

TOWNSHIP OF LOWER, COUNTY OF CAPE MAY, STATE OF NEW JERSEY

ORDINANCE #2018-16

Title: AN ORDINANCE AUTHORIZING THE TOWNSHIP OF LOWER TO CONVEY A DEED OF EASEMENT TO THE PROPERTY OWNERS OF BLOCK 369.01, LOT 1 IN ORDER TO PROVIDE SAID OWNERS ACCESS TO THE VILLAGE ROAD RIGHT-OF-WAY IN ORDER TO ALLOW FOR THE REPAIR, RECONSTRUCTION AND MAINTENANCE OF THE BULKHEAD LOCATED WITHIN THE VILLAGE ROAD RIGHT-OF-WAY

WHEREAS, Kelly and John Arena ("Arena") are the owners of certain property located at 513 Village Road a/k/a Block 369.01, Lot 1 ("Subject Property") on the official Tax Map of the Township of Lower; and

WHEREAS, there is currently a bulkhead located within the Village Road right-of-way, a portion of which is located on the Subject Property, which sustained significant damage which threatened the structural integrity of Arena's home and threatened to cause significant erosion to the surrounding lands; and

WHEREAS, Arena requested that the Township of Lower provide its consent so as to allow Arena the opportunity to file an Emergency Permit Application with the New Jersey Department of Environmental Protection ("NJDEP") in order to permit the reconstruction of the damaged bulkhead in order to secure Arena's residence and to prevent erosion; and

WHEREAS, the Township of Lower recognized the immediate and emergent nature of this request and agreed to provide its consent to the filing of an Emergency Permit Application by Arena in order to permit Arena to reconstruct, repair and extend the damaged bulkhead located within the Village Road right-of-way on the Subject Property; and

WHEREAS, in connection with the approval and authorization received from the NJDEP to permit Arena to complete the required and necessary repairs to the bulkhead the Township of Lower has determined that it is necessary to convey a right-of-way access easement to Arena so as to allow them access to the Village Road right-of-way in order to undertake required repairs; and

WHEREAS, N.J.S.A. 40A:12-1 et seq. permits the conveyance of an interest in land not needed for public purposes; and

WHEREAS, the public's interest in the Easement is not affected by the granting thereof as the easement provides for access to the right-of-way by Arena while maintained the public interest in the land itself; and

NOW, THEREFORE, BE IT ORDAINED by the Township Council of the Township of Lower, County of Cape May, State of New Jersey, as follows:

Section 1. The Township of Lower is hereby authorized to convey a deed of easement permitting access to the Village Road right-of-way over a portion of Block 369.01, Lot 1, which is owned by the Township of Lower, as further identified in **Exhibit A** which is attached hereto;

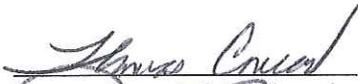
Section 2. The Mayor and Township Clerk are hereby authorized to execute all documents necessary for the conveyance of the Easement, including but not limited to executing a Deed of Easement, attached hereto as **Exhibit B**, and other required conveyance documents;

Section 3. The land subject to the Easement is not needed for a public purpose and it is determined to be in the best interests of the Township of Lower to permit access by Arena to the land in question by way of an Easement;

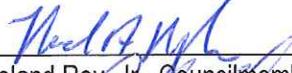
Section 4. If any section or provision of this Ordinance shall be held invalid in any Court of competent jurisdiction, the same shall not affect the other sections or provisions of this Ordinance, except so far as the section or provision so declared invalid shall be inseparable from the remainder or any portion thereof;

Section 5. All ordinances or parts of ordinances which are inconsistent herewith are hereby repealed to the extent of such inconsistency.

Section 6. This ordinance shall take effect immediately after final passage and publication in the manner provided by law.


Thomas Conrad, Councilmember


David Perry, Councilmember

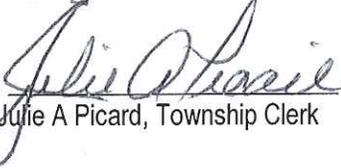

Roland Roy, Jr., Councilmember


Frank Sippel, Deputy Mayor


Erik Simonsen, Mayor

First Reading: August 6, 2018

Adopted: *August 20, 2018*

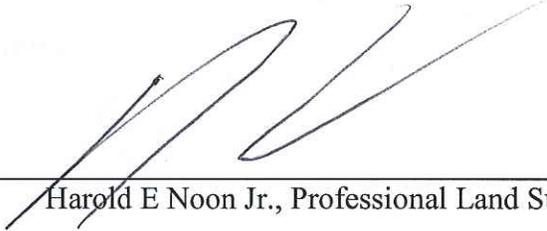
Attest: 
Julie A Picard, Township Clerk

DESCRIPTION FOR EASEMENT
TO BE GRANTED TO THE OWNERS OF BLOCK 369.01 LOT 1
IN ORDER TO
MAINTAIN AND REPAIR THE NEW BULKHEAD THROUGH A PORTION
OF THE CURRENT VILLAGE ROAD RIGHT OF WAY ADJOINING
BLOCK 369.01, LOT 1 (TAX MAP NUMBERS)
TOWNSHIP OF LOWER
CAPE MAY COUNTY, NEW JERSEY
July 13, 2018

BEGINNING at intersection of the Northerly line of Village Road (50' wide) with the common line between Block 369.01, Lots 1 and 2 said point being North 54 degrees 15 minutes 30 seconds West a distance of 169.89 feet from the intersection of said line of Village Road with the Westerly line of Bay Drive (50' wide); thence

1. South 35 degrees 44 minutes 30 seconds West a distance of 25.00 feet through the Village Road right of way to a point in the centerline of said Village Road; thence
2. North 54 degrees 15 minutes 30 seconds West a distance of 77.91 feet along the centerline of Village Road to a point; thence
3. North 21 degrees 42 minutes 20 seconds East a distance of 25.77 feet through said Village Road right of way to a point in the aforesaid Northerly line of Village Road; thence
4. South 54 degrees 15 minutes 30 seconds East a distance of 84.16 feet along the common line between Block 369.01, Lot 1 and the aforementioned line of Village Road to the POINT OF BEGINNING

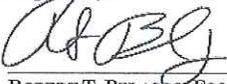
The above being shown as a portion of Village Road right of way on the official tax map of the Township of Lower when next revised.



Harold E Noon Jr., Professional Land Surveyor License Number 24GS03401400

GEOSURV NJ LLC, 377 Kings Highway, Cape May Court House, NJ 08210
(609) 849 9227 OR (609) 317 5650

DEED OF EASEMENT

Prepared by:

ROBERT T. BELASCO, ESQUIRE

This DEED OF EASEMENT is made on _____, 2018

BETWEEN TOWNSHIP OF LOWER, a municipal corporation of the State of New Jersey, whose address is 2600 Bayshore Road, Villas, New Jersey 08251 (hereinafter the "Grantor"),

AND JOHN ARENA AND KELLY ARENA, husband and wife, whose address is 513 Village Road, Villas, New Jersey 08251 (hereinafter the "Grantee").

The words "Grantor" and "Grantee" shall mean all Grantors and Grantees listed above.

GRANT OF EASEMENT. The GRANTOR hereby grants and conveys unto the GRANTEE, their successors and assigns, a perpetual easement through, over, upon and across that portion of GRANTOR'S lands hereinafter described and referred to as the easement area in the attached description of permanent easement. The term of this easement is perpetual so long as GRANTEE abides by the term of this easement.

CONSIDERATION. The GRANTEE have paid the sum of ONE (\$1.00) DOLLAR to GRANTOR as full consideration and total payment for the right-of-way access easement rights hereby granted. The GRANTOR hereby acknowledges the receipt of said consideration.

EASEMENT AREA. That area of the GRANTOR'S property which is the subject of this right-of-way access easement hereby granted and conveyed unto GRANTEE (the "Easement Area") is graphically depicted on the plan annexed hereto as **Exhibit A**, prepared by Harold E. Noon, Jr., PLS, New Jersey, License No. 24GS03401400, and more formally described herein:

BEGINNING at intersection of the Northerly line of Village Road (50' wide) with the common line between Block 369.01, Lots 1 and 2 said point being North 54 degrees 15 minutes 30 seconds West a distance of 169.89 feet from the intersection of said line of Village Road with the Westerly line of Bay Drive (50' wide); thence

1. South 35 degrees 44 minutes 30 seconds West a distance of 25.00 feet through the Village Road right of way to a point in the centerline of said Village Road; thence
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4. South 54 degrees 15 minutes 30 seconds East a distance of 84.16 feet along the common line between Block 369.01, Lot 1 and the aforementioned line of Village Road to the POINT OF BEGINNING.

The above being shown as a portion of Village Road right of way on the official tax map of the Township of Lower when next revised.

THIS DEED OF EASEMENT conveys to GRANTEE the right to utilize the easement area in perpetuity in order to maintain and repair the bulkhead located within the Village Road right-of-way, as set forth herein.

IT IS THE SPECIFIC INTENTION of the easement to permit GRANTEE to plan, construct, install, maintain and repair the bulkhead located within the Village Road right-of-way, as described and identified herein, as necessary and required.

THE TERMS OF THIS DEED OF EASEMENT are as follows:

1. GRANTOR and GRANTEE shall exercise due care in the manner in which rights hereunder are exercised.
2. GRANTOR and GRANTEE agree to exercise its rights with respect to the described area so as to not unreasonably interfere with the rights of the other party.
3. GRANTEE is permitted to the right to enter in and upon the described premises to plan, construct, install, maintain and repair the bulkhead located within the Village Road right-of-way as may be necessary and required.
4. GRANTEE shall have the right of ingress and egress to and over said described premises at any and all times for the purpose of doing anything necessary or useful or convenient for the enjoyment and use of the right-of-way easement herein granted.
5. GRANTOR shall not construct, install, alter or cause to be constructed, installed or altered, any improvements within the described premises that will interfere with or impede in any manner Grantee's ability to access or use this right-of-way easement.
6. GRANTEE at their sole cost and expense shall have the obligation and responsibility to properly maintain the Easement Area in a safe and clean condition in compliance with all ordinances and codes of the Township of Lower and the State of New Jersey.
7. GRANTEE agrees to indemnify and hold GRANTOR harmless from any and all liabilities, damages or injuries arising out of any conduct of GRANTEE or any of its employees or agents while accessing, using, repairing and/or maintaining the land which is the subject matter of this easement, or any and all liabilities, damages, or injuries arising from GRANTEE'S use of the land which is the subject of this easement, or from claims of third parties utilizing the Easement Area without the consent of the GRANTOR.
8. The GRANTOR hereby warrants that it is the owner in fee simple of the Easement Area described herein as of the date of this Deed of Easement, and has the complete right and power to execute this Deed, and as such will indemnify, defend and hold harmless the GRANTEE, or their successors or assigns, from any and all loss, costs, damages, claims, actions or liability on account of any and all defects in or lack of title, and disputes arising out of the grant herein.

IN WITNESS WHEREOF, GRANTOR and GRANTEE have signed and sealed this Deed the day and year first above written.

GRANTOR

TOWNSHIP OF LOWER

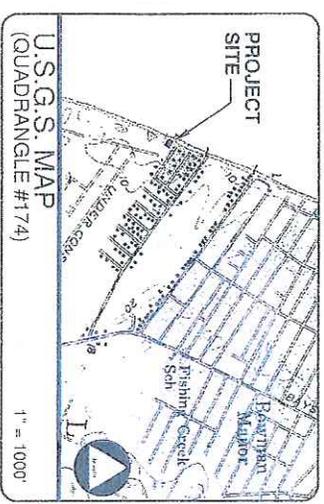
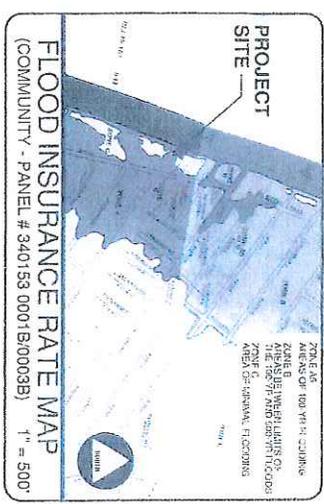
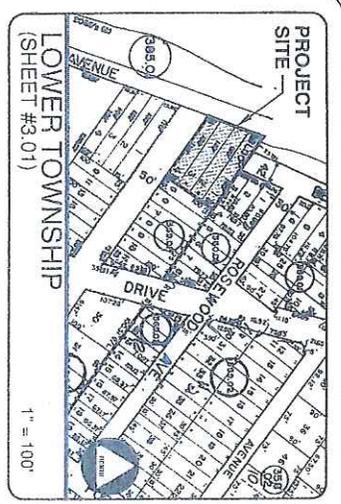
Attest: Julie Picard, Township Clerk

Erik Simonsen, Mayor

GRANTEE

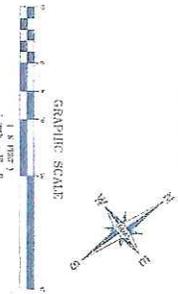
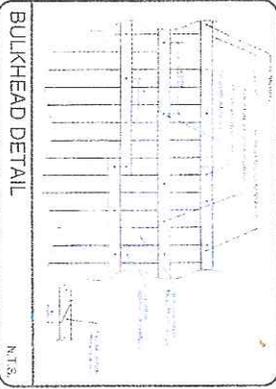
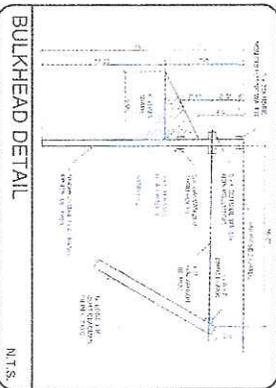
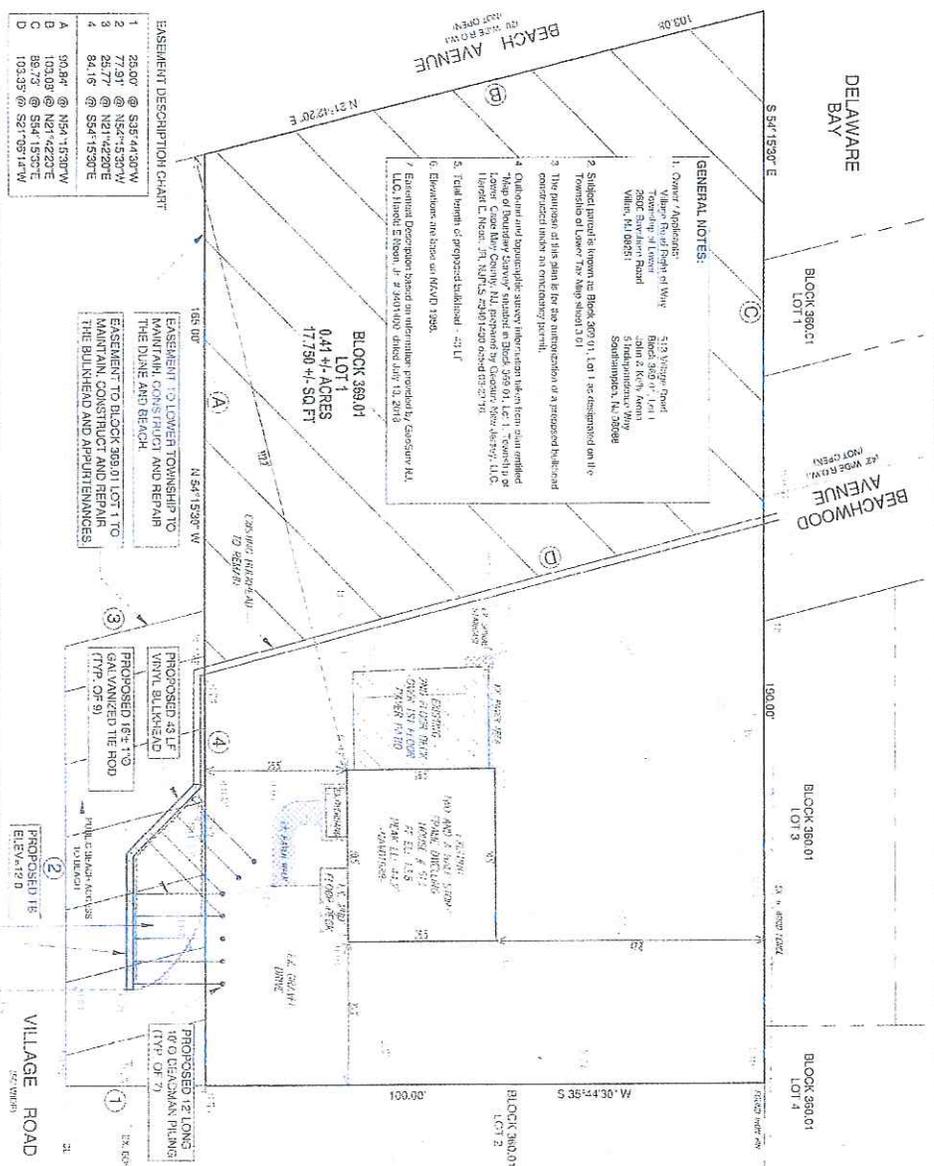
John Arena

Kelly Arena



NJDEP LAND USE EMERGENCY AUTHORIZATION PLAN

EBA Engineers - Landscape Architects - Planners



DATE: 05/20/19	DRAWN BY: NAW
SCALE: AS SHOWN	CHECKED BY: JHM
PROJECT: 19195	SHEET: 1 OF 1



OWNER: NJDEP	DATE: 05/20/19
PROJECT: 19195	SHEET: 1 OF 1

JOSEPH H. MAFFEI

PROFESSIONAL ENGINEER

No. P.E. Lic. #20424



EDA Engineering Design Associates, P.A.

NJDEP LAND USE EMERGENCY AUTHORIZATION PLAN

BLOCK 369.01, LOT 1

LOWER TOWNSHIP

CAPE MAY COUNTY, NEW JERSEY