parcel 1.

BE IT FURTHER RESOLVED, that the Town of Middletown Town Board hereby authorizes the Town and its legal agents to work with the Property Owner and WAC to agree on a purchase price for Parcel 1, the access easement and the termination of the WAC easement on Parcel 1 in order to avoid potential litigation over compensation;

BE IT IS FURTHER RESOLVED, that the Town of Middletown Town Board shall comply with all requirements of Article 2 of the Eminent Domain Procedure Law, by giving due notice, and holding a public hearing on July 8, 2020, relative to the Town proposed acquisitions in fee simple absolute of a 21.7 acres portion of property of Parcel 1 reputed to be owned by Michael Moriarty and Donna S. Hollon, a permanent easement over Parcel 2 reputed to be owned by Michael Moriarty and Donna S. Hollon, and the termination of an the conservation easement granted to WAC with respect to Parcel 1;

BE IT IS FURTHER RESOLVED, that the Town Board and the attorneys for the Town are hereby directed to take such actions as are necessary to implement this resolution.

WHEREUPON, the Resolution was put to a vote, recorded as follows:

Motion made by: Brian Sweeney

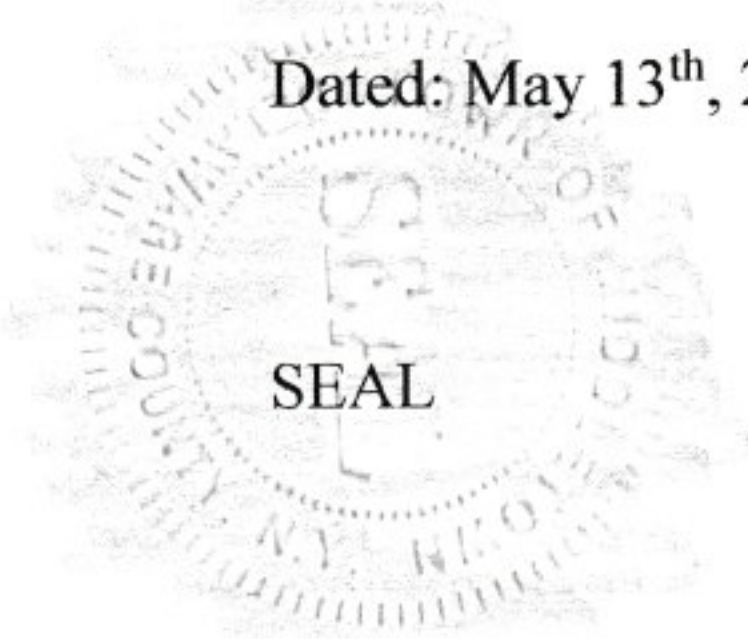
Seconded by: Nelson Delameter

Resolution adopted by a vote of 5 ayes and 0 nays

I hereby certified that the above resolution was duly adopted by the Town Board of the Town of Middletown at its regular meeting held on May 13th, 2020.

Dated: May 13th, 2020

Patricia F. Kelly
Patricia Kelly, Town Clerk
Town of Middletown



STATE OF NEW YORK }
COUNTY OF DELAWARE }
TOWN OF MIDDLETOWN }

I have compared the preceding copy with the original Resolution on file in this office adopted by the Town Board of Middletown at a regular meeting held May 13th, 2020, and I DO HEREBY CERTIFY the same to be a correct transcript therefrom and of the whole of the original. I further certify the vote thereon was as follows:

| MEMBERS PRESENT | MEMBERS ABSENT | VOTE |
|-----------------|----------------|---------|
| Davis | | Yea/Nay |
| Sweeney | | Yea/Nay |
| Delameter | | Yea/Nay |
| Reischel | | Yea/Nay |
| Dabritz | | Yea/Nay |

Dated: May 13th, 2020

Patricia F. Kelly
Patricia Kelly, Town Clerk
Town of Middletown

