

**TOWNSHIP OF UPPER
CAPE MAY COUNTY
MINUTES FOR NOVEMBER 27, 2006**

REGULAR MEETING OF THE TOWNSHIP COMMITTEE –4:00 P.M.

CALL TO ORDER

SUNSHINE ANNOUNCEMENT

SALUTE TO THE FLAG

ROLL CALL

Barbara Camp	Present
Frank E. Conrad	Present
Curtis Corson	Absent
John “Jay” Newman	Present
Richard Palombo	Present

Also present were Municipal Clerk Wanda Gaglione, Finance Officer Patricia Garbutt, Municipal Attorney Daniel Young and Municipal Engineer Paul Dietrich.

**APPROVAL OF MINUTES - November 13, 2006 Regular Meeting and
Closed Session Minutes**

Moved by Jay Newman, second by Barbara Camp to approve the Minutes. During roll vote all four Committee members present voted in the affirmative.

REPORT OF GOVERNING BODY MEMBERS

Frank Conrad, reported on the GTAMA train ride scholarship fundraiser. He invited children from the Tuckahoe area to apply for the scholarship money. The Township received a letter from the NJDOT with more information of the Rt. 50 bridge replacement project. The bridge over the train tracks is scheduled to be replaced in 2007. He reminded everyone of the annual Christmas parade on Saturday, December 2, at 10:00 A.M.

Barbara Camp, reminded everyone that loose leaves are being picked up now. Leaves are to be raked into long rows and must be at least 25 feet away from storm drains.

Jay Newnam, he reported on the Indians Football banquet last night in that over 340 people attended. Winter sports are now in progress.

OTHER REPORTS

Wanda Gaglione, Municipal Clerk, invited everyone to stay after the meeting for the 6:30 PM tree lighting ceremony. The Noon Rotary Club will recognize their “Man of the Year” Reverend Lynch, the Uptown Singers will perform Christmas carols, and afterwards light refreshments will be served.

PUBLIC HEARING

1. **Plan Endorsement Petition-review recommendations from the Planning Board for submission of said petition to the State Planning Commission.** Mayor Palombo opened the hearing informing the public that the Plan Endorsement is finally ready to submit to the State Planning Commission for approval. This is something we are required to do and will allow us to take advantage of some ratables that could come into the Township and hopefully defray our school taxes. We are about 1 year ahead with our Master Plan review to coordinate it with what is required by the state at this time.

Paul Dietrich, Sr. P.E., Township Engineer, discussed stage of planning and documents that were being discussed. Introduced Marcia Shiffman for her presentation.

Marcia Shiffman, P.P. from Maser Consulting reviewed revisions since 2005 and the action items in the Memorandum of Understanding (MOU) with the Office of Smart Growth (OSG). She described proposed center boundaries and proposed core design features. She serves as the planning consultant to the Township for the Plan Endorsement process. Her comments included the following: The Plan Endorsement process was funded by the State of New Jersey. The Township submitted a Plan (or petition) in October, 2005. It was declared complete and then in April, 2006 the State Office of Smart Growth required some changes that the Township needed to make before the petition would be approved. It is important to the Township to receive approval of the petition because this will allow our CAFRA centers to be adopted, which are necessary to allow any kind of growth in the Township. (CAFRA centers in the entire State of NJ are set to expire in Feb. 2007.) In May, 2006, the Township signed a Memorandum of Understanding. There was an action plan that had to be addressed before the town could resubmit their petition. All of the action plan items required in the petition have been completed to date, with the exception of items that are subject to DEP approval after the Office of Smart Growth approval. Since May, 2006 there has been much work on the part of the Township working with the State, the NJDEP, and NJDOT, in the preparation and adoption of a Land Use Plan, a Stormwater Management Plan, a Natural Resource Inventory, and the preparation of a draft Housing Element. These are all required elements that this Township had to adopt before the Petition could be resubmitted and approved. These elements were adopted after the required public notice by the Planning Board on November 16, 2006. The deadline for submission of the Plan to the State of NJ is the end of this month.

Jay Newman, Township Committeeman, discussed why the Township is doing this to help get smart commercial growth like the Shoprite project in Marmora. Otherwise there will be no future commercial development to help taxes.

Several members of the public were concerned about the COAH Plan. Mr. Young explained that the Township cannot have an ordinance that excludes low income residents. Upper Township is under a state mandate to create 334 new affordable housing units. There was discussion of a recent lawsuit the Township fought in that a developer planned a 700+ unit housing complex in the Tuckahoe area under “Builder’s Remedy”. The Township was successful because the site contained wetlands. It was explained that a “Builder’s Remedy” allows developers to obtain court approval in municipalities without an Affordable Housing Plan. The developer can build any number of units he wants without complying with local zoning ordinances or regulations as long as the court believes it is reasonable. The Housing and Fair Share Plan will stop any potential court ordered development.

Mayor Palombo discussed that the Housing Plan is necessary because it gives the Township some control to determine how the state mandated affordable units will be created. The Plan provides for senior housing, homes for disabled persons, scattered site family housing and mobile home parks. It does not allow for group homes to include halfway type houses for drug rehabilitation or criminal probation. The Township Planning Board and Planning Professional attempted to design a plan which satisfied the state mandated units and resulted in the least negative impact on the Township.

Dan Young, Esq., Township Solicitor, discussed Township obligation to provide low/moderate income housing in accordance with Council on Affordable Housing (COAH) rules and the Township’s current status. Ms. Shiffman added comments on the number of units that the Township is obligated to provide under the 1st & 2nd round and the new 3rd round or growth share. Group homes were discussed further. Mr. Young explained that as required by state law, group homes are considered a permitted use in all residential districts and the requirements are the same as for single-family dwellings. The group homes considered would have only four bedrooms in each home, less than permitted under state law. Each bedroom would be considered 1 unit.

The plan identifies several tracts of Township owned land as appropriate property for this use. Township will control future building use through their property ownership and lease provisions that would otherwise be lost if these properties were sold to a developer.

The following members from the public commented on the Plan:

John Mirallegro, Linda Lane, asked if plan will promote projects like being developed in Rio Grande. Shiffman said that there are proposed limits to the size of stores to prevent some of the “Big Box” stores. Promote retail on 1st floor and office & residential on 2nd or 3rd

floors. He stated that the proposed project behind his house was a big surprise and the Township did not talk to the neighbors. Mayor, Rich Palombo responded that at this point this is a plan but the project has not been specifically designed yet. At that point the plan would be prepared with the specific site plan details.

Patricia Finnegan, Linda Lane, questioned whether the project site was accessible to center and necessary services as there are no sidewalks or businesses near the site. Mayor responded that the plan was a good one and that it meets the overall objective to meeting COAH certification while balancing the financial burden of all the Township residents.

Mary Ann Irmeler, Mark Ave, discussed meeting up with a prospective developer at the project site. They were discussing project specifics and intimating that they were going to develop the project. Mayor responded the Township has only developed a general plan for the Township and has not talked specifics or selected any specific developer for the project.

Jennifer Goudie, Stagecoach Road, asked what type of residents would occupy the group homes. She was concerned about drug and alcohol half-way-houses. Mayor said the plan does not specify, but most likely would be for adults with physical and/or mental disabilities.

Gary Barsoud, Linda Lane asked should be careful with what happens to the property.

Rich Kaczmariski, Evergreen Dr., said he was concerned about the proposed project on the site. What happens if the plan changes; and did not want to see 3-4 story buildings behind his home.

Thomas Finnegan, Linda Lane asked Township Committee where they lived. Discussed safety of children in the neighborhood. Worried about their safety with the type of element that group homes bring to a neighborhood. Committee discussed that the project would not include criminal or drug half-way-house occupants.

Edwart Irmeler, Mark Ave discussed meeting up with a prospective developer at the project site. They were discussing project specifics and intimating that they were going to develop the project. He asked the Township Committee to make the property open space. Discussion if project could meet Township standards for conforming subdivision. Mr. Dietrich stated that the property could be developed with 1-acre conforming lots.

Richard Frasca asked if Osprey Point gave the Township any credit. Since the project did not have any income restrictions so therefore it does not.

Wayne Lampson, how are we going to meet the future need and can we use that growth share money to pay for this. How did we get in the mess and why was this not addressed previously. The Committee answered that in previous administrations the thought was that Upper Township does not have city water or sewer services so that high density was out of the question. Due to modern technological advancements that is no longer a difficulty as seen in the recent development of Osprey Point.

John Peterson here representing Atlantic Co. Planning Dept., Corbin City Planning Board and Second Cape May Baptist Church. He feels Upper Township is on the right track and understands it is hard working with the State agencies. They are looking to see how Upper Township does things to use some lessons learned for their community in Corbin City. He felt that the Second Cape May Baptist Church project and the surrounding development should be included in the Seaville Town Center, and that the State is being shortsighted in limiting coverage on properties in PA2.

Charles Kona, Tuckahoe asked about the Center Boundaries and if they have changed from the last submittal. Mr. Dietrich and the Planner stated that they are mostly the same but the State has trimmed some areas again. Discussed timing of approval and location of proposed sewer services. Asked about the number of COAH required units.

Kevin Goudie, Stagecoach Road does not want the project here and feels that it is not a good location.

Fred Birnirt, Linda Lane, worried that the reval just raised his taxes and felt that the project would lower his property value.

Margaret Shelton, discussed house sales in this area compared to Foxboro development where another existing group home is located.

Rich Kaczmariski asked to increase the development fees to pay for the housing and put it somewhere else. Shiffman responded that fees collected under growth share could not be used to meet prior round obligation.

Public hearing ended at 6:40pm.

A recess was taken at 6:40 P.M. to allow everyone to attend the Rotary Club Tree Lighting Ceremony, motion to recess by Jay Newman, second by Frank Conrad with all four Committee members present voting in the affirmative. The meeting reconvened at 7:00 P.M.

RESOLUTIONS

- 2. Accepting of the Plan Endorsement Petition and Submission to the State Planning Commission.**

**TOWNSHIP OF UPPER
COUNTY OF CAPE MAY, NEW JERSEY
RESOLUTION
RESOLUTION NO. 228 -2006
RE: ACCEPTING OF THE PLAN ENDORSEMENT PETITION AND SUBMISSION
TO THE STATE PLANNING COMMISSION**

WHEREAS, the State Planning Act, pursuant to N.J.S.A 52:18A-196 et seq. authorizes municipalities to apply to the State of New Jersey, State Planning Commission; and

WHEREAS, the Township Committee of the Township of Upper, in the County of Cape May received a grant from the State of New Jersey, Department of Community Affairs, Office of Smart Growth (OSG) to prepare a Plan Endorsement Petition for initial Plan Endorsement and establishment of town centers in accordance with the New Jersey State Development and Redevelopment Plan; and

WHEREAS, Maser Consulting, P.A. was retained to undertake such a report and assisted the Township Planning Board and Petition Sub-committee; and

WHEREAS, the Township worked with the Township of Dennis and Township of Middle as part of an intermunicipal planning effort; and

WHEREAS, the Township Planning Board reviewed the Maser report entitled: “Plan Endorsement Petition, Upper Township, Cape May County” dated September, 2005 revised November, 2006 (the “Plan Endorsement Petition” or “Petition”) and supporting documentation and any and all other materials and information deemed necessary or desirable in connection with the investigation of the proposed redevelopment area; and

WHEREAS, the Township Planning Board conducted a public hearing to consider the Plan Endorsement Petition at a meeting on October 18, 2005 after providing due notice of the date of the hearing in accordance with N.J.A.C. 5:85-1.7(d); and

WHEREAS, the Township Planning Board, after the OSG and New Jersey Department of Environmental Protection required additional information, revised the Plan Endorsement Petition and conducted another public hearing to consider the Plan Endorsement Petition at a meeting on November 16, 2006 after providing due notice of the date of the hearing in accordance with N.J.A.C. 5:85-1.7(d); and

WHEREAS, the Township Planning Board, after due consideration of the Plan Endorsement Petition and supporting documentation and the comments and objections from the public made part of the public record and after consulting appropriate municipal departments officials and counsel, adopted a resolution in support of the Petition; and

WHEREAS, the Township Committee after review of the Plan Endorsement Petition and the Township Planning Board Resolution, as well as other evidence and testimony presented to it in connection therewith and comments from the public, desires to accept and endorse the Petition and submit the Petition to the State Planning Commission for approval; and

WHEREAS, the Township Committee desires to establish the Marmora-Palermo-Beesley’s Point Town Center, Seaville Town Center, Petersburg Village Center and Tuckahoe Village Center as delineated in the Plan Endorsement Petition; and

WHEREAS, the Township Committee will adopt an Environmental Assessment Ordinance within Chapter 20 of the Revised General Ordinance of the Township of Upper within 45 days of the receipt of the consistency report prepared by the Executive Director of the Office of Smart Growth; and

NOW THEREFORE, BE IT RESOLVED BY THE TOWNSHIP COMMITTEE OF THE TOWNSHIP OF UPPER, IN THE COUNTY OF CAPE MAY, NEW JERSEY, as follows:

1. The allegations of the preamble are incorporated herein by this reference.
2. The Mayor of the Township of Upper is hereby authorized to submit the Petition to the State Planning Commission and execute the Planning and Implementation Agreement.

Resolution No. 228 -2006

Offered by: Camp, Seconded by: Conrad

Adopted: November 17, 2006

Roll Call Vote:

<u>NAME</u>	<u>YES</u>	<u>NO</u>	<u>ABSTAINED</u>	<u>ABSENT</u>
Camp	<u> x </u>	<u> </u>	<u> </u>	<u> </u>
Conrad	<u> x </u>	<u> </u>	<u> </u>	<u> </u>
Corson	<u> </u>	<u> </u>	<u> </u>	<u> x </u>
Newman	<u> x </u>	<u> </u>	<u> </u>	<u> </u>
Palombo	<u> x </u>	<u> </u>	<u> </u>	<u> </u>

3. **Honoring Reverend George Lynch as the Ocean City-Upper Township (Noon) Rotary Club’s “Citizen of the Year for 2006”.**

**TOWNSHIP OF UPPER
CAPE MAY COUNTY
RESOLUTION
RESOLUTION NO. 229-2006
RE: HONORING REV. GEORGE LYNCH
AS THE OCEAN CITY-UPPER TOWNSHIP (NOON) ROTARY CLUB’S
“CITIZEN OF THE YEAR FOR 2006”**

WHEREAS, Rev. George Lynch has longtime served the community and the Seaville United Methodist Church with an enthusiastic and joyful spirit; and

WHEREAS, throughout his dedicated tenure of praiseworthy service to the Seaville United Methodist Church and the community, Rev. Lynch has earned the deepest respect of his colleagues and the community; and

WHEREAS, he is honored for his exemplary leadership, inspiring dedication and active involvement with our community; and

WHEREAS, Rev. Lynch is to be personally honored for being named the Ocean City-Upper Township (Noon) Rotary Club’s “Citizen of the Year for 2006”; and

WHEREAS, the Township of Upper wishes to publicly acknowledge this outstanding accomplishment.

NOW, THEREFORE, BE IT RESOLVED by the Township Committee of the Township of Upper, in the County of Cape May and State of New Jersey, to extend to Rev. George Lynch sincere congratulations on being named the Ocean City-Upper Township (Noon) Rotary Club’s “Citizen of the Year for 2006” and convey our very best wishes for his future endeavors.

GIVEN UNDER OUR HANDS and the seal of the Township of Upper this 27th day of November, 2006.

Resolution No. 229-2006
Offered by: Palombo, Seconded by: Newman
Adopted: November 27, 2006
Roll Call Vote:

<u>NAME</u>	<u>YES</u>	<u>NO</u>	<u>ABSTAINED</u>	<u>ABSENT</u>
Camp	___x___	_____	_____	_____
Conrad	___x___	_____	_____	_____
Corson	_____	_____	_____	___x___
Newman	___x___	_____	_____	_____
Palombo	___x___	_____	_____	_____

ORDINANCES

4. Public Hearing and Final Adoption of Ordinance No. 023-2006: Re: An Ordinance accepting Real Property known as Block 801 Lot 1 on the Municipal Tax Map of the Township of Upper, County of Cape May and State of New Jersey by gift. During the Public Hearing portion of the meeting there were no speakers from the public. Moved by Jay Newman, second by Barbara Camp to adopt Ordinance 023-2006. During roll call vote all four Committee members present voted in the affirmative.

**TOWNSHIP OF UPPER
CAPE MAY COUNTY
ORDINANCE
ORDINANCE NO. 023-2006
RE: AN ORDINANCE ACCEPTING REAL PROPERTY KNOWN AS BLOCK 801
LOT 1 ON THE MUNICIPAL TAX MAP OF
THE TOWNSHIP OF UPPER,
COUNTY OF CAPE MAY AND STATE OF NEW JERSEY BY GIFT**

WHEREAS, the Township of Upper has received an offer to convey property to the Township by gift from Joseph A. Del Duca and Melinda T. Del Duca; and

WHEREAS, said property is commonly known as Lot 1 in Block 801 on the municipal tax map located at Commonwealth Avenue and Hawthorne Avenue, Upper Township, New Jersey; and

WHEREAS, the Township Committee of the Township of Upper has considered such proposal and has determined to accept said property subject to the terms and conditions of this Ordinance.

NOW, THEREFORE, BE IT ORDAINED by the Township Committee in the Township of Upper, County of Cape May and State of New Jersey as follows:

SECTION 1: AUTHORIZATION TO ACCEPT BLOCK 801, LOT 1:

The Township of Upper is hereby authorized to accept the conveyance of the following described parcel:

Block 801, Lot 1 on the municipal tax map of the Township of Upper, State of New Jersey.

SECTION 2: POLICY: The Township accepts said real property by gift pursuant to its stated policy of acquiring certain properties in Upper Township as part of or in conjunction with a policy of acquiring property in Strathmere for open space and that is adjacent to other property owned by the Township.

SECTION 3: DUTY OF PROPERTY OWNER: In order to accept the conveyance herein, the property owner must provide evidence satisfactory to the Township that there are no liens or encumbrances except for ad valorem real estate taxes affecting the property; that the title is marketable; that there are no undisclosed ownership interests; that the property is not subject to any environmental hazards or conditions; and is not subject to any pending or threatened environmental enforcement action. The foregoing shall not prohibit the Township from accepting such conveyance if the property is subject to a tidelands or riparian claim of the State of New Jersey.

SECTION 4: EFFECTIVE DATE: This Ordinance shall take effect immediately upon final adoption and publication as required by law.

NOTICE IS HEREBY GIVEN THAT THE FOREGOING ORDINANCE WAS INTRODUCED FOR FIRST READING AT A MEETING OF THE TOWNSHIP COMMITTEE OF THE TOWNSHIP OF UPPER HELD ON THE 23rd OF October, 2006 AND WILL BE TAKEN UP FOR CONSIDERATION AS TO FINAL ADOPTION AT A PUBLIC HEARING OF THE TOWNSHIP COMMITTEE OF THE TOWNSHIP OF UPPER TO BE HELD ON THE 27th DAY OF November, 2006 AT 4:00 P.M. AT THE TOWNSHIP HALL, TUCKAHOE, NEW JERSEY.
BY ORDER OF THE TOWNSHIP COMMITTEE OF THE TOWNSHIP OF UPPER.

WANDA GAGLIONE, TOWNSHIP CLERK
TOWNSHIP OF UPPER

5. Public Hearing and Final Adoption of Ordinance 024-2006, re: An Ordinance accepting real property known as Block 319, Lots 27 through 60 on the Municipal Tax Map of the Township of Upper, County of Cape May and State of New Jersey by gift. As discussed at the introduction meeting of this ordinance, this property is being accepted without the benefit of title search or title insurance and that due to environmental constraints such as wetlands, it would be used for open space. During the Public Hearing portion of the meeting there were no speakers from the public. Moved by Frank Conrad, second by Jay Newman to adopt Ordinance 024-2006. During roll call vote all four Committee members present voted in the affirmative.

**TOWNSHIP OF UPPER
CAPE MAY COUNTY
O R D I N A N C E**

ORDINANCE NO. 024-2006

**RE: AN ORDINANCE ACCEPTING REAL PROPERTY KNOWN AS BLOCK 319
LOTS 27 THROUGH 60 ON THE MUNICIPAL TAX MAP OF THE TOWNSHIP
OF UPPER, COUNTY OF CAPE MAY AND STATE OF NEW JERSEY BY GIFT**

WHEREAS, the Township of Upper has received an offer to convey property to the Township by gift from Margaret J. Bedell and Aloysius J. Bedell; and

WHEREAS, said property is commonly known as Lots 27 through 60 in Block 319 on the municipal tax map located at Pennsylvania Avenue, Upper Township, New Jersey; and

WHEREAS, the Township Committee of the Township of Upper has considered such proposal and has determined to accept said property subject to the terms and conditions of this Ordinance.

NOW, THEREFORE, BE IT ORDAINED by the Township Committee in the Township of Upper, County of Cape May and State of New Jersey as follows:

SECTION 1: AUTHORIZATION TO ACCEPT BLOCK 319, LOTS 27

THROUGH 60: The Township of Upper is hereby authorized to accept the conveyance of the following described parcel:

Block 319, Lots 27 through 60 on the municipal tax map of the Township of Upper, State of New Jersey.

SECTION 2: POLICY: The Township accepts said real property by gift pursuant to its stated policy of acquiring certain properties in Upper Township as part of or in conjunction with a policy of acquiring property for open space.

SECTION 3: STATUS OF TITLE AND CONDITION OF PROPERTY:

The Township shall accept the conveyance herein by way of Quit Claim Deed. This conveyance is without the benefit of a title search or title insurance. The cost of a title search and title insurance is prohibitive in light of the value of the property. The township engineer has determined that the subject property is not buildable or developable, and as such, the township committee has determined that the cost of title insurance and a title search is not warranted. The township engineer has inspected the property and is satisfied that the property is not subject to environmental hazards and is not subject to any pending or threatened environmental enforcement action.

SECTION 4: EFFECTIVE DATE: This Ordinance shall take effect immediately upon final adoption and publication as required by law.

NOTICE IS HEREBY GIVEN THAT THE FOREGOING ORDINANCE WAS INTRODUCED FOR FIRST READING AT A MEETING OF THE TOWNSHIP COMMITTEE OF THE TOWNSHIP OF UPPER HELD ON THE 23rd OF October, 2006 AND WILL BE TAKEN UP FOR CONSIDERATION AS TO FINAL ADOPTION AT A PUBLIC HEARING OF THE TOWNSHIP COMMITTEE OF THE TOWNSHIP OF UPPER TO BE HELD ON THE 27th DAY OF November, 2006 AT 4:00P.M. AT THE TOWNSHIP HALL, TUCKAHOE, NEW JERSEY.

BY ORDER OF THE TOWNSHIP COMMITTEE OF THE TOWNSHIP OF UPPER.

6. Introduction and First Reading of Ordinance No. 026-2006, Re: An Ordinance accepting Real Property known as Block 830, Lot 12 on the Municipal Tax Map of the Township of Upper, County of Cape May and State of New Jersey by gift.

Motion to introduce Ordinance No. 026-2006 by Jay Newman, second by Barbara Camp with Public Hearing and Final Adoption scheduled for 12/11/2006 at 7:30 P.M. During roll call vote all four Committee members present voted in the affirmative.

**TOWNSHIP OF UPPER
CAPE MAY COUNTY
O R D I N A N C E
ORDINANCE NO. 026-2006
RE: AN ORDINANCE ACCEPTING REAL PROPERTY KNOWN AS BLOCK 830
LOT 12 ON THE MUNICIPAL TAX MAP OF THE TOWNSHIP OF UPPER,
COUNTY OF CAPE MAY AND STATE OF NEW JERSEY BY GIFT**

WHEREAS, the Township of Upper has received an offer to convey property to the Township by gift from Edward and Lyn Tetteimer; and

WHEREAS, said property is commonly known as Lot 12 in Block 830 on the municipal tax map located at 29 Randolph Avenue, Strathmere, Upper Township, New Jersey; and

WHEREAS, the Township Committee of the Township of Upper has considered such proposal and has determined to accept said property subject to the terms and conditions of this Ordinance.

NOW, THEREFORE, BE IT ORDAINED by the Township Committee in the Township of Upper, County of Cape May and State of New Jersey as follows:

SECTION 1: AUTHORIZATION TO ACCEPT BLOCK 830, LOT 12:

The Township of Upper is hereby authorized to accept the conveyance of the following described parcel:

Block 830, Lot 12 on the municipal tax map of the Township of
Upper, State of New Jersey.

SECTION 2: POLICY: The Township accepts said real property by gift pursuant to its stated policy of acquiring certain properties in Upper Township as part of or in conjunction with a policy of acquiring property for open space and that is adjacent to other property owned by the Township.

SECTION 3: DUTY OF PROPERTY OWNER: In order to accept the conveyance herein, the property owner must provide evidence satisfactory to the Township that there are no liens or encumbrances except for al valorem real estate taxes affecting the property; that the title is marketable; that there are no undisclosed ownership interests; that the property is not subject to any environmental hazards or conditions; and is not subject to any pending or threatened environmental enforcement action. The foregoing shall not prohibit the Township from accepting such conveyance subject to encumbrances or conditions deemed acceptable to the Township.

SECTION 4: OPEN SPACE: The subject property shall be used only for open space and passive recreation and shall remain part of the Strathmere beach and dune system.

SECTION 5: EFFECTIVE DATE: This Ordinance shall take effect immediately upon final adoption and publication as required by law.

NOTICE IS HEREBY GIVEN THAT THE FOREGOING ORDINANCE WAS INTRODUCED FOR FIRST READING AT A MEETING OF THE TOWNSHIP COMMITTEE OF THE TOWNSHIP OF UPPER HELD ON THE 27th OF NOVEMBER, 2006 AND WILL BE TAKEN UP FOR CONSIDERATION AS TO FINAL ADOPTION AT A PUBLIC HEARING OF THE TOWNSHIP COMMITTEE OF THE TOWNSHIP OF UPPER TO BE HELD ON THE 11th DAY OF DECEMBER, 2006 AT 7:30 P.M. AT THE TOWNSHIP HALL, TUCKAHOE, NEW JERSEY.

BY ORDER OF THE TOWNSHIP COMMITTEE OF THE TOWNSHIP OF UPPER.

WANDA GAGLIONE, TOWNSHIP CLERK
TOWNSHIP OF UPPER

7. Introduction and First Reading of Ordinance No. 020–2006, Re: Growth Based Affordable Housing. Motion to introduce Ordinance No. 020-2006 with a minor correction as shown in the last line of section 20-14.6 paragraph b. Motion by Barbara Camp, second by Frank Conrad with Public Hearing and Final Adoption scheduled for 12/11/2006 at 7:30 P.M. During roll call vote all four Committee members present voted in the affirmative.

**TOWNSHIP OF UPPER
CAPE MAY COUNTY
O R D I N A N C E
ORDINANCE NO. 020 -2006
RE: Growth Based Affordable Housing**

WHEREAS, the Township of Upper the New Jersey Supreme Court and New Jersey Legislature have recognized and mandated in So. Burl. Co. NAACP v. Mount Laurel, 92 N.J. 158 (1983) (“Mount Laurel II”) and the Fair Housing Act, N.J.S.A. 52:27D-301, et seq. (“FHA”) that every municipality in New Jersey has an affirmative obligation to facilitate the provision of affordable housing; and

WHEREAS, the New Jersey Council on Affordable Housing (“COAH”) is the State administrative agency created pursuant to the FHA vested with primary jurisdiction for the administration of affordable housing obligations in accordance with sound regional planning considerations in New Jersey; and

WHEREAS, COAH’s Third Round Substantive Rules (N.J.A.C. 5:94-1 et seq.) implement a “growth share” approach to affordable housing production which requires affordable housing to be produced in conjunction with market-priced residential and nonresidential growth and development within the Township of Upper; and

WHEREAS, the Township of Upper desires to implement the “growth share” policies promulgated by COAH in its Third Round Substantive Rules in an effort to foster the production of affordable housing opportunities for qualified low and moderate income households through COAH’s third round, which extends from 1999 to 2014.

NOW, THEREFORE, BE IT ORDAINED AND ESTABLISHED by the Township Committee of the Township of Upper that the Zoning Chapter XX of the Township of Upper be and is hereby amended as follows:

The following new Section 20-14 entitled “ Growth Based Affordable Housing “ is hereby added to the Township of Upper’s Zoning Ordinance, to read as follows:

20-14.1 Applicability

a. This subsection of the land use regulations of the Township of Upper sets forth mechanisms by which developers shall provide for a fair share of affordable housing based on growth that is associated with development taking place within the Township of Upper.

b. Residential Development. Except as exempted in §20-14.2, all residential development that results in the construction of new market-priced dwelling units in accordance with N.J.A.C. 5:94-1 et seq., shall be subject to the “growth share” provisions of this ordinance.

c. Non-residential development. Except as exempted in §20-14.2, all non-residential development that results in an increase in gross floor area of any existing non-residential structure or the construction of a new non-residential structure in accordance with N.J.A.C. 5:94-1 et seq., shall be subject to the “growth share” provisions of this ordinance.

§ 20-14.2 Exemptions

The following are exempted from the provisions of this Chapter:

- a. Developments that received preliminary or final subdivision or site plan approval from the Planning Board and/or Zoning Board of Adjustment, as applicable, prior to the effective date of this ordinance.
- b. Residential developments that have been zoned to produce an affordable housing set-aside greater than the growth share requirements of this Article or that are intended to include only low and moderate income housing units.
- c. Public facilities and public schools.
- d. Not-for-profit facilities including churches and private universities
- e. Existing single family residential lots that have existed prior to the effective date of this ordinance.

§ 20-14.3 Residential Growth Share Provisions

- a. All residential development which results in the construction of one or more new market-priced dwelling units shall provide non-age restricted affordable housing at a ratio of one affordable unit for every eight market-priced units constructed on-site.
- b. All residential development consisting of eight or more residential units shall provide one non-age restricted affordable housing unit on-site for every eight market-priced units.
- c. For developments that result in a number of market-priced residential units not evenly divisible by eight, the developer may construct the additional affordable unit on-site or alternatively, the developer may make a payment in lieu of constructing the additional affordable unit. If the developer selects the latter option, the amount of said payment shall be

established by subtracting any whole multiples of eight from the total number of market-priced residential units being created, dividing any remaining number of units by eight and multiplying the resulting fraction by the established cost to construct one affordable residential unit (“Affordable Unit Cost”).

d. All residential development consisting of less than eight residential units may provide one affordable unit on-site or may make a payment in lieu of constructing the proportionate fraction of the affordable housing unit required. If the developer selects the latter option, the amount of said payment shall be established by dividing the number of market-priced units by eight and multiplying the resulting fraction by the Affordable Unit Cost.

e. As an alternative to fulfilling the affordable housing requirements set forth in b. through d. above, developers of residential units may elect to construct affordable housing units off-site but within the Township of Upper. If the developer elects to construct the affordable unit off-site but within the Township of Upper, each on-site unit otherwise required to be affordable to a low or moderate income household may be converted to a market-priced unit, but the developer’s growth share obligation shall be increased accordingly and reflected in the number of units being constructed off-site but within the Township.

f. No density increase shall be permitted for the construction of affordable housing.

§20-14.4 Non-Residential Growth Share Provisions

a. All non-residential development that results in an increase in gross floor area of any existing non-residential building or the construction of a new non-residential building

in the Township of Upper shall provide one non-age restricted affordable unit for every 25 jobs that results from the application of standards adopted by COAH (presently found in Appendix E of N.J.A.C. 5:94-1 et seq.) and based on use groups, as defined by the International Building Code (IBC) which has been incorporated by reference into the Uniform Construction Code (UCC).

b. All non-residential development shall provide one unit of affordable housing for every 25 jobs created by new or expanded development. Determinations of the number of jobs created shall be based on the new or expanded floor area in the development and the conversion factors, by use group, published by COAH as Appendix E in N.J.A.C. 5:94-1 et seq.

c. Except as set forth in 20-14.4d below, non-residential developers shall provide for their affordable housing unit obligation off-site but within the Township of Upper.

d. As an alternative to fulfilling the affordable housing requirements set forth in 20-14.3 and 20-14.4 above, the non-residential developer may make a payment in lieu of constructing the affordable units. The amount of said payment shall be determined by establishing the number of jobs to be created in a development by using the conversion factors published by COAH as Appendix E in N.J.A.C. 5:94-1 et seq., dividing by 25 to determine the number of affordable housing units required and multiplying the resulting figure by the Affordable Unit Cost.

e. For developments that result in a number of jobs not evenly divisible by 25, the developer may construct the additional affordable unit off-site in accordance with subsection 20-14.4.c above or alternatively, the developer may make a payment in lieu of constructing an additional affordable unit in accordance with subsection 20-14.4d above. If

the developer selects the latter option, the amount of said payment shall be established by subtracting any whole multiples of 25 from the total number of jobs being created, dividing any remaining number of jobs by 25 and multiplying the resulting fraction by the Affordable Unit Cost.

f. All non-residential development creating less than 25 jobs may provide one affordable unit off-site in accordance with subsection 20-14.4.c above or may make a payment in lieu of constructing an affordable housing unit. If the developer selects the latter option, the amount of said payment shall be established by dividing the number of jobs by 25 and multiplying the resulting fraction by the Affordable Unit Cost.

g. No density increase shall be permitted for the construction of affordable housing.

§ 20-14.5 Mixed Use District Growth Share Provisions

a. “Mixed Use District” are defined as zoning districts that permit both residential and non-residential construction.

b. In a Mixed Use District, residential development shall provide one affordable housing unit on-site for every eight market-priced units.

c. In a Mixed Use District, non-residential development shall provide one affordable housing unit on-site for every 25 jobs created by new or expanded development. Determinations of the number of jobs created shall be based on the new or expanded floor area in the development and the conversion factors, by use group, published by COAH as Appendix E in N.J.A.C. 5:94-1 et seq. Affordable units may be part of or included within a mixed use structure or may be constructed in a separate building(s) on the same site.

d. For developments in Mixed Use Districts that result in a fractional affordable housing obligation, the developer may construct the additional affordable unit on-site or alternatively, the developer may make a payment in lieu of constructing the additional affordable unit only. The amount of said payment for non-residential development shall be determined by establishing the number of jobs to be created in a development by using the conversion factors published by COAH as Appendix E in N.J.A.C. 5:94-1 et seq., subtracting any whole multiples of 25 from the total number of jobs being created, dividing any remaining number of units by 25 and multiplying the resulting fraction by affordable unit cost. The amount of said payment for residential development shall be determined by subtracting any whole multiples of eight from the total number of market-priced residential units being created, dividing any remaining number of units by eight and multiplying the resulting fraction by the Affordable Unit Cost.

§ 20-14.6 General Provisions for Constructing Affordable Units

a. Affordable housing units being constructed on-site or off-site shall meet the requirements of Township of Upper affordable housing ordinance then currently in effect, and shall be in conformance with COAH's third round rules at N.J.A.C. 5:94-1 et seq. and the Uniform Housing Affordability Controls at N.J.A.C. 5:80-26.1 et seq., including, but not limited to, requirements regarding phasing schedule, controls on affordability, low/moderate income split, heating source, maximum rent and/or sales prices, affordability average, bedroom distribution, and affirmative marketing.

b. Developers electing to create affordable housing units elsewhere within the Township may do so within existing buildings, whether converted, reconstructed or

purchased for buy down or rental subsidy assistance in any zone of the Township of Upper as set forth and regulated in this article. Said units shall not be permitted to create or expand any non-conforming uses within the zone.

c. The reconstruction or conversion of any existing dwelling in which all such dwelling units are deed restricted for affordability to and occupancy by low and moderate income households shall be permitted as of right, subject to meeting all other requirements of this Section 20-14 notwithstanding any other provision of this Ordinance to the contrary.

d. To the greatest extent possible, affordable housing units being provided within inclusionary developments shall be disbursed throughout inclusionary developments and shall be located within buildings designed to be architecturally indistinguishable from the market-priced units otherwise being constructed within the development.

e. In single-family residential zones, single-family attached buildings in the form of semi-detached (side-by-side) units or two-family (over and under) units buildings shall be deemed to be permitted uses in the underlying zone when created for the purpose of meeting the growth share obligation on-site. These units shall be constructed within the development. The remaining portion of the project that is not considered to be an affordable housing unit shall conform to the requirements of the underlying zone.

f. All required setbacks, building height and impervious coverage limits for the zone shall be met on the lot except that existing setback deficiencies and other nonconformities of the lot and/or building(s) may be continued, for as long as the buildings remain on the site without the need for additional variances.

§20-14.7 Payment in Lieu Provisions

a. Payments in lieu of the construction of affordable housing. The Affordable Unit Cost shall be based upon a proportionate share of the total project cost embodied in one or more pro-formas for the construction an affordable housing development elsewhere within the Township of Upper. Said proforma(s) shall be on file in the office of the Township Clerk and shall be updated by Resolution by Township Committee at least once per year.

b. The payment in lieu of construction to be made by the developer may be subject to negotiation with the Township based upon the following considerations: the actual cost of buying down or subsidizing an existing or planned market priced dwelling unit to achieve affordability; the actual land cost of site(s) identified for off-site affordable housing construction with the Township or reasonable and acceptable offers to substitute land, site preparation and/or construction services for all or a portion of the monetary payment otherwise required.

c. Regarding of the mechanism selected by the developer for satisfying the required number of affordable housing units, any development or portion thereof that generates a fraction of an affordable housing unit (because the development contains fewer than or more than a number of units that is evenly divisible by eight) shall be required to make a payment in lieu of construction for that fraction of a units based upon the pro-rated cost of constructing an affordable housing unit in the Township of Upper.

d. All payments in lieu of constructing affordable housing shall be deposited by the Township of Upper into an affordable housing trust fund to be established by the Township of Upper in conformance with regulations established by COAH and shall at all times be identifiable from development fees. These funds shall be used in accordance with

regulations established by COAH to create new affordable housing opportunities within the physical boundaries of the Township of Upper.

e. All payments shall be made to the Township Treasurer before the issuance of the first building permit.

§20-14.8 Other Requirements

a. A proposed affordable housing plan shall be submitted to the Planning Board / Zoning Board at the time application is made for any development requiring growth share affordable housing pursuant to this Section. The Plan shall be a condition of “completeness” determination. All Plans shall be the subject of review by the Township Affordable Housing Officer or appointee for consistency with COAH’s Rules and with the Town’s third round Housing Element and Fair Share Plan. Compliance with all of the terms of COAH’s Rules and with the approved plan shall be a condition of development plan approval and may be covered by appropriate performance and maintenance guarantees as with any other required improvement.

b. Where an odd number of low and moderate income housing units are required to be provided, the majority of the units shall be low income units. Where there are an insufficient number of affordable units provided to meet the bedroom distribution requirements of COAH’s Rules, the first unit shall be a two bedroom unit, the second unit shall be a one-bedroom unit and third unit shall be a three bedroom unit. Otherwise, the bedroom distribution shall be in strict accordance with COAH’s Rules.

c. It shall be the developer’s responsibility, at its sole cost and expense, to pay the per unit cost of the initial advertising and ongoing administration of the controls on

affordability pursuant to the contract between the Township and the experienced administrative entity. The designated administrative entity shall file with the Township Affordable Housing Officer or designee such certification, reports and or monitoring forms as may be required by COAH.

d. The use of any of the foregoing mechanisms for providing affordable housing within the Township of Upper shall be limited to the provision of non-age restricted affordable housing units in compliance with all of the COAH's Rules set forth at N.J.A.C. 5:94-1 et seq., unless specifically waived by the Township.

REPEAL OF CONFLICTING ORDINANCES

Any ordinances of the Township of Upper that are in conflict with this Ordinance are hereby repealed to the extent of such conflict.

SEVERABILITY

If any part of this Ordinance shall be deemed invalid, such parts shall be severed and the invalidity thereof shall not effect the remaining parts of this Ordinance.

EFFECTIVE DATE

This Ordinance shall take effect upon passage and publication as required by law.

CODIFICATION: This Ordinance shall be codified in Chapter 20 of the Upper Township Code commencing at 20-14.1.

NOTICE IS HEREBY GIVEN THAT THE FOREGOING ORDINANCE WAS INTRODUCED FOR FIRST READING AT A MEETING OF THE TOWNSHIP COMMITTEE OF THE TOWNSHIP OF UPPER HELD ON THE 27TH DAY OF NOVEMBER, 2006 AND WILL BE TAKEN UP FOR CONSIDERATION AS TO FINAL ADOPTION AT A PUBLIC HEARING OF THE TOWNSHIP 11TH DAY OF DECEMBER, 2006 AT 7:30 P.M. AT THE TOWNSHIP HALL, TUCKAHOE, NEW JERSEY.

BY ORDER OF THE TOWNSHIP COMMITTEE OF THE TOWNSHIP OF UPPER.

CORRESPONDENCE

NEW BUSINESS

8. Master Plan Re-examination report, etc.--from Upper Township Planning Board.

Motion to accept the report by Barbara Camp, second by Jay Newman with all four Committee members present voting in the affirmative.

9. Housing and Fair Share Plan report--from Upper Township Planning Board.

Motion to accept the report by Barbara Camp, second by Jay Newman with all four Committee members present voting in the affirmative.

10. M. Stella Venditti—donation of Block 332, Lot 37 to the Township. Lots included are Lots 37 to 40, property is vacant with part wetlands and part wooded areas. The Engineer is satisfied there are no environmental problems with the tract. Motion made by Richard Palombo, second by Jay Newman to accept the property on condition that there are no problems with the title search. During roll call vote all four Committee members present voted in the affirmative.

11. Richard and Shannon Broschard--request for street vacation for Lincoln Blvd. and First Avenue, Petersburg. The map presented with the application was unclear, motion to table to future meeting by Frank Conrad, second by Barbara Camp with all four Committee members present voting in the affirmative.

UNFINISHED BUSINESS:

DISCUSSION

PAYMENT OF BILLS:

“I hereby move that all claims submitted for payment at this meeting be approved and then incorporated in full in the minutes of this meeting.” Moved by Frank Conrad, second by Barbara Camp with all four Committee members present voting in the affirmative.

Bills submitted for payment: \$129,451.15

Payroll: \$144,768.05

REPORT OF MUNICIPAL DEPARTMENTS:

12. MUA Report.

Report is available for inspection in the Clerk’s Office.

PUBLIC COMMENT

CLOSED SESSION

Motion by Jay Newman, second by Barbara Camp to close the regular portion of the meeting and go into an executive session. During roll call vote all four Committee members present voted in the affirmative.

13. Resolution to conduct a closed meeting pursuant to N.J.S.A. 10:4-12, from which the public shall be excluded.

RECONVENE PUBLIC PORTION OF MEETING

Motion was made by Jay Newman, second by Frank Conrad to forward the letter regarding Bayberry Cove Condominium and the Municipal Services Act to conflict attorney George Neidig. During roll call vote all four Committee members present voted in the affirmative.

ADJOURNMENT

There being no further business this evening the meeting was adjourned at 7:40 P.M. Next meeting to be December 11, 2006 at 7:30 P.M.

Minutes prepared by

Wanda Gaglione, RMC
Municipal Clerk

Bill list 11/27/2006			
042382	11/27/06	A0006	ADVANCE TREADS INC 1,051.01
042383	11/27/06	A0023	ADAMS, JOHN 12.00
042384	11/27/06	.00	* VOID *
042385	11/27/06	A0028	ADVANTAGE RENTAL CENTER INC. 186.09
042386	11/27/06	A0041	ALL ACTION WATER SPORTS, INC. 2,474.00
042387	11/27/06	A0070	ALBERTSONS/ACME 53.86
042388	11/27/06	A0075	ADAMS, JOSHUA 29.00
042389	11/27/06	A0078	ANCHOR RUBBER STAMP & PRINTING 25.50
042390	11/27/06	A0091	ATLANTIC CITY ELECTRIC 2,470.64
042391	11/27/06	B0008	BAILEY, CARROLL 12.00
042392	11/27/06	B0035	BELMONT & CRYSTAL SPRINGS 167.78
042393	11/27/06	B0076	BOND, LAURENCE E. 60.00
042394	11/27/06	B0078	BOUND TREE MEDICAL, LLC 7.87
042395	11/27/06	B0091	BIRCHMEIER, JAMES 150.00
042396	11/27/06	C0057	CAPE MAY COUNTY TREASURER 330.00
042397	11/27/06	C0068	COMCAST 190.00
042398	11/27/06	C0091	CHISHOLM, JOHN R. 172.90
042399	11/27/06	C0143	CODY'S POWER EQUIPMENT 278.02
042400	11/27/06	C0204	CUMBERLAND MUTUAL FIRE INS. CO 1,744.00
042401	11/27/06	D0003	DATA RESOURCE SOLUTIONS 770.00
042402	11/27/06	D0040	DELTA DENTAL PLAN OF N.J. INC. 5,391.63
042403	11/27/06	D0124	DUFFY, FRAN 250.00
042404	11/27/06	E0017	EDMUNDS & ASSOCIATES, INC. 25.00
042405	11/27/06	F0054	FORT DEARBORN LIFE INSURANCE 523.83
042406	11/27/06	F0061	FOX ELECTRIC SUPPLY COMPANY 188.20
042407	11/27/06	F0065	FRANK'S SCREENS LLC 150.00
042408	11/27/06	G0002	GAGLIONE, WANDA 200.00
042409	11/27/06	G0006	GARBUTT, PATRICIA A. 41.19
042410	11/27/06	G0008	GALLO GMC TRUCK SALES INC. 713.94
042411	11/27/06	G0014	GARDEN STATE HWY PRODUCTS INC. 220.50

042412	11/27/06	G0021	GARTLAND, JOSEPH, INC.	250.13
042413	11/27/06	G0037	GFOA OF NEW JERSEY	24.00
042414	11/27/06	G0040	GIBSON ASSOCIATES,P.A.	11,600.00
042415	11/27/06	G0094	GRUBB, JON	16.00
042416	11/27/06	H0018	HAROLD RUBIN/L & H SUPPLY	250.90
042417	11/27/06	H0028	HARRE,ED	162.50
042418	11/27/06	I0006	INTEROP, INC.	1,657.00
042419	11/27/06	K0034	KOHLER, CLAUDE JR.	12.00
042420	11/27/06	L0018	LANIER WORLDWIDE, INC.	788.10
042421	11/27/06	L0038	LAYTON, WILLIAM	600.00
042422	11/27/06	L0080	LOWES, INC.	284.51
042423	11/27/06	L0093	LIPKE, NEAL	421.44
042424	11/27/06	M0012	MCCAULEY, RICHARD	81.28
042425	11/27/06	M0021	MASER CONSULTING, P.A.	2,775.00
042426	11/27/06	M0115	MOORE WALLACE NORTH AMERICA	133.16
042427	11/27/06	N0014	N.J.SOC.OF MUNICIPAL ENGINEERS	150.00
042428	11/27/06	N0052	NATL YOUTH SPORTS COACHED ASSN	500.00
042429	11/27/06	N0114	NORTHERN TOOL & EQUIPMENT CO.	578.22
042430	11/27/06	O0025	OLD DOMINION BRUSH	772.50
042431	11/27/06	P0007	PALOMBO,RICHARD A.	148.00
042432	11/27/06	P0032	PEDRONI FUEL CO.	948.57
042433	11/27/06	P0034	PEIFER, SUSAN R.	46.99
042434	11/27/06	P0036	PENNELLO,DAVID	369.21
042435	11/27/06	P0054	PHILA COCA-COLA BOTTLING CO.	89.75
042436	11/27/06	P0075	POSITIVE PROMOTIONS INC	465.44
042437	11/27/06	R0030	RIGGINS, INC.	2,893.57
042438	11/27/06	S0001	SAM'S CLUB	248.03
042439	11/27/06	S0020	SANITARY SUPPLY SERVICE	401.45
042440	11/27/06	S0126	SPIEGEL, BARBARA	33.95
042441	11/27/06	S0134	SO. JERSEY GAS COMPANY	1,095.19
042442	11/27/06	S0151	SOUTH JERSEY ANIMAL SERVICES	1,250.00
042443	11/27/06	T0020	TERWILLIGER, DUANE E.	36.00
042444	11/27/06	T0032	THE PRESS & SUNDAY PRESS	852.12
042445	11/27/06	T0044	THOMSON, KERRY AGENCY	73,510.00
042446	11/27/06	T0048	TILL PAINT CO/D. FITZGERALD	1,120.50
042447	11/27/06	T0074	TRANSAXLE INC.	1,508.47
042448	11/27/06	U0005	STUDENT COUNCIL MIDDLE SCHOOL	300.00
042449	11/27/06	U0029	UPPER TOWNSHIP BD.OF EDUCATION	495.00
042450	11/27/06	V0005	VAN EMBDEN,NATHAN, ATTORNEY	862.50
042451	11/27/06	V0022	VERIZON	1,828.63
042452	11/27/06	V0024	VAL-U AUTO PARTS L.L.C.	375.20
042453	11/27/06	V0026	VITAL COMPUTER RESOURCES, INC.	20.00
042454	11/27/06	W0027	WELSHIE'S	609.00
042455	11/27/06	W0030	WEST PUBLISHING CO.	282.36
042456	11/27/06	Y0009	YMCA CAMP OCKANICKON,INC.	635.00
042457	11/27/06	Y0020	YOUNG, BARBARA L.	80.52

Total Paid:			\$129,451.15	
