

**TOWNSHIP OF UPPER  
2100 TUCKAHOE ROAD  
PETERSBURG, NJ 08270  
CAPE MAY COUNTY  
MINUTES FOR APRIL 27, 2009**

**REGULAR MEETING OF THE TOWNSHIP COMMITTEE –7:30 P.M.**

**CALL TO ORDER**

**SUNSHINE ANNOUNCEMENT**

**SALUTE TO THE FLAG**

**ROLL CALL**

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

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

**APPROVAL OF MINUTES - April 13, 2009 Regular Meeting and  
Closed Session Minutes**

Motion was made by Jay Newman, second by Frank Conrad to approve the Minutes as written. Mayor Palombo abstained, the remaining three Committee members voted in the affirmative.

**REPORT OF GOVERNING BODY MEMBERS**

**Frank Conrad**, made a motion to re-hire employees boat ramp attendants, Richard Hartman, Thomas Duffy, and Kenneth Lea effective May 23<sup>rd</sup>. Jay Newman seconded the motion, with all four Committee members present voting in the affirmative.

Mr. Conrad made motion to hire Michael Dugan as a Seasonal Recreation Dept. Worker. Motion seconded by Richard Palombo with all four Committee members present voting in the affirmative.

Mr. Conrad made a motion to appoint James Card as the Recreation Committee Alternate Member for Hockey, Jay Newman seconded with all Committee members present voting in the affirmative.

He reminded everyone of the Tyler Davis Run being held on Sunday, May 3<sup>rd</sup> at 9a.m., at Amandas Field. The proceeds from this event benefit the Soccer Teams trip to Europe.

He reported that he and Mayor Palombo attended the Grand Re-Opening of Acme Supermarket. He is pleased to see reinvestment into the community. The Acme donated a bench to the new dog park. While on that note, Mr. Conrad reported that a voluntary “Dog Park Clean Up” took place over weekend. The park should be opening fairly soon and was pleased to report that so far it has been under budget.

He attended the fifth anniversary celebration at Osprey Point and that it was well attended.

**Curtis Corson, Deputy Mayor,** reported that the School Budget was defeated and now requires a special meeting with the school board to review budget. A formal announcement will be made requesting the finance committee also be present at the upcoming meeting. The State requires a findings report by May 19, 2009.

Mayor Palombo commented that the School Budget was defeated by an overwhelming Majority and that the Committee needs to be cognizant on what the public has said. He expects serious cuts to be made from the budget and strongly encourages the Committee to review the school budget and be prepared to make recommendations at the upcoming meeting. Jay Newman announced he would be recused from the meeting due to conflict as his wife is on the School Board.

**Jay Newman, Committeeman,** announced there will be a Lead Safe Seminar held June 11<sup>th</sup> at Cape Regional Medical Center and that Cape May County will be holding a Health Resource Day, May 9<sup>th</sup> at Wildwood Convention Center. Both events will offer free screenings and exhibits.

He reminded everyone that on Sunday May 10<sup>th</sup>, at 1:30 p.m. there will be a dedication at Seaville Fire Social Hall, to honor Curtis Corson's parents. The late Mr. Corson Sr., will always be remembered for his dedication to the Seaville Fire Company and our community and Mrs. Corson for her dedication and service to the Seaville Fire Hall. Mayor Palombo made a motion to draft a resolution honoring the two, and to dedicate the day, May 10<sup>th</sup>, to them. This was seconded by Jay Newman. During roll call vote all four Committee members voted in affirmative.

Mr. Newman reported he received a letter of commendation naming Chief Robert Spiegel and the Seaville Fire and Rescue Squad. The fire and rescue crews were called out to a fire at Seaville Shores Campground. The deputy director of Public Safety for Pitman was present and drafted this letter noting he was very impressed with how quickly and professionally the team worked. Mr. Newman requested the Township Clerks office also draft Commendation letter for the Seaville Fire Company.

**Richard Palombo, Mayor,** reported he would have a Contract item for closed session. Both he and Barbara Spiegel met with a medical benefits group to discuss and negotiate a new contract.

He reported he would attend a meeting scheduled for Tuesday, April 28<sup>th</sup>, with regards to a consolidation at Corbin City.

He made a motion to hire Michael Pfaff as a Beach Cleaner. Frank Conrad seconded this with all four Committee members voting in the affirmative. Paul Dietrich requested he start as soon as possible and will coordinate with Brenda Layton.

Mayor Palombo reported the Strathmere Star Party is scheduled for Sunday, May 24<sup>th</sup>.

A representative from the Franklin Institute will do the presentation.

He made a recommendation that the Township draft a resolution opposing budget cuts made by the Governor to Beach Funding Programs and also oppose any reduction in the Energy Receipt Tax. The resolutions will be placed on a further agenda.

He announced that Mayor Palughi of Avalon is holding a forum addressing the state budget and proposed cuts and encouraged everyone to attend.

Mayor Palombo has one other item for closed session involving Special Council Thomas Smith and the Roth Tax Appeal.

## **OTHER REPORTS**

**Daniel Young, Municipal Solicitor**, has two items for closed session with regards to Litigation; 1. to report on the matter of Upper Township vs. Sansone; and 2. to report on the ongoing tax appeals.

**Paul Dietrich, Township Engineer**, has one item for closed session regarding Contract Negotiations and the Collective Bargaining Agreement. He reported that he has been approached by Sea Isle City to enter into a Shared Services Agreement to use our vehicle wash station. He will look further into the matter to determine costs, scheduling issues, and staffing issues. Mayor Palombo was in favor of sharing the station as a way to offset costs. Mr. Dietrich will ask Sea Isle to prepare a Shared Services agreement, which Mr. Young can then review. Mr. Dietrich also notified the Committee and audience that the Gypsy Moth spray program will begin around May 4th. Public notifications have been sent to residents affected. In addition, Mr. Dietrich announced the State is charging less than anticipated so there will be some savings to the Township.

## **RESOLUTIONS**

### **1. Declaring “A Day of Prayer in Upper Township”.**

**TOWNSHIP OF UPPER  
CAPE MAY COUNTY  
R E S O L U T I O N**

**RESOLUTION NO. 096-2009**

**RE: DECLARING “ A DAY OF PRAYER IN UPPER TOWNSHIP”**

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**WHEREAS**, civic prayers and national days of prayer have a long and revered history in our constitutional democracy, dating back to the First Continental Congress in 1775; and

**WHEREAS**, the Declaration of Independence, our first statement as Americans of national purpose and identity, made “the Laws of Nature and Nature’s God” the foundation of our United States of America and asserted that people have inalienable rights that are God-given; and

**WHEREAS**, the Supreme Court has affirmed the right of state legislatures to open their sessions with prayer and the Supreme Court and the U.S. Congress themselves begin each day with prayer; and

**WHEREAS**, in 1988, legislation setting aside the first Thursday in May in each year as a National Day of Prayer was passed unanimously by both Houses of Congress and signed by President Ronald Reagan; and

**WHEREAS**, the National Day of Prayer is an opportunity for Americans of all faiths to join in united prayer to acknowledge our dependence on God, to give thanks for blessings received, to pray for peace, to request healing for wounds endured; and to ask God to guide our leaders and bring wholeness to the United States and her citizens; and

**WHEREAS**, it is fitting and proper to give thanks to God by observing a day of prayer in the Township of Upper when all may acknowledge our blessings and express gratitude for them, while recognizing the need for strengthening religious and moral values in our State and nation;

**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, as follows:

**RESOLVED THAT** this Township Committee Designate the first Thursday in May, 2009 as “**A DAY OF PRAYER IN UPPER TOWNSHIP**” and encourage the citizens of Upper Township to observe the day in ways appropriate to its importance and significance.

**GIVEN UNDER OUR HANDS** and the seal of the Township of Upper this 27th day of April, 2009.

**Resolution No. 096 -2009**  
**Offered by: Corson**  
**Adopted: April 27, 2009**

**Seconded by: Conrad**

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___    | _____     | _____            | _____         |

**2. Annual Fourth of July Fireworks Display.**

**TOWNSHIP OF UPPER  
 CAPE MAY COUNTY  
 RESOLUTION  
 RESOLUTION NO. 097 -2009  
 RE: ANNUAL FOURTH OF JULY FIREWORKS DISPLAY**

**WHEREAS**, for many years, the Township of Upper has provided a fireworks display for the residents of Upper Township and others; and

**WHEREAS**, the Township wishes to continue to provide a display of fireworks in celebration of the 4th of July; and

**WHEREAS**, the Township solicited bids from several Firework Companies and has selected Pyrotecnico, a Pennsylvania corporation; and

**WHEREAS**, the State of New Jersey, Department of Community Affairs, requires that the Township provide a Resolution approving same; and

**WHEREAS**, the site for the fireworks display will be determined in conjunction with a State of New Jersey Fire Inspector; and

**WHEREAS**, FAA Clearance will be applied for; and

**WHEREAS**, a Certificate of Insurance will be provided by the Township's Insurance Carrier for the amount specified by the State Department of Community Affairs; and

**WHEREAS**, a plot/site plan for site display, showing the distances from the public and structures to the fireworks discharge area, will be provided by the Township Engineer; and

**WHEREAS**, the Chief Financial Officer has certified the availability of funds to permit said Contract to be entered into.

**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, as follows:

1. The allegations of the preamble are incorporated in full herein by this reference.

2. Upon meeting all requirements of the State of New Jersey, Department of Community Affairs as well as any and all recommendations or requirements of the Township's Risk Management Consultant and the Joint Insurance Fund, the Township Clerk

is hereby directed and authorized to provide a certified copy of this Resolution, with all attachments, to the Department of Community Affairs for their review and issuance of a Fireworks Permit.

3. The contractor shall comply with all terms and provisions of the Municipal Excess Liability Joint Insurance Fund Bulletin MEL 09-08, dated January 30, 2009.

4. The contractor has registered with the State of New Jersey pursuant to c.57, Laws of 2004 and has provided proof of that registration to the Township of Upper.

5. All Township officials and officers are hereby authorized and empowered to take all action deemed necessary or advisable to carry into effect the intent and purpose of this Resolution, including but not limited to the entering into and execution of an Agreement to Furnish Fireworks Exhibition with Pyrotecnico, New Castle, PA, for the sum of \$6,000.00.

Resolution No. 097 -2009  
 Offered by: Newman  
 Adopted: April 27, 2009

Seconded by: Conrad

Roll Call Vote:

| <u>NAME</u> | <u>YES</u>   | <u>NO</u> | <u>ABSTAINED</u> | <u>ABSENT</u> |
|-------------|--------------|-----------|------------------|---------------|
| Camp        | ___          | ___       | ___              | __x__         |
| Conrad      | <u>  x  </u> | ___       | ___              | ___           |
| Corson      | <u>  x  </u> | ___       | ___              | ___           |
| Newman      | <u>  x  </u> | ___       | ___              | ___           |
| Palombo     | <u>  x  </u> | ___       | ___              | ___           |

**3. Accepting the Annual Stormwater Report and Certification, and authorizing the Mayor to sign and send to the NJ Department of Environmental Protection pursuant to Stormwater Rules.**

**TOWNSHIP OF UPPER  
 CAPE MAY COUNTY  
 R E S O L U T I O N  
 RESOLUTION NO.098-2009  
 ANNUAL STORMWATER REPORT AND CERTIFICATION  
 ACCEPTING THE ANNUAL STORMWATER REPORT AND CERTIFICATION, AND  
 AUTHORIZING THE MAYOR TO SIGN AND SEND TO THE NJDEP  
 PURSUANT TO STORMWATER RULES**

WHEREAS, the State of New Jersey on January 5, 2004 adopted stormwater rules which impact municipalities; and

WHEREAS, under the aforesaid stormwater rules municipalities are required to apply for permits and provide reports and certifications to the NJDEP; and

WHEREAS, the Township Committee of the Township of Upper has determined that the Township should make the appropriate applications for permits and prepare appropriate reports pursuant to the stormwater rules; and

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, as follows:

1. The allegations of the preamble are incorporated herein by this reference.

2. The Township Committee hereby accepts the Stormwater Annual Report.

2. The Mayor is hereby authorized to execute said Report and Certification pursuant to the stormwater rules of the State of New Jersey, which is attached hereto as Exhibit A.

3. All Township officials and officers are hereby authorized and empowered to take all action deemed necessary or advisable to carry into effect the intent and purpose of this Resolution.

Resolution No. 098-2009

Offered by: Corson

Seconded by: Newman

Adopted: April 27, 2009

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__      | _____     | _____            | _____         |

4. Authorizing the Township to enter into a contract and/or issue purchase orders to Computer House of South Jersey, LLC, 740 South Sixth Avenue, Galloway, New Jersey 08205, for various services.

CAPE MAY COUNTY

RESOLUTION

RESOLUTION NO. 099-2009

RE: AUTHORIZING THE TOWNSHIP TO ENTER INTO A  
 CONTRACT AND/OR ISSUE PURCHASE ORDERS TO  
 COMPUTER HOUSE OF SOUTH JERSEY, LLC, 740 SOUTH SIXTH AVENUE,  
 GALLOWAY, NEW JERSEY 08205, FOR VARIOUS SERVICES

WHEREAS, the Township of Upper has previously entered into a Professional Services Contract with Computer House Of South Jersey, LLC to service Township computers and the Township wishes to extend and renew that Contract for an additional term; and

WHEREAS, the Township has also transferred past files and records to electronic storage under the rules and regulations and under the supervision of the State of New Jersey; and

WHEREAS, the rules and regulations of the State of New Jersey require certain tests and procedures to be made with respect to such electronic files and further requires that certain tests be performed at periodic intervals; and

WHEREAS, Computer House Of South Jersey, LLC has the necessary expertise, technology and qualifications to perform such service and has demonstrated their capacity and competency in their past services with the Township; and

WHEREAS, the Chief Financial Officer of the Township has certified the availability of funds to allow the award of Contract for the purchase herein authorized and has certified that adequate funds have been appropriated for this purpose in the 2009 Municipal Budget;

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, as follows:

1. The allegations of the preamble are incorporated herein by this reference.

2. The Township Committee does hereby authorize the following services to be provided by Computer House Of South Jersey, LLC.

- (A) Renewal of the Annual Maintenance/Annual Support Agreement for Alchemy versions upgrades, service patches, hot fixes, telephone technical support, one (1) on-site visit for up to four (4) hours and discounts of twenty percent (20%) on additional training and/or consulting, for a term commencing June 29, 2009 and ending June 29, 2010, at a cost of \$4,995.00. A copy of the proposal dated February 4, 2009 is attached hereto as Exhibit "A".
- (B) Acceptance of the proposal for Preventive Maintenance Agreement for a cost of \$95 per month (one year prepaid \$1,140.00). A copy of the proposal is attached hereto as Exhibit "B".
- (C) Acceptance of the proposal for a bi-annual component-level restoration of the Township of Upper's Alchemy Database Server to conform to the Township's IT Disaster Prevention/Recovery Plan for the certification of scanning and archiving of public records for the State of New Jersey Division of Archives and Records

Management, to include bi-annual test cycle, for a total annual cost of \$2,700.00. A copy of the proposal dated February 4, 2009, is attached hereto as Exhibit "C".

(D) Acceptance of the proposal for Technical Services and Prepaid Support for a cost of \$1,000.00. A copy of the proposal is attached hereto as Exhibit "D".

3. This Resolution is awarded subject to and

conditioned upon the following:

(i) Computer House Of South Jersey, LLC, in providing the services contemplated in this Resolution and in the attachments hereto, acknowledges that it is an independent contractor and not an employee of the Township. As such, Computer House Of South Jersey, LLC, represents and warrants that it will maintain in full force and effect workers compensation coverage and disability coverage for all of its employees.

(ii) During the term of the Contract and any renewal or extension thereof, Computer House Of South Jersey, LLC, will maintain in full force and effect the following insurance:

(a) Commercial general liability insurance on an occurrence basis with limits of liability of not less than \$500,000.00 per occurrence and/or aggregate combined single limit, personal injury, bodily injury and property damage.

(b) Motor vehicle liability insurance, including applicable no-fault coverage, with limits of liability of not less than \$500,000.00 per accident, combined single limit, bodily injury and property damage. Coverage shall include all owned vehicles, all non-owned vehicles and all hired vehicles.

(c) Computer House Of South Jersey, LLC shall not be required to name the Township as an additional insured.

(iii) Computer House Of South Jersey, LLC agrees to indemnify the Township and to hold it harmless from and against any and all damages, claims, losses and/or liabilities of any sort (including attorney's fees), which the Township may incur as a result of the performances of services under this Resolution and the attachments hereto by Computer House, LLC or its agents, servants and employees.

(iv) Computer House Of South Jersey, LLC acknowledges that it must comply with the Affirmative Action requirements of the State of New Jersey, which requirements are attached to this Resolution as Exhibit "E".

(v) Computer House Of South Jersey, LLC, has registered with the State of New Jersey pursuant to c.57, Laws of 2004 and has provided proof of that registration to the Township of Upper.

(vi) Computer House Of South Jersey, LLC, has not made and will not make any reportable contributions pursuant to N.J.S.A. 19:44A-1 et seq. that, pursuant to P.L. 2004, c.19 would bar the award of this contract and Computer House, LLC, shall not make any such reportable contributions during the term of this contract.

4. This Contract is awarded without competitive bidding for the reason that the aggregate of the amounts anticipated to be paid to Computer House Of South Jersey, LLC. are under the current bid threshold for the State of New Jersey.

5. A copy of this Resolution, when signed by the authorized representative of Computer House Of South Jersey, LLC, shall constitute a Contract executed in accordance with

the requirements and provisions of the Local Public Contracts Law.

6. The Township Clerk shall cause a Notice of Award of this Contract to be published in the official newspaper of the Township as required by N.J.S.A. 40A:11-5.

7. The Chief Financial Officer is hereby authorized, directed and empowered to issue a purchase order consistent with the intention and purpose of this Resolution. All other Township officers and officials are authorized to take such action as may be necessary or required in order to carry out the intent and purpose of this Resolution.

Resolution No. 099-2009

Offered by: Conrad

Seconded by: Corson

Adopted: April 27, 2009

Roll Call Vote:

| <u>NAME</u> | <u>YES</u>   | <u>NO</u>   | <u>ABSTAINED</u> | <u>ABSENT</u> |
|-------------|--------------|-------------|------------------|---------------|
| Camp        | <u>    </u>  | <u>    </u> | <u>    </u>      | <u>  X  </u>  |
| Conrad      | <u>  X  </u> | <u>    </u> | <u>    </u>      | <u>    </u>   |
| Corson      | <u>  X  </u> | <u>    </u> | <u>    </u>      | <u>    </u>   |
| Newman      | <u>  X  </u> | <u>    </u> | <u>    </u>      | <u>    </u>   |
| Palombo     | <u>  X  </u> | <u>    </u> | <u>    </u>      | <u>    </u>   |

**5. Confirming the sale of certain lands to wit: Block 497, Lots 18, 19 and 20 to Eustace Eggie and Janice Eggie.**

TOWNSHIP OF UPPER

CAPE MAY COUNTY

R E S O L U T I O N

RESOLUTION NO. 100 -2009

RE: CONFIRMING SALE OF CERTAIN LAND

TO WIT: BLOCK 497, LOTS 18, 19 and 20

TO EUSTACE EGGIE AND JANICE EGGIE

**WHEREAS**, the Township of Upper has authorized the sale of Township owned real property commonly known as Block 497, Lots 18, 19 and 20 to

the only contiguous owners thereto, Eustace Eggie and Janice Eggie, pursuant to Ordinance No. 002-2009; and

**WHEREAS**, Eustace Eggie and Janice Eggie have executed an agreement pursuant to Ordinance No. 002-2009 for the purchase of said real property from the Township of Upper; and

**WHEREAS**, the Township Committee of the Township of Upper is satisfied that all conditions precedent were complied with and that said sale has been conducted in accordance with the requirements of the Ordinance aforesaid; and

**WHEREAS**, the Township Committee believes that it is in the public interest to confirm the sale of such parcels.

**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, as follows:

1. The allegations of the preamble are incorporated herein by this reference.

2. The sale of Block 497, Lots 18, 19 and 20 to Eustace Eggie and Janice Eggie

at a sale price of \$9,000.00 is hereby confirmed under and subject to the terms, conditions and provisions of Ordinance No. 002-2009 and further subject to and conditioned upon the purchasers' compliance with said Ordinance.

3. The Mayor and Township Clerk are hereby authorized, directed and empowered to execute and deliver, on behalf of the Township of Upper, to the aforesaid purchaser, a Quitclaim Deed conveying the Township's right, title and interest in the above described property and the Township Clerk is further

authorized, directed and empowered to seal the Deed with the official seal of the Township of Upper.

Resolution No. 100-2009

Offered by: Newman

Seconded by: Conrad

Adopted: April 27, 2009

Roll Call Vote:

| NAME    | YES         | NO    | ABSTAINED | ABSENT      |
|---------|-------------|-------|-----------|-------------|
| Camp    | _____       | _____ | _____     | _____x_____ |
| Conrad  | _____x_____ | _____ | _____     | _____       |
| Corson  | _____x_____ | _____ | _____     | _____       |
| Newman  | _____x_____ | _____ | _____     | _____       |
| Palombo | _____x_____ | _____ | _____     | _____       |

**6. Authorizing execution of NJDEP TWA-1 application statements of consent form regarding Block 835, Lot 21.**

TOWNSHIP OF UPPER  
 CAPE MAY COUNTY  
 R E S O L U T I O N  
 RESOLUTION NO: 101-2009  
 RE: AUTHORIZING EXECUTION OF NJDEP TWA-1 APPLICATION  
 STATEMENTS OF CONSENT FORM REGARDING BLOCK 835, LOT 21

WHEREAS, Ethel Woods has or is about to make application to the New Jersey Department of Environmental Protection (hereinafter “DEP”) for Treatment Works Approval and has requested that the Township complete a portion of DEP Form No. WQM-003, which merely consents to the submission of the application to the DEP and certifies that the project, as proposed, conforms with the requirements of all municipal Ordinances and does not otherwise impose any obligation or liability on the Township; and

WHEREAS, Ms. Woods must apply to the New Jersey Department of Environmental Protection for Treatment Works Approval in order to construct a permanent holding tank to handle sewage generated from a single family dwelling to be constructed on Sumner Avenue, on Block 835, Lot 21 of the municipal tax map of Upper Township, New Jersey; and

WHEREAS, the Township Engineer has informed the Township Committee as to the general nature of the project and has indicated that the Township has no ordinance prohibiting such permanent holding tank; and

WHEREAS, the matter has been considered by the Township Committee and it has been determined that the consent by the Governing Body should be granted to this application to permit the application process to go forward; and

WHEREAS, the Township Committee wishes to authorize the Township officials to execute said documentation;

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, as follows:

1. The allegations of the preamble are incorporated herein by this reference.
2. The Mayor is hereby authorized to execute on behalf of the Township of Upper a Statements of Consent, Section A-1, in the form attached hereto as Exhibit "A" and said consent shall be completed by inserting therein this Resolution number and the date of its adoption.
3. This Statements of Consent is submitted in conjunction with the application of Ethel Woods for treatment works approval for the Woods residence at Lot 21, Block 835 on the municipal tax map.
4. A certified copy of this Resolution shall be provided to the applicant.

Resolution No.101-2009

Offered by: Newman

Seconded by: Conrad

Adopted: April 27, 2009

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_____ | _____     | _____            | _____         |

7. Rejecting all bids received for the Field Lighting project at Amanda's Field Sports Complex.

**TOWNSHIP OF UPPER  
CAPE MAY COUNTY  
R E S O L U T I O N  
RESOLUTION NO.102-2009**

**RE: REJECTING ALL BIDS RECEIVED FOR THE  
FIELD LIGHTING PROJECT AT AMANDA'S FIELD SPORTS COMPLEX**

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WHEREAS, the Township of Upper solicited bids for the Field Lighting Project at Amanda's Field Sports Complex; and

WHEREAS, bids were submitted from ten companies; and

WHEREAS, the Township Committee has determined to reject all bids heretofore received; and

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, as follows:

1. The allegations of the preamble are incorporated herein by this reference.

2. All bids for the Field Lighting Project at Amanda's Field Sports Complex which bids were received on April 7, 2009, are hereby rejected.

Resolution No. 102-2009  
Offered by: Conrad  
Adopted: April 27, 2009

Seconded by: Newman

**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___    | _____     | _____            | _____         |

8. Authorizing the Mayor to sign the license and indemnification agreement with the County of Cape May for the placement and maintenance of terrapin fencing along Roosevelt Boulevard County Route 623.

*Ms. Laura Olson was present, she is the person who spearheaded this effort and has at this point raised \$3500 for the project and will keep the Committee informed of progress and*

success.

**TOWNSHIP OF UPPER  
CAPE MAY COUNTY  
RESOLUTION  
RESOLUTION NO. 103-2009**

**RE: AUTHORIZING THE MAYOR TO SIGN THE LICENSE AND  
IDEMNIFICATION AGREEMENT WITH THE COUNTY OF CAPE MAY FOR THE  
PLACEMENT AND MAINTENANCE OF TERRAPIN FENCING ALONG  
ROOSEVELT BOULEVARD COUNTY ROUTE 623**

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**WHEREAS**, the County of Cape May requires signature on the License and Indemnification Agreement (attached hereto as Exhibit "A") to install and maintain Diamondback Terrapin fencing within the right-of-way of Roosevelt Boulevard County Route 623 from the Garden State Parkway to the bridge over Crook Horn Creek in The Township of Upper, County of Cape May; and

**WHEREAS**, the Township Committee fully supports and endorses participation in this worthwhile project.

**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, 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, directed and empowered to sign the License and Indemnification Agreement necessary for participation in the program.
3. All Township officials, officers and employees are empowered to take such action as may be necessary or advisable in order to carry out the intent and purpose of this Resolution.

Resolution No. 103-2009  
Offered by: Corson      Seconded by: Newman  
Adopted: April 27, 2009

Roll Call Vote:

| <u>NAME</u> | <u>YES</u> | <u>NO</u> | <u>ABSTAINED</u> | <u>ABSENT</u> |
|-------------|------------|-----------|------------------|---------------|
| Camp        | _____      | _____     | _____            | _____X_____   |

|         |              |                   |                   |                   |
|---------|--------------|-------------------|-------------------|-------------------|
| Conrad  | <u>  x  </u> | <u>          </u> | <u>          </u> | <u>          </u> |
| Corson  | <u>  x  </u> | <u>          </u> | <u>          </u> | <u>          </u> |
| Newman  | <u>  x  </u> | <u>          </u> | <u>          </u> | <u>          </u> |
| Palombo | <u>  x  </u> | <u>          </u> | <u>          </u> | <u>          </u> |

**9. Tax Refund.**

**TOWNSHIP OF UPPER  
CAPE MAY COUNTY  
R E S O L U T I O N  
Resolution No. 104-2009  
TAX REFUND**

---

**WHEREAS, certain corrections have been recommended by the  
Upper Township Tax Collector in order to refund monies.**

**NOW, THEREFORE BE IT RESOLVED, by the Township Committee of the  
Township of Upper, Cape May County, that corrections to the Tax records are hereby  
authorized and the Tax Collector is hereby directed to correct said records or take such  
action as indicated on the attached sheet.**

Resolution No. 104-2009  
Offered by: Conrad                      Seconded by: Corson  
Adopted: April 27, 2009

Roll Call Vote:

| NAME    | YES               | NO                | ABSTAINED         | ABSENT            |
|---------|-------------------|-------------------|-------------------|-------------------|
| CAMP    | <u>          </u> | <u>          </u> | <u>          </u> | <u>  x  </u>      |
| CONRAD  | <u>  x  </u>      | <u>          </u> | <u>          </u> | <u>          </u> |
| CORSON  | <u>  x  </u>      | <u>          </u> | <u>          </u> | <u>          </u> |
| NEWMAN  | <u>  x  </u>      | <u>          </u> | <u>          </u> | <u>          </u> |
| PALOMBO | <u>  x  </u>      | <u>          </u> | <u>          </u> | <u>          </u> |

**REFUND 2009**

| <u>BLOCK/LOT</u>     | <u>AMOUNT</u>     | <u>NAME</u>  |
|----------------------|-------------------|--|
| <b>348/94.15/B01</b> | <b>\$1,060.40</b> | <b>SP MARMORA, LLC</b><br>2 EASTWICK DR., SUITE 100<br>GIBBSBORO, NJ 08026 |

Owner requests refund of overpayment.

|               |                   |   |
|---------------|-------------------|---|
| <b>562/25</b> | <b>\$1,968.88</b> | <b>Steven &amp; Suzanne Haskins</b><br>2018 Rt US 9 South<br>Seaville, NJ 08230 |
|---------------|-------------------|---|

Property exempt-totally disabled Vet.

567/27/C111          \$1,037.34

**Lucille Carey**  
1731 Rt US 9 South  
Seaville, NJ 08230

1<sup>st</sup> qtr paid twice, homeowner requests refund.

646/17.02          \$652.22

**EXPO HOMES, LLC**  
60 CATHY LA. SUITE 103  
BURLINGTON, NJ 08016

**Lot deleted/subdivided.**

\*\*\*

**10. Authorizing the execution of a Shared Services Agreement with the City of Corbin City to provide Municipal Court Services.**

TOWNSHIP OF UPPER

CAPE MAY COUNTY

R E S O L U T I O N

RESOLUTION NO. 105 -2009

RE: AUTHORIZING THE EXECUTION OF A SHARED SERVICES AGREEMENT WITH THE CITY OF CORBIN CITY TO PROVIDE MUNICIPAL COURT SERVICES



WHEREAS, the Uniform Shared Services and Consolidation Act, N.J.S.A. 40A:65-1 et. seq., (“Act”) provides that any local governmental unit may enter into a contract with any other local governmental unit to provide or receive any service that each local unit is empowered to provide or receive within its own jurisdiction; and

WHEREAS, Corbin City has indicated a willingness to enter into a Shared Services Agreement with the Township of Upper to permit the Township to provide all the usual and ordinary services of a Municipal Court for Corbin City; and

WHEREAS, Corbin City and Upper Township have agreed to enter into a Shared Services Agreement for a term of one year, commencing on May 6, 2009 and continuing through May 5, 2010; and

WHEREAS, the Township of Upper has deemed it would be in the best interest of the residents of the Township to enter into a Shared Services Agreement with the City of Corbin City for the sharing of Municipal Court operations with the Corbin City Municipal Court.

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

1. **SHARED SERVICES AGREEMENT.** Pursuant to the provisions of the Uniform Shared Services and Consolidation Act, N.J.S.A. 40A:65-1 et. seq., the Township of Upper is hereby authorized and empowered to enter into a Shared Services Agreement with Corbin City pertaining to Upper Township providing Municipal Court Services to Corbin City.

2. **SERVICES TO BE PROVIDED BY CONTRACT.** The Shared Services Agreement authorized in paragraph 1 shall cover those services which are enumerated in said Agreement, a copy of which is attached hereto as Exhibit A.

3. **ASSIGNMENT JUDGE APPROVAL.** The authority to enter into this Shared Services Agreement is subject to the approval of the Assignment Judge pursuant to N.J.S.A. 2B:12-1.d.

4. **AUTHORIZATION TO MUNICIPAL OFFICIALS.** The appropriate Township officers and officials are hereby authorized to take any action necessary or advisable to carry out the intent and purpose of this Resolution. Specifically, the Mayor and Township Clerk are hereby authorized and directed to execute such Shared Services Agreement on behalf of the Township of Upper pursuant to the authority conferred by this Resolution. The Township Clerk is further authorized and directed to seal said Agreement with the seal of the Township of Upper.

5. **COMPLIANCE WITH STATUTORY REQUIREMENTS.** The Shared Services Agreement between the Township of Upper and the City of Corbin City shall meet and satisfy the requirements of N.J.S.A. 40A:65-7, as may be amended and supplemented.

6. **CONTRACT TERM.** This Resolution authorizes a Shared Services Agreement for a duration of one (1) year from May 6, 2009, unless sooner terminated or modified by either of the parties as provided in the Agreement.

7. **SEVERABILITY.** If any action, subsection, paragraph, sentence or other part of this Resolution is adjudged to be unconstitutional or invalid, such judgment shall not affect, impair or invalidate the remainder of this Resolution, but shall be confined in its effect to the section, subsection, paragraph, sentence or other part of this Resolution directly involved in the controversy in which said judgment shall have been rendered and all other provisions of this Resolution shall remain in full force and effect.

8. **REPEALER.** All Resolutions or parts of Resolutions inconsistent herewith are hereby repealed to the extent of such inconsistency only.

9. **EFFECTIVE DATE.** This Resolution shall take effect immediately upon final adoption and publication in the manner provided by law.

Resolution No. 105 -2009

Offered by: Newman

Seconded by: Corson

Adopted: April 27, 2009

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**

**10. Public Hearing and Final Adoption of Ordinance No. 010-2009 RE: AN**

**ORDINANCE AMENDING REVISED GENERAL ORDINANCE  
CHAPTER X OF THE CODE OF UPPER TOWNSHIP. (Construction fees)**  
During the public comment section of the hearing there were no speakers from the audience. Motion to adopt by Jay Newman, second by Frank Conrad. During roll call vote all four Committee members present voted in the affirmative.

**TOWNSHIP OF UPPER  
CAPE MAY COUNTY  
ORDINANCE  
ORDINANCE NO. 010-2009  
RE: AN ORDINANCE AMENDING REVISED GENERAL ORDINANCE  
CHAPTER X OF THE CODE OF UPPER TOWNSHIP**

---

**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.** Chapter 10 of the Revised General Ordinances of the Township of Upper, also known as the Code of Upper Township, shall be amended and supplemented as hereinafter provided:

**10-1.3 Fees.** The fees to be charged and collected by the Construction Official of the Township, as well as the subcode officials of the Township, shall be as follows:

- a. *Special Permit Fees.*
  1. **Demolition Fees.** The fee for a demolition or removal permit shall be \$54.00 for a structure of less than 5,000 square feet in area and less than 30 feet in height, for one or two family residences (use group R-5 of the building subcode), and structures on farms including commercial farm buildings under N.J.A.C. 5:23-3.2(d), and \$80.00 for all other use groups.
  2. **Sign Permits.** The fee for a permit to construct a sign shall be in the amount of \$1.55 per square foot of surface

area of the sign, computed on one side only for a double faced sign. The minimum permit fee for a sign shall be \$54.00.

3. **Swimming Pool Permits.** The building subcode fee for a swimming pool shall be \$235.00 for an inground pool. The building subcode fee for an above ground pool shall be \$108.00.
4. **Mechanical Fee.** Fees charged for a Mechanical Permit for work covered under N.J.A.C. 5:23-3.4(c) shall be \$78.00 for the first device and \$24.00 for each additional device. Note that Mechanical Permits are only allowed for work on R-3, R-4 and R-5 structures.
5. **Periodic Inspections.** For cross connection and back-flow preventers that are subject to testing, requiring a reinspection every three months, the fee shall be \$78.00 for each device when they are tested (thrice annually) and \$192.00 for each device when they are broken down and tested (once annually).
6. **Variation.** The fee for an application for a variation in accordance with N.J.A.C. 5:23-2.10 shall be \$660.00 for Class I structures and \$65.00 for Class II and Class III structures. The fee for resubmission of an application for a variation shall be \$240.00 for Class I and \$35.00 for Class II and Class III structures.

7. New Jersey State Permit Surcharge Fee. The New Jersey State permit surcharge fee that is collected by this agency for the State is to be the current fee mandated by N.J.A.C. 5:23-4.19.

NOTE: Due to the limitations of the Department of Community Affairs' computer program, Upper Township is forced to round off all permit and surcharge fees to the nearest whole dollar.

b. *Exempt-Nonprofit Fees.*

1. Nonprofit-exempt organizations are not exempt from New Jersey State permit surcharge fee.
2. Exemption from Fee: The following organizations and entities shall be exempt from the payment of any fee required by this Ordinance:
  - (a) Any entity or organization specified in N.J.S.A. 40A:12-15, as the same may be amended and supplemented from time to time;
  - (b) Any entity or organization specified in N.J.S.A. 40A:12-21, as the same may be amended and supplemented from time to time; and
  - (c) Any organization which is exempt from the payment of ad valorem real estate taxes.

c. *Plan Review Fees.*

1. Plan review fees are 20% of the total construction fee. Plan review fees are due either when the construction

permit application is submitted or when the construction permit is issued. It is the option of the Construction Official to determine when the plan review fee is due.

2. Certificate of Occupancy Fees.

- (a) Any Certificate of Occupancy fee shall be paid before a certificate is issued.
- (b) The Certificate fee for an R-5 use and structures that are accessory uses to R-5 use, such as detached garages, etc., located on the same property and farm structures including commercial farm buildings shall be \$60.00.
- (c) Certificate fees for all others are 10% of the total construction permit fee with a \$100.00 minimum.
- (d) The fee for a certificate granted pursuant to a change in use group shall be \$240.00 providing that all subcode inspections reveal no Uniform Construction Code violations that have to be remedied. Uniform Construction Code violations or required changes may require construction permit fees in addition to the fee for a change in use certificate.
- (e) There is no fee for a Certificate of Approval certifying that work done under a construction permit has been satisfactorily completed.

(f) There is no fee for a Temporary Certificate of Occupancy.

d. *Annual Permit Fees.*

1. Fees charged for annual permits are to be the same as required by N.J.A.C. 5:23-4.20(c)5.

e. *Construction Permit Fees.*

1. The fee to be charged for a construction permit will be the sum of the basic construction fee computed in accordance with the section below, plus any applicable special fees, such as elevator or sign fees. The fee is to be paid before a permit is issued.

f. *Basic Construction Fees.*

1. The basic construction fee shall be in the sum of the parts computed on the basis of the volume or cost of construction, the number of plumbing fixtures and pieces of equipment, the number of electrical fixtures, and devices and the number of sprinklers, standpipes, and detectors (smoke and heat) at the unit rates provided here plus any special fees. The minimum fee for a basic construction permit covering any or all building, plumbing, electrical or fire protection work shall be \$54.00 per subcode.

g. *Building Subcode Fees.*

1. Fees for new construction shall be based upon the volume of the structure. The volume shall be computed in

accordance with N.J.A.C. 5:23-2.28. The new construction fee shall be:

\$0.039 all use groups, all structures less than 10,001 cubic feet in volume.

\$0.032 all use groups, all structures 10,001 or more cubic feet in volume.

EXCEPTION: The following structures generally being of very large volume are to be charged the following fee when 10,001 or more cubic feet in volume:

Use Group A-1, A-2, A-3, A-4, F-1, F-2, S-1, S-2 the fee shall be \$0.216 and the fee shall be \$0.216 per cubic feet for structures on farms, including commercial farm buildings under N.J.A.C. 5:23-3.2(d), with a maximum fee for such structures on farms not to exceed \$960.00.

2. Fees for renovations, alterations and repairs are based on estimated cost of work:

\$ 1,000.00 up to \$ 50,000.00    \$16.00 per \$1,000.00

\$50,001.00 up to \$100,000.00    \$14.00 per \$1,000.00

\$100,001.00 and above                    \$ 10.00 per  
\$1,000.00

For the purpose of determining estimated cost the applicant shall submit to the agency such cost data as may be available, produced by the architect or engineer of record, or by a recognized estimating firm or by the contractor. A bona fide contractor's bid, if available, shall

be submitted. The agency shall make the final decision regarding the estimated cost.

3. Fees for additions shall be computed on the same basis as the new construction for the added portion.
4. Fees for combination renovations and additions shall be computed as the sum of the fees computed separately in accordance with the items above.

h. *Plumbing Subcode Fees. Plumbing Fixtures and Equipment:*

1. The fee shall be in the amount of \$11.00 per fixture for any fixtures connected to the plumbing system except for special devices listed below.
2. Plumbing Special Devices: Grease traps, oil separators, water cooled air conditioning units, refrigeration air conditioning units, utility service connections, back-flow preventers, steam boilers, hot water boilers, gas piping, active solar systems, sewer pumps, interceptors and fuel piping. The fee for these and similar devices shall be \$54.00 each.

i. *Electric Subcode Fees. Electrical Fixtures and Devices:* The fee shall be as follows:

1. For the first block consisting of one to 50 receptacles, fixtures or devices, the fee shall be \$78.00. For each additional block consisting of up to 25 receptacles, fixtures or devices, the fee shall be \$19.00. For the purpose of computing this fee, receptacles, fixtures or

devices shall include lighting fixtures, wall switches, convenience receptacles, sensors, dimmers, alarm devices, smoke and heat detectors, communication outlets, light standards eight feet or less in height including luminaries, emergency lights, electric signs, exit lights or similar electric fixtures and devices rated 20 amperes or less including motors or equipment rated less than one horsepower (hp) or one kilowatt(kw).

2. For each motor or electrical device rated from 1 hp to 10 hp or 1 kw to 10 kw; for each transformer or generator from 1 kw to 10 kw or 1 kva to 10 kva; for each replacement of wiring involving one branch circuit or part thereof; for each storable pool or hydro massage bath tub; for each underwater lighting fixture; for household electric cooking equipment rated up to 60 kw; for each fire, security or burglar alarm control unit; for each receptacle rated from 30 amperes to 50 amperes; for each light standard greater than eight feet in height including luminaries; and for each communications closet the fee shall be \$16.00.
3. For motor or electrical devices rated from greater than 10 hp to 50 hp, or 10 kw to 50 kw; for each service equipment, panel board, switch board, switch gear, motor control center, or disconnection means rated 225 amperes or less; for each transformer or generator rated

from greater than 10 kw to 45 kw or 10 kva to 45 kva; for each electric sign rated from greater than 20 amperes to 225 amperes including associated disconnecting means; for each receptacle rated greater than 50 amperes; and for each utility load management device, the fee shall be \$54.00.

4. For each motor or electrical device rated from greater than 50 hp to 100 hp or 50 kw to 100 kw; for each service equipment, panel board, switch board, switch gear, motor control center or disconnection means rated from greater than 225 amperes to 1,000 amperes, and for each transformer or generator rated from greater than 45 kw to 112.5 kw or 45 kva to 112.5 kva, the fee shall be \$120.00.
5. For each motor or electrical device rated greater than 100 hp or 100 kw; for service equipment, panel board, switch board, switch gear, motor control center or disconnecting means greater than 112.5 kw or 112.5 kva, the fee shall be \$540.00.
6. For motors or similar devices requiring concurrent installation of individual controls, relays and switches, the fee shall be based only upon the rating of the motor or device. There shall be no additional fee charged for the concurrent installation of individual circuit components, for example, controllers, starter, and disconnecting means.

7. The fee charged for process equipment shall be based on the ampere rating of the over current device protecting the conductor feeding the process equipment or the cutoff device.
  8. For the purpose of computing these fees, all electrical and communications devices, utilization equipment and motors which are part of premises wiring, except those which are portable plug-in-type, shall be counted.
- j. *Fire Protection Fees.* Sprinklers, standpipes, detectors (smoke or heat), pre-engineered suppression system, gas or oil fired appliances not connected to the plumbing systems, kitchen exhaust systems, incinerators and crematoriums:
1. The fee for 20 or fewer heads or detectors shall be \$54.00; the fee for 21 to and including 100 heads or detectors shall be \$156.00; for 101 to and including 200 heads or detectors the fee shall be \$312.00; for 201 to and including 400 heads or detectors the fee shall be \$960.00; for 401 to and including 1,000 heads or detectors the fee shall be \$1,200.00.
  2. In computing the fees for heads and detectors, the number of each shall be counted separately and two fees, one for the heads and one for the detectors shall be charged.
  3. The fee for each standpipe shall be \$240.00.

4. The fee for each independent pre-engineered fire suppression system shall be \$192.00.
  5. The fee for each gas or oil fired appliance which is not connected to the plumbing system shall be \$54.00.
  6. The fee for each kitchen exhaust system shall be \$54.00.
  7. The fee for each incinerator shall be \$600.00.
  8. The fee for each crematorium shall be \$600.00.
- k. *Elevator Subcode Fees.* Upper Township does not currently have an Elevator Subcode Official. This position is being handled by the Department of Community Affairs.

In the event that Upper Township does contract with a third party to act as Elevator Subcode Official the fee will be the same as charged by the Department of Community Affairs plus a 10% administrative charge.

**SECTION 2: REPEALER:** All Ordinances or parts of Ordinances which are in conflict or inconsistent herewith are hereby repealed to the extent of such inconsistency or conflict only.

**SECTION 3: SEVERABILITY:** If any section, paragraph, subdivision, subsection, clause or provision of this Ordinance shall be adjudged invalid, such adjudication shall apply only to the section, paragraph, subdivision, subsection, clause or provision declared invalid and the remainder of this Ordinance shall remain in full force and effect and shall be enforceable.

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

**SECTION 5: CODIFICATION:** This Ordinance shall be codified in the Upper Township Code at the sections referred to above.

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 24<sup>th</sup> OF MARCH, 2009 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 27<sup>th</sup> DAY OF APRIL, 2009 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

**12. Public Hearing and Final Adoption of Ordinance No. 011-2009 RE: AN ORDINANCE AMENDING REVISED GENERAL ORDINANCE CHAPTER VIII (ANIMAL CONTROL) OF THE CODE OF UPPER TOWNSHIP TO REGULATE THE CHAINING AND TETHERING OF DOGS.**

During the public comment section of the hearing there were no speakers from the audience. Motion to adopt the ordinance made by Jay Newman, second by Frank Conrad. 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. 011-2009

RE: AN ORDINANCE AMENDING REVISED GENERAL ORDINANCE CHAPTER VIII (ANIMAL CONTROL) OF THE CODE OF UPPER TOWNSHIP TO REGULATE THE CHAINING AND TETHERING OF DOGS.

---

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: Chapter VIII, Section 8-5.1, of the Revised General

Ordinances of the Township of Upper, also known as the Code of Upper Township,

shall be revised as follows:

8-5.1 Running at Large.

No person owning, possessing or harboring any dog shall suffer or permit it to run at large unless such dog is accompanied by a person over the age of twelve (12) years and such dog is securely confined and controlled by an adequate leash not exceeding six feet (6') in length, providing nevertheless, that properly licensed hunting dogs under the control and supervision of their owner may be used for hunting purposes in hunting areas permitted by Law. For the purpose of this Chapter, any dog which is off the premises of the owner is hereby defined as one which runs at large.

SECTION 2: Chapter VIII, Section 8-5, of the Revised General

Ordinances of the Township of Upper, also known as the Code of Upper Township,

shall be revised to add the following Section 8-5.7:

8-5.7 Chaining or Tethering of Dogs.

- a. Dogs must be able to move freely when chained or tethered. The size of the tether or chain must be a minimum of 15 linear feet and shall remain tangle free. Dogs must be equipped with properly fitted harness or buckle-type collars. The tether or chain shall be constructed of lightweight, yet durable, material. A dog house must be accessible to any dog that is chained or tethered.
- b. Dogs that are not spayed or neutered shall not be tethered or chained for any period of time and must be in a completely enclosed yard or housed indoors.

- c. No dogs may be tethered or chained after dark (prior to sunrise or after sunset).

SECTION 3: REPEALER: All Ordinances or parts of Ordinances inconsistent herewith are hereby repealed to the extent of such inconsistency only.

SECTION 4: SEVERABILITY: If any section, paragraph, subdivision, subsection, clause or provision of this Ordinance shall be adjudged invalid, such adjudication shall apply only to the section, paragraph, subdivision, subsection, clause or provision declared invalid and the remainder of this Ordinance shall remain in full force and effect and shall be enforceable.

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

SECTION 6: CODIFICATION: This Ordinance shall be codified in Chapter VII of the Upper Township Code commencing at 8-5.1.

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 24<sup>th</sup> DAY OF MARCH, 2009 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 27<sup>th</sup> DAY OF APRIL, 2009 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

**13. Introduction and First Reading of Ordinance No. 013-2009 RE: AN ORDINANCE AMENDING REVISED GENERAL ORDINANCE CHAPTER XX OF THE CODE OF UPPER TOWNSHIP TO ESTABLISH DEVELOPMENT FEES TO FACILITATE AFFORDABLE HOUSING.**

Mr. Young commented this modifies exemptions of fees used for commercial and residential projects.

Motion was made by Jay Newman, second by Curtis Corson to introduce Ordinance No. 013-2009 with public hearing and final adoption set for May 26, 2009 at 7:30 PM. During roll call vote all four Committee members voted in the affirmative.

**TOWNSHIP OF UPPER  
CAPE MAY COUNTY  
O R D I N A N C E  
ORDINANCE NO. 013 -2009**

**RE: AN ORDINANCE AMENDING REVISED GENERAL ORDINANCE CHAPTER XX OF THE CODE OF UPPER TOWNSHIP TO ESTABLISH DEVELOPMENT FEES TO FACILITATE AFFORDABLE HOUSING**

---

**WHEREAS**, 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**, Pursuant to P.L.2008, c.46 section 8 (C. 52:27D-329.2) and the Statewide Non-Residential Development Fee Act (C. 40:55D-8.1 through 8.7), COAH is authorized to adopt and promulgate regulations necessary for the establishment, implementation, review, monitoring and enforcement of municipal affordable housing trust funds and corresponding spending plans. Municipalities that are under the jurisdiction of the Council or court of competent jurisdiction and have a COAH-approved spending plan may retain fees collected from non-residential development; and;

**WHEREAS**, the Township of Upper intends to establish standards for the collection, maintenance, and expenditure of development fees pursuant to COAH's regulations and in accordance P.L.2008, c.46, Sections 8 and 32-38. Fees collected pursuant to this ordinance shall be used for the sole purpose of providing low- and moderate-income housing. This ordinance shall be interpreted within the framework of COAH's rules on development fees, codified at N.J.A.C. 5:97-8; and

**WHEREAS**, COAH approved the Township's model development fee ordinance on March 17, 2009.

**NOW, THEREFORE, BE IT ORDAINED AND ESTABLISHED** by the Township Committee of the Township of Upper that Chapter XX of the Revised General Ordinance of the Township of Upper, also known as the Code of Upper Township be and is hereby amended as follows:

The following Section 20 -15 entitled " Development Fees " is hereby added and reads as follows:

§20- 15 Development Fees

a. Purpose

1. In Holmdel Builder's Association V. Holmdel Township, 121 N.J. 550 (1990), the New Jersey Supreme Court determined that mandatory development fees are authorized by the Fair Housing Act of 1985 (the Act),

N.J.S.A. 52:27d-301 et seq., and the State Constitution, subject to the Council on Affordable Housing's (COAH's) adoption of rules.

2. Pursuant to P.L.2008, c.46 section 8 (C. 52:27D-329.2) and the Statewide Non-Residential Development Fee Act (C. 40:55D-8.1 through 8.7), COAH is authorized to adopt and promulgate regulations necessary for the establishment, implementation, review, monitoring and enforcement of municipal affordable housing trust funds and corresponding spending plans. Municipalities that are under the jurisdiction of the Council or court of competent jurisdiction and have a COAH-approved spending plan may retain fees collected from non-residential development.
3. This ordinance establishes standards for the collection, maintenance, and expenditure of development fees pursuant to COAH's regulations and in accordance P.L.2008, c.46, Sections 8 and 32-38. Fees collected pursuant to this ordinance shall be used for the sole purpose of providing low- and moderate-income housing. This ordinance shall be interpreted within the framework of COAH's rules on development fees, codified at N.J.A.C. 5:97-8.

b. Basic requirements

1. This ordinance shall not be effective until approved by COAH pursuant to N.J.A.C. 5:96-5.1.
2. Upper Township shall not spend development fees until COAH has approved a plan for spending such fees in conformance with N.J.A.C. 5:97-8.10 and N.J.A.C. 5:96-5.3.

c. Definitions

The following terms, as used in this subsection, shall have the following meanings:

*Affordable housing development* means a development included in the Housing Element and Fair Share Plan, and includes, but is not limited to, an inclusionary development, a municipal construction project or a 100 percent affordable development.

*COAH* or the *Council* means the New Jersey Council on Affordable Housing established under the Act which has primary jurisdiction for the administration of housing obligations in accordance with sound regional planning consideration in the State.

*Development fee* means money paid by a developer for the improvement of property as permitted in N.J.A.C. 5:97-8.3.

*Developer* means the legal or beneficial owner or owners of a lot or of any land proposed to be included in a proposed development, including the holder of an option or contract to purchase, or other person having an enforceable proprietary interest in such land.

*Equalized assessed value* means the assessed value of a property divided by the current average ratio of assessed to true value for the municipality in which the

property is situated, as determined in accordance with sections 1, 5, and 6 of P.L.1973, c.123 (C.54:1-35a through C.54:1-35c).

*Green building strategies* means those strategies that minimize the impact of development on the environment, and enhance the health, safety and well-being of residents by producing durable, low-maintenance, resource-efficient housing while making optimum use of existing infrastructure and community services.

d. Residential Development fees

1. Imposed fees

- i. Within all residential zone districts, Town Center (TC) and Town Center Core (TCC) zone districts, and other zone districts which permit residential uses, residential developers, except for developers of the types of development specifically exempted below, shall pay a fee of one and a half (1.5%) percent of the equalized assessed value of the land and improvements for all new residential construction on an unimproved lot or lots provided no increased density is permitted.
- ii. Residential developers, except for the developers of the types of development specifically exempted below, shall also pay a fee equal to one and a half (1.5%) percent of the equalized value resulting from any additions to existing structures used for residential purposes.
- iii. Development fees shall be imposed and collected when an existing structure is demolished and replaced. The development fee of one and a half (1.5%) percent shall be calculated on the difference between the equalized assessed value of pre-existing land and improvement and the equalized assessed value of the newly improved structure, i.e., land and improvement, at the time final certificate of occupancy is issued. If the calculation required under this section results in a negative number, the residential development fee shall be zero.
- iv. When an increase in residential density pursuant to N.J.S.A. 40:55D-70d(5) (known as a “d” variance) has been permitted, developers may be required to pay a development fee of six percent of the equalized assessed value for each additional unit that may be realized. However, if the zoning on a site has changed during the two-year period preceding the filing of such a variance application, the base density for the purposes of calculating the bonus development fee shall be the highest density permitted by right during the two-year period preceding the filing of the variance application. Example: If an approval allows four units to be constructed on a site that was zoned for two units, the fees could equal one and a half percent of the equalized assessed value on the first two units; and the specified higher percentage up to six percent of the equalized assessed value for the two additional units, provided zoning on the site has not changed during the two-year period preceding the filing of such a variance application.

2. Eligible exactions, ineligible exactions and exemptions for residential development

- i. Affordable housing developments, developments where the developer is providing for the construction of affordable units elsewhere in the municipality and developments where the developer has made a payment in lieu of on-site construction of affordable units shall be exempt from development fees.
- ii. Developments that have received preliminary or final site plan approval prior to the adoption of the development fee ordinance shall be exempt from development fees, unless the developer seeks a substantial change in the approval or the approval required compliance with future municipal COAH ordinances and regulations. Where a site plan approval does not apply, a zoning and/or construction permit shall be synonymous with preliminary or final site plan approval for this purpose. The fee percentage shall be vested on the date that the construction permit is issued.
- iii. The fee shall not apply to an increase in equalized assessed value resulting from alterations, reconstruction, renovations, repairs and additions within the existing footprint.

e. Non-residential Development fees

1. Imposed fees

- i. Within all zoning districts, non-residential developers, except for developers of the types of development specifically exempted, shall pay a fee equal to two and one-half (2.5%) percent of the equalized assessed value of the land and improvements, for all new non-residential construction on an unimproved lot or lots.
- ii. Non-residential developers, except for developers of the types of development specifically exempted, shall also pay a fee equal to two and one-half (2.5%) percent of the increase in equalized assessed value resulting from any additions to existing structures to be used for non-residential purposes.
- iii. Development fees shall be imposed and collected when an existing structure is demolished and replaced. The development fee of two and a half percent (2.5%) shall be calculated on the difference between the equalized assessed value of the pre-existing land and improvement and the equalized assessed value of the newly improved structure, i.e. land and improvement, at the time final certificate of occupancy is issued. If the calculation required under this section results in a negative number, the non-residential development fee shall be zero.

2. Eligible exactions, ineligible exactions and exemptions for non-residential development

- i. The non-residential portion of a mixed-use inclusionary or market rate development shall be subject to the two and a half (2.5) percent development fee, unless otherwise exempted below.
- ii. The two and a half (2.5%) percent fee shall not apply to an increase in equalized assessed value resulting from alterations, change in use within existing footprint, reconstruction, renovations and repairs.
- iii. Non-residential developments shall be exempt from the payment of non-residential development fees in accordance with the exemptions

required pursuant to P.L.2008, c.46, as specified in the Form N-RDF “State of New Jersey Non-Residential Development Certification/Exemption” Form. Any exemption claimed by a developer shall be substantiated by that developer.

- iv. A developer of a non-residential development exempted from the non-residential development fee pursuant to P.L.2008, c.46 shall be subject to it at such time the basis for the exemption no longer applies, and shall make the payment of the non-residential development fee, in that event, within three years after that event or after the issuance of the final certificate of occupancy of the no-residential development, whichever is later.
- v. If a property which was exempted from the collection of a non-residential development fee thereafter ceases to be exempt from property taxation, the owner of the property shall remit the fees required pursuant to this section within 45 days of the termination of the property tax exemption. Unpaid non-residential development fees under these circumstances may be enforceable by Upper Township as a lien against the real property of the owner.
- vi. Developments that have received preliminary or final site plan approval prior to the adoption of the development fee ordinance shall be exempt from development fees, unless the developer seeks a substantial change in the approval or the approval required compliance with future municipal COAH ordinances and regulations. Where a site plan approval does not apply, a zoning and/or construction permit shall be synonymous with preliminary or final site plan approval for this purpose. The fee percentage shall be vested on the date that the construction permit is issued.

f. Collection procedures

- 1. Upon the granting of a preliminary, final or other applicable approval, for a development, the applicable approving authority shall notify the construction official responsible for the issuance of a construction permit.
- 2. For non-residential developments only, the developer shall also be provided with a copy of Form N-RDF “State of New Jersey Non-Residential Development Certification/Exemption” to be completed as per the instructions provided. The Developer of a non-residential development shall complete Form N-RDF as per the instructions provided. The construction official shall verify the information submitted by the non-residential developer as per the instructions provided in the Form N-RDF. The Tax assessor shall verify exemptions and prepare estimated and final assessments as per the instructions provided in Form N-RDF.
- 3. The construction official responsible for the issuance of a construction permit shall notify the local tax assessor of the issuance of the first construction permit for a development which is subject to a development fee.
- 4. Within 90 days of receipt of that notice, the municipal tax assessor, based on the plans filed, shall provide an estimate of the equalized assessed value of the development.

5. The construction official responsible for the issuance of a final certificate of occupancy notifies the local assessor of any and all requests for the scheduling of a final inspection on property which is subject to a development fee.
6. Within 10 business days of a request for the scheduling of a final inspection, the municipal tax assessor shall confirm or modify the previously estimated equalized assessed value of the improvements of the development; calculate the development fee; and thereafter notify the developer of the amount of the fee.
7. Should the Township of Upper fail to determine or notify the developer of the amount of the development fee within 10 business days of the request for final inspection, the developer may estimate the amount due and pay that estimated amount consistent with the dispute process set forth in subsection b. of section 37 of P.L.2008, c.46 (C.40:55D-8.6).
8. Fifty (50%) percent of the development fee shall be collected at the time of issuance of the construction permit which shall be nonrefundable. The remaining portion shall be collected at the issuance of the certificate of occupancy. The developer shall be responsible for paying the difference between the fee calculated at construction permit and that determined at issuance of certificate of occupancy. No certificate of occupancy shall be issued to the developer until all remaining developer fees have been paid in full.
9. Appeal of development fees
  - i. A developer may challenge residential development fees imposed by filing a challenge with the County Board of Taxation. Pending a review and determination by the Board, collected fees shall be placed in an interest bearing escrow account by the Township of Upper. Appeals from a determination of the Board may be made to the tax court in accordance with the provisions of the State Tax Uniform Procedure Law, R.S.54:48-1 et seq., within 90 days after the date of such determination. Interest earned on amounts escrowed shall be credited to the prevailing party.
  - ii. A developer may challenge non-residential development fees imposed by filing a challenge with the Director of the Division of Taxation. Pending a review and determination by the Director, which shall be made within 45 days of receipt of the challenge, collected fees shall be placed in an interest bearing escrow account by Township of Upper. Appeals from a determination of the Director may be made to the tax court in accordance with the provisions of the State Tax Uniform Procedure Law, R.S.54:48-1 et seq., within 90 days after the date of such determination. Interest earned on amounts escrowed shall be credited to the prevailing party.

g. Affordable Housing trust fund

1. There is hereby created a separate, interest-bearing housing trust fund to be maintained by the chief financial officer for the purpose of depositing development fees collected from residential and non-residential developers and proceeds from the sale of units with extinguished controls.

2. The following additional funds shall be deposited in the Affordable Housing Trust Fund and shall at all times be identifiable by source and amount:
  - i. payments in lieu of on-site construction of affordable units;
  - ii. developer contributed funds to make ten percent (10%) of the adaptable entrances in a townhouse or other multistory attached development accessible;
  - iii. rental income from municipally operated units;
  - iv. repayments from affordable housing program loans;
  - v. recapture funds;
  - vi. proceeds from the sale of affordable units; and
  - vii. any other funds collected in connection with Township of Upper's affordable housing program.
3. Within seven days from the opening of the trust fund account, the Township of Upper shall provide COAH with written authorization, in the form of a three-party escrow agreement between the municipality, the approved municipal banking institution and COAH to permit COAH to direct the disbursement of the funds as provided for in N.J.A.C. 5:97-8.13(b).
4. All interest accrued in the housing trust fund shall only be used on eligible affordable housing activities approved by COAH.

h. Use of funds

1. The expenditure of all funds shall conform to a spending plan approved by COAH. Funds deposited in the housing trust fund may be used for any activity approved by COAH to address the Township of Upper's fair share obligation and may be set up as a grant or revolving loan program. Such activities include, but are not limited to: preservation or purchase of housing for the purpose of maintaining or implementing affordability controls, rehabilitation, new construction of affordable housing units and related costs, accessory apartment, market to affordable, or regional housing partnership programs, conversion of existing non-residential buildings to create new affordable units, green building strategies designed to be cost saving and in accordance with accepted national or state standards, purchase of land for affordable housing, improvement of land to be used for affordable housing, extensions or improvements of roads and infrastructure to affordable housing sites, financial assistance designed to increase affordability, administration necessary for implementation of the Housing Element and Fair Share Plan, or any other activity as permitted pursuant to N.J.A.C. 5:97-8.7 through 8.9 and specified in the approved spending plan.
2. Funds shall not be expended to reimburse Upper Township for past housing activities.
3. At least thirty (30%) percent of all development fees collected and interest earned shall be used to provide affordability assistance to low- and moderate-income households in affordable units included in the municipal Fair Share Plan. One-third of the affordability assistance portion of development fees collected shall be used to provide affordability assistance to those households earning thirty (30%) percent or less of median income by region.
  - i. Affordability assistance programs may include down payment assistance, security deposit assistance, low interest loans, rental

- assistance, assistance with homeowners association or condominium fees and special assessments, and assistance with emergency repairs.
- ii. Affordability assistance to households earning thirty (30%) percent or less of median income may include buying down the cost of low or moderate income units in the municipal Fair Share Plan to make them affordable to households earning thirty (30%) percent or less of median income.
  - iii. Payments in lieu of constructing affordable units on site and funds from the sale of units with extinguished controls shall be exempt from the affordability assistance requirement.
4. Township of Upper may contract with a private or public entity to administer any part of its Housing Element and Fair Share Plan, including the requirement for affordability assistance, in accordance with N.J.A.C. 5:96-18.
  5. No more than twenty (20%) percent of all revenues collected from development fees, may be expended on administration, including, but not limited to, salaries and benefits for municipal employees or consultant fees necessary to develop or implement a new construction program, a Housing Element and Fair Share Plan, and/or an affirmative marketing program. In the case of a rehabilitation program, no more than twenty (20%) percent of the revenues collected from development fees shall be expended for such administrative expenses. Administrative funds may be used for income qualification of households, monitoring the turnover of sale and rental units, and compliance with COAH's monitoring requirements. Legal or other fees related to litigation opposing affordable housing sites or objecting to the Council's regulations and/or action are not eligible uses of the affordable housing trust fund.
- i. **Monitoring**
    1. The Township of Upper shall complete and return to COAH all monitoring forms included in monitoring requirements related to the collection of development fees from residential and non-residential developers, payments in lieu of constructing affordable units on site, funds from the sale of units with extinguished controls, barrier free escrow funds, rental income, repayments from affordable housing program loans, and any other funds collected in connection Township of Upper's housing program, as well as to the expenditure of revenues and implementation of the plan certified by COAH. All monitoring reports shall be completed on forms designed by COAH.
- j. **Ongoing collection of fees**
    1. The ability for Township of Upper to impose, collect and expend development fees shall expire with its substantive certification unless the Township of Upper has filed an adopted Housing Element and Fair Share Plan with COAH, has petitioned for substantive certification, and has received COAH's approval of its development fee ordinance. If Township of Upper fails to renew its ability to impose and collect development fees prior to the expiration of substantive certification, it may be subject to forfeiture of any or all funds remaining within its municipal trust fund. Any funds so forfeited shall be

deposited into the "New Jersey Affordable Housing Trust Fund" established pursuant to section 20 of P.L.1985, c.222 (C.52:27D-320). Township of Upper shall not impose a residential development fee on a development that receives preliminary or final site plan approval after the expiration of its substantive certification or judgment of compliance, nor shall Township of Upper retroactively impose a development fee on such a development. The Township of Upper shall not expend development fees after the expiration of its substantive certification or judgment of compliance.

#### 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 affect 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 20-15.

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 27<sup>th</sup> DAY OF APRIL, 2009 AND WILL BE TAKEN UP FOR CONSIDERATION AS TO FINAL ADOPTION AT A PUBLIC HEARING OF THE TOWNSHIP ON THE 26<sup>TH</sup> DAY OF MAY, 2009 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

#### CORRESPONDENCE

#### NEW BUSINESS

##### **14. Scott Georgetti, request to vacate Atlantic Avenue.**

Curtis Corson made a motion to approve, second by Frank Conrad with all four Committee members present voting in the affirmative. Mr. Young will prepare an ordinance to be placed on a future agenda.

**15. Roberta Townsend, request to purchase Township owned property Block 622, Lots 18, 19 & 20.**

As Mrs. Townsend was not present this evening the Committee wanted to be sure that she understood the policy for land sales as follows: the policy is that no new lots could be created by the sale, and that the buyer is required to consolidate the purchased property with the buyer's lot. Mrs. Townsend would be sent a letter informing her of this and if agreeable her matter would be placed on a future agenda.

**16. Humane Society of Ocean City Harriers for Hounds Biathlon, request to hold a triathlon event on the Beesleys Point beach on July 25, 2009.**

Louise Nunan of Ocean City was present to request the use of the Beesleys Point beach for the Harriers for Hounds biathlon event. She estimates approximately 100 participants and has spoken with State Police and Rescue Squads regarding traffic control and safety issues. Lifeguards would be the responsibility of the organization not the Township. Harbor Road and the boat ramp will not be closed. Frank Conrad made motion to approve the use of the beach for this event if all concerns were addressed. Motion was, seconded by Jay Newman, and during voice vote all four Committee members voted in the affirmative. A resolution will be placed on a future agenda.

**17. Bruce Riordan and Robert Roland, request to vacate Seacliff Road street end.**

It was discussed that a street vacation must answer whether the street is needed for public purpose and/or is there potential for current or future public uses. This matter will be put on the next agenda for unfinished business.

**18. Church of the Resurrection request to hold Calendar Raffle RA #356.**

Motion was made to approve by Curtis Corson, seconded by Frank Conrad with all four Committee members present voting in the affirmative.

**UNFINISHED BUSINESS:**

**DISCUSSION**

19. Report from the Upper Township Planning Board on the petition for De-annexation of Strathmere and Whale Beach.

Daniel Young gave attendees a brief history of this process. The Planning Board had 18 meetings specifically covering this issue. Based on these meetings the Planning Board issued a report of findings denying the de-annexation. The Township Committee now has 30 days to review these reports and exhibits and make their decision to deny or consent. Mr. Young explained the petitioner of de-annexation has the right to appeal the decision of the Planning Board and Committee. The petitioner must prove three things,

- The decision is arbitrary or unreasonable,
- The refusal to consent is detrimental to economic and social well being of the majority of residents of Strathmere and Whale Beach, and
- De-annexation will not cause significant injury to the Township.

These items could have the decision overturned by appeal process.

Mr. Young suggested a meeting be scheduled inviting Planning Board representatives, the Auditor, and Ms. Bittner. The regular meeting date of May 11<sup>th</sup> was selected for initial discussion. The Committee would start the regular meeting at 6:30 PM and inform the

individuals listed above that the de-annexation portion of the meeting would not begin until 7:30 or 8:00 pm. A date was then set for May 21<sup>st</sup> as the final meeting for determination on this matter. Richard Palombo made motion to schedule early meeting time on May 11<sup>th</sup> and final date on May 21<sup>st</sup> as stated above, Frank Conrad seconded with all four Committee members present voting in the affirmative.

### **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.”** motion by Jay Newman, second by Richard Palombo to approve the bills as submitted with all four Committee members present voting in the affirmative.

Payroll: \$158,163.72

Bills submitted for payment: \$1,615,056.42

### **REPORT OF MUNICIPAL DEPARTMENTS:**

#### **PUBLIC COMMENT**

**Robert Roth, 3041 Rt. 9, Seaville**, was present along with his brother William, to speak to the Committee about their tax appeal. Curtis Corson and Daniel Young stepped down from the dais at this point and did not participate in this matter. Conflict attorney Thomas Smith was present. Robert Roth proceeded to narrate the history of his family’s tax appeal journey beginning in 1975 as follows: they have owned 13 acres since 1964. He claims the property has been Farmland assessment qualified since late 1960’s to 2008. Development rights were transferred to the Farmland Preservation Program in 2003. In 2009 Farmland Assessment was disapproved by the current Tax Assessor due to the lack of a Woodlot Management Plan in place. The Roths are now appealing with the Cape May County Board of Taxation. The Roth family is not happy with the current treatment by Special Council Smith. Mr. Smith has brought the County Tax Board in as a co-defendant in the tax appeal. Mr. Roth accuses Thomas Smith and the Township of many things including not following the Farmland Assessment Qualifications, that the Township is trying to acquire his property, and that he is being forced to possibly lose his property at a tax sale.

At this point Mayor Palombo assured Mr. Roth that the Township has no intention of trying to acquire the Roth property or “selling it off at a tax sale”. Mayor Palombo asked Mr. Roth about the Woodland Management Plan and if they are in process of getting into compliance with that. Mr. Roth replied that they are.

**William Roth, 3053 Rt.9,f Seaville** commented that he has had less than pleasant conversations with the Tax Assessor and that they have never failed to produce any item requested.

**Edmund Bamford, 1810 Commonwealth Ave. Strathmere**, asked if the Storm Water Report and Certification included Commonwealth Ave. Mr. Dietrich responded that it did not include Commonwealth because Commonwealth is a county road. Mr. Bamford asked for help in getting debris cleared from the drains. Mayor Palombo responded that the Township Clerk will send a letter to the county requesting cleanup.

**Ted Kingston, Willard Rd., Strathmere**, wanted information about the vacation of street ends being on the agenda. He stated that the Strathmere Improvement Association and the Township discussed these items previously and the street vacations were denied. Mr. Kingston added that these street ends are needed for fire protection and also mentioned access issues.

Mayor Palombo responded that this matter is unique and Mr. Jankowski who owns the Marina at Whittier made this current request. The bulkhead needs major repairs, the marina has encroached on the land in question for many years and if enforced would severely harm the business. Other alternatives are being reviewed such as leasing or licensing. Public safety is a major concern. It was also discussed that the NJ DEP Public Access plan is also a part of this problem. This issue will be evaluated as significant changes in regulations create the need for following these plans.

### **CLOSED SESSION**

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

Motion was made by Jay Newman, second by Richard Palombo to close the regular portion of the meeting and go into an executive session to discuss items previously identified as follows: **Richard Palombo, Mayor**, regarding Contract Negotiations for employee medical benefits, and one other item for closed session regarding Litigation in the Roth Tax Appeal. Municipal Attorney Daniel Young had two items for closed session with regards to Litigation; 1. to report on the matter of Upper Township vs. Sansone; and 2. to report on the ongoing tax appeals. **Paul Dietrich, Township Engineer**, has one item for closed session regarding Contract Negotiations and the Collective Bargaining Agreement.

### **RECONVENE PUBLIC PORTION OF MEETING**

The Committee closed the executive session and went back into the open portion of the meeting.

### **ADJOURNMENT**

There was no further business for this evening and the meeting was adjourned at 9:55 P.M., motion by Jay Newman, second by Frank Conrad with all four Committee members present voting in the affirmative. The next meeting is scheduled for May 11, 2009 at 6:30 P.M.

Minutes prepared by

Wanda Gaglione, RMC  
Municipal Clerk

**\*\*Please note—the order of the agenda may be changed at the discretion of the Township Committee.**

### **Bill List**

48751 04/27/09 A0004 A+ COMMERCIAL OFFICE CLEANERS 4,005.00 2527  
48752 04/27/09 A0024 ADVANCE DOOR & SUPPLY CO. 1,441.00 2527  
48753 04/27/09 A0025 ADVANTAGE RENTAL ACE HARDWARE 81.65 2527

48754 04/27/09 A0028 ADVANTAGE RENTAL CENTER INC. 10.33 2527  
48755 04/27/09 A0087 AT & T 22.07 2527  
48756 04/27/09 A0091 ATLANTIC CITY ELECTRIC 3,288.69 2527  
48757 04/27/09 A0095 ATLANTIC CITY COURT REPORTING 2,490.00 2527  
48758 04/27/09 B0018 BARRETT,GERALD INC. 123.75 2527  
48759 04/27/09 B0026 BETTER MATERIALS CORP. 1,188.15 2527  
48760 04/27/09 B0035 BELMONT & CRYSTAL SPRINGS 143.54 2527  
48761 04/27/09 B0061 BILLOWS ELECTRIC 24.80 2527  
48762 04/27/09 B0070 HORIZON BLUE CROSS/BLUE SHIELD 101,775.74 2527  
48763 04/27/09 C0030 CAMP, BARBARA 186.00 2527  
48764 04/27/09 C0046 CAPE MAY COUNTY CLERK 16.00 2527  
48765 04/27/09 C0048 CAPE MAY COUNTY MUA 25,370.97 2527  
48766 04/27/09 C0068 COMCAST 239.94 2527  
48767 04/27/09 C0071 CAPEHART & SCATCHARD, P.A. 3,244.51 2527  
48768 04/27/09 C0116 CINTAS CORPORATION #158 192.74 2527  
48769 04/27/09 C0131 CINTAS FIRST AID & SAFETY 587.16 2527  
48770 04/27/09 C0146 COLLINS IRON WORKS, INC. 218.50 2527  
48771 04/27/09 C0171 COLONIAL ELECTRIC SUPPLY CO. 221.05 2527  
48772 04/27/09 C0201 CRUZAN'S TRUCK SERVICE INC. 579.00 2527  
48773 04/27/09 D0040 DELTA DENTAL OF N.J. INC. 6,225.12 2527  
48774 04/27/09 D0077 DIETRICH,PAUL 20.00 2527  
48775 04/27/09 D0080 DOWNAM, HARRY J. JR. 135.98 2527  
48776 04/27/09 F0053 FORD, SCOTT & ASSOCIATES 6,500.00 2527  
48777 04/27/09 G0006 GARBUTT,PATRICIA A. 18.48 2527  
48778 04/27/09 G0028 GENTILINI FORD 289.34 2527  
48779 04/27/09 G0092 GRUND, BARBARA J. 301.48 2527  
48780 04/27/09 G0096 GRUND, GEORGE 52.00 2527  
48781 04/27/09 H0018 HAROLD RUBIN/L & H SUPPLY 324.71 2527  
48782 04/27/09 H0131 HPI PROCESSES, INC 2,958.07 2527  
48783 04/27/09 I0023 IIMC 125.00 2527  
48784 04/27/09 J0033 JANKOWSKI,MATTHEW 400.00 2527  
48785 04/27/09 J0040 JOHNSON & TOWERS, INC. 141.70 2527  
48786 04/27/09 K0016 KEENE, DAVID 80.00 2527  
48787 04/27/09 K0031 KELLY PRODUCTS CO SUPLIES 81.75 2527  
48788 04/27/09 L0075 LEXISNEXIS T/A MATTHEW BENDER 66.00 2527  
48789 04/27/09 L0080 LOWES, INC. 195.06 2527  
48790 04/27/09 M0035 MARMORA FIRE CO. DISTRICT #3 458,796.00 2527  
48791 04/27/09 M0088 MC SYSTEMS SOFTWARE LLC 400.00 2527  
48792 04/27/09 M0103 MODERN GAS COMPANY, INC. 1,922.81 2527  
48793 04/27/09 M0115 MOORE WALLACE NORTH AMERICA 66.58 2527  
48794 04/27/09 M0174 MCAFEE MEGAN 35.31 2527  
48795 04/27/09 M0209 MAYBERRY, JOHN D 84.80 2527  
48796 04/27/09 N0043 NAPA AUTO PARTS OF S.JERSEY 336.97 2527  
48797 04/27/09 N0052 NATL YOUTH SPORTS COACHED ASSN 1,420.00 2527  
48798 04/27/09 N0088 N.J. CONFERENCE OF MAYORS 155.00 2527  
48799 04/27/09 N0089 NEXTIRAONE TA BLACK BOX 300.00 2527  
48800 04/27/09 O0006 OCS PRINTING 24.00 2527  
48801 04/27/09 P0032 PEDRONI FUEL CO. 1,579.64 2527  
48802 04/27/09 P0043 PERRONE DOOR CO. INC. 3,280.00 2527  
48803 04/27/09 P0064 PITNEY BOWES 210.00 2527  
48804 04/27/09 P0084 PROGRESSIVE BUSINESS PUBLICATI 299.00 2527  
48805 04/27/09 Q0003 QC INC. 2,261.80 2527  
48806 04/27/09 Q0008 QUILL CORPORATION 372.05 2527  
48807 04/27/09 R0030 RIGGINS, INC. 4,044.62 2527  
48808 04/27/09 R0055 ROSIAK, CAROL 20.00 2527  
48809 04/27/09 R0071 REMINGTON VERNICK & WALBERG 581.50 2527  
48810 04/27/09 R0089 RIVERSIDE SHELLS, INC 315.00 2527  
48811 04/27/09 S0016 SAMPSON, MICHELLE 24.00 2527  
48812 04/27/09 S0031 SCHULER SECURITY, INC. 3,800.00 2527  
48813 04/27/09 S0065 SEAVILLE FIRE CO. DISTRICT #4 454,537.00 2527  
48814 04/27/09 S0092 SHONE, LEROY 230.00 2527  
48815 04/27/09 S0108 SOUTHERN NEW JERSEY NIGP 120.00 2527  
48816 04/27/09 S0112 SOUTH JERSEY COURT ADM. ASSOC. 60.00 2527  
48817 04/27/09 S0113 SMITH,THOMAS G. 5,094.12 2527  
48818 04/27/09 S0121 SMUZ, THERESE A 76.05 2527  
48819 04/27/09 S0126 SPIEGEL, BARBARA 50.00 2527  
48820 04/27/09 S0134 SO. JERSEY GAS COMPANY 1,766.45 2527  
48821 04/27/09 S0139 SO. JERSEY WATER COND. INC. 371.50 2527  
48822 04/27/09 S0185 STOCKTON STATE COLLEGE 6,610.24 2527  
48823 04/27/09 S0191 STRATHMERE FIRE CO.DISTRICT #1 71,585.00 2527  
48824 04/27/09 S0216 DEPT.31 OOOO261489 160.96 2527  
48825 04/27/09 T0018 TEKK COMMUNICATIONS 204.00 2527  
48826 04/27/09 T0022 TERMINIX 94.00 2527  
48827 04/27/09 T0032 THE PRESS & SUNDAY PRESS 240.32 2527

48828 04/27/09 T0038 THOMAS, CHRISTOPHER 200.00 2527  
48829 04/27/09 T0095 TRI-COUNTY ANIMAL CONTROL 1,500.00 2527  
48830 04/27/09 T0117 TUCKAHOE FIRE DISTRICT #2 417,000.00 2527  
48831 04/27/09 T0126 TUCKAHOE SAND & GRAVEL CO. 829.15 2527  
48832 04/27/09 U0011 UPPER TOWNSHIP BASEBALL 78.75 2527  
48833 04/27/09 U0034 UPPER TWP.GIRLS SOFTBALL ASSOC 78.75 2527  
48834 04/27/09 U0040 U.T. MUNICIPAL ALLIANCE COM. 1,073.80 2527  
48835 04/27/09 V0005 VAN EMBDEN, NATHAN, ATTORNEY 7,283.80 2527  
48836 04/27/09 V0022 VERIZON 773.12 2527  
48837 04/27/09 V0024 VAL-U AUTO PARTS L.L.C. 611.22 2527  
48838 04/27/09 V0027 VANORDER, ROGER 194.92 2527  
48839 04/27/09 W0060 WOOLLEY, THOMAS 80.00 2527  
48840 04/27/09 Y0012 YOUNG,ROBERT 137.95 2527  
48841 04/27/09 Z0001 ZOLL MEDICAL CORPORATION 320.96

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Total Paid: \$1,615,056.42

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