**NOTICE OF A BRIEF SYNOPSIS OF THE DETERMINATION AND FINDINGS**

 **PURSUANT TO §204 OF EMINENT DOMAIN PROCEDURE LAW**

Resolution #19, dated August 12, 2020

Tax Parcels Effected: Middletown Tax Map No. 241.-1-1.1

Nature of Acquisition: Fee Title and Easement and Termination of WAC Conservation Easement

Project: Town of Middleton, Hamlet of New Kingston Community Sewer System

NOTICE IS HEREBY GIVEN that by Resolution #19, dated August 12, 2020, the Town Board of the Town of Middletown adopted the Determination and Findings pursuant to §204 of the Eminent Domain Procedure Law entitled:

**DETERMINATION AND FINDINGS PURSUANT TO ARTICLE 2**

**OF THE NEW YORK EMINENT DOMAIN PROCEDURE LAW**

**Town of Middletown Community Wastewater Management Program**

**Construction of community subsurface wastewater treatment facility**

Section 204 of New York State Eminent Domain Procedure Law (“EDPL) requires the Town to publish in the newspaper and mail to assessment record billing owners a brief synopsis of the Findings and Determination. This Notice constitutes the brief synopsis.

By a resolution of the Town Board of the Town of Middletown duly adopted on June 10, 2020; a duly noticed public hearing was held by the Town of Middletown on July 8, 2020, pursuant to Article 2 of the Eminent Domain Procedure Law of the State of New York ("EDPL"), to consider the acquisition by exercise of the power of eminent domain of the following lands:

* 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 (the 21.7 acre portion of the parcel to be acquired is hereinafter referred to as the “Fee Parcel”);
* Permanent Easement for access to the Treatment System over the remaining portion of Tax Map Parcel No. 241.-1-1.1 (“Easement Parcel”); and
* Termination of a Watershed Agricultural Council (“WAC”) Conservation Easement encumbering the Fee Parcel.

The Fee Parcel and Easement Parcel are located at County Highway 6 in the Town of Middletown, County of Delaware. The Fee Parcel and Easement Parcel are more particularly described in a deed recorded in the Delaware County Clerk’s Office in Liber 1158 of Deeds at page 261The portions of property comprising the Fee Parcel and Easement Parcel are part of the Property owned by Michael Moriarty (hereinafter, the “Property Owner”). The Fee Parcel is encumbered by a WAC Conservation Easement that the Town Board also seeks to terminate. The Fee Parcel and Easement Parcel to be acquired and WAC Conservation Easement to be terminated through eminent domain are hereinafter referred to collectively as the “Property”.

The public hearing was duly held as scheduled, and the purpose and proposed location of the public project and all other pertinent information was outlined, and thereafter all persons in attendance were given a reasonable opportunity to present oral or written statements, or to submit other documentation concerning the specified public project, and a record of the hearing was made, and

Based upon the EAF and other supporting documentation prepared pursuant to SEQRA, the Town Board determined that the community sewer system including the acquisition of the lands (both Fee Parcel and Easement Parcel and termination of the WAC Conservation Easement) will have no significant environmental impact or adverse impact on local residents, as the project will provide benefits and enhance the environment and assist in maintaining and enhancing water quality in the area. The Town Board adopted its Negative Declaration on May 8, 2019.

At its Board meeting on August 12, 2020, the Town Board of the Town of Middletown, pursuant to the Constitution of the State of New York, Town Law and Eminent Domain Procedure Law, made determination and findings including the following:

1. The Property to be acquired by the exercise of eminent domain is identified as: 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 (the 21.7 acre portion of the parcel to be acquired is hereinafter referred to as the “Fee Parcel”); Permanent Easement for access to the Fee Parcel over the remining portion of Tax Map Parcel No. 241.-1-1.1 (“Easement Parcel”), and; Termination of a WAC Conservation Easement encumbering the Fee Parcel.
2. The land so acquired shall be used for public use and is necessary for the protection of the environment and the health, safety and welfare of the residents of the Town of Middletown. The engineering study prepared by the Town’s Engineer determined that there is an overwhelming predominance of small and otherwise problematic lots in the hamlet that could not meet design standards for individual on-site septic systems. A Small Diameter Gravity Sewer (“SDGS”) was recommended as the preferred wastewater solution for the hamlet of New Kingston, due in part to the flexibility of the layout of an SDGS, the elimination of the need for manholes and primary treatment facilities at the wastewater treatment facility, all of which result in a reduction of the overall project cost. Areas that are too low for gravity sewers will be augmented with an effluent pump. The Project will include 2,400 LF of small diameter gravity sewer main, 3,200 LF of small diameter force main, 560 LF of lateral stubs, and one (1) main effluent pump station. Approximately twenty-eight (28) lateral connections are also proposed. Each lateral connection would receive a new septic tank equipped with an effluent filter. Five (5) of the lateral connections will have septic tank effluent pumps to convey their flows. Final treatment and disposal will occur through a community subsurface wastewater treatment facility, consisting of a receiving manhole, a flow meter, an absorption bed dosing pump station and shallow absorption beds (“Treatment System”). As required on other Community Wastewater Management Program (“CWMP”) project subsurface treatment systems, the Treatment System will be constructed in 3 sections each capable of handling 50% of the design flow and will be dosed with a pressure distribution system. The application rate of the absorption beds will be 0.5625 gpd/sf (0.6 gpd/sf with a 30-minute percolation rate, reduced by 25% for using absorption beds and then increased by 25% for constructing 150% of the required absorption area). The Property acquisition is integral to and necessary for implementing the Project. Because protection of drinking water is paramount for the benefit of the community and the City of New York, the Project will facilitate a dual agenda of a sustainable plan for the future, as well as address an immediate community need.
3. The location of the Property to be acquired was selected following an in-depth evaluation of the preferred wastewater solution for the Hamlet of New Kingston as described in the study performed by the Town’s Engineer. A CD containing the Engineering Report is on file with the Town Clerk. A discussion of the alternative sites that were evaluated is included in the Engineering Report and in the Comment/Response document published and incorporated in the Town Board’s Determination and Finding. The second and determining factor in the site selection process is that the funding requirements for the Project specify the site location must be reviewed and approved by the City of New York Department of Environmental Protection (“DEP”). In reviewing and approving the site location, DEP gives priority to the potential impact on its water supply and the ability to obtain water quality protection. This Property is and was the only location that met DEP approval.
4. The funding for Property acquisition shall be obtained from the DEP through the CWMP, which is administered by the Catskill Watershed Corporation (“CWC”). The New Kingston Sewer District has a adopted a Sewer Use Law which specifies the sewer rate structure and procedure for the Town Board to make decisions regarding future connections to the system. The proposed Sewer Use Law establishes a minimum annual charge of $250 per non-household. The Town estimates that there are approximately 2 non-households and thus the minimum annual charge will raise approximately $500 (plus a potential additional charge based upon usage). The Town cautions that these are estimates of the expected cost and the actual cost will vary from these estimates.
5. The Town Board adopted the Determination and Findings, pursuant to EDPL §204 and authorizes the Town Clerk and the Town Attorney to take such steps as may be necessary to carry out the intent of the resolution and to publish such findings in accordance with section 204 of the EDPL and to mail copies of this notice together with notice under Section 207 of the EDPL regarding the procedure and timing for judicial review.
6. Copies of the record of the Public Hearing and Determination and Findings are available for examination without cost during normal business hours at the office of the Town Clerk. Further, copies of the record of the Public Hearing and the Determination and Findings shall be produced upon written request by any interested party, without cost.
7. Under Section 207 of the New York State Eminent Domain Procedure Law, an impacted property owner has thirty (30) days from the newspaper publication of this Notice to commence a proceeding seeking judicial review of the Town’s determination and findings.
8. Under Sections 207 and 208 of the EDPL, the exclusive venue for judicial review of the Town’s determination and findings is the Appellate Division of the Supreme Court in the Judicial Department where any part of the property is located.

Dated: August 14, 2020