

ORDINANCE NO. 16-19

AN ORDINANCE OF THE BOROUGH COUNCIL OF THE BOROUGH OF WOODCLIFF LAKE AUTHORIZING THE ACQUISITION BY PURCHASE OR EMINENT DOMAIN IF NECESSARY, OF THE REAL PROPERTY KNOWN AS 223 WOODCLIFF AVENUE, BLOCK 1402, LOT 7 ON THE OFFICAL TAX MAP OF THE BOROUGH OF WOODCLIFF LAKE

WHEREAS, pursuant to N.J.S.A. 40A:12-1 et seq., and N.J.S.A. 20:3-1 et seq., the Borough of Woodcliff Lake (the “Borough”) has the power to acquire real property for a public purpose through negotiated agreement or by the exercise of its powers of eminent domain; and

WHEREAS, the Borough desires to acquire the property located at 223 Woodcliff Avenue, Woodcliff Lake, New Jersey also known as Block 1402 Lot 7 on the official tax map of the Borough (the “Galaxy Gardens Property”) in order to expand the open space available in the Borough for the use and enjoyment of the local population; and

WHEREAS, the Borough has determined that it is necessary, beneficial and in the public interest to acquire the Galaxy Gardens Property for public use as open space; and

WHEREAS, the acquisition of such property to be utilized as open space will fulfill a primary goal of the Borough with regard to preservation of the Borough’s character by providing for open space for the Borough’s residents; and

WHEREAS, the Bergen County Open Space Trust Fund shares in the goals of the Borough of Woodcliff Lake and is a dedicated program to support open space acquisition and recreation development throughout Bergen County; and

WHEREAS, the Borough submitted an application to the Bergen County Board of Chosen Freeholders’ Open Space Trust Fund to finance the acquisition of the Galaxy Gardens Property; and

WHEREAS, the Board of Chosen Freeholders granted final approval to a grant award for the above-referenced open space land acquisition project at its meeting on August 10, 2016; and

WHEREAS, pursuant to N.J.S.A. 40A:5-1 et. seq., the Borough is authorized and empowered to accept such grants; and

WHEREAS, pursuant to Resolution No. 16-231, the Borough accepted the grant and will use such funds towards the acquisition of the Galaxy Gardens Property; and

WHEREAS, an appraisal of the Galaxy Gardens Property was completed on or about September 27, 2016 by Mason Helmstetter Associates, LLC (“Helmstetter Appraisal”) setting forth the fair market value of the property as if remediated in the amount of \$900,000.00; and

WHEREAS, the Borough hereby approves the Helmstetter Appraisal and the fair market value of the Galaxy Gardens Property and hereby authorizes the issuance of an “Offer Letter” pursuant to N.J.S.A. 20:3-6 to the record owners of the Galaxy Gardens Property to purchase the property for the full fair market value in the amount of \$900,000.00 or some other amount the parties may amicably agree upon, or such amount which may be determined by a Court of competent jurisdiction, subject to the satisfaction of appropriate contingencies and holdbacks including, but not limited to, any environmental remediation regarding the Galaxy Gardens Property; and

WHEREAS, the Borough desires to formally authorize the acquisition of the Galaxy Gardens Property and the institution of eminent domain proceedings if necessary in order to acquire title to the Galaxy Gardens Property.

NOW, THEREFORE BE IT ORDAINED, by the Borough Council of the Borough of Woodcliff Lake, County of Bergen, State of New Jersey that:

SECTION 1. The Mayor and such other officials, consultants, agents, employees and professionals as may be necessary and appropriate, shall be, and are hereby, authorized to pursue all lawful means of acquiring the Galaxy Gardens Property specifically known and designated as 223 Woodcliff Avenue, Woodcliff Lake, New Jersey Block 1402 Lot 7 through negotiation and/or condemnation if necessary pursuant to N.J.S.A. 40A:12-5 and N.J.S.A. 20:3-1 et seq. including the filing of a Declaration of Taking, the filing of a Condemnation Complaint and all other proceedings related thereto; and

SECTION 2. The Borough Council hereby confirms its approval of the Helmstetter Appraisal. The amount to be offered by the Borough to the record owner of the Galaxy Gardens Property pursuant to N.J.S.A. 20:3-6 shall be the fair market value of \$900,000.00 or some other amount the parties may amicably agree upon or such amount which may be determined by a Court of competent jurisdiction, subject to the satisfaction of appropriate contingencies and holdbacks including, but not limited to, any environmental remediation regarding the Galaxy Gardens Property; and

SECTION 3. In conjunction with said acquisition, the Borough reserves and shall reserve any rights it may have had or may recover in any subsequent or pending action or by any administrative means, all costs of remediation and/or clean-up that have been incurred or may be incurred in the future by reason of environmental conditions which were in existence on the Galaxy Gardens Property as of or prior to the date of vesting of title and possession of the Galaxy Gardens Property in the name of the Borough; and

SECTION 4. In conjunction with said acquisition, the Borough reserves and shall reserve the right to seek in its sole discretion, any and all available legal, administrative and equitable remedies to compel the record owner and/or responsible parties to remediate and/or clean up the Galaxy Gardens Property in accordance with applicable state and

federal statutory and regulatory provisions. The Borough is not and shall not be liable for the clean-up and removal costs of any discharge or contamination which occurred or began prior to the Borough's ownership; and

SECTION 5. The Borough Attorney, any special counsel retained by the Borough, and the Borough Administrator are hereby authorized to hire and employ such consultants and experts as may be appropriate to effectuate such acquisition, whether by negotiation or eminent domain proceedings, and to pay said consultants and experts a reasonable fee for their services; and

SECTION 6. The Mayor and Borough Administrator are hereby authorized to execute and witness any documents or instruments necessary to acquire the Galaxy Gardens Property and/or any interests thereto; and

SECTION 7. If any word, phrase, clause, section or provision of this ordinance shall be adjudged by any Court or competent jurisdiction to be unenforceable, illegal or unconstitutional, such word, phrase, clause, section, or provision shall be severable from the balance of this Ordinance and the remainder of this Ordinance shall remain in full force and effect; and

SECTION 8. All ordinances of the Borough which are inconsistent with the provisions of this Ordinance, are hereby repealed to the extent of such inconsistency.

SECTION 9. This Ordinance shall take effect immediately upon final passage, approval, and publication as required by law.

Date: December 19, 2016

Attest: Deborah A. Dakin, RMC, CMR
Borough Clerk