

**TOWNSHIP OF UPPER
2100 TUCKAHOE ROAD
PETERSBURG, NJ 08270
CAPE MAY COUNTY
MINUTES FOR MAY 11, 2009**

*****REGULAR MEETING OF THE TOWNSHIP COMMITTEE –6:30 P.M.*****
Please be advised that due to the additional pending matters needed to be addressed
this evening the regular Township Committee meeting began at 6:30 PM.

CALL TO ORDER

SUNSHINE ANNOUNCEMENT

SALUTE TO THE FLAG

ROLL CALL

Barbara Camp	Present
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 27, 2009 Regular Meeting and
Closed Session Minutes**

Motion was made by Jay Newman, second by Curtis Corson to approve the Minutes as written. Mrs. Camp abstained, the remaining four Committee members voted in the affirmative.

REPORT OF GOVERNING BODY MEMBERS

Frank Conrad, Committeeman; reported that the work on the Caldwell Park lawn sprinkler system has been completed and the field should be ready to play on within three weeks.

Jay Newman, Committeeman; reported that he has noticed bikes in skate park at Amanda’s Field and asked for ideas as to how to block from entering. Our insurance allows the park to be unmanned for skaters only, not bicycles. Mr. Conrad said that the gate has been reconfigured to prevent bringing bikes into the park and that there have been consistent calls to the State Police. Many of the young people using the park are not from Upper Township and are coming from all over southern New Jersey. If the matter cannot be resolved than the Township may have to consider dismantling the park to avoid someone getting injured.

Barbara Camp, Committeewoman; reported that 400 recycling buckets have been purchased with money received from a recycling grant. Some of these buckets where placed

in schools and she is taking suggestions for other locations that will further encourage recycling throughout the Township. The Public Works Department is currently in the spring clean-up mode and includes street cleaning, tree trimming, and snow fencing repairs in Strathmere.

Curtis Corson, Deputy Mayor; discussed the letter that came in the packets from the County regarding Bailey Road. This pertains to the CMC Open Space Board and a possible lease agreement. Mr. Corson would like to get more information on this property and what restrictions there may be. He will speak to the County to discuss what their plans and options are.

He also discussed the insurance recommendation from Kerry Thomson for above-ground storage tanks. This insurance would cover ground spill, explosions, etc. Curtis Corson made motion to pursue the insurance coverage, Jay Newman seconded, with all five Committee members voting in affirmative.

Mr. Corson requested the bill list be sent via email. The group was in favor of doing this. He reported on the meeting both he and Mayor Palombo attended with School Board members, the Board Administrator, and the Superintendent with regards to the recently defeated School Board Budget. The group presented some budget cuts that are possible. Mr. Corson handed out a copy of possible amendments for each Committee member's review for the next meeting.

Jay Newman, Committeeman; reported on EMS and Fire activities for the last month and commented on the recent robbery at Ocean City Home Bank and that no suspects have been arrested as yet.

Richard Palombo, Mayor, made a motion to hire Luke Hogan as a seasonal Beach Cleanup person. Motion was seconded by Mrs. Camp, with all five Committee members voting in the affirmative.

Mayor Palombo recognized Patricia Garbutt's recertification as Purchasing Officer; and recognized Michael Jones' successful completion of the amateur radio course receiving his license needed for his Deputy Emergency Management position.

He announced that the School Budget meeting is set for Tuesday, April 28th at 7:30 P.M., and the Strathmere Deannexation Petition meeting is set for May 21st at 7:30 P.M.

OTHER REPORTS

Daniel Young, Municipal Attorney; reported he has two items for discussion in closed session; one with regards to a Contract Negotiations matter with Jankowski, and the other with regards to Litigation--to report on the Sansone/Yank matter.

Mr. Young reported that a recent State Supreme Court finding provides that municipalities do not have the power to enforce residency restrictions of the Township's current sex offender ordinance; that it is a violation of their civil rights. Jay Newman made a motion to direct Mr. Young to prepare an ordinance to repeal the Township's current ordinance, seconded by Curtis Corson. During roll call vote four Committee members voted in the affirmative, and Curtis Corson opposed the motion.

Paul Dietrich, Municipal Engineer; Mr. Dietrich reported the NJDEP Beach Fill project is moving along satisfactorily. The contractor is requesting permission to begin a staging area

by placing safely secured piping for the project on the beach area now. Mr. Dietrich reported there are some limited bird-nesting areas on the beach that must not be disturbed. There will be a pre-emptive meeting with the municipalities, the contractors, and the State prior to this being done. Curtis Corson made motion to allow the staging area with confirmation that the Township is not liable during this process. Barbara Camp seconded the motion with all Committee members voting in the affirmative. Mr. Corson, Mayor Palombo, and Mr. Dietrich will be present onsite with the contractor prior to the pipe placement staging. Mr. Dietrich requested authorization to bid the reconstruction/paving of Peach Orchard Road between Route 50 and up to the beginning of the existing gravel area. Jay Newman made motion to authorize bid advertisement, Barbara Camp seconded with all Committee members present voting in the affirmative.

Mr. Dietrich reported that Gypsy Moth spraying will begin next Tuesday. Mayor Palombo inquired about the status of the turtle-fencing project along Roosevelt Blvd. Mr. Dietrich responded that Ms. Olson had obtained all the funds and ordered the required supplies. The Township will assist the project by picking up materials to save shipping costs. The County Engineer has all the paperwork required from the Township. Mr. Dietrich reported that the State notified him that the Route 49 Bridge project is behind schedule by approximately two weeks and will probably not be open for Memorial Day. Since the bridge will not be open for the Memorial holiday weekend Mr. Dietrich informed the State Officials that State Police presence is required for traffic control.

RESOLUTIONS

1. Congratulating employee Edward Carter of the Upper Township Recreation Department for his winning entry in the Upper Township Safety Award Program for the Second quarter of 2009.

TOWNSHIP OF UPPER
CAPE MAY COUNTY
R E S O L U T I O N
RESOLUTION NO. 097-2009
RE: CONGRATULATING EMPLOYEE EDWARD CARTER
OF THE UPPER TOWNSHIP RECREATION DEPARTMENT
FOR HIS WINNING ENTRY IN
THE UPPER TOWNSHIP SAFETY AWARD PROGRAM
FOR THE 2ND QUARTER OF 2009

WHEREAS, employee Edward Carter is recognized for his efforts to promote safety for his fellow employees and residents of the Township through his participation in the Upper Township Safety Award Program with a submission of a safety suggestion; and

WHEREAS, Ed's safety suggestion was chosen by the Upper Township Safety Committee from the entries submitted in the second quarter for the promotion of safety for employees and the community; and

WHEREAS, Ed should be publicly recognized for his recommendation to correct/repair the open base of transformer located at Amandas Field, preventing possible electrocution

Or other injury to the public in the area of the municipal park; 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. That the Committee extends its appreciation and publicly recognizes Edward Carter on his commitment to safety by his identifying a potential hazard and presenting a solution through participation in the program.
2. That the Committee, on behalf of our employees and the citizens of the Township of Upper extend to Edward Carter our congratulations and present him with the "Safety Day Award" of one day off with pay.

GIVEN UNDER OUR HANDS and the seal of the Township of Upper this 11th day of May, 2009.

Resolution No. 097-2009

Offered by: Conrad Second by: Camp

Adopted: May 11, 2009

Roll Call Vote:

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

2. Appointment of Charles James Thonsen as a part-time seasonal employee to the Upper Township Recreation Department.

**TOWNSHIP OF UPPER
CAPE MAY COUNTY
R E S O L U T I O N
RESOLUTION NO.098-2009
RE: APPOINTMENT OF CHARLES JAMES THONSEN
AS A PART-TIME SEASONAL EMPLOYEE
TO THE UPPER TOWNSHIP RECREATION DEPARTMENT**

WHEREAS, a need exists to appoint qualified personnel as part-time employees to the Upper Township Recreation Department to insure optimal operation; and

WHEREAS, a recommendation has been made to the Township Committee and duly considered at the meeting of April 13, 2009; and

WHEREAS, this Resolution is intended to ratify the action heretofore taken; 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. Charles James Thonsen is hereby appointed in part-time seasonal position effective May 18, 2009 at a salary of \$10.50 per hour in accordance with the Salary Ordinance.

3. This Resolution ratifies, confirms and approves action taken by the Township Committee, by motion, at the meeting of April 13, 2009.

Resolution No. 098-2009

Offered by: Conrad

Seconded by: Newman

Adopted: May 11, 2009

Roll Call Vote:

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

3. Appointment of Michael Dugan and Michael Pfaff as part-time seasonal employees to the Upper Township Recreation Department.

**TOWNSHIP OF UPPER
CAPE MAY COUNTY
R E S O L U T I O N
RESOLUTION NO.099-2009**

**RE: APPOINTMENT OF MICHAEL DUGAN AND MICHAEL PFAFF
AS A PART-TIME SEASONAL EMPLOYEES
TO THE UPPER TOWNSHIP RECREATION DEPARTMENT**

WHEREAS, a need exists to appoint qualified personnel as part-time employees to the Upper Township Recreation Department to insure optimal operation; and

WHEREAS, a recommendation has been made to the Township Committee and duly considered at the meeting of April 27, 2009; and

WHEREAS, this Resolution is intended to ratify the action heretofore taken; 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. Michael Dugan and Michael Pfaff are hereby appointed in part-time seasonal positions effective immediately at a salary of \$10.50 per hour in accordance with the Salary Ordinance.

4. This Resolution ratifies, confirms and approves action taken by the Township Committee, by motion, at the meeting of April 27, 2009.

Resolution No. 099-2009

Offered by: Conrad

Seconded by: Newman

Adopted: May 11, 2009

Roll Call Vote:

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

4. Appointment of James Card to the Recreation Committee as Alternate Member in Charge of In-Line Hockey.

**TOWNSHIP OF UPPER
CAPE MAY COUNTY
RESOLUTION
RESOLUTION NO. 111-2009
RE: APPOINTMENT OF JAMES CARD
TO THE RECREATION COMMITTEE
AS ALTERNATE MEMBER IN CHARGE OF IN-LINE HOCKEY.**

WHEREAS, a need exists to fill the seat for an Alternate Member in charge of In-line Hockey;

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. James Card is hereby appointed to the Recreation Committee of the Township of Upper, effective immediately and to serve in the capacity of Alternate Member in charge of In-line Hockey, which consists of a (1) year term, which commences immediately and expires on December 31, 2009, and, that such member shall continue to serve until his successor is duly appointed and qualified.

Resolution No. 111-2009

Offered by: Conrad

Seconded by: Camp

Adopted: May 11, 2009

Roll Call Vote:

NAME	YES	NO	ABSTAINED	ABSENT
Camp	_X_	_____	_____	_____
Conrad	_X_	_____	_____	_____
Corson	_X_	_____	_____	_____
Newman	_X_	_____	_____	_____
Palombo	_X_	_____	_____	_____

5. Appointing the 2008 Season Beach Patrol Personnel.

**TOWNSHIP OF UPPER
CAPE MAY COUNTY
RESOLUTION
RESOLUTION NO. 112-2009
RE: APPOINTING THE 2009 SEASON BEACH PATROL PERSONNEL**

WHEREAS, the individuals hereinafter named have been determined to possess the requisite skills, training and are otherwise eligible for appointment to the position of lifeguard; 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 following individuals are appointed as lifeguards in the Township of Upper at a salary as stated below in accordance with the Salary Ordinance:

CAPTAIN

WILLIAM HANDLEY \$20.50 per hour

LIEUTENANTS

WILLIAM STULL \$15.25 per hour
JOSEPH LAROSA \$15.25 per hour
JASON MARSHALL \$15.25 per hour

SENIOR GUARDS

SPENSER POPESON \$13.00 per hour

RETURNING GUARDS

ALEX FORSMAN \$11.20 per hour
CATHERINE I. TOBIASEN \$11.20 per hour
JIM GIBBONS \$11.50 per hour
JOSEPH LAROSA JR. \$11.50 per hour
BRIAN RIORDAN \$11.50 per hour
JAMES DUGAN \$11.50 per hour
JOHN O'HARA \$11.50 per hour
HAYLEY CONOVER \$10.50 per hour

ROOKIE GUARDS

EMILY CONOVER \$10.00 per hour

3. This Resolution shall be effective immediately and is further intended to ratify, confirm and approve any formal action taken by the Township Committee.

Resolution No. 112-2009

Offered by: Palombo

Seconded by: Conrad

Adopted: May 11, 2009

Roll Call Vote:

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

6. Proclaiming the week of May 18-24 AS “NATIONAL PUBLIC WORKS WEEK”.

**TOWNSHIP OF UPPER
CAPE MAY COUNTY
RESOLUTION
RESOLUTION NO. 113-2009**

RE: PROCLAIMING MAY 18-24 AS “NATIONAL PUBLIC WORKS WEEK”

Whereas, public works services provided in our community are an integral part of our citizens’ every day lives; and

Whereas, the support of an understanding and informed citizenry is vital to the efficient operation of the public works systems and programs such as water, sewers, streets and highways, public buildings and solid waste collection; and

Whereas, the health, safety and comfort of this community greatly depends on the facilities and services; and

Whereas, the quality and effectiveness of these facilities, as well as their planning, design, and construction, is vitally dependent upon the efforts and skill of public works officials; and

Whereas, the efficiency of the qualified and dedicated personnel who staff public works departments is materially influenced by the people’s attitude and understanding of the importance of the work they perform; and

Whereas, the Township Committee of the Township of Upper proclaims the week of May 18-24 “National Public Works Week;” 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, to extend to the Public Works Department heartfelt thanks and appreciation for the generous donation of their service to this community.

GIVEN UNDER OUR HANDS and the seal of the Township of Upper this 11th of May, 2009.

Resolution No. 113-2009

Offered by: Camp

Seconded by: Conrad

Adopted: May 11, 2009

Roll Call Vote:

<u>NAME</u>	<u>YES</u>	<u>NO</u>	<u>ABSTAINED</u>	<u>ABSENT</u>
Camp	<u> x </u>	<u> </u>	<u> </u>	<u> </u>

Conrad	<u> x </u>	_____	_____	_____
Corson	<u> x </u>	_____	_____	_____
Newman	<u> x </u>	_____	_____	_____
Palombo	<u> x </u>	_____	_____	_____

7. Chapter 159 Resolution for the insertion of a special item of revenue into the 2009 Budget that was not determined at the time of the adoption of the budget-State of New Jersey 2009 Clean Community Grant Program in the amount of \$5,985.55.

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

RESOLUTION NO. 114-2009

**RE: CHAPTER 159 RESOLUTION FOR THE INSERTION OF A SPECIAL ITEM OF REVENUE INTO THE 2009 BUDGET THAT WAS NOT DETERMINED AT THE TIME OF THE ADOPTION OF THE BUDGET—STATE OF NEW JERSEY
2009 CLEAN COMMUNITY GRANT PROGRAM
IN THE AMOUNT OF \$5,985.55**

WHEREAS, N.J.S. 40A-87 PROVIDES THAT THE DIRECTOR OF THE DIVISION OF LOCAL GOVERNMENT SERVICES MAY APPROVE THE INSERTION OF ANY SPECIAL ITEM OF REVENUE IN THE BUDGET OF ANY COUNTY OR MUNICIPALITY WHEN SUCH ITEM SHALL HAVE BEEN MADE AVAILABLE BY LAW AND THE AMOUNT THEREOF WAS NOT DETERMINED AT THE TIME OF THE ADOPTION OF THE BUDGET; AND

WHEREAS, SAID DIRECTOR MAY ALSO APPROVE THE INSERTION OF AN ITEM OF APPROPRIATION FOR AN EQUAL AMOUNT; AND

WHEREAS, THE TOWNSHIP OF UPPER WILL RECEIVE AN ADDITIONAL AMOUNT OF \$5,985.55 FROM THE 2009 CLEAN COMMUNITY GRANT PROGRAM FOR A TOTAL APPROPRIATION OF \$27,686.96 AND WISHES TO AMEND ITS 2009 BUDGET TO INCLUDE A PORTION OF THIS AMOUNT AS A REVENUE.

NOW, THEREFORE, BE IT RESOLVED THAT THE TOWNSHIP COMMITTEE OF THE TOWNSHIP OF UPPER HEREBY REQUESTS THE DIRECTOR OF THE DIVISION OF LOCAL GOVERNMENT SERVICES APPROVE THE INSERTION OF AN ADDITIONAL ITEM OF REVENUE IN THE BUDGET OF THE YEAR 2009 IN THE SUM OF \$5,985.55 FOR A TOTAL GRANT OF \$27,686.96, WHICH IS NOW AVAILABLE AS A REVENUE FROM:

REVENUE: STATE & FEDERAL REVENUE OFFSET WITH APPROPRIATIONS:
2009 CLEAN COMMUNITY GRANT PROGRAM, AND

BE IT FURTHER RESOLVED THAT A LIKE SUM OF \$5,985.55 FOR A TOTAL GRANT OF \$27,686.96 BE AND THE SAME IS HEREBY APPROPRIATED UNDER THE CAPTION OF:

APPROPRIATION: STATE AND FEDERAL PROGRAMS OFFSET BY REVENUE:
2009 CLEAN COMMUNITY GRANT PROGRAM

BE IT FURTHER RESOLVED, THAT THE TOWNSHIP CLERK FORWARD TWO COPIES OF THIS RESOLUTION TO THE DIRECTOR OF LOCAL GOVERNMENT SERVICES.

Resolution No. 114-2009

Offered by: Camp

Seconded by: Conrad

Adopted: May 11, 2009

Roll Call Vote:

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

ORDINANCES

7. PUBLIC HEARING AND FINAL ADOPTION OF ORDINANCE NO. 012-2009, RE: An Ordinance vacating Whittier Avenue abutting Block 842, Lot 3 and Block 849, Lot 1 as the same appear on the current Official Tax Map of the Township of Upper, Cape May County, New Jersey.

Mr. Corson stated that since this request was made the Township has received numerous other requests for Strathmere street end vacations. Mayor Palombo said he received several emails opposing the ordinance. Mr. Newman presented a letter from Strathmere Fire Company also opposing the ordinance due to public safety issues. It was discussed that this ordinance came up last year and that the reason it was denied then, was due to concerns that beach access and waterways access could affect the beach replenishment program and that now the NJDEP no longer has an interest in this. There were no further comments from the Committee and the Mayor opened the public comment portion of the hearing.

The following speakers from the public were heard:

Greg Bennett, 21 E. Winthrop Ave., Strathmere, and also president of the Strathmere Fire Company, read a letter from the Fire Company. They are opposed to this ordinance and their concerns included the following: for the safety of Strathmere residents and business owners they want the Township to maintain public access to all bay front street ends in Strathmere; they are concerned by the lack of open access available now and losing more would only increase the risk to public safety. They are urging the Township Committee to oppose the closing, selling, or transfer of public street ends in Strathmere.

Edmund Bamford, 1912 S. Commonwealth Ave., Strathmere, and Thomas Leonard, 112 Prescott Rd., Strathmere, are both opposed to vacating any street in Strathmere.

Theodore (Ted) Kingston, Willard Road, Strathmere, is also opposed to vacating any street end, particularly Willard Avenue and the bay. He stated that the street ends on the bay provide water for the fire department, provides unobstructed access for emergency equipment to the bay, and that bayside access is just as important as ocean side access. He is making this request as a Fire Commissioner, as the former assistant chief, and lifelong member of the Fire Company. He also presented a letter from Herb Hollinger from the fire company also stating to keep the street ends open and opposed this ordinance.

Charles Vandergrift, 9 Commonwealth Ave., and president of the Strathmere Improvement Association. He is also opposed to this street vacation ordinance. He presented a report showing a survey of available street ends starting from Seacliff that indicated which are open for emergency use and which are fenced off. He is not in favor of vacating street ends in Strathmere.

Laura Jankowski, 234 Stagecoach Rd., Marmora and 100 S. Bayview Ave., Strathmere. Her property in Strathmere is one of the properties affected by the street vacation ordinance. She stated that the request to vacate the street end was primarily made for an encroaching outbuilding that has been in place for over 70 years. The bulkhead is in extreme disrepair and she believes the street vacation would be a savings to the Township by putting the responsibility for repair onto the two adjacent property owners. She asked about other options to resolve the matter of her building encroachment. The discussion focused on the ordinance hearing and other alternatives could be discussed at a later time.

There were no further speakers; Mayor Palombo closed the public comment portion of the hearing. Curtis Corson made a motion to deny Ordinance 12-2009, Barbara Camp seconded with all Committee members voting to deny ordinance.

At this point Mayor Palombo requested that Municipal Attorney Daniel Young research possible alternatives to resolve this matter for both the Jankowski's and the Township. Mr. Young did review some options but commented that they are limited. He suggested negotiations occur between the Jankowski's and the Township privately, which would then become a closed session item.

CORRESPONDENCE

NEW BUSINESS

9. Request to correct a typographical error on Resolution No. 101-2009 that Authorizes the Execution of NJDEP TWA-1 Application Statements of Consent form regarding Block 835, Lot 21.

The Curtis Corson made motion to allow for a correction to the previous resolution in regards to the project description, Richard Palombo seconded with all Committee members voting in the affirmative.

10. William Sheridan request to vacate Willard Avenue at the Bay.

Curtis Corson made motion to deny, seconded by Barbara Camp, with all Committee members voting in the affirmative.

11. Maser Consulting, proposal for Planning Advisory Services.

Mr. Dietrich reported that the Township received a \$50,000 Smart Growth Grant for the Seaville and Marmora areas. Additional services are required for street layout and design. Curtis Corson made a motion authorizing Mr. Young to prepare a contract and resolution for a future meeting. Motion was seconded by Jay Newman, with all five Committee members voting in the affirmative in a roll call vote.

UNFINISHED BUSINESS:

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

Curtis Corson made a motion to deny the request, Barbara Camp seconded with all Committee members voting in the affirmative.

DISCUSSION

PAYMENT OF BILLS:

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

Payroll: \$163,349.37
Bills submitted for payment: \$1,331,450.17

REPORT OF MUNICIPAL DEPARTMENTS:

- 13. Construction Code**
- 14. Clerk’s Office**
- 15. Animal Control**
- 16. Tax Assessor**
- 17. MUA Report**
- 18. Department of Public Works**
- 19. Finance Report**

Reports are available for inspection from the Clerk’s Office.

PUBLIC COMMENT

Theodore (Ted) Kingston, Willard Rd., Strathmere, asked if this is the end of future street end vacation requests in Strathmere. Mr. Young responded that the Township has to review each request on its own merit however fire districts in those areas affected could be notified before any public hearing. He explained that the whole purpose of a public hearing is to obtain public input.

George Turner, of 12 Brewhaus Lane, Seaville, asked about the Township recouping any funds for street vacations. Mr. Young responded that the law does not allow the Township to sell street ends. Mr. Turner commented on an application he had before the Township in 1987. Mr. Young replied he could not respond to this matter without researching it.

Frank DiCesari, 7 Bayaire Rd., Beesleys Point, questioned the Resident’s Boat Ramp fee for the Beesleys Point Boat Ramp. Although his primary residence is elsewhere, he owns property in Upper Township and objects to paying the non-resident’s fee. Mayor Palombo requested that the ordinance be revised to reflect property owners and taxpayers receiving the discounted “resident’s fee” for the boat ramp.

Greg Bennett, 21 E. Winthrop, Strathmere, requested that the beach fencing along his street be repaired. Mr. Dietrich commented that he would take care of this.

There were no other public comments and the meeting was adjourned for five-minute break.

OTHER BUSINESS

- 20. Committee review and discussion on the report entitled “Impact Report on the Petition for De-Annexation, Strathmere and Whale Beach, Township of Upper, Cape May County, NJ”.**

The Mayor reconvened the meeting to review and discuss the impact report on the petition for deannexation of Strathmere and Whale Beach. The Township Committee received the report from the Upper Township Planning Board. The Planning Board produced the report after 18 separate meetings covering this topic. The meetings took place from February, 2008 through April, 2009 and covered over 50 hours of testimony. Mr. Young instructed the Committee that upon receiving the report the Committee must review and make a decision by resolution to either consent to, or deny the deannexation request. The law states that a consent for deannexation must be by 2/3 vote of the full Township Committee. Mary Bittner has requested permission to appear before the Township Committee tonight. She was previously granted permission and concurred with the Township Committee that no new testimony or evidence would be presented. It was also requested that the Planning Board Professional Planner, Planning Board Chairperson, Planning Board Solicitor, and the Township Auditor would attend this meeting to review the report and be available to answer any questions.

Mr. Young explained that once a Municipal decision is reached it could only be overturned by meeting the legal standard, which is to prove the decision was capricious, arbitrary, or unreasonable. The state legislature has identified that a refusal by a municipality to consent to a deannexation can only be overturned if the petitioner can prove the following three things:

- Consent was arbitrary or unreasonable.
- Refusal to consent is detrimental to economic and social well being to the majority of the residents seeking deannexation.
- Deannexation will not cause significant injury to well being of municipality in which the land is located.

He then introduced attorney Mary Bittner representing the Petitioners for Deannexation. Ms. Bittner came forward and thanked the Mayor, Deputy Mayor, and Committee for allowing her this opportunity. She began her presentation by asking the Committee how she could persuade the group not to accept the recommendation to deny deannexation. She mentioned Committee members Newman, Camp and Conrad and that Mr. Newman's wife is on the School Board and that "a lot of this has to do with school taxes". Ms. Bittner stated that she decided that persuasion itself would not be possible but she did want to make some comments. The first comment being about the "legal standard" referred to by Mr. Young; she believes that is for a court of law and not this meeting.

Ms. Bittner stated that four separate bodies are represented in this meeting; they are the residents of Strathmere, residents of Sea Isle City, the Upper Township Committee, and the Planning Board. Strathmere residents decided they wanted to sign a petition to leave Upper Township and join with Sea Isle City. She speculated as to opinion of residents of Sea Isle City on this matter. She then discussed the Planning Board and referred to it as the fourth entity in this matter. She stated that the Planning Board's role, by statute, is limited. The Planning Board was to listen to the facts, investigate, research, and determine what the impact would be on Upper Township if Strathmere left; then report to the Township Committee and allow the Committee to make their own decision. She stated that the Planning Board "usurped the Committee's authority" by recommending a decision, and they "usurped the courts authority by saying the petitioners are aggrieved" and that "they cannot prove what was done is arbitrary, capricious, and unreasonable."

Ms. Bittner directed attention to the final page of the Planning Board report, and quoted "based on evidence and testimony the petitioners have not satisfied their burden of proof", Ms. Bittner contends the burden of proof is for a court of law not here. Ms. Bittner summarizes that the report recommends denial of the petition for deannexation. Ms. Bittner questions why objectors – Stephen Martinelli and friends could also not prove Strathmere leaving would be arbitrary, capricious and unreasonable. She stated that the Planning Board never intended to approve the request and that neither does the Committee. She stated that no impact report was ever done and she accused the Township of meeting before the Petition was filed to have an illegal closed-door meeting, a violation of the Sunshine Act. At this point Mayor Palombo and Daniel Young both objected. In reply to Ms. Bittner's comments, Mr. Young stated that her claim of "illegal closed-door meeting" was resolved by judicial decision when she first brought it up last year. Her claim was ruled not in violation of the law, that it was appropriate. Ms. Bittner argues that this did not include the August meeting and Judge Armstrong's decision did not apply to that meeting. Mr. Young responded that she was incorrect in this claim and that due to conflict of interest a Special Counsel was required in a very short period of time. He advised a closed session was appropriate to discuss this potential contract. The ultimate contract was awarded via resolution in open session of a regular meeting. Mr. Corson added negotiating legal contracts is never done in public portion of meeting, that once discussed and desired a motion to draft a resolution is made in the public portion of meeting for a Committee vote. Mr. Young added that the meeting was appropriate and he takes offense that Ms. Bittner would suggest he provides advice to violate the law.

Ms. Bittner continued that based on case law, the Township has to prove that deannexation would be injurious to the social and economic well being of the Township. She stated that the Municipality is separate from School District and should not appear together in the report and that the School District should not be included in economic considerations. Ms. Bittner claimed the Township would actually save money as they will be released from the cost of beach replenishment. She claimed the deannexation would have a positive impact on the Municipal Budget.

She continued to discuss social injury. She quoted Mr. Wiser's opinion that "the Township would be diminished in terms of prestige". Ms. Bittner pointed out that Strathmere residents do not use the mainland churches, or participate in cultural and intellectual activities on the mainland. She contended there is nothing in the report demonstrating social injury. Ms. Bittner referred to letters written in 1960's and 1980's by the governing body requesting that Sea Isle City acquire Strathmere. None of those governing body members are presently on the Township Committee.

Ms. Bittner commented on police protection and stated "this Committee heard requests for police protection and has never done anything to provide added protection".

Daniel Young requested the record reflect that Ms. Bittner is referring to discussions and requests from many years ago. Ms. Bittner responded that this history is important. It demonstrates that Strathmere's unhappiness with the Township is historical. Mayor Palombo contended that this move for deannexation was because of the property re-evaluation. Ms. Bittner strongly contends that historically Strathmere has had problems with the Township.

She refers to Minutes from a meeting that took place in mid 1980's. She says economically and socially there would be no detriment to Township. She refers to historical documents as early as 1905 and stated that Strathmere is not included in the Master Plan for the Township.

Mr. Young responded to let the record show Ms. Bittner received the draft copy of the "Impact Report", not the adopted copy. Ms. Bittner made reference to a specific page in the report, which was incorrect. The report lists one of the negative impacts to Strathmere are the loss of two liquor licenses. Planning Board attorney Dean Marcolongo stated that that was included in the report when it was unclear whether deannexation was to Ocean City or Sea Isle City. Ms. Bittner was given a copy of the adopted report at this meeting.

Ms. Bittner contended that Strathmere's deannexation would lead to a safer community. She indicated that there are two troopers assigned to the Township during the day and one trooper at night. She stated that not having to go over the bridge into Strathmere would allow better police coverage on the mainland.

Ms. Bittner noted the negative impact of losing the Strathmere area listed as the need to purchase beach tags, lose of tax ratables, school tax, prestige of upscale area, reduce bonding capacity, and loss of all of the beach patrol/lifeguard positions. She contended the school board funding issue is the most pressing issue. Ms. Bittner referred to the local fair share aid both with and without Strathmere. She contends the Township would get more state aid without Strathmere.

Daniel Young then introduced the chairperson of the Planning Board, Renee Scrocca and she requested to comment on the matter. She wanted to quickly put to rest the notion that the Planning Board had a preset agenda regarding the deannexation. She stated that over 58 hours of testimony took place before the report was compiled. The Planning Board heard from all sides of the issue and that all sides were given ample opportunity to ask questions and present facts. "The notion that they were trying to shape testimony is simply absurd! The reason the (Planning) Board did not subpoena the state was because the (the state) said there were so many variables they could not answer the question that was asked (regarding how school funding is calculated). She further stated that after hearing from all the witnesses and the professional planner they compiled and presented their report. They presented this along with guidance from previous cases including Avalon Manor.

Ms. Scrocca noted she compiled lists of positives, negatives, and neutral impacts on both parties. She stated she believed Strathmere would have an increased comfort level by going with Sea Isle City, in police protection, lower real estate taxes, and trash pick up twice a week, as well as being aligned with a purely coastal community.

The positives aspect for the remaining residents of Upper Township would be the balance of \$450,000 being put back into the current budget from the beach replenishment fund. This money would not alleviate a burden but be spread out over the current competing needs. The transportation costs would be slightly less. Ms. Scrocca noted she did not find any social impact on either Strathmere residents or mainland residents. Flooding and snow removal were also neutral issues.

The mainland residents of Township would lose 370 acres of land and \$390,000 in rateables. The most significant negative impact on Mainland residents would be each taxpayer would pay an additional \$700 per year. All of these factors were included in the Avalon Manor Deannexation Case which is what the Planning Board was using as a guide. Ms. Scrocca felt these items were important issues.

Mr. Stewart Wiser, Special Council and a qualified professional planner, was introduced by Mr. Young. He stated that he did not have much to add to what has been said this evening. He just wanted to review the process the Planning Board went through to come to its determination. Mr. Young wanted the record to show all exhibits are compiled in two large binders and available for review from Planning Board hearings.

Mr. Wiser's narration was as follows: the process began by the Citizens of Strathmere and Whale Beach filing their petition before the Township Clerk and it being forwarded to the Planning Board. The Planning Board commenced their hearings on February 2nd, 2008 continued through numerous meetings calling 74 witnesses and professionals on both sides of issue.

The testimony can be grouped as follows:

Strathmere--Strathmere residents, Strathmere hired public safety professionals, environmental professionals, planning professionals, and financial professionals.

Upper Township--Townships Environmental Consultant, Dr. Stewart Farrell, Township Director of Public Works, Paul Dietrich, Leon Costello the Township Auditor, Mr. Garcia Board of Education Auditor, Lt. Watkins of Woodbine State Police Barracks, residents of mainland portion of the Township, and various other individuals.

We heard a litany of complaints, problems, and concerns. Mr. Wiser grouped them into the following economic related issues:

Non-financial school related issues, beach issues, planning issues, drainage/flooding, public safety--Police, Fire, EMS, lifeguards, and general quality of life, social issues, and general comments and impressions.

At the end of these 14 meetings and all testimony had been heard, Mr. Wiser compiled a matrix in spreadsheet form laying out the discussions by issue via Pro versus Con of Deannexation. He reviewed this spreadsheet and then at the end he outlined his recommended findings.

His testimony included the following: Whether one chooses to dwell on Legal Standard or not and whether one takes into consideration a legal standard as deliberating – the layout of matrix lends itself to decision.

Is there an economic benefit to Strathmere residents if deannexation goes through – yes.

Is there a benefit or detriment to Mainland residents as part of the deannexation – yes.

The additional \$700 tax burden per home falls upon those residents.

The other items are qualitative/social issues and can't be judged by the outsiders. These are items that each Planning Board member had to come to their own conclusions. Mr. Wiser wanted the Committee to know that in his opinion, the Planning Board members carefully took their time to hear and review the issues and looked at all sides.

Mr. Young asked the question about the Master Plan not including Strathmere. Mr. Wisner replied that this statement was simply not true. The Master Plan appropriately addressed that section of the Township.

There were no further speakers and this section of the meeting was closed.

CLOSED SESSION

21. 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: Municipal Attorney Daniel Young had two items for discussion in closed session; one with regards to a Contract Negotiations matter with Jankowski, and the other with regards to Litigation--to report on the Sansone/Yank matter.

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 this evening the meeting was adjourned at 9:50 P.M. Meetings scheduled for the following dates: Meeting with the Township Committee and the School Board with regards to the defeated School Board Budget on May 12th; Meeting with regards to the Strathmere Deannexation Petition on May 21st, and Regular Township Committee meeting on Tuesday, May 26th at 7:30 P.M.

Minutes prepared by

Wanda Gaglione, RMC
Municipal Clerk

Bill List-

48849	05/12/09	A0004	A+ COMMERCIAL OFFICE CLEANERS	1,330.00	2530
48850	05/12/09	A0006	ADVANCE TREADS INC	177.00	2530
48851	05/12/09	A0020	ACU-THERM SUPPLY CO., INC.	3,068.88	2530
48852	05/12/09	A0025	ADVANTAGE RENTAL ACE HARDWARE	232.84	2530
48853	05/12/09	A0042	ALL AMERICAN SPORTS CORP.	4,473.69	2530
48854	05/12/09	A0050	ALL STAR SPORT CENTER	11,825.20	2530
48855	05/12/09	A0075	ADAMS, JOSHUA	57.97	2530
48856	05/12/09	A0086	AT&T MOBILITY	276.33	2530
48857	05/12/09	A0091	ATLANTIC CITY ELECTRIC	16,486.02	2530
48858	05/12/09	A0095	ATLANTIC CITY COURT REPORTING	1,409.00	2530
48859	05/12/09	A0122	ANSELL, ZARO, GRIMM & AARON	2,559.30	2530
48860	05/12/09	B0013	BRADCO SUPPLY CORP.	153.55	2530
48861	05/12/09	B0052	BENNETT BATTERIES, LLC.	139.90	2530
48862	05/12/09	B0070	HORIZON BLUE CROSS/BLUE SHIELD	135,494.83	2530
48863	05/12/09	B0078	BOUND TREE MEDICAL, LLC	3.29	2530
48864	05/12/09	B0142	BRINKERHOFF ENVIRONMENTAL	750.00	2530

48865 05/12/09 B0160 BONNER, ROSEMARY 190.60 2530
48866 05/12/09 C0019 CITY OF OCEAN CITY 6,937.66 2530
48867 05/12/09 C0035 CAPE ASSIST EAP 110.00 2530
48868 05/12/09 C0048 CAPE MAY COUNTY MUA 34,793.82 2530
48869 05/12/09 C0052 CAPE MAY COUNTY TREASURER 1,054,598.01 2530
48870 05/12/09 C0060 CAPRIONI'S PORTABLE TOILETS 1,799.00 2530
48871 05/12/09 C0068 COMCAST 169.32 2530
48872 05/12/09 C0116 CINTAS CORPORATION #158 180.78 2530
48873 05/12/09 C0171 COLONIAL ELECTRIC SUPPLY CO. 1,251.00 2530
48874 05/12/09 C0179 CONRAD, FRANK 150.00 2530
48875 05/12/09 C0187 CROWTHER, BILL 690.00 2530
48876 05/12/09 C0193 CUMBERLAND CO.CLERK'S ASSOC. 20.00 2530
48877 05/12/09 C0223 CASA PAYROLL SERVICE 214.80 2530
48878 05/12/09 E0025 ELECTRO-MESH CORPORATION 392.00 2530
48879 05/12/09 F0042 FLANAGANS SOUTH AUTO TIRE CENT 95.00 2530
48880 05/12/09 F0053 FORD, SCOTT & ASSOCIATES 3,000.00 2530
48881 05/12/09 F0054 FORT DEARBORN LIFE INSURANCE 559.08 230
48882 05/12/09 G0002 GAGLIONE, WANDA 143.00 2530
48883 05/12/09 G0030 GENERAL SPRING SERVICE 500.83 2530
48884 05/12/09 G0081 GRANT SUPPLY COMPANY, INC 91.20 2530
48885 05/12/09 G0094 GRUBB, JON 32.00 2530
48886 05/12/09 G0129 GOLDSTAR PRODUCTS INV 214.62 2530
48887 05/12/09 H0012 HALL,ARTHUR 21.90 2530
48888 05/12/09 H0133 GEO HEFFERNAN/EST. L. HEFFERNA 2,470.00 2530
48889 05/12/09 J0041 JONES, JAMES M. 23.73 2530
48890 05/12/09 K0014 KEENAN,BRIAN 223.94 2530
48891 05/12/09 K0020 KENNEY,EDWARD 31.50 2530
48892 05/12/09 L0040 LEA, SHELLEY 20.00 2530
48893 05/12/09 L0080 LOWES, INC. 286.88 2530
48894 05/12/09 L0093 LIPKE, NEAL 425.01 2530
48895 05/12/09 M0012 McCAULEY, RICHARD 158.00 2530
48896 05/12/09 M0103 MODERN GAS COMPANY, INC. 318.43 2530
48897 05/12/09 M0209 MAYBERRY, JOHN D 77.46 2530
48898 05/12/09 N0004 NJ-AMERICAN WATER CO. 39.75 2530
48899 05/12/09 N0024 N.J. DIVISION OF FIRE SAFETY 398.00 2530
48900 05/12/09 N0052 NATL YOUTH SPORTS COACHED ASSN 60.00 2530
48901 05/12/09 N0061 NJ E-Z PASS VIOLATION PROCESS 26.00 2530
48902 05/12/09 P0008 PALMER, NANCY 129.05 2530
48903 05/12/09 P0032 PEDRONI FUEL CO. 1,262.91 2530
48904 05/12/09 P0034 PEIFER, SUSAN R. 190.00 2530
48905 05/12/09 P0036 PENNELLO,DAVID 89.94 2530
48906 05/12/09 R0030 RIGGINS, INC. 4,063.32 2530
48907 05/12/09 R0055 ROSIAK, CAROL 28.00 2530
48908 05/12/09 R0073 RICOH AMERICAS CORPORATION 512.10 2530
48909 05/12/09 S0066 SEETON TURF WAREHOUSE LLC 153.48 2530
48910 05/12/09 S0072 SEGIN, STEWART S. 49.98 2530
48911 05/12/09 S0216 DEPT.31 OOOO261489 344.94 2530
48912 05/12/09 S0218 S.J.A.P. NATURALINK 5,622.00 2530
48913 05/12/09 S240 SJTP 221.00 2530
48914 05/12/09 T0006 TCTA OF NJ C/O S. GALLAGHER 185.00 2530
48915 05/12/09 T0020 TERWILLIGER, DUANE E. 542.78 2530
48916 05/12/09 T0032 THE PRESS & SUNDAY PRESS 152.00 2530
48917 05/12/09 T0034 THE PAPER OF U.T./GAZETTE 513.00 2530
48918 05/12/09 T0067 TOWNSHIP OF UPPER PETTY CASH 16.50 2530
48919 05/12/09 T0085 TREASURER, STATE OF NEW JERSEY 331.00 2530
48920 05/12/09 T0131 TROUT, ROSEMARY 32.38 2530
48921 05/12/09 U0011 UPPER TOWNSHIP BASEBALL 52.50 2530
48922 05/12/09 U0025 UNITED STATES POSTAL SERVICE 2,000.00 2530
48923 05/12/09 U0034 UPPER TWP.GIRLS SOFTBALL ASSOC 1,600.00 2530
48924 05/12/09 V0013 VERIZON WIRELESS 589.37 2530
48925 05/12/09 V0018 VILLAGE PHARMACY, INC. 398.60 2530
48926 05/12/09 V0022 VERIZON 1,574.80 2530
48927 05/12/09 W0030 WEST PUBLISHING CO. 452.75 2530
48928 05/12/09 W0038 WILLIAMS, JEREMIAH J. 100.96 2530
48929 05/12/09 W0085 WOODY, LESTER 178.74 2530
48930 05/12/09 X0002 XEROX CAPITAL SERVICES,LLC 66.00 2530
48931 05/12/09 Y0008 YOUNG, DANIEL J. ESQUIRE PC 25,714.11 2530
48932 05/12/09 Y0020 YOUNG, BARBARA L. 38.10 2530

Total: \$1,336,356.43
