

**JOHN SCOTT ABBOTT**  
ATTORNEY AT LAW  
9 SOUTH WASHINGTON AVENUE  
MARGATE, N.J. 08402-2301

(609) 823-4485  
FAX (609) 823-0707  
EMAIL: jsabbottlawoffice@comcast.net

March 24, 2014

City of Margate  
9001 Winchester Ave.  
Margate NJ 08402  
Attention:  
Mayor Michael Becker – mbecker414@aol.com  
Commissioner Maury Blumberg – maury.jerseyarch@verizon.net  
Commissioner Brenda Taube – commissionerertaube@margate-nj.com

Re: Shore Protection Project

Dear Mayor and Commissioners:

A meeting was held with representatives of the Army Corps of Engineers and NJDEP on Friday, March 21, 2014. Representatives of Ventnor, Longport and Margate met at Longport Borough Hall with a number of representatives of the Army Corps and State including Colonel Christopher Beckin, Bill Dixon, Assistant Attorney General, Dave Apy and other State and Federal officials.

A start date has not been established although in all probability the project will begin after Labor Day 2014. We were advised that the project has not yet been put out to bid. The State advised that it is moving forward with this project and will do so with or without the cooperation of Margate.

Margate's officials consisting of the Mayor, City Engineer Walberg and myself met after the general meeting with Assistant Attorney General David Apy and thereafter with the various DEP officials at an inspection of the bulkhead along Amherst Avenue. Request was once again made that the City of Margate execute a general easement granting permission to the State and Federal Government to construct the Shore Protection Project along Margate's beach front. Mr. Apy stated that if the Easement Agreement is not forthcoming, the State would implement condemnation proceedings so as to obtain an easement for the purposes of the Shore Protection Project.

You know my opinion. I do not believe we can prevail in court against the State and Federal Government. The State has the right to take the beach from Margate and to implement the Shore Protection Project. The only concession of any significance was made by Commissioner Martin at our meeting held on February 3, 2010 in Trenton. The Commissioner stated that the City of

Margate would not be required to sign the long term Shore Protection Agreement.

It has been mentioned a number of times by members of the Governing Body that perhaps the City would benefit from an outside or independent counsel's opinion. If such an opinion is to be obtained it must be done as soon as possible. To that end, I enclose the following documents:

1. Executive Order #140 dated September 25, 2013 signed by Governor Christy.
2. Copy of letter of Commissioner of the DEP, Robert Martin, dated December 4, 2013, addressed to Commissioner Blumberg, letter was addressed to each Margate elected official individually.
3. Letter from Acting Attorney General, John Hoffman, dated February 26, 2014.
4. Margate City Resolution 232 of 2013.
5. Letter of Mayor Becker to Commissioner Martin, Deputy Attorney Apy and Mr. Rosenblatt dated February 24, 2014.
6. N.J.S.A. 12:3-64 - Statutory Authorization for DEP to Condemn Land (note Department of Conservation and Economical Development was reorganized and is now known as the Department of Environmental Protection.)
7. Appellate Court decision *Archer v. Borough of Union Beach*, 107 N.J. Super. 77 (App. Div. 1969)

Please note Governor's Executive Order 140, page 3, references, among other things, N.J.S.A. 12:3-64. This statutory authority would most likely be the basis for the condemnation of Margate's beaches by the State. The Appellate Court in the case of *Archer v. Borough of Union Beach*, 107 N.J. Super. 77 (App. Div. 1969) (#7) confirmed this statutory authority as it was applied to a situation virtually identical to that facing Margate. In *Archer* the Borough of Union Beach appealed a condemnation proceeding instituted by the predecessor agency of the DEP. Beach lands were being acquired for the purpose of hurricane and shore protection. The Appellate Court stated that the Shore Protection Program was in connection with the Flood Control Act of 1962 passed by Congress. This Federal project in conjunction with the State of New Jersey necessitated the filing of a condemnation proceeding to acquire lands under the afore-cited statutory provision. The Borough challenged the right of the State to bring condemnation proceedings for the purpose of hurricane and shore protection. The Court, in a very brief but to the point decision, ruled against the Borough and stated the following:

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We have no doubt of the power of the Department under the statute in question to maintain these condemnation proceedings. The statute is general legislation for the public benefit and is to be read broadly so as to permit the Department to achieve the salutary purposes outlined in the act. Participation by the Department in the federal flood control program via this act is fully warranted. To the same effect, we conclude that the taking is for a public purpose, even though the program necessarily only affects particular areas.

Time is running short if the City is to obtain an additional legal opinion. It was my understanding that the group in opposition to the Shore Protection Program was going to engage its own legal representation. I have heard nothing further and have no names of law firms who have been contacted for that purpose. You will recall that the Mayor, at our last meeting, asked for any names of lawyers that anyone would like to engage for the purpose of obtaining a second legal opinion. If any lawyer is to be consulted, the documents and authority I have included with this letter must be a part of that review.

The Mayor will discuss the recently held meetings with you in further detail at our next scheduled Governing Body meeting.

Very truly yours,

  
John Scott Abbott,  
Margate City Solicitor

JSA:da

Encl.

cc: Richard Deaney, City Administrator ([rwdbad@aol.com](mailto:rwdbad@aol.com))  
Chief David Wolfson, Acting City Administrator ([wolfson\\_david@margate-nj.com](mailto:wolfson_david@margate-nj.com))  
Tom Hiltner, City Clerk ([hiltnerd@aol.com](mailto:hiltnerd@aol.com))  
Rosie Freed ([rfreed@margate-nj.com](mailto:rfreed@margate-nj.com))  
Ed Walberg ([ed.walberg@rve.com](mailto:ed.walberg@rve.com))  
Roger Rubin ([rubin\\_roger@margate-nj.com](mailto:rubin_roger@margate-nj.com))  
James Galantino, Construction Official ([galantion\\_jim@margate-nj.com](mailto:galantion_jim@margate-nj.com))  
Lisa McLaughlin, CFO ([lmclaughlin@margate-nj.com](mailto:lmclaughlin@margate-nj.com))  
Chief Tony Tabasso ([tabasso\\_anthony@margate-nj.com](mailto:tabasso_anthony@margate-nj.com))  
Frank Ricciotti ([ricciotti\\_frank@margate-nj.com](mailto:ricciotti_frank@margate-nj.com))