



**AGENDA**  
**NEWTON TOWN COUNCIL**  
**JULY 11, 2011**  
**7:00 P.M.**

- I. PLEDGE OF ALLEGIANCE**
- II. ROLL CALL**
- III. OPEN PUBLIC MEETINGS ACT STATEMENT**
- IV. APPROVAL OF MINUTES** - JUNE 27, 2011 REGULAR MEETING
- V. OPEN TO PUBLIC**

AT THIS POINT IN THE MEETING, THE TOWN COUNCIL WELCOMES COMMENTS FROM ANY MEMBER OF THE PUBLIC ON ANY TOPIC. TO HELP FACILITATE AN ORDERLY MEETING AND TO PERMIT THE OPPORTUNITY FOR ANYONE WHO WISHES TO BE HEARD, SPEAKERS ARE ASKED TO LIMIT THEIR COMMENTS TO 5 MINUTES. IF READING FROM A PREPARED STATEMENT, PLEASE PROVIDE A COPY AND EMAIL A COPY TO THE CLERK'S OFFICE AFTER MAKING YOUR COMMENTS SO IT MAY BE PROPERLY REFLECTED IN THE MINUTES.

**VI. SWEARING – IN CEREMONY**

- a.** SWEARING IN OF A CLASS II SPECIAL POLICE OFFICER - KYLE J. PHLEGAR

**VII. COUNCIL & MANAGER REPORTS**

- a.** PROPOSED FLOOD DAMAGE CONTROL ORDINANCE – J. CALDWELL

**VIII. ORDINANCE**

- a.** 2<sup>ND</sup> READING AND PUBLIC HEARING

ORDINANCE 2011-11

ORDINANCE REAPPROPRIATING \$78,000 PROCEEDS OF OBLIGATIONS NOT NEEDED FOR THE ORIGINAL PURPOSE IN ORDER TO PROVIDE FOR MILLING, PAVING, SIDEWALK IMPROVEMENTS AND INSTALLATION OF LIGHTING IN THE ALLEY IN BETWEEN BRENDA'S DINER AND PB&J, IN THE ALLEY ADJACENT TO SPRINGBOARD SHOPPES AND ON SPRING STREET AND THE ADJACENT HISTORIC DISTRICT, AND THE REMOVAL AND INSTALLATION OF SHADE TREES ON ROUTE 206 IN AND BY THE TOWN OF NEWTON, IN THE COUNTY OF SUSSEX, NEW JERSEY

- i.** OPEN HEARING TO PUBLIC
- ii.** CLOSE HEARING TO PUBLIC
- iii.** ACT ON ORDINANCE

ORDINANCE 2011-12

REFUNDING BOND ORDINANCE OF THE TOWN OF NEWTON, IN THE COUNTY OF SUSSEX, NEW JERSEY, PROVIDING FOR THE REFUNDING OF ALL OR A PORTION OF THE OUTSTANDING GENERAL IMPROVEMENT BONDS OF THE TOWN, DATED AUGUST 1, 2002, ISSUED IN THE ORIGINAL PRINCIPAL AMOUNT OF \$4,900,000, APPROPRIATING \$4,370,000 THEREFOR AND AUTHORIZING THE ISSUANCE OF \$4,370,000 REFUNDING BONDS OF THE TOWN FOR FINANCING THE COST THEREOF

- i. OPEN HEARING TO PUBLIC
- ii. CLOSE HEARING TO PUBLIC
- iii. ACT ON ORDINANCE

ORDINANCE 2011-13

A FULLY FUNDED GENERAL CAPITAL IMPROVEMENT ORDINANCE IN THE AMOUNT OF \$13,500 FOR ACQUISITION AND INSTALLATION OF A CAMERA ON THE DEPARTMENT OF PUBLIC WORKS BUILDING FOR THE TOWN OF NEWTON

- i. OPEN HEARING TO PUBLIC
- ii. CLOSE HEARING TO PUBLIC
- iii. ACT ON ORDINANCE

**IX. OLD BUSINESS**

**X. CONSENT AGENDA**

ALL ITEMS LISTED WITH AN ASTERISK (\*) ARE CONSIDERED TO BE ROUTINE AND NON-CONTROVERSIAL BY THE TOWN COUNCIL AND WILL BE APPROVED BY ONE MOTION. THERE WILL BE NO SEPARATE DISCUSSION OF THESE ITEMS UNLESS A COUNCIL MEMBER SO REQUESTS, IN WHICH CASE THE ITEM WILL BE REMOVED FROM THE CONSENT AGENDA AND CONSIDERED IN ITS NORMAL SEQUENCE ON THE AGENDA.

- a. RESOLUTION #147-2011\* REFER REVISED LAND DEVELOPMENT ORDINANCES TO THE TOWN PLANNING BOARD FOR REVIEW AND COMMENT
- b. RESOLUTION #148-2011\* TO CANCEL RECEIVABLE AND APPROPRIATED RESERVE BALANCES IN THE FEDERAL AND STATE GRANT FUND
- c. RESOLUTION #149-2011\* APPROVAL OF A RENEWAL APPLICATION FOR A JUNK DEALER'S LICENSE FOR GEORGE'S SALVAGE COMPANY
- d. RESOLUTION #150-2011\* APPROVAL OF A RENEWAL APPLICATION FOR A JUNK DEALER'S LICENSE FOR NEWTON AUTO SALVAGE, LLC

- e.** RESOLUTION #151-2011\* APPROVING THE SETTLEMENT OF KATTERMANN AND REINHART V. TOWN OF NEWTON ZONING BOARD OF ADJUSTMENT, ET AL, AND NARDINO AND RADZELOVAGE V. TOWN OF NEWTON ZONING BOARD OF ADJUSTMENT, ET AL.
- f.** RESOLUTION #152-2011\* APPOINTMENT OF A CLASS II – SPECIAL POLICE OFFICER – KYLE J. PHLEGAR
- g.** RESOLUTION #153-2011\* AUTHORIZE CREDITS DUE WATER AND SEWER UTILITY ACCOUNTS
- h.** RESOLUTION #155-2011\* APPROVE BILLS AND VOUCHERS FOR PAYMENT
- i.** APPLICATIONS\* APPLICATION FOR AN OFF-PREMISE RAFFLE FROM HSA ST. JOSEPH SCHOOL, 20 JEFFERSON STREET, NEWTON, TO BE HELD THURSDAY, DECEMBER 8, 2011 AT 8:00PM AT ST. JOSEPH REGIONAL SCHOOL, 20 JEFFERSON STREET, NEWTON
- APPLICATION FOR MEMBERSHIP TO THE NEWTON FIRE DEPARTMENT FROM KIERAN GILL, 7 KORY ROAD, NEWTON

**XI. INTERMISSION**

**XII. DISCUSSION**

**XIII. OPEN TO THE PUBLIC**

**XIV. COUNCIL & MANAGER COMMENTS**

**XV. ADJOURNMENT**

# TOWN OF NEWTON

## ORDINANCE #2011-11

**ORDINANCE REAPPROPRIATING \$78,000 PROCEEDS OF OBLIGATIONS NOT NEEDED FOR THE ORIGINAL PURPOSE IN ORDER TO PROVIDE FOR MILLING, PAVING, SIDEWALK IMPROVEMENTS AND INSTALLATION OF LIGHTING IN THE ALLEY IN BETWEEN BRENDA'S DINER AND PB&J, IN THE ALLEY ADJACENT TO SPRINGBOARD SHOPPES AND ON SPRING STREET AND THE ADJACENT HISTORIC DISTRICT, AND THE REMOVAL AND INSTALLATION OF SHADE TREES ON ROUTE 206 IN AND BY THE TOWN OF NEWTON, IN THE COUNTY OF SUSSEX, NEW JERSEY.**

BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF NEWTON, IN THE COUNTY OF SUSSEX, NEW JERSEY (not less than two-thirds of all members thereof affirmatively concurring) AS FOLLOWS:

Section 1. Pursuant to N.J.S.A. 40A:2-39, it is hereby determined that \$78,000 of the proceeds of obligations and unspent down payment funds originally made available pursuant to Section 3(d) of bond ordinance #2008-7 of the Town of Newton, in the County of Sussex, New Jersey (the "Town") finally adopted April 28, 2008 is no longer necessary for the purpose of paving of various streets (in accordance with road master plan) for which the obligations previously were authorized.

Section 2. The \$78,000 described in Section 1 and made available pursuant to N.J.S.A. 40A:2-39 is hereby reappropriated to provide for milling, paving, sidewalk improvements and installation of lighting in the alley in between Brenda's Diner and PB&J, in the alley adjacent to SpringBoard Shops and on Spring Street and the adjacent Historic District, and the removal and installation of shade trees on Route 206.

Section 3. The Town hereby certifies that it has adopted a capital budget or a temporary capital budget, as applicable. The capital or temporary capital budget of the Town is hereby amended to conform with the provisions of this ordinance to the extent of any

inconsistency herewith. To the extent that the purposes authorized herein are inconsistent with the adopted capital or temporary capital budget, a revised capital or temporary capital budget has been filed with the Division of Local Government Services.

Section 4. This ordinance shall take effect 20 days after the first publication thereof after final adoption, as provided by the Local Bond Law.

**TAKE NOTICE** that the above entitled Ordinance was introduced at a regular meeting of the Town Council of the Town of Newton held on June 27, 2011. It was for adopted, after public hearing and final reading thereon, at a regular meeting of said Governing Body conducted on July 11, 2011, and shall take effect according to law.

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Lorraine A. Read, RMC  
Municipal Clerk

**TOWN ON NEWTON**  
**ORDINANCE 2011-12**

**REFUNDING BOND ORDINANCE OF THE TOWN OF NEWTON, IN THE COUNTY OF SUSSEX, NEW JERSEY, PROVIDING FOR THE REFUNDING OF ALL OR A PORTION OF THE OUTSTANDING GENERAL IMPROVEMENT BONDS OF THE TOWN, DATED AUGUST 1, 2002, ISSUED IN THE ORIGINAL PRINCIPAL AMOUNT OF \$4,900,000, APPROPRIATING \$4,370,000 THEREFOR AND AUTHORIZING THE ISSUANCE OF \$4,370,000 REFUNDING BONDS OF THE TOWN FOR FINANCING THE COST THEREOF**

BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF NEWTON, IN THE COUNTY OF SUSSEX, NEW JERSEY (not less than two-thirds of all members thereof affirmatively concurring) AS FOLLOWS:

Section 1. The Town of Newton, in the County of Sussex, New Jersey (the "Town") is hereby authorized to refund all or a portion of the outstanding bonds of the Town originally issued in the principal amount of \$4,900,000 dated August 1, 2002 (the "2002 Bonds"). The 2002 Bonds maturing on or after August 1, 2012 (the "Refunded Bonds") may be redeemed at the option of the Town in whole or in part on any date (the "Redemption Date") at a redemption price equal to 100% of such Refunded Bonds, plus unpaid accrued interest, if any, to the Redemption Date.

Section 2. In order to finance the cost of the purpose described in Section 1 hereof, negotiable refunding bonds (the "Refunding Bonds") are hereby authorized to be issued in the aggregate principal amount not to exceed \$4,370,000 pursuant to the Local Bond Law of the State of New Jersey.

Section 3. An aggregate amount not exceeding \$110,000 for items of expense listed in and permitted under N.J.S.A. 40A:2-51(b) has been included in the aggregate principal amount of Refunding Bonds authorized herein.

Section 4. The supplemental debt statement required by the Local Bond Law has been duly prepared and filed in the office of the Clerk, and a complete executed duplicate thereof has been filed in the office of the Director of the Division of Local Government Services in the Department of Community Affairs of the State of New Jersey. Such statement shows that the gross debt of the Town as defined in the Local Bond Law is increased by the \$4,370,000 amount of the Refunding Bonds authorized by this refunding bond ordinance and that an amount representing the \$4,005,000 principal amount of the bonds to be refunded will be deductible from gross debt. The obligations authorized herein will be within all debt limitations prescribed by the Local Bond Law.

Section 5. The purpose of the refunding is to effect an interest cost savings for the Town.

Section 6. A certified copy of this refunding bond ordinance as adopted on first reading has been filed with the Director of the Division of Local Government Services in the Department of Community Affairs of the State of New Jersey prior to final adoption, together with a complete statement in the form prescribed by the Director and signed by the Mayor or the Chief Financial Officer of the Town as to the indebtedness to be financed by the issuance of the Refunding Bonds authorized herein.

Section 7. The Mayor, the Chief Financial Officer, the Town Clerk and other appropriate representatives of the Town are hereby authorized to prepare such documents, to publish such notices and to take such other actions as are necessary or desirable to enable the Town to prepare for the sale and the issuance of the Refunding Bonds authorized herein and to provide for the redemption of the 2002 Bonds referred to in Section 1 hereof.

Section 8. This bond ordinance shall take effect 20 days after the first publication thereof after final adoption and endorsement of the consent of the Local Finance Board upon a certified copy of this ordinance as finally adopted.

**TAKE NOTICE** that the above entitled Ordinance was introduced at a regular meeting of the Town Council of the Town of Newton held on June 27, 2011. It was for adopted, after public hearing and final reading thereon, at a regular meeting of said Governing Body conducted on July 11, 2011, and shall take effect according to law.

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Lorraine A. Read, RMC  
Municipal Clerk

# TOWN OF NEWTON

## ORDINANCE #2011-13

### A FULLY FUNDED GENERAL CAPITAL IMPROVEMENT ORDINANCE IN THE AMOUNT OF \$13,500 FOR ACQUISITION AND INSTALLATION OF A CAMERA ON THE DEPARTMENT OF PUBLIC WORKS BUILDING FOR THE TOWN OF NEWTON

**BE IT ORDAINED** by the Town Council of the Town of Newton, in the County of Sussex, as follows:

**Section 1.** \$13,500 is hereby appropriated from the General Capital – Fund Balance for the following improvement in the Town of Newton, including all costs necessary therefore or incidental thereto:

**Acquisition of a Camera** – It has been determined that a camera should be installed at the Department of Public Works Garage area to safeguard the municipal assets and deter vandalism. **\$13,500.00**

**Section 2.** The General Capital Budget of the Town of Newton is hereby amended to conform with the provisions of this ordinance to the extent of any inconsistency herewith. The resolution in the form promulgated by the Local Finance Board showing full detail of the amended capital budget and capital program as approved by the Director of the Division of Local Government Services is on file with the Clerk and is available there for public inspection.

**Section 3.** This ordinance shall take effect as provided by the law.

**TAKE NOTICE** that the above entitled Ordinance was introduced at a regular meeting of the Town Council of the Town of Newton held on June 27, 2011. It was for adopted, after public hearing and final reading thereon, at a regular meeting of said Governing Body conducted on July 11, 2011, and shall take effect according to law.

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Lorraine A. Read, RMC  
Municipal Clerk



## TOWN OF NEWTON

### RESOLUTION #147-2011

July 11, 2011

#### **“Refer Proposed Revised Land Development Ordinances to Town Planning Board for Review and Comment”**

**WHEREAS**, the Town Council of the Town of Newton has determined it to be in the best interest of the community for a re-examination of its Land Development regulations, which include those affecting land subdivision and site plan (Chapter 19), zoning (Chapter 20), and historic preservation (Chapter 20A); and

**WHEREAS**, the Town Planner has submitted to the Town Council draft revised Land Development Ordinances addressing Chapters 19, 20, and 20A of the Newton Municipal Code, which draft was the subject of initial review by the Council at its regular meeting held on June 27, 2011, following which the Town Planner has issued a draft entitled “Newton Land Development Ordinances” dated July 11, 2011; and

**WHEREAS**, the Town Council desires that, prior to introduction of the proposed revised Land Development Ordinances at first reading, the Town Planning Board consider the proposed Ordinances and provide the Council with its comments and recommendations;

**NOW, THEREFORE BE IT RESOLVED**, that the Town Council of the Town of Newton hereby refers to the Town Planning Board a draft of the “Newton Land Development Ordinances” dated July 11, 2011, and requests that the proposed Ordinances be considered by the Board at its earliest convenience and that the Board provide the Council with such comments and recommendations as the Board deems appropriate.

#### **CERTIFICATION**

**THIS IS TO CERTIFY** that the above is a true copy of a Resolution adopted by the Town Council of the Town of Newton at a regular meeting of said Governing Body conducted on Monday, July 11, 2011.

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Lorraine A. Read, RMC  
Municipal Clerk



**TOWN OF NEWTON**  
**RESOLUTION #148-2011**

July 11, 2011

**“To Cancel Receivable and Appropriated Reserve Balances in the Federal and State Grant Fund”**

**WHEREAS**, the Town of Newton received an award in the amount of \$20,000.00 from the State of New Jersey Records Management Paris grant for *Disaster Prevention and Recovery Planning*; and

**WHEREAS**, the total costs expended and approved by the State of New Jersey total \$17,000.00; and

**WHEREAS**, a receivable balance of \$3,000.00 entitled *Due from State of New Jersey Paris Grant* remains on the Federal and State Grant Fund balance sheet; and

**WHEREAS**, it is necessary to formally cancel the receivable balance and its offsetting appropriated reserve balance from the Federal and State Grant Fund balance sheet;

**NOW, THEREFORE BE IT RESOLVED**, by the Town Council of the Town of Newton, that we hereby cancel the following grant receivable and appropriated reserve balances:

**Federal & State Grant Fund**

Grant Receivable – Paris Grant #110121	\$3,000.00
Appropriated Reserve – Paris Grant #111221	\$3,000.00

**CERTIFICATION**

**THIS IS TO CERTIFY** that the above is a true copy of a Resolution adopted by the Town Council of the Town of Newton at a regular meeting of said Governing Body conducted on Monday, July 11, 2011.

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Lorraine A. Read, RMC  
Municipal Clerk



**TOWN OF NEWTON**  
**RESOLUTION #149-2011**

**July 11, 2011**

**“Approval of a Renewal Application for a Junk Dealer’s License for George’s Salvage Company”**

**WHEREAS**, the Newton Revised General Ordinances, **Section 6-5** require that no person shall engage in the business of a retail or wholesale junk dealer except pursuant to and within the terms of a license granted by the Town Council; and

**WHEREAS**, said renewal application for the Junk Dealer's License lists the business as George's Salvage Company at 10 South Park Drive, Newton, New Jersey; and

**WHEREAS**, Section 6.5-8 requires that the Health Officer, Construction Official, Fire Official, Public Works Supervisor, and Zoning Officer are authorized and directed to make periodic inspections of all licensed junk yards in the Town for the purpose of ascertaining that the business is being conducted on the licensed premises in accordance with the provision of Chapter 6; and

**WHEREAS**, George's Salvage Company has been inspected and approved as required in Section 6-5.8; and

**WHEREAS**, George's Salvage Company has provided a two hundred dollar (\$200.00) bond conditioned for the due observance of all ordinances of the Town relating to the business of retail junk dealer;

**NOW, THEREFORE BE IT RESOLVED**, by the Town Council of the Town of Newton that it hereby approves the application for a renewal Junk Dealer License submitted by George Miller, of George's Salvage Company, 10 South Park Drive, Newton, N.J, with said license expiring on December 31, 2011.

**CERTIFICATION**

**THIS IS TO CERTIFY** that the above is a true copy of a Resolution adopted by the Town Council of the Town of Newton at a regular meeting of said Governing Body conducted on Monday, July 11, 2011.

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Lorraine A. Read, RMC  
Municipal Clerk



**TOWN OF NEWTON**  
**RESOLUTION #150-2011**

**July 11, 2011**

**“Approval of a Renewal Application for a Junk Dealer’s License for Newton Auto Salvage, LLC”**

**WHEREAS**, the Newton Revised General Ordinances, **Section 6-5** require that no person shall engage in the business of a retail or wholesale junk dealer except pursuant to and within the terms of a license granted by the Town Council; and

**WHEREAS**, said renewal application for the Junk Dealer’s License lists the business as Newton Auto Salvage, LLC at 79 Mt. View Street, Newton, New Jersey; and

**WHEREAS**, Section 6.5-8 requires that the Health Officer, Construction Official, Fire Official, Public Works Supervisor, and Zoning Officer are authorized and directed to make periodic inspections of all licensed junk yards in the Town for the purpose of ascertaining that the business is being conducted on the licensed premises in accordance with the provision of Chapter 6; and

**WHEREAS**, Newton Auto Salvage, LLC has been inspected and approved as required in Section 6-5.8; and

**WHEREAS**, Newton Auto Salvage, LLC has provided a two hundred dollar (\$200.00) bond conditioned for the due observance of all ordinances of the Town relating to the business of junk dealer;

**NOW, THEREFORE BE IT RESOLVED**, by the Town Council of the Town of Newton that it hereby approves the application for a renewal Junk Dealer License submitted by Mike Sesera, of Newton Auto Salvage, 79 Mt. View Street, Newton, N.J, with said license expiring on December 31, 2011.

**CERTIFICATION**

**THIS IS TO CERTIFY** that the above is a true copy of a Resolution adopted by the Town Council of the Town of Newton at a regular meeting of said Governing Body conducted on Monday, July 11, 2011.

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Lorraine A. Read, RMC  
Municipal Clerk



**TOWN OF NEWTON**  
**RESOLUTION #151-2011**

July 11, 2011

**“Approving the settlement of: *Kattermann and Reinhart v. Town of Newton Zoning Board of Adjustment, et al.*; and *Nardino and Radzelovage v. Town of Newton Zoning Board of Adjustment, et al.*”**

**WHEREAS**, there is litigation pending in the Superior Court of New Jersey, Sussex County, under the captions: ***Nardino and Radzelovage v. Town of Newton Zoning Board of Adjustment, et al.***, bearing Docket Nos. SSX-L-803-10, and SSX-L-1086-10; and ***Kattermann and Reinhart v. Town of Newton Zoning Board of Adjustment, et al.***, bearing Docket No. SSX-L-936-10; and

**WHEREAS**, terms of settlement for said litigation have been mediated as more particularly set forth on **Schedule A** attached hereto.

**NOW, THEREFORE, BE IT RESOLVED** by the Town Council of the Town of Newton as follows:

1. The Settlement on the terms set forth in the April 6, 2011 Mediation Settlement Terms attached hereto, paragraphs 5 through 10 are hereby approved and accepted.
2. The Mayor and the Clerk are hereby authorized to execute and accept Releases in the form attached hereto as **Schedule B**, to be delivered and exchanged by Newton counsel for reciprocal Releases in favor of the Town of Newton.
3. The counsel for the Town of Newton is authorized to take such other actions as may be reasonably required to consummate the settlement on behalf of the Town of Newton, including execution of Stipulations of Dismissal with Prejudice in each of the three above-referred to lawsuits being settled.

**CERTIFICATION**

**THIS IS TO CERTIFY** that the above is a true copy of a Resolution adopted by the Town Council of the Town of Newton at a regular meeting of said Governing Body conducted on Monday, July 11, 2011.

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Lorraine A. Read, RMC  
Municipal Clerk

MEDIATION SETTLEMENT TERMS

April 6, 2011

These Mediation Settlement Terms concern Docket Numbers L-000803-10, L-000936-10, L-001086-10 referred to mediation, which were initially mediated at the offices of Vogel Chait Collins & Schneider in Morristown, New Jersey on March 2, 2011, in the presence of Mediator David Owen, Esq., and which were subsequently mediated in follow-up negotiations with David Owen, Esq. throughout March 2011. The Mediation Settlement Terms are as follows:

1. Kattermann/Reinhardt (KR) shall pay Radzelovage/Nardino (RN) \$60,000 for a deed acceptable to KR's title company, including an affidavit of title, and with customary closing adjustments (realty transfer fee is only item to be paid by RN), in exchange for the parcel described in the annexed exhibit. The description of the parcel and the survey or map depicting the parcel will be prepared by Catalano at KR's cost.
2. The settlement is contingent upon the grant of a subdivision and variance to RN to allow an eight-foot fence to be installed on RN's property along the required setback from the common property lines of RN and KR, consistent with Newton Zoning Ordinance 20-5.20 and without any further requirements imposed by the Planning Board other than standard conditions such as review of Deeds by the Board Professionals, approval by any and all other jurisdictions, if any; and that real estate taxes be paid in full.
3. Closing will take place after Newton Planning Board final unappealed approval for the subdivision and the fence variance. "Final unappealed approval" means that no person or entity commences or files any appeal, complaint, or challenge to the Newton Planning Board approval within the 45-day appeal period. Richard Clark will make a joint application for this relief on behalf of KR and RN as part of a "Whispering Woods" (court case) settlement, in which the Board may merge KR's three lots (house, garage, and access strip) or otherwise determine that the three lots must be owned or conveyed together. KR shall allow RN's fence installers to step onto and to maneuver on KR's property, if necessary and as reasonably required, in connection with installation of the fence. Richard Clark's presentation of a joint application on behalf of KR and RN shall not disqualify or prevent Richard Clark or his law firm from continuing to represent KR in the subject litigations in the event that not all settlement terms are met and settlement is not completed.
4. RN will relinquish any rights to ownership or use of the property being conveyed to KR and will further relinquish any rights to use the remainder of the existing 15 feet wide easement running from the property being conveyed to Clarkson Street.

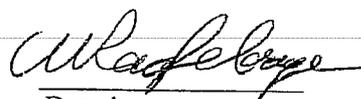
5. The Newton Planning Board application fees for the joint application will be waived and KR will pay \$1,500 escrow deposit towards costs for application, deed review and adoption of the resolution by the Board Professionals. RN shall not have any Newton Planning Board application expense. If approved, RN will request the Appellate Division for a stay for time to complete this settlement, provided the Board Resolution approving the application and settlement is adopted at the April 20, 2011, meeting.
6. Upon Town of Newton and Newton Planning Board approval of the settlement and Newton Planning Board final unappealed approval (as defined above) of the subdivision and the fence variance, and also upon the purchase and sale of the property, all litigation of any kind, including civil, municipal court, zoning or criminal complaints, shall be dismissed with prejudice. Until such time, the parties may continue to file briefs in Docket No. A-001415-10T2, and so long as the parties are proceeding diligently to carry out the terms of this settlement, RN agrees to stay the time for oral argument and decision in Docket No. A-001415-10T2.
7. The parties shall execute general releases in favor of all parties.
8. The settlement is contingent upon the Town of Newton and the Newton Planning Board approving the settlement among the parties and giving the approvals described above. The settlement is also contingent upon the approvals being unappealed as described above. The Town of Newton and Newton Planning Board understand and agree that any approvals granted shall become null and void should an appeal, complaint or challenge be filed negating the settlement, or in the event the subdivision is not perfected and KR and RN fail to close in accordance with paragraph one above. The Resolution shall so provide as one of its terms.
9. These Mediation Settlement Terms shall be binding upon the parties only upon the signing of same by all of the parties, and without such signatures these Mediation Settlement Terms shall be inadmissible in any proceeding.
10. The Mediator's fees shall be shared equally among the parties as set forth in the countersigned correspondence from David Owen, Esq. to Richard I. Clark, Esq., David H. Soloway, Esq., and Marie D. Nardino, Esq. dated February 25, 2011.

Patricia Kattermann

William Radzelovage

Town of Newton

\_\_\_\_\_ Dated:

  
 \_\_\_\_\_ Dated: 12 APR 2011

By: \_\_\_\_\_

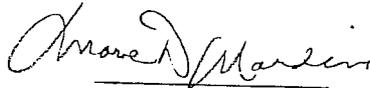
Dated: \_\_\_\_\_

Thomas Reinhardt

Marie D. Nardino

Town of Newton  
Planning Board  
as successor to  
Zoning Board of Adjustment

Dated: \_\_\_\_\_

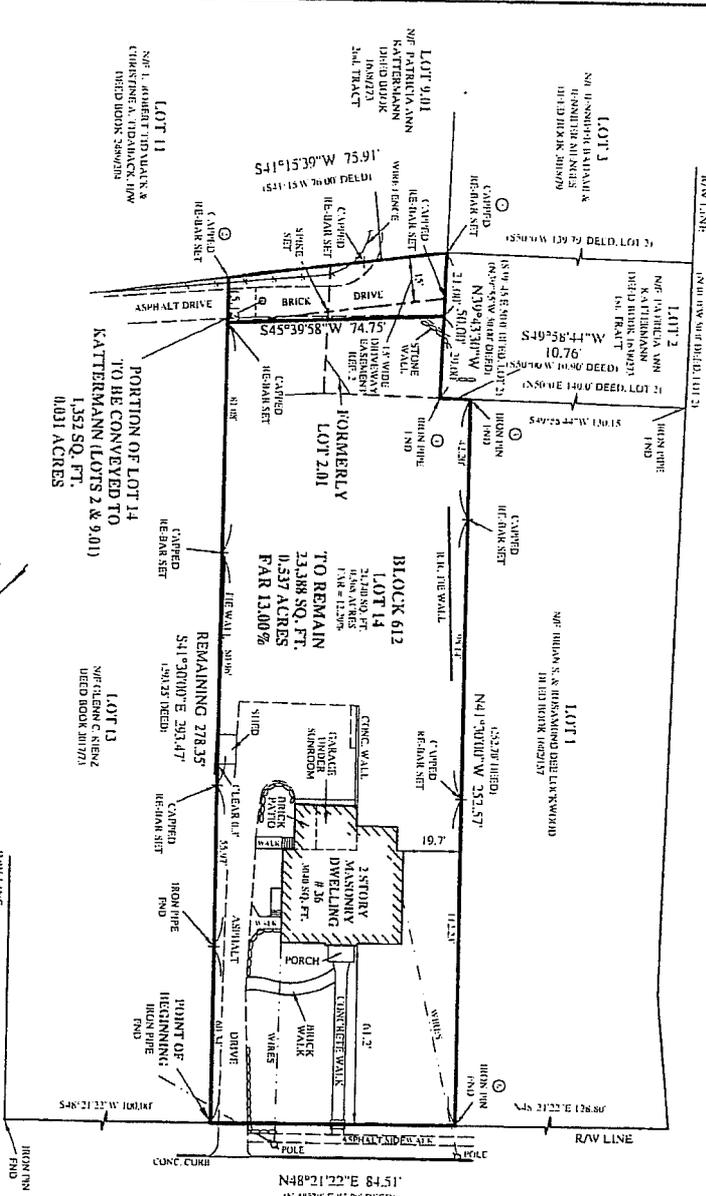
  
Dated: 4/12/11

By: \_\_\_\_\_

Dated:

(which consents to parags.  
2, 4, 5, 6, 7, 8, and 9 and  
which takes no position  
as to the other parags.)

**FOSTER STREET**  
50' WIDE



**LINWOOD AVENUE**  
50' WIDE

**CLARKSON STREET**  
30' WIDE

**CERTIFIED TO:**  
MARIE D. NARDINO AND WILLIAM RADZELOVAGE  
RICHARD I. CLARK, ESQ.  
LADDEY, CLARK AND RYAN, LLP

SCALE: 1" = 40'



REV. APRIL 7, 2011, LOT LINE (NDL)  
REV. APRIL 6, 2011, LOT LINE (NDL)  
JUNE 26, 2007

**LOCATION SURVEY**  
PREPARED FOR  
**MARIE D. NARDINO &  
WILLIAM RADZELOVAGE**  
**LOT 14, BLOCK 612**  
TOWN OF NEWTON, SUSSEX COUNTY, NEW JERSEY

**MICHAEL A. CATALANO**  
LAND SURVEYING AND PLANNING  
P.O. BOX 252, 17 HIGH STREET, NEWTON, NEW JERSEY 07860  
TEL: (973) 383-7102 FAX: (973) 383-3740

**REFERENCE:**

1. LOT 14, BLOCK 612, TOWN OF NEWTON TAX MAP.
2. RECORD DEED: ROBERT SANFORD FOGELSON AND LENORE F. FOGELSON, HW, TO MARIE D. NARDINO AND WILLIAM RADZELOVAGE, DATED DECEMBER 4, 1997 AND RECORDED IN THE SUSSEX COUNTY CLERK'S OFFICE ON DECEMBER 8, 1997 IN BOOK 1358 OF DEEDS, PAGE 13.

**NOTES:**

1. THIS SURVEY WAS PREPARED FROM INFORMATION FURNISHED TOGETHER WITH EVIDENCE FOUND ON THE GROUND AND IS SUBJECT TO ALL EASEMENTS OR RESTRICTIONS OR RECORD, UNDERGROUND UTILITIES SHOULD ANY EXIST AND TO SUCH STATE OF FACT THAT AN ACCURATE TITLE SEARCH MAY REVEAL.

2. OFFSETS SHOWN HEREON ARE FOR TITLE PURPOSES ONLY AND NOT TO BE USED TO DETERMINE BOUNDARIES FOR CONSTRUCTION PURPOSES.

MICHAEL A. CATALANO, PROFESSIONAL LAND SURVEYOR, N.J. LICENSE NO. 17778

**RELEASE**

This Release dated July \_\_\_\_\_, 2011, is given

**BY** the Releasor(s) **TOWN OF NEWTON ACTING BY AND THROUGH THE TOWN COUNCIL OF THE TOWN OF NEWTON**

referred to as "T",

**TO** **PATRICIA KATTERMANN AND THOMAS REINHARDT**

referred to as "You".

If more than one person signs this Release, "T" shall mean each person who signs this Release.

**1. Release.** I release and give up any and all claims and rights which I may have against you. This releases all claims, including those of which I am not aware and those not mentioned in this Release. This Release applies to claims resulting from anything which has happened up to now. I specifically release the following claims: all claims that were brought or could have been brought in all pending litigation in which the releasor and the releasees are parties, including the following cases brought in the Superior Court of New Jersey, Sussex County, under the caption "Nardino and Radzelovage v. Zoning Board of Adjustment, et al, bearing docket nos. SSX-L-803-10 and SSX-L-1086-10; and Kattermann and Reinhardt v. Zoning Board of Newton, bearing docket no. SSX-L-936-10.

**2. Payment.** I have been paid a total of \$1.00 and such other good and valuable consideration, in full payment for making this Release. I agree that I will not seek anything further including any other payment from you.

**3. Who is Bound.** I am bound by this Release. Anyone who succeeds to my rights and responsibilities, such as my heirs or the executor of my estate, is also bound. This Release is made for your benefit and all who succeed to your rights and responsibilities, such as your heirs or the executor of your estate.

**4. Signatures.** I understand and agree to the terms of this Release. If this Release is made by a corporation its proper corporate officers sign and its corporate seal is affixed.

Witnessed or Attested by:

**TOWN OF NEWTON ACTING BY AND THROUGH THE TOWN COUNCIL OF THE TOWN OF NEWTON**

\_\_\_\_\_  
Town Clerk

By: \_\_\_\_\_(Seal)

STATE OF NEW JERSEY, COUNTY OF SUSSEX

SS.:

I CERTIFY that on July \_\_\_\_\_, 2011,

\_\_\_\_\_ personally came before me and stated under oath to my satisfaction that:

- (a) this person was the subscribing witness to the signing of the attached instrument;
- (b) this instrument was signed by

\_\_\_\_\_ who is \_\_\_\_\_ of

\_\_\_\_\_ the entity named in this instrument, and was fully authorized to and did execute this instrument on its behalf; and

- (c) the subscribing witness signed this proof under oath to attest to the truth of these facts.

Signed and sworn to before me on \_\_\_\_\_  
July \_\_\_\_\_, 2011,

\_\_\_\_\_  
Notary Public of the State of New Jersey

**RELEASE**

This Release dated July \_\_\_\_\_, 2011, is given

**BY** the Releasor(s) **TOWN OF NEWTON ACTING BY AND THROUGH THE TOWN COUNCIL OF THE TOWN OF NEWTON**

referred to as "I",

**TO** **MARIE D.NARDINO AND WILLIAM RADZELOVAGE**

referred to as "You".

If more than one person signs this Release, "I" shall mean each person who signs this Release.

**1. Release.** I release and give up any and all claims and rights which I may have against you. This releases all claims, including those of which I am not aware and those not mentioned in this Release. This Release applies to claims resulting from anything which has happened up to now. I specifically release the following claims: all claims that were brought or could have been brought in all pending litigation in which the releasor and the releasees are parties, including the following cases brought in the Superior Court of New Jersey, Sussex County, under the caption "Nardino and Radzelovage v. Zoning Board of Adjustment, et al, bearing docket nos. SSX-L-803-10 and SSX-L-1086-10; and Kattermann and Reinhardt v. Zoning Board of Newton, bearing docket no. SSX-L-936-10.

**2. Payment.** I have been paid a total of \$1.00 and such other good and valuable consideration, in full payment for making this Release. I agree that I will not seek anything further including any other payment from you.

**3. Who is Bound.** I am bound by this Release. Anyone who succeeds to my rights and responsibilities, such as my heirs or the executor of my estate, is also bound. This Release is made for your benefit and all who succeed to your rights and responsibilities, such as your heirs or the executor of your estate.

**4. Signatures.** I understand and agree to the terms of this Release. If this Release is made by a corporation its proper corporate officers sign and its corporate seal is affixed.

Witnessed or Attested by:

**TOWN OF NEWTON ACTING BY AND THROUGH THE TOWN COUNCIL OF THE TOWN OF NEWTON**

\_\_\_\_\_  
Town Clerk

By: \_\_\_\_\_ (Seal)

STATE OF NEW JERSEY, COUNTY OF SUSSEX

SS.:

I CERTIFY that on July \_\_\_\_\_, 2011,

\_\_\_\_\_ personally came before me and stated under oath to my satisfaction that:

- (a) this person was the subscribing witness to the signing of the attached instrument;
- (b) this instrument was signed by

who is \_\_\_\_\_ of

\_\_\_\_\_ the entity named in this instrument, and was fully authorized to and did execute this instrument on its behalf; and

- (c) the subscribing witness signed this proof under oath to attest to the truth of these facts.

Signed and sworn to before me on \_\_\_\_\_  
July \_\_\_\_\_, 2011,

\_\_\_\_\_  
Notary Public of the State of New Jersey



## TOWN OF NEWTON

### RESOLUTION #152-2011

July 11, 2011

**“Appointment of a Class II - Special  
Police Officer – Kyle J. Phlegar”**

**WHEREAS**, Section 3-10 within Chapter III, Police Department, of the Revised General Ordinances of the Town of Newton indicates that the Town Manager may appoint Special Police Officers for a term not to exceed one year;

**NOW, THEREFORE BE IT RESOLVED**, by the Town Council of the Town of Newton that this Governing Body concurs with the Town Manager's appointment of the following individual as a Class II - Special Police Officer for calendar year 2011:

Kyle J. Phlegar

### CERTIFICATION

**THIS IS TO CERTIFY** that the above is a true copy of a Resolution adopted by the Town Council of the Town of Newton at a regular meeting of said Governing Body conducted on Monday, June 11, 2011.

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Lorraine A. Read, RMC  
Municipal Clerk



## TOWN OF NEWTON

### RESOLUTION #153-2011

July 11, 2011

### “Authorize Credits Due Water and Sewer Utility Accounts”

**WHEREAS**, the Water and Sewer Collector has determined that the following Water and Sewer Utility Accounts are due credits for the reasons stated;

**NOW, THEREFORE BE IT RESOLVED**, by the Town Council of the Town of Newton that the Water and Sewer Collector is hereby authorized to credit the following accounts for amounts billed incorrectly due to the reason(s) stated:

#### Penalty Charged Erroneously

<u>Account</u>	<u>Address</u>	<u>Amount</u>
15039	17 Linmor Avenue	\$7.50

#### CERTIFICATION

**THIS IS TO CERTIFY** that the above is a true copy of a Resolution adopted by the Town Council of the Town of Newton at a regular meeting of said Governing Body conducted on Monday, July 11, 2011.

\_\_\_\_\_  
Lorraine A. Read, RMC  
Municipal Clerk



## TOWN OF NEWTON

### RESOLUTION #155-2011

July 11, 2011

**“Approve Bills and Vouchers for Payment”**

**BE IT RESOLVED** by the Town Council of the Town of Newton that payment is hereby approved for all vouchers that have been properly authenticated and presented for payment, representing expenditures for which appropriations were duly made in the 2010 and 2011 Budgets adopted by this local Governing Body, including any emergency appropriations, and where unexpended balances exist in said appropriation accounts for the payment of such vouchers.

#### CERTIFICATION

**THIS IS TO CERTIFY** that the above is a true copy of a Resolution adopted by the Town Council of the Town of Newton at a regular meeting of said Governing Body conducted on Monday, July 11, 2011.

---

Lorraine A. Read, RMC  
Municipal Clerk

**AGENDA ITEMS**

**For July 11, 2011 Council Meeting**

**Minutes:** June 27, 2011 ( Regular )

Application for an off-premise raffle from HSA St. Joseph School, 20 Jefferson Street, Newton, to be held on Thursday, December 8, 2011 at 8:00 p.m. at St. Joseph Regional School, 20 Jefferson Street, Newton.

Application for membership to the Newton Fire Department from Kieran Gill, 7 Kory Road, Newton. The Application is in order and signed by the Chief of the Fire Department.

# TOWN OF NEWTON

## ORDINANCE 2011-~~1~~

### AN ORDINANCE REPEALING AND REPLACING CHAPTER 14 FLOOD DAMAGE PREVENTION ORDINANCE OF THE TOWN OF NEWTON REVISED GENERAL ORDINANCES WITH AN UPDATED FLOOD DAMAGE ORDINANCE

DRAFT

**WHEREAS**, the Legislature of the State of New Jersey has in N.J.S.A. 40:48-1, et seq., delegated the responsibility to local governmental units to adopt regulations designed to promote public health, safety, and general welfare of its citizenry; and

**WHEREAS**, the flood hazard areas of Town of Newton are subject to periodic inundation which results in loss of life and property, health and safety hazards, disruption of commerce and governmental services, extraordinary public expenditures for flood protection and relief, and impairment of the tax base, all of which adversely affect the public health, safety, and general welfare; and

**WHEREAS**, these flood losses are caused by the cumulative effect of obstructions in areas of special flood hazard which increase flood heights and velocities, and when inadequately anchored, causes damage in other areas. Uses that are inadequately floodproofed, elevated or otherwise protected from flood damage also contribute to the flood loss; and

**WHEREAS**, it is the purpose of this Ordinance to promote the public health, safety, and general welfare, and to minimize public and private losses due to flood conditions in specific areas by provisions designed to:

- [1] Protect human life and health;
- [2] Minimize expenditure of public money for costly flood control projects;
- [3] Minimize the need for rescue and relief efforts associated with flooding and generally undertaken at the expense of the general public;
- [4] Minimize prolonged business interruptions;
- [5] Minimize damage to public facilities and utilities such as water and gas mains, electric, telephone and sewer lines, streets, bridges located in areas of special flood hazard;
- [6] Help maintain a stable tax base by providing for the second use and development of areas of special flood hazard so as to minimize future flood blight areas;
- [7] Ensure that potential buyers are notified that property is in an area of special flood hazard; and
- [8] Ensure that those who occupy the areas of special flood hazard assume responsibility for their actions; and

**WHEREAS**, in order to accomplish its purposes, this Ordinance includes methods and provisions for:

- [1] Restricting or prohibiting uses which are dangerous to health, safety, and property due to water or erosion hazards, or which result in damaging increases in erosion or in flood heights or velocities;
- [2] Requiring that uses vulnerable to floods including facilities which serve such uses, be protected against flood damage at the time of initial construction;
- [3] Controlling the alteration of natural floodplains, stream channels, and natural protective barriers, which help accommodate or channel flood waters;

- [4] Controlling filling, grading, dredging, and other development which may increase flood damage; and,
- [5] Preventing or regulating the construction of flood barriers which will unnaturally divert flood waters or which may increase flood hazards in other areas.

**NOW THEREFORE BE IT ORDAINED** by the Town Council of the Town of Newton, Sussex County, New Jersey, as follows:

**SECTION 14-1.0 DEFINITIONS**

Unless specifically defined below, words or phrases used in this Ordinance shall be interpreted so as to give them the meaning they have in common usage and to give this Ordinance it's most reasonable application.

**Appeal** — A request for a review of the Construction Official's interpretation of any provision of this Ordinance or a request for a variance.

**Area of Shallow Flooding** — A designated AO, AH, or VO zone on a community's Digital Flood Insurance Rate Map (DFIRM) with a one percent annual or greater chance of flooding to an average depth of one to three feet where a clearly defined channel does not exist, where the path of flooding is unpredictable and where velocity flow may be evident. Such flooding is characterized by ponding or sheet flow.

**Area of Special Flood Hazard** — The land in the floodplain within a community subject to a one percent or greater chance of flooding in any given year.

**Base Flood** — The flood having a one percent chance of being equaled or exceeded in any given year.

**Basement** — Any area of the building having its floor subgrade (below ground level) on all sides.

**Breakaway Wall** — A wall that is not part of the structural support of the building and is intended through its design and construction to collapse under specific lateral loading forces without causing damage to the elevated portion of the building or supporting foundation system.

**Development** — Any man made change to improved or unimproved real estate, including but not limited to buildings or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations, or storage of equipment or materials located within the area of special flood hazard.

**Digital Flood Insurance Rate Map (DFIRM)** — The official map on which the Federal Insurance Administration has delineated both the areas of special flood hazards and the risk premium zones applicable to the community.

**Elevated Building** — A non-basement building (i) built in the case of a building in an Area of Special Flood Hazard to have the top of the elevated floor elevated above the ground level by means of piling, columns (posts and piers), or shear walls parallel to the flow of the

water, and (ii) adequately anchored so as not to impair the structural integrity of the building during a flood up to the magnitude of the base flood. In an Area of Special Flood Hazard "elevated building" also includes a building elevated by means of fill or solid foundation perimeter walls with openings sufficient to facilitate the unimpeded movement of flood waters.

**Flood or Flooding** — A general and temporary condition of partial or complete inundation of normally dry land areas from: .

[1] The overflow of inland or tidal waters and/or

[2] The unusual and rapid accumulation or runoff of surface waters from any source.

**Flood Insurance Study (FIS)** — The official report in which the Federal Insurance Administration has provided flood profiles, as well as the Flood Insurance Rate Map(s) and the water surface elevation of the base flood.

**Flood Insurance Rate Map (FIRM)** — The official map on which the Federal Insurance Administration has delineated both the areas of special flood hazards and the risk premium zones applicable to the community.

**Floodplain Management Regulations** — Zoning Ordinances, subdivision regulations, building codes, health regulations, special purpose ordinances (such as a floodplain ordinance, grading ordinance and erosion control ordinance) and other applications of police power. The term describes such State or local regulations, in any combination thereof, which provide standards for the purpose of flood damage prevention and reduction.

**Floodway** — The channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than 0.2 foot.

**Highest Adjacent Grade** — The highest natural elevation of the ground surface prior to construction next to the proposed walls of a structure.

**Historic Structure** — Any structure that is:

[a] Listed individually in the National Register of Historic Places (a listing maintained by the Department of Interior) or preliminarily determined by the Secretary of the Interior as meeting the requirements for individual listing on the National Register;

[b] Certified or preliminarily determined by the Secretary of the Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the Secretary to qualify as a registered historic district;

[c] Individually listed on a State inventory of historic places in States with historic preservation programs which have been approved by the Secretary of the Interior; or

[d] Individually listed on a local inventory of historic places in communities with historic preservation programs that have been certified either:

(1) By an approved State program as determined by the Secretary of the Interior; or

(2) Directly by the Secretary of the Interior in States without approved programs.

**Lowest Floor** — The lowest floor of the lowest enclosed area [including basement]. An unfinished or flood resistant enclosure, useable solely for the parking of vehicles, building access or storage in an area other than a basement is not considered a building's lowest

floor provided that such enclosure is not built so to render the structure in violation of other applicable non-elevation design requirements.

**Manufactured Home** — A structure, transportable in one or more sections, which is built on a permanent chassis and is designed for use with or without a permanent foundation when attached to the required utilities. The term "manufactured home" does not include a "recreational vehicle".

**Manufactured Home Park or Manufactured Home Subdivision** — A parcel (or contiguous parcels) of land divided into two (2) or more manufactured home lots for rent or sale.

**New Construction** — Structures for which the start of construction commenced on or after the effective date of a floodplain regulation adopted by a community and includes any subsequent improvements to such structures.

**New Manufactured Home Park or Subdivision** — A manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) is completed on or after the effective date of the floodplain management regulations adopted by the municipality.

**Recreational Vehicle** — A vehicle which is [i] built on a single chassis; [ii] 400 square feet or less when measured at the longest horizontal projections; [iii] designed to be self-propelled or permanently towable by a light duty truck; and [iv] designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational, camping, travel, or seasonal use.

**Start of Construction** — For other than new construction or substantial improvements under the Coastal Barrier Resources Act (P.L. No. 97-348) includes substantial improvements and means the date the building permit was issued, provided the actual start of construction, repair, reconstruction, rehabilitation, addition, placement, or other improvement was within 180 days of the permit date. The actual start means either the first placement of permanent construction of a structure on a site such as the pouring of a slab or footings, the installation of piles, the construction of columns, or any work beyond the stage of excavation, or the placement of a manufactured home on a foundation.

Permanent construction does not include land preparation, such as clearing, grading and filling nor does it include the installation of streets and/or walkways, nor does it include excavation for a basement, footings or piers, or foundations or the erection of temporary forms, nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or not part of the main structure. For a substantial improvement, the actual start of construction means the first alteration of any wall, ceiling, floor, or other structural part of a building, whether or not that alteration affects the external dimensions of the building.

**Structure** — A walled and roofed building, a manufactured home, or a gas or liquid storage tank, that is principally above ground.

**Substantial Damage** — Damage of any origin sustained by a structure whereby the cost of restoring the structure to its before damaged condition would equal or exceed 50 percent of the market value of the structure before the damage occurred.

**Substantial Improvement** — Any reconstruction, rehabilitation, addition, or other improvement of a structure, the cost of which exceeds 50 percent of the market value of the structure before the "start of construction" of the improvement. This term includes structures which have incurred "substantial damage", regardless of the actual repair work performed. The term does not, however, include either:

- [1] Any project for improvement of a structure to correct existing violations of State or local health, sanitary or safety code specifications which have been identified by the local code enforcement officer and which are the minimum necessary to assure safe living conditions; or
- [2] Any alteration of a "historic structure", provided that the alteration will not preclude the structure's continued designation as a "historic structure".

**Variance** — A grant of relief from the requirements of this Ordinance that permits construction in a manner that would otherwise be prohibited by this Ordinance.

## **SECTION 14-2.0 GENERAL PROVISIONS**

### **14-2.1 LANDS TO WHICH THIS ORDINANCE APPLIES**

This Ordinance shall apply to all areas of special flood hazards within the jurisdiction of the Town of Newton, Sussex County, New Jersey.

### **14-2.2 BASIS FOR ESTABLISHING THE AREAS OF SPECIAL FLOOD HAZARD**

The areas of special flood hazard for the areas of special flood hazard for the Town of Newton, Community No. 340453, are identified and defined on the following documents prepared by the Federal Emergency Management Agency:

- a) A scientific and engineering report "Flood Insurance Study, Sussex County, New Jersey (All Jurisdictions)" dated September 29, 2011.
- b) Flood Insurance Rate Map for Sussex County, New Jersey (All Jurisdictions) as shown on Index and panel numbers 34037C0284E, 34037C0292E, 34037C0303E, 34037C0311E; whose effective date is September 29, 2011.

The above documents are hereby adopted and declared to be a part of this Ordinance. The Flood Insurance Study and maps are on file at 39 Trinity Street, Newton, New Jersey.

### **14-2.3 PENALTIES FOR NONCOMPLIANCE**

No structure or land shall hereafter be constructed, located, extended, converted, or altered without full compliance with the terms of this Ordinance and other applicable regulations. Violation of the provisions of this Ordinance by failure to comply with any of its requirements (including violations of conditions and safeguards established in connection with conditions) shall constitute a misdemeanor. Any person who violates this Ordinance or fails to comply with any of its requirements shall upon conviction thereof be fined not more than \$2,000 or imprisoned for not more than 90 days, or both, for each violation, and in addition shall pay all costs and expenses involved in the case. Nothing herein contained shall prevent the Town of Newton from taking such other lawful action as is necessary to prevent or remedy any violation.

#### **14-2.4 ABROGATION AND GREATER RESTRICTIONS**

This Ordinance is not intended to repeal, abrogate, or impair any existing easements, covenants, or deed restrictions. However, where this Ordinance and other Ordinance, easement, covenant, or deed restriction conflict or overlap, whichever imposes the more stringent restrictions shall prevail.

#### **14-2.5 INTERPRETATION**

In the interpretation and application of this Ordinance, all provisions shall be:

- [1] Considered as minimum requirements;
- [2] Liberally construed in favor of the governing body; and,
- [3] Deemed neither to limit nor repeal any other powers granted under State statutes.

#### **14-2.6 WARNING AND DISCLAIMER OF LIABILITY**

The degree of flood protection required by this Ordinance is considered reasonable for regulatory purposes and is based on scientific and engineering considerations. Larger floods can and will occur on rare occasions. Flood heights may be increased by man-made or natural causes. This Ordinance does not imply that land outside the area of special flood hazards or uses permitted within such areas will be free from flooding or flood damages.

This Ordinance shall not create liability on the part of the Town of Newton, any officer or employee thereof or the Federal Insurance Administration, for any flood damages that result from reliance on this Ordinance or any administrative decision lawfully made thereunder.

### **SECTION 14-3.0 ADMINISTRATION**

#### **14-3.1 ESTABLISHMENT OF DEVELOPMENT PERMIT**

A Development Permit shall be obtained before construction or development begins, including placement of manufactured homes, within any area of special flood hazard established in SECTION 14-2.2. Application for a Development Permit shall be made on forms furnished by the Construction Official and may include, but not be limited to; plans in duplicate drawn to scale showing the nature, location, dimensions, and elevations of the area in question; existing or proposed structures, fill, storage of materials, drainage facilities; and the location of the foregoing. Specifically, the following information is required:

- [1] Elevation in relation to mean sea level, of the lowest floor (including basement) of all structures;
- [2] Elevation in relation to mean sea level to which any structure has been floodproofed.
- [3] Certification by a registered professional engineer or architect that the floodproofing methods for any nonresidential structure meet the floodproofing criteria in SECTION 14-4.2-2; and,
- [4] Description of the extent to which any watercourse will be altered or relocated as a result of proposed development.

#### **14-3.2 DESIGNATION OF THE LOCAL ADMINISTRATOR**

The Construction Official is hereby appointed to administer and implement this Ordinance by granting or denying development permit applications in accordance with its provisions.

#### **14-3.3 DUTIES AND RESPONSIBILITIES OF THE ADMINISTRATOR**

Duties of the Construction Official shall include, but not be limited to:

### **14-3.3-1 PERMIT REVIEW**

- [1] Review all development permits to determine that the permit requirements of this Ordinance have been satisfied.
- [2] Review all development permits to determine that all necessary permits have been obtained from those Federal, State or local governmental agencies from which prior approval is required.
- [3] Review all development permits to determine if the proposed development is located in the floodway, assure that the encroachment provisions of SECTION 14-4.3[1] are met.

### **14-3.3-2 USE OF OTHER BASE FLOOD AND FLOODWAY DATA**

When base flood elevation and floodway data has not been provided in accordance with SECTION 14-2.2, BASIS FOR ESTABLISHING THE AREAS OF SPECIAL FLOOD HAZARD, the Construction Official shall obtain, review, and reasonably utilize any base flood elevation and floodway data available from a Federal, State or other source, in order to administer SECTIONS 14-4.2-1, SPECIFIC STANDARDS, RESIDENTIAL CONSTRUCTION, and 14-4.2-2, SPECIFIC STANDARDS, NONRESIDENTIAL CONSTRUCTION.

### **14-3.3-3 INFORMATION TO BE OBTAINED AND MAINTAINED**

- [1] Obtain and record the actual elevation (in relation to mean sea level) of the lowest floor (including basement) of all new or substantially improved structures, and whether or not the structure contains a basement.
- [2] For all new or substantially improved floodproofed structures:
  - [i] verify and record the actual elevation (in relation to mean sea level); and
  - [ii] maintain the floodproofing certifications required in SECTION 14-3.1 (3).
- [3] Maintain for public inspection all records pertaining to the provisions of this Ordinance.

### **14-3.3-4 ALTERATION OF WATERCOURSES**

- [1] Notify adjacent communities and the New Jersey Department of Environmental Protection, Dam Safety and Flood Control Section and the Land Use Regulation Program prior to any alteration or relocation of a watercourse, and submit evidence of such notification to the Federal Insurance Administration.
- [2] Require that maintenance is provided within the altered or relocated portion of said watercourse so the flood carrying capacity is not diminished.

### **14-3.3-5 INTERPRETATION OF FIRM BOUNDARIES**

Make interpretations where needed, as to the exact location of the boundaries of the areas of special flood hazards (for example, where there appears to be a conflict between a mapped boundary and actual field conditions). The person contesting the location of the boundary shall be given a reasonable opportunity to appeal the interpretation as provided in SECTION 14-3.4.

## **14-3.4 VARIANCE PROCEDURE**

### **14-3.4-1 APPEAL BOARD**

- [1] The Planning Board as established by the Town Council shall hear and decide appeals and requests for variances from the requirements of this Ordinance.
- [2] The Planning Board shall hear and decide appeals when it is alleged there is an error in any requirement, decision, or determination made by the Construction Official in the enforcement or administration of this Ordinance.

- [3] Those aggrieved by the decision of the Planning Board, or any taxpayer, may appeal such decision to the Superior Court of New Jersey.
- [4] In passing upon such applications, the Planning Board, shall consider all technical evaluations, all relevant factors, standards specified in other sections of this Ordinance, and:
- (i) the danger that materials may be swept onto other lands to the injury of others;
  - (ii) the danger to life and property due to flooding or erosion damage;
  - (iii) the susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner;
  - (iv) the importance of the services provided by the proposed facility to the community;
  - (v) the necessity to the facility of a waterfront location, where applicable;
  - (vi) the availability of alternative locations for the proposed use which are not subject to flooding or erosion damage;
  - (vii) the compatibility of the proposed use with existing and anticipated development;
  - (viii) the relationship of the proposed use to the comprehensive plan and floodplain management program of that area;
  - (ix) the safety of access to the property in times of flood for ordinary and emergency vehicles;
  - (x) the expected heights, velocity, duration, rate of rise, and sediment transport of the flood waters and the effects of wave action, if applicable, expected at the site; and,
  - (xi) the costs of providing governmental services during and after flood conditions, including maintenance and repair of public utilities and facilities such as sewer, gas, electrical, and water systems, and streets and bridges.
- [5] Upon consideration of the factors of SECTION 14-3.4-1 [4] and the purposes of this Ordinance, the Planning Board may attach such conditions to the granting of variances as it deems necessary to further the purposes of this Ordinance.
- [6] The Construction Official shall maintain the records of all appeal actions, including technical information, and report any variances to the Federal Insurance Administration upon request.

#### **14-3.4-2 CONDITIONS FOR VARIANCES**

- [1] Generally, variances may be issued for new construction and substantial improvements to be erected on a lot of one-half acre or less in size contiguous to and surrounded by lots with existing structures constructed below the base flood level, providing items (i-xi) in SECTION 14-3.4-1[4] have been fully considered. As the lot size increases beyond the one-half acre, the technical justification required for issuing the variance increases.
- [2] Variances may be issued for the repair or rehabilitation of historic structures upon a determination that the proposed repair or rehabilitation will not preclude the structure's continued designation as a historic structure and the variance is the minimum necessary to preserve the historic character and design of the structure.
- [3] Variances shall not be issued within any designated floodway if any increase in flood levels during the base flood discharge would result.
- [4] Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.
- [5] Variances shall only be issued upon:
- (i) A showing of good and sufficient cause;
  - (ii) A determination that failure to grant the variance would result in exceptional hardship to the applicant; and,

- (iii) A determination that the granting of a variance will not result in increased flood heights, additional threats to public safety, extraordinary public expense, create nuisances, cause fraud on or victimization of the public as identified in SECTION 14-3.4- 1[4], or conflict with existing local laws or Ordinances.
- [6] Any applicant to whom a variance is granted shall be given written notice that the structure will be permitted to be built with a lowest floor elevation below the base flood elevation and that the cost of flood insurance will be commensurate with the increased risk resulting from the reduced lowest floor elevation.

## **SECTION 14-4.0 PROVISIONS FOR FLOOD HAZARD REDUCTION**

### **14-4.1 GENERAL STANDARDS**

In all areas of special flood hazards the following standards are required:

#### **14-4.1-1 ANCHORING**

- [1] All new construction and substantial improvements shall be anchored to prevent flotation, collapse, or lateral movement of the structure.
- [2] All manufactured homes shall be anchored to resist flotation, collapse or lateral movement. Methods of anchoring may include, but are not to be limited to, use of over-the-top or frame ties to ground anchors. This requirement is in addition to applicable state and local anchoring requirements for resisting wind forces.

#### **14-4.1-2 CONSTRUCTION MATERIALS AND METHODS**

- [1] All new construction and substantial improvements shall be constructed with materials and utility equipment resistant to flood damage.
- [2] All new construction and substantial improvements shall be constructed using methods and practices that minimize flood damage.

#### **14-4.1-3 UTILITIES**

- [1] All new and replacement water supply systems shall be designed to minimize or eliminate infiltration of flood waters into the system;
- [2] New and replacement sanitary sewage systems shall be designed to minimize or eliminate infiltration of flood waters into the systems and discharge from the systems into flood waters;
- [3] On-site waste disposal systems shall be located to avoid impairment to them or contamination from them during flooding; and
- [4] Electrical, heating, ventilation, plumbing and air-conditioning equipment and other service facilities shall be designed and/or located so as to prevent water from entering or accumulating within the components during conditions of flooding.

#### **14-4.1-4 SUBDIVISION PROPOSALS**

- [1] All subdivision proposals shall be consistent with the need to minimize flood damage;
- [2] All subdivision proposals shall have public utilities and facilities such as sewer, gas, electrical, and water systems located and constructed to minimize flood damage;
- [3] All subdivision proposals shall have adequate drainage provided to reduce exposure to flood damage; and,
- [4] Base flood elevation data shall be provided for subdivision proposals and other proposed development which contain at least fifty (50) lots or five (5) acres (whichever is less).

#### **14-4.1-5 ENCLOSURE OPENINGS**

All new construction and substantial improvements having fully enclosed areas below the lowest floor that are usable solely for parking of vehicles, building access or storage in an area other than a basement and which are subject to flooding shall be designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of floodwaters. Designs for meeting this requirement must either be certified by a registered professional engineer or architect or must meet or exceed the following minimum criteria: A minimum of two (2) openings having a total net area of not less than one (1) square inch for every square foot of enclosed area subject to flooding shall be provided. The bottom of all openings shall be no higher than one (1) foot above grade. Openings may be equipped with screens, louvers, or other covering or devices provided that they permit the automatic entry and exit of floodwaters.

#### **14-4.2 SPECIFIC STANDARDS**

In all areas of special flood hazards where base flood elevation data have been provided as set forth in SECTION 14-2.2, BASIS FOR ESTABLISHING THE AREAS OF SPECIAL FLOOD HAZARD or in SECTION 14-3.3-2, USE OF OTHER BASE FLOOD DATA, the following standards are required:

##### **14-4.2-1 RESIDENTIAL CONSTRUCTION**

- [1] New construction and substantial improvement of any residential structure shall have the lowest floor, including basement together with the attendant utilities and sanitary facilities, elevated to or above base flood elevation;
- [2] within any AO zone on the municipality's FIRM that all new construction and substantial improvement of any residential structure shall have the lowest floor, including basement, elevated above the highest adjacent grade at least as high as the depth number specified in feet (at least two feet if no depth number is specified). And, require adequate drainage paths around structures on slopes to guide floodwaters around and away from proposed structures.

##### **14-4.2-2 NONRESIDENTIAL CONSTRUCTION**

In an Area of Special Flood Hazard, all new construction and substantial improvement of any commercial, industrial or other nonresidential structure shall have the lowest floor, including basement together with the attendant utilities and sanitary facilities:

either

- [1] Elevated to the level of the base flood elevation; and
- [2] Within any AO zone on the municipality's DFIRM that all new construction and substantial improvement of any commercial, industrial or other nonresidential structure shall have the lowest floor, including basement, elevated above the highest adjacent grade at least as high as the depth number specified in feet (at least two feet if no depth number is specified). And, require adequate drainage paths around structures on slopes to guide floodwaters around and away from proposed structures;

or

- [1] Be floodproofed so that below the base flood level the structure is watertight with walls substantially impermeable to the passage of water;
- [2] Have structural components capable of resisting hydrostatic and hydrodynamic loads and effects of buoyancy; and,
- [3] Be certified by a registered professional engineer or architect that the design and methods of construction are in accordance with accepted standards of practice for meeting the

applicable provisions of this subsection. Such certification shall be provided to the official as set forth in SECTION 14-3.3-3 [2] [ii].

#### **14-4.2-3 MANUFACTURED HOMES**

- [1] Manufactured homes shall be anchored in accordance with SECTION 14-4.1-1 [2].
- [2] All manufactured homes to be placed or substantially improved within an area of special flood hazard shall be elevated on a permanent foundation such that the top of the lowest floor is at or above the base flood elevation.

#### **14-4.3 FLOODWAYS**

Located within areas of special flood hazard established in SECTION 14-2.2 are areas designated as floodways. Since the floodway is an extremely hazardous area due to the velocity of flood waters which carry debris, potential projectiles, and erosion potential, the following provisions apply:

- [1] Prohibit encroachments, including fill, new construction, substantial improvements, and other development unless a technical evaluation demonstrates that encroachment shall not result in any increase in flood levels during the occurrence of the base flood discharge.
- [2] If SECTION 14-4.3[1] is satisfied, all new construction and substantial improvements must comply with SECTION 14-4.0 PROVISIONS FOR FLOOD HAZARD REDUCTION.
- [3] In all areas of special flood hazard in which base flood elevation data has been provided and no floodway has been designated, the cumulative effect of any proposed development, when combined with all other existing and anticipated development, shall not increase the water surface elevation of the base flood more than two-tenths (0.2) of a foot at any point.

#### **SECTION 14-5.0 SEVERABILITY**

If any provision of this Ordinance or the application of this Ordinance to any person or circumstances is held invalid, the remainder of this Ordinance shall not be affected and shall remain in full force and effect.

#### **SECTION 14-6.0 REPEALER**

All Ordinances or parts of Ordinances or resolutions that are inconsistent or in opposition to the provisions of this Ordinance are hereby repealed in their entirety.

#### **SECTION 14-7.0 EFFECTIVE DATE**

This Ordinance shall take effect upon its final passage and publication according to law.

#### **NOTICE**

**TAKE NOTICE** that the above-entitled Ordinance was introduced at a regular meeting of the Town Council of the Town of Newton on July 11, 2011 and said Ordinance will be considered for final passage at a regular meeting of the Town Council of the Town of Newton to be held in the Council Chambers, 39 Trinity Street, Newton, New Jersey, on July 25, 2011.

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Lorraine A. Read, RMC  
Municipal Clerk



# Town of Newton



Council-Manager Plan Since 1956

MUNICIPAL COURT -  
JOHN E. MULHERN, JUDGE  
ANN M. ROSELLEN, COURT ADMINISTRATOR

39 TRINITY STREET  
NEWTON, NEW JERSEY 07860  
TELEPHONE:: 973-383-3521  
FAX: 973-383-6471

June 27, 2011

Tom Russo, Jr.  
Town Manager  
39 Trinity Street  
Newton, New Jersey 07860



Dear Mr. Russo

Pease accept this letter as formal notification that I am retiring from my position with the Newton Municipal Court on August 1, 2011.

Thank you for the opportunities you have provided me during my time with the Town. If I can be of any assistance during this transition, please let me know.

Very truly yours

MUNICIPAL COURT-TOWN OF NEWTON

Ann M. Rosellen  
Court Administrator

Cc: Dawn Babcock/Finance Director  
Debra Carter/Human Resoure