

At a meeting of the Town of Town Board
held on January 12, 2022 at 6:00 p.m.

RESOLUTION NO. 2 Of 2022

**TITLE: DE MINIMIS FINDING AND AUTHORIZATION FOR SUPERVISOR
TO EXECUTE AND FILE NECESSARY PETITION(S), ACQUISITION MAP(S), AND
NOTICE(S) OF PENDENCY AS ARE REQUIRED TO SECURE THE NECESSARY
PROPERTY BY EMINENT DOMAIN.**

THE TOWN OF MIDDLETOWN, NEW YORK

In The Matter of the Acquisition of Certain Minor Easements for Use in Public Project by
the Town of Middletown, New York:

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; and

WHEREAS, the Town of Middletown, Delaware County contains one of those hamlets,
the Hamlet of New Kingston, which was selected to receive funding for the construction of a
new community wastewater infrastructure; and

WHEREAS, due to certain deficiencies in the existing on-site wastewater treatment and
disposal facilities on both residential and commercial properties in the Town, the Town proposed
the creation of a sewer district for these areas and the construction of a Town-owned and
operated wastewater collection system including pump station and related infrastructure, with
related work (the “Project”); and

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

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 30, 2019, and per Town Board Resolution No. 14 of 2019, the Town formed the New Kingston Sewer District with a service area that includes the hamlet of New Kingston; and

WHEREAS, due to failing septic systems and demonstrable water quality problems, a primary purpose of the Project is to construct and maintain an adequate system for sewage removal and treatment to ensure the health, safety and welfare of Town residents and businesses; and

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), and the Rules and Regulations for the Protection from the Contamination, Degradation and Pollution of the New York City Water Supply and its Resources, 2002 (NYCWRR). Regulatory review and approval will be obtained prior to the initiation of construction; and

WHEREAS, the Town of Middletown Town Board (the “Board”) has reviewed and considered the plans and schematics for the Project, as reflected in the Preliminary Engineer’s Report Community Wastewater Management for the Hamlet of New Kingston, Town of Middletown, Delaware County, New York, dated November 2018, prepared by Lamont Engineers, which requires the Town to acquire minor easements from various real property in the area of the proposed sewer district to accommodate the Project;

WHEREAS, the sewer main locations, after an exhaustive study prepared by Lamont Engineering, is no longer subject to change;

WHEREAS, the Board and the residents of the New Kingston Sewer District have 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 easements and acquisitions for the project by voluntary compliance with land owners, but the Board acknowledges that voluntary compliance may not be achieved for all the necessary acquisitions requiring the Board to exercise its powers of Eminent Domain;

WHEREAS, as reflected by the Project maps for the remaining easements needed for the Project, the Board has determined, pursuant to New York Eminent Domain Procedure Law § 206, that the remaining contemplated acquisitions are all minor in nature, affecting small portions of individual properties and constitute minor amounts of land and land interests, and therefore any of the individual acquisitions by Eminent Domain would be *de minimis* in nature so that the public interests will not be prejudiced by the acquisition of those property interests for construction of the Project;

WHEREAS, the Town had previously complied with the mandates of the State Environmental Quality Review Act (ECL Article 8 and 6 NYCRR Part 617) ("SEQRA") for the Project, as reflected by the Board's Negative Declaration adopted on May 8, 2019; and

WHEREAS, pursuant to the terms of SEQRA, utilizing Eminent Domain to acquire those lands/easements for the Project is consistent with the Board's prior SEQRA review and Negative Declaration for the Project.

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 the contemplated remaining easements and acquisitions for the Project are *de minimis* in nature as provided by the Eminent Domain Procedure Law; and

THAT THE Town authorizes its legal agents to send final offer letters to remaining landowners with fair market value; and

THAT THE Town of Middletown Town Board hereby determines that if the final offers are not accepted and/or voluntary compliance to acquire easements or fee acquisitions in furtherance of the Project is not practicable or would prejudice the Project, the Town and its legal agents are authorized to acquire the lands or interests by use of Eminent Domain; and

THAT THE Supervisor is authorized to execute and file the necessary Petitions, Acquisition Maps and Notices of Pendency as are required to secure the necessary property by eminent domain.

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

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

Motion made by: Nelson Delameter

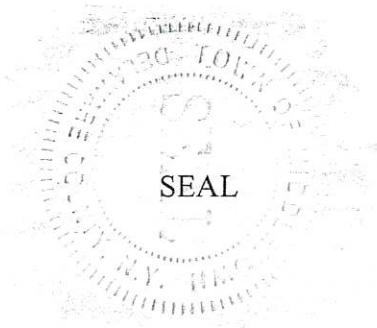
Seconded by: Christopher Dabritz

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 January 12th, 2022.

Dated: January 12th, 2022

Patricia F. Kelly
Patricia F. 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 January 12th, 2022, 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
Supervisor Davis		Yea/Nay/Abstain
Councilperson Sweeney		Yea/Nay/Abstain
Councilperson Delameter		Yea/Nay/Abstain
Councilperson Williams		Yea/Nay/Abstain
Councilperson Dabritz		Yea/Nay/Abstain

Dated: January 12th, 2022

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



TAX MAP NO.	PROPERTY ADDRESS	OWNER 1	OWNER 2	BOOK	PAGE	MAILING ADDRESS STREET	CITY	STATE	ZIP	EASEMENT	SQUARE FOOTAGE	COMPENSATION (10M/ACRE)	LATERAL
240.2-1-6	5194 COUNTY HWY 6	Kort, Brian	Kort, Manjula	1417	197	244 Washington Ave	Princetonville	NY	10570	x	2,254 SF	2,254 SF/43,560 SF = 0.0517 acres*10,000 = \$520.00	x
240.2-1-7	5170 COUNTY HWY 6	Rubin, Allen	Rubin, Deanna	740	513	159-24 Ingerside Dr W	New York	NY	10032	x	3,438 SF	3,438 SF/43,560 SF = 0.0789 acres*10,000 = \$790.00	x
240.2-1-8	5150 COUNTY HWY 6	Levine Keating, Helene		901	273	PO Box 396	New Kingston	NY	12459	x	1,890 SF	1,890 SF/43,560 SF = 0.0433 acres*10,000 = \$433.00	x
240.2-1-9	5140 COUNTY HWY 6	Gambanes, Jorge D		1149	151	143 Franklin St	Brooklyn	NY	11222	x	1,559 SF	1,559 SF/43,560 SF = 0.0357 acres*10,000 = \$350.00	x
240.2-1-12	5114 COUNTY HWY 6	Silver, Marilyn		1010	262	150 E 98 St	New York	NY	10128	x	1,390 SF	1,390 SF/43,560 SF = 0.0319 acres*10,000 = \$310.00	x
240.2-1-34	5157 COUNTY HWY 6	Essom, Philippe A		1565	138	PO Box 181	New Kingston	NY	12459	x	3,572 SF	3,572 SF/43,560 SF = 0.0820 acres*10,000 = \$820.00	x