

**TOWNSHIP OF UPPER  
2100 TUCKAHOE ROAD  
PETERSBURG, NJ 08270  
CAPE MAY COUNTY  
MINUTES FOR MAY 26, 2009 - TUESDAY**

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

**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 -**

**May 11, 2009 Closed Session Minutes**

Motion was made by Curtis Corson, second by Barbara Camp to approve the Closed Session Minutes as written. All Committee members voted in the affirmative. The regular minutes were moved to following meeting.

**May 12, 2009 Special Meeting RE: Defeated School Budget**

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

**May 11, 2009 Regular Meeting Minutes and the  
May 21, 2009 Special Meeting RE: Strathmere Deannexation Petition**  
were held over for approval a the next meeting.

**REPORT OF GOVERNING BODY MEMBERS**

**Frank Conrad, Committee person:** Reported that the new Shoprite will open officially on May 31 and that the ribbon cutting ceremony is scheduled for 9AM. He made a motion to hire James Thomas as a seasonal employee to the Dept. of Recreation. Motion was seconded by Mayor Palombo with all five Committee members voting in the affirmative.

He made a motion to refund \$40 to Linda Gulla. She paid for two Skate Park passes prior to the change in the ordinance governing the skate park. Motion was seconded by Jay Newman with all five Committee members voting in the affirmative.

**Barbara Camp, Committee person:** reported the Township received a recycling rebate in the amount of \$77,904.80 from the County Municipal Utility Authority.

The Township engineer has requested that the Committee consider introducing a bond ordinance in order to purchase a street sweeper, as was discussed earlier in the year during budget discussions. This is at the cost of \$250,000, which would require \$50,000 budgeted for each year for the next five years. There was much discussion as to the life of machine lasting 8 – 10 years. Ms. Camp made a motion to authorize a bond ordinance for a street sweeper at the cost of \$250,000. Richard Palombo seconded with all five Committee members voting in the affirmative.

**Jay Newman, Committee person:** Reported that the Memorial Day weekend ran smoothly with the standard amount of emergency calls and services requested. He inquired about the renewals of contracts with AtlantiCare. Mr. Young responded that he was not prepared to report on the matter at this meeting but will review paperwork for the next meeting.

**Richard Palombo, Mayor:** reported that the continued closing of Route 49 and the detours went smoothly over the Memorial Day weekend. The state has notified us that the bridge should re-open on June 12, 2009. He thanked the NJ State Troopers for their assistance with traffic control.

He reported that the Township received a letter from David Rosenblatt regarding the beach fill bid. The contract was awarded to lowest bidder and work is still on track. They do not have an exact date for the commencement of the work but are staying on top of things.

The Strawberry Festival is scheduled for this weekend at the Gandy Farm and invited everyone to attend.

In light of the resignation of Duane Terwilliger as the Class II member of the Upper Township Planning Board, Mayor Palombo through an Executive Order appointed Janet McCrosson to that seat, effective this evening as follows:

## **TOWNSHIP OF UPPER EXECUTIVE ORDER OF THE MAYOR**

**002-2009**

**Pursuant to the authority vested in me as Mayor of the Township of Upper, I hereby make the following appointment to the Upper Township Planning Board, pursuant to the provisions of the Municipal Land Use Act of the State of New Jersey:**

**CLASS II:**

**Janet McCrosson** is hereby appointed to fill the unexpired term of Duane Terwilliger effective immediately, which term shall expire on December 31, 2009 .

RICHARD PALOMBO, Mayor

Effective May 26, 2009

Mayor Palombo congratulated Rosemary Trout, Teri Smuz, and Barbara Spiegel for completing courses, which enhance their municipal employment.

He then inquired about a letter received from Council on Affordable Housing with regards to "Substantative Certification". Mr. Dietrich responded this means that the Township is ready to move forward to a technical review period with an officer of COAH.

### **OTHER REPORTS**

**Paul Dietrich, Township Engineer:** presented a proposed driver safety policy as recommended by the Joint Insurance Fund. He requested that the Committee review it for possible incorporation into the Township personnel policy.

He also discussed that several employees that previously did in-house electrical work have moved onto other positions. He presented a proposal for two present employees to attend training at the Cape May County Technical School in an Electrical Apprentice class at the cost of \$625 per year. It is a four-year program, and the course takes place twice a week in the evening. His opinion is that having electricians in-house rather than hiring contractors would be a savings to the Township. A discussion took place regarding payment for course and time but this was tabled to next meeting.

With regards to the turtle-fencing project, Mr. Dietrich reported that the supplies will be picked up this week and installation to begin soon after. He also reminded the audience that Public Works and Recreation crews are starting at 6 a.m., their summer hours.

Mr. Dietrich reported that the pipe layout for the beach fill project has not yet begun in Strathmere.

### **RESOLUTIONS**

- 1. Reappointment of Barbara Spiegel as Temporary Chief Municipal Financial Officer of the Township of Upper for a one (1) year term commencing 6/1/2009.**

**TOWNSHIP OF UPPER  
CAPE MAY COUNTY  
RESOLUTION  
RESOLUTION NO. 117-2009  
RE: REAPPOINTMENT OF BARBARA SPIEGEL  
AS TEMPORARY CHIEF MUNICIPAL FINANCIAL OFFICER OF  
THE TOWNSHIP OF UPPER  
FOR A ONE (1) YEAR TERM COMMENCING JUNE 1, 2009**

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**WHEREAS,** Barbara Spiegel has held the appointment of Temporary Chief Municipal Financial Officer for the Township of Upper for the past year and said term is set to expire on May 31, 2009; and

**WHEREAS,** the Township Committee has duly considered the matter of another one-year reappointment and has determined that Barbara Spiegel has successfully performed the

duties of the office and is currently working towards requisite qualifications for appointment to the C.M.F.O position; and

**WHEREAS**, the Township Committee is of the opinion that the said Barbara Spiegel is a competent, fit and suitable person for reappointment to the hereinafter designated position; 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. Barbara Spiegel is hereby reappointed as Temporary Chief Municipal Financial Officer of the Township of Upper for another one (1) year term, effective June 1, 2009 and expiring May 31, 2010, at her present annual salary of \$49,350, with an additional \$4,000 stipend added to her salary upon successful completion of the requisite educational course of study and examination as previously agreed upon.

**GIVEN UNDER OUR HANDS** and the seal of the Township of Upper this 26th day of May, 2009.

Resolution No. 117-2009

Offered by: Corson                      Seconded by: Conrad

Adopted: May 26, 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 Luke Hogan as part-time seasonal Beach Sweeper to the Upper Township Recreation Department.**

**TOWNSHIP OF UPPER**  
**CAPE MAY COUNTY**  
**R E S O L U T I O N**  
**RESOLUTION NO. 118-2009**  
**RE: APPOINTMENT OF LUKE HOGAN**  
**AS PART-TIME SEASONAL BEACH SWEEPER**  
**TO THE UPPER TOWNSHIP RECREATION DEPARTMENT**

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**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 May 11, 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. Luke Hogan is hereby appointed in part-time seasonal positions as beach sweepers, effective immediately 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 May 11, 2009.

Resolution No. 118-2009

Offered by: Conrad

Seconded by: Camp

Adopted: May 26, 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. Appointing the 2009 Season Beach Patrol Personnel.**

**TOWNSHIP OF UPPER  
CAPE MAY COUNTY  
R E S O L U T I O N  
RESOLUTION NO. 119-2009  
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:

LIEUTENANTS

MICHAEL MANNING                      \$15.25 per hour

SENIOR GUARDS

KATELYN KENNY                        \$13.00 per hour

RETURNING GUARDS

RICHARD KELLY                        \$11.50 per hour  
 GARY RIORDAN                         \$11.50 per hour  
 WAYNE MCMURRAY                    \$11.50 per hour  
 PATRICK CURRAN                      \$11.50 per hour  
 THOMAS MCCANN, JR.                \$11.50 per hour  
 FRANCIS EIDEN                        \$11.50 per hour  
 JOSEPH SWITZER                      \$11.50 per hour  
 ANDREW TOBIASEN                    \$11.50 per hour  
 GREG VAN GILDER                     \$11.50 per hour  
 RODNEY TICE                          \$11.50 per hour  
 TIMOTHY DRAKE                       \$11.20 per hour  
 FORD PALMER                         \$10.50 per hour  
 PATRICK KELLY                        \$10.50 per hour  
 ZACK KRANEFELD                     \$10.50 per hour  
 MARYELLEN CURRAN                 \$10.50 per hour  
 KELLY MCHALE                        \$10.50 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. 119-2009  
 Offered by: Palombo  
 Adopted: May 26, 2009  
 Roll Call Vote:

Seconded by: Newman

<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. Resolution renewing Mobile Home Park Licenses.  
 TOWNSHIP OF UPPER**

**CAPE MAY COUNTY  
RESOLUTION  
RESOLUTION NO. 120 –2009  
RE: RESOLUTION RENEWING MOBILE HOME PARK LICENSES**

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**WHEREAS**, each of the Mobile Home Parks hereinafter designated has attested that the operation of the mobile home park is in compliance with all applicable New Jersey Statutes and the rules and regulations promulgated pursuant thereto.

**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 mobile home park licenses are hereby renewed for a term of (1) one year, commencing August 1, 2009.

**HIDDEN PINE MOBILE HOME PARK  
1414 SOUTH SHORE ROAD  
MARMORA, NJ 08223  
10 Sites**

**PINE HILL MOBILE PARK, INC.  
430 ROUTE 9 SOUTH  
MARMORA, NJ 08223  
132 Sites**

**OCEAN BEACH TRAILER RESORT  
1100 SO.COMMONWEALTH AVENUE  
P.O. BOX 390  
STRATHMERE, NJ 08248  
95 Sites**

**SHORE ACRES MOBILE HOME PARK, LLC  
1621 SOUTH SHORE ROAD  
PALERMO, NJ 08230  
197 Sites**

3. All officials of the Township are hereby authorized to take such action as necessary or required in order to carry out the intent and purpose of this Resolution.
4. This Resolution shall become effective immediately upon adoption.

Resolution No. 120 -2009

Offered by: Camp

Seconded by: Conrad

Adopted: May 26, 2009

Roll Call Vote:

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

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. Resolution renewing Campground Licenses.**

**TOWNSHIP OF UPPER  
CAPE MAY COUNTY  
RESOLUTION  
RESOLUTION NO. 121-2009  
RE: RESOLUTION RENEWING CAMPGROUND LICENSES**

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**WHEREAS**, Chapter XII of the Code of Upper Township provides for the renewal of licenses to operate a Campground annually after certification by the Cape May County Board of Health; and

**WHEREAS**, each of the Campgrounds hereinafter designated has had an On-site inspection conducted by the Cape May County Board of Health and has been Attested that the operation of the campground is in compliance with all applicable New Jersey Statutes and the rules and regulations promulgated pursuant thereto.

**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:

5. The allegations of the preamble are incorporated herein by this reference.
6. The following campground licenses are hereby renewed for a term of (1) one year, commencing August 1, 2009.

**OAK RIDGE RESORT CONDO ASSOC.  
516 ROUTE US 9, SOUTH  
MARMORA, NJ 08223  
240 Sites**

**PLANTATION CAMPGROUND  
60 CORSON TAVERN ROAD  
SEAVILLE, NJ 08230  
223 Sites**

**SEAVILLE SHORES CAMPGROUND  
98 CORSON TAVERN ROAD  
SEAVILLE, NJ 08230  
275 Sites**

**SHADY OAKS CAMPGROUND  
64 ROUTE 50  
SEAVILLE, NJ 08230**

218 Sites

**ECHO FARM CAMPGROUND**  
**3066 ROUTE US 9 SOUTH**  
**SEAVILLE, NJ 08230**  
**241 Sites**

**OCEAN SANDS RESORT**  
**56 ROUTE 50**  
**P.O. BOX 518**  
**SEAVILLE, NJ 08230**  
**217 Sites**

**WHIPPOORWILL CAMPGROUND**  
**810 ROUTE US 9 SO.**  
**MARMORA, NJ 08223**  
**288 Sites**

**SCENIC RIVERVIEW CAMPGROUND**  
**465 ROUTE 49**  
**P.O. BOX 184**  
**TUCKAHOE, NJ 08250**  
**101 Sites**

**SHOREBIRDS CAMPGROUND**  
**1314 STAGECOACH ROAD**  
**PALERMO, NJ 08230**  
**100 Sites**

- 7. All officials of the Township are hereby authorized to take such action as necessary or required in order to carry out the intent and purpose of this Resolution
- 8. This Resolution shall become effective immediately upon adoption.

Resolution No. 121-2009

Offered by: Camp

Seconded by: Conrad

Adopted: May 26, 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>          </u>	<u>          </u>	<u>    x    </u>	<u>          </u>
Newman	<u>  x  </u>	<u>          </u>	<u>          </u>	<u>          </u>
Palombo	<u>  x  </u>	<u>          </u>	<u>          </u>	<u>          </u>

**6. Resolution strongly opposing the decision to remove Beach Re-Nourishment Funding from the current Economic Stimulus Package.**

TOWNSHIP OF UPPER  
CAPE MAY COUNTY  
R E S O L U T I O N  
RESOLUTION NO. 122-2009

RE: RESOLUTION STRONGLY OPPOSING THE DECISION TO REMOVE BEACH RE-  
NOURISHMENT FUNDING FROM THE CURRENT ECONOMIC STIMULUS PACKAGE

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WHEREAS, the White House Office of Management and Budget has pulled funding for every beach re-nourishment project from the stimulus list prepared by the Army Corps of Engineers; and

WHEREAS, at the same time Governor Jon S. Corzine decided to reduce funding of New Jersey's beach re-nourishment projects from \$25 million to \$18.75 million in order to adopt a balanced budget; and

WHEREAS, Governor Corzine justifies this reduction by claiming "that a law outside of the Appropriations Act, no matter how well intended, cannot mandate spending from one year to the next" although in many similar situations the State has argued that a law can in fact mandate spending from year to year; and

WHEREAS, the Township Committee of the Township of Upper feels that the dedicated State Shore Protection Fund which is funded by the Realty Transfer Tax has been undermined at a time when the revenue generated by tourism is desperately needed; and

WHEREAS, the Obama administration and Governor Corzine have quickly forgotten the lessons of hurricanes Katrina, Rita, Ike and may be putting the lives and property of those in coastal communities in harms way if coastal storm protection is compromised; and

WHEREAS, these proposed cuts to beach re-nourishment programs could ultimately cost millions in American taxpayers funds for recover efforts if a hurricane or northeaster should hit this environmentally sensitive area; and

WHEREAS, according to Mark Mauriello, Commissioner of New Jersey DEP beach re-nourishment makes New Jersey better prepared for sea level rise; and

WHEREAS, President Obama and Governor Corzine must also realize the importance of the revenue stream generated in New Jersey through tourism which funds many of New Jersey's important social service programs and employs thousands of New Jersey residents;

WHEREAS, every year there are over two billion visitors to America's beaches and in a time of economic recession, the beach is an even more desirable destination than other domestic and foreign alternatives; and

WHEREAS, in 2007 beaches contributed \$322 billion to America's economy and New Jersey's 127 miles of beach contributed more than \$19 billion (½ of the State's total tourism revenue) in 2008; and

WHEREAS, for every dollar the federal government spends on beach nourishment it gets \$320 back in tax revenues

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 of the Township of Upper strongly opposes any cuts to federal or state funding of periodic beach nourishment and strongly supports the use of federal stimulus money to fund the list of projects prepared by the Arm Corps of Engineers.
3. A copy of this Resolution shall be forwarded to President Barack H. Obama, Senator Frank Lautenberg, Senator Robert Menendez, Governor Jon S. Corzine, Senator Jeff Van Drew, Assemblyman Nelson Albano, Assemblyman Matthew Milam and the Jersey Shore Partnership.

Resolution No. 122-2009

Offered by: Conrad

Seconded by: Palombo

Adopted: May 26, 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>

**7. Resolution opposing cuts in the Energy Tax Receipts.**

TOWNSHIP OF UPPER

CAPE MAY COUNTY

R E S O L U T I O N

RESOLUTION NO. 123-2009

RE: RESOLUTION OPPOSING CUTS IN THE ENERGY TAX RECEIPTS

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WHEREAS, the Township of Upper relies substantially on revenue from the New Jersey Energy Tax Receipts; and

WHEREAS, cuts proposed in Governor Jon S. Corzine's 2009 budget provide for a substantial reduction in the apportionment to the Township of Upper from Energy Tax Receipts; and

WHEREAS, with the enactment of the Energy Tax Receipts legislation in the late 1990's it was the intent of the New Jersey legislature to protect the taxpayers in all municipalities from the "skim" of the State of New Jersey from such receipts which routinely occurred throughout the 1980's and 1990's; and

WHEREAS, the State of New Jersey, as evidenced by the governor's current proposed budget, has abandoned the principal behind the Energy Tax Receipts legislation and reduced the apportionment allocated to municipalities, particularly the Township of Upper; and

WHEREAS, the Township Committee of the Township of Upper hereby demands that the State fully fund the Energy Tax Receipts Distribution Program rather than increasingly keeping money for itself.

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 of the Township of Upper strongly opposes the cuts proposed by Governor Corzine as reflected in the apportionment to the Township of Upper from the Energy Tax Receipts.
3. The original intent of the Energy Receipts Tax was to make sure that payments to the municipalities were maintained and increased with inflation. Instead, the State of New Jersey has decreased such payments by reducing other forms of aid to balance them out, keeping the excess funds with the State. The Township Committee of the Township of Upper strenuously objects to this "skim" which is beyond the intent of the legislature.

4. A copy of this Resolution shall be forwarded to Governor Jon S. Corzine,

Senator Jeff Van Drew, Assemblyman Nelson Albano, Assemblyman Matthew Milam, the Senate Budget and Appropriations Committee and the Assembly Budget Committee.

Resolution No. 123-2009

Offered by: Conrad

Seconded by: Corson

Adopted: May 26, 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>

**8. Resolution requesting approval of the Director of the Division of Local Government Services to establish a Dedicated Trust By Rider for Recreation Developer's Trust Pursuant To N.J.A.C. 5:30-15.**

**TOWNSHIP OF UPPER  
CAPE MAY COUNTY  
RESOLUTION**

**RESOLUTION NO. 124-2009**

**RE: RESOLUTION REQUESTING APPROVAL OF THE DIRECTOR OF THE DIVISION OF LOCAL GOVERNMENT SERVICES TO ESTABLISH A DEDICATED TRUST BY RIDER FOR RECYCLING TRUST PURSUANT TO N.J.A.C. 5:30-1**

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**WHEREAS**, permission is required of the Director of the Division of Local Government Services for approval as a dedication by rider of revenues received by a municipality when the revenue is not subject to reasonable accurate estimates in advance; and

**WHEREAS**, N.J.A.C. 5:30-15 permits municipalities to receive amounts for costs incurred for recycling; and



**WHEREAS**, permission is required of the Director of the Division of Local Government Services for approval as a dedication by rider of revenues received by a municipality when the revenue is not subject to reasonable accurate estimates in advance; and

**WHEREAS**, N.J.A.C. 5:30-15 permits municipalities to receive amounts for costs incurred for developer's escrow; and

**WHEREAS**, N.J.S.A. 40A:4-39 provides that the Director of the Division of Local Government Services may approve expenditures of monies by dedication by rider.

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

3. The Township Committee of the Township of Upper hereby requests permission of the Director of the Division of Local Government Services to pay expenditures for developer's escrow created in accordance with the provisions of N.J.A.C. 5:30-15 as per N.J.S.A 40A:4-39; and
4. The Municipal Clerk of the Township of Upper is hereby directed to forward two certified copies of this resolution to the Director of the Division of Local Government Services.

Resolution No. 125-2009

Offered by: Corson                      Seconded by: Camp

Adopted: May 26, 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>

**10. Authorizing the Mayor to sign and submit an NJDEP Lurp-2 application to the NJDEP for Footprint of Disturbance of Whitman Avenue Block 329 Lot (s) 13-20 & 33-40 Pursuant to NJDEP rules.**

**TOWNSHIP OF UPPER  
CAPE MAY COUNTY  
RESOLUTION  
RESOLUTION NO. 126-2009  
RE: AUTHORIZING THE MAYOR TO SIGN AND SUBMIT AN NJDEP LURP-2  
APPLICATION TO THE NJDEP FOR FOOTPRINT OF DISTURBANCE OF  
WHITMAN AVENUE BLOCK 329 LOT (S) 13-20 & 33-40  
PURSUANT TO NJDEP RULES**

---

**WHEREAS**, the Township of Upper wishes to make application to the New Jersey Department of Environmental Protection (NJDEP) for Footprint of Disturbance located at Pennsylvania Avenue Block 329 Lot(s) 13-20 & 33-40, Tuckahoe, in the Township of Upper; and

**WHEREAS**, Gibson Associates P.A. has prepared the NJDEP (lurp-2) application describing the project and permit fees and wishes to submit it to the NJDEP; and

**WHEREAS**, the Township Committee fully supports and endorses the actions of Gibson Associates P.A. in their filing of the NJDEP Division of Land Use Regulation Application Form (LURP-2); and

**WHEREAS**, Gibson Associates P.A. shall submit the Permit and necessary fees for the following project:

Freshwater Wetlands Letter of Interpretation,  
Presence/Absence LOI (Footprint of Disturbance)

**WHEREAS**, The owner(s) of Block 329 Lots 13-20 & 33-40 shall be responsible for the cost of construction to improve Whitman Avenue to the roadway standards as directed by the Township Engineer;

**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 NJDEP permit application for Footprint of Disturbance for Pennsylvania Avenue, Block 329 Lot(s) 13-20 & 33-40 which is attached hereto as Exhibit A.

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.

4. A certified copy of this Resolution shall be provided to Gibson Associates P.A. for insertion into the Pennsylvania Avenue NJDEP Division of Land Use Regulation application (LURP-2).

Resolution No. 126-2009

Offered by: Corson

Seconded by: Camp

Adopted: May 26, 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>

**11. Authorizing the Mayor to sign and submit an NJDEP Lurp-2 application to the NJDEP for Footprint of Disturbance of Pennsylvania and Whitman Avenue Block 332, Lot (s) 3-17, 21-23, 28 & 29 & 33-36 Pursuant to NJDEP rules.**

**TOWNSHIP OF UPPER  
CAPE MAY COUNTY  
RESOLUTION  
RESOLUTION NO. 127 -2009**

**RE: AUTHORIZING THE MAYOR TO SIGN AND SUBMIT AN NJDEP LURP-2 APPLICATION TO THE NJDEP FOR FOOTPRINT OF DISTURBANCE OF PENNSYLVANIA AND WHITMAN AVENUE BLOCK 332, LOT (S) 3-17, 21-23, 28 & 29 & 33-36 PURSUANT TO NJDEP RULES**

---

**WHEREAS**, the Township of Upper wishes to make application to the New Jersey Department of Environmental Protection (NJDEP) for Footprint of Disturbance located at

Pennsylvania Avenue Block 332 Lot(s) 3-17, 21-23, 28, 29 and 33-36, Tuckahoe, in the Township of Upper; and

**WHEREAS**, Gibson Associates P.A. has prepared the NJDEP (lurp-2) application describing the project and permit fees and wishes to submit it to the NJDEP; and

**WHEREAS**, the Township Committee fully supports and endorses the actions of Gibson Associates P.A. in their filing of the NJDEP Division of Land Use Regulation Application Form (LURP-2); and

**WHEREAS**, Gibson Associates P.A. shall submit the Permit and necessary fees for the following project:

Freshwater Wetlands Letter of Interpretation,  
Presence/Absence LOI (Footprint of Disturbance)

**WHEREAS**, The owner(s) of Block 332 Lot(s) 3-17, 21-23, 28, 29 and 33-36 shall be responsible for the cost of construction to improve Pennsylvania and Whitman Avenues to the roadway standards as directed by the Township Engineer;

**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 NJDEP permit application for Footprint of Disturbance for Pennsylvania Avenue, Block 332, Lot (s) 3-17, 21-23, 28 & 29 & 33-36, which is attached hereto as Exhibit A.
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.

4. A certified copy of this Resolution shall be provided to Gibson Associates P.A.

for insertion into the Pennsylvania Avenue NJDEP Division of Land Use Regulation application (LURP-2).

Resolution No. 127-2009

Offered by: Camp                      Seconded by: Conrad

Adopted: May 26, 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>

**12. Authorizing the Mayor to sign and submit an NJDEP Lurp-2 application to the NJDEP for Footprint of Disturbance of Whitman Avenue Block 333 Lot (s) 1-8, 21 & 22 & 25-28 Pursuant to NJDEP rules.**

**TOWNSHIP OF UPPER  
CAPE MAY COUNTY  
R E S O L U T I O N  
RESOLUTION NO. 128 -2009**

**RE: AUTHORIZING THE MAYOR TO SIGN AND SUBMIT AN NJDEP LURP-2 APPLICATION TO THE NJDEP FOR FOOTPRINT OF DISTURBANCE OF WHITMAN AVENUE BLOCK 333 LOT (S) 1-8, 21 & 22 & 25-28 PURSUANT TO NJDEP RULES**

---

**WHEREAS**, the Township of Upper wishes to make application to the New Jersey Department of Environmental Protection (NJDEP) for Footprint of Disturbance located at Pennsylvania Avenue Block 333 Lot(s) 1-8, 21 & 22 & 25-28, Tuckahoe, in the Township of Upper; and

**WHEREAS**, Gibson Associates P.A. has prepared the NJDEP (lurp-2) application describing the project and permit fees and wishes to submit it to the NJDEP; and

**WHEREAS**, the Township Committee fully supports and endorses the actions of Gibson Associates P.A. in their filing of the NJDEP Division of Land Use Regulation Application Form (LURP-2); and

**WHEREAS**, Gibson Associates P.A. shall submit the Permit and necessary fees for the following project:

Freshwater Wetlands Letter of Interpretation,  
Presence/Absence LOI (Footprint of Disturbance)

**WHEREAS**, The owner(s) of Block 333 Lots 1-8, 21 & 22 & 25-28 shall be responsible for the cost of construction to improve Pennsylvania Avenue to the roadway standards as directed by the Township Engineer;

**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 NJDEP permit application for Footprint of Disturbance for Pennsylvania Avenue, 333 Lot(s) 1-8, 21 & 22 & 25-28 which is attached hereto as Exhibit A.
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.
4. A certified copy of this Resolution shall be provided to Gibson Associates P.A. for insertion into the Pennsylvania Avenue NJDEP Division of Land Use Regulation application (LURP-2).

Resolution No. 128 -2009

Offered by: Newman                      Seconded by: Camp

Adopted: May 26, 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>

**13. Authorization for Mayor to sign NJDEP permit application for improvement of Harbor Road ROW; Block 735 Lot 13.**

**TOWNSHIP OF UPPER  
CAPE MAY COUNTY  
RESOLUTION  
RESOLUTION NO. 129-2009  
RE: AUTHORIZING THE MAYOR TO SIGN  
AND SUBMIT AN NJDEP LURP-2  
APPLICATION TO THE NJDEP FOR THE IMPROVEMENTS  
OF HARBOR ROAD R-O-W; BLOCK 735 LOT 13 PURSUANT TO NJDEP RULES**

---

**WHEREAS**, the Township of Upper wishes to make application to the New Jersey Department of Environmental Protection (NJDEP) for Improvements of Harbor Road located at 127 Harbor Road R-O-W Block 735 Lot 13, Beesley’s Point, in the Township of Upper; and

**WHEREAS**, Waters Edge Environmental, LLC has prepared the NJDEP (lurp-2) application describing the project and permit fees and wishes to submit it to the NJDEP; and

**WHEREAS**, the Township Committee fully supports and endorses the actions of Waters Edge Environmental, LLC in their filing of the NJDEP Division of Land Use Regulation Application Form (LURP-2); and

**WHEREAS**, Waters Edge Environmental, LLC shall submit  
The Permit and necessary fees for the following project:

**HARBOR ROAD IMPROVEMENTS**  
FWW TAW for redevelopment & CAFRA Individual  
Permit application for roadway improvements

**WHEREAS,** The owner(s) of Block 735 Lot 13 shall be responsible for the cost of construction to improve Harbor Road to the roadway standards as directed by the Township Engineer;

**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 NJDEP permit application for Harbor Road Improvements, which is attached hereto as Exhibit A.
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.
3. A certified copy of this Resolution shall be provided to Waters Edge Environmental, LLC for insertion into the Harbor Road NJDEP Division of Land Use Regulation application (LURP-2).

Resolution No. 129 -2009

Offered by: Camp

Seconded by: Newman

Adopted: May 26, 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>

**14. Authorizing the advertisement for bids for the Peach Orchard Road paving project.**

**TOWNSHIP OF UPPER  
CAPE MAY COUNTY  
RESOLUTION  
RESOLUTION NO.130-2009  
RE: AUTHORIZING THE  
ADVERTISEMENT FOR BIDS FOR  
THE PEACH ORCHARD ROAD PAVING PROJECT**

---

**WHEREAS**, the Township of Upper participates in a yearly maintenance program to pave various streets throughout the municipality; and

**WHEREAS**, pursuant to the provisions of the Local Public Contracts Law, the Township of Upper intends to solicit bids as herein indicated;

**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 Engineer is hereby authorized and directed to prepare specifications,

bid documents and solicit bids for the following project:

Peach Orchard Road Paving Project.

3. Sealed bids shall be received by the Township of Upper in accordance with the directives contained in the Notice to Bidders.

Resolution No. 130-2009

Offered by: Camp                      Seconded by: Newman

Adopted: May 26, 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>

**15. Appointment of Maser Consulting P.A. to assist the Township of Upper in the development of its Form-Based Code for its Street Plan.**

TOWNSHIP OF UPPER

CAPE MAY COUNTY

R E S O L U T I O N

RESOLUTION NO. 131-2009

RE: APPOINTMENT OF MASER CONSULTING P.A. TO ASSIST THE TOWNSHIP OF  
UPPER IN THE DEVELOPMENT OF ITS FORM-BASED CODE FOR  
ITS STREET PLAN

WHEREAS, pursuant to Resolution No. 294-2008 Maser Consulting, P.A. was awarded the contract to assist the Township in the preparation of Form-Based Code Design Guidelines as a part of the New Jersey Smart Futures Grant awarded to the Township; and

WHEREAS, as part of the Form-Based Code Design Guidelines the Township of Upper wishes to develop a Form-Based Code for its Street Plan for the Marmora and Seaville sections of the Township; and

WHEREAS, the Township requires a planner to assist in the preparation of the Form-Based Code for its Street Plan; and

WHEREAS, the Township has decided to acquire the services of the firm of Maser Consulting, P.A. as a non-fair and open contract pursuant to the provisions of N.J.S.A. 19:44A-2.05; and

WHEREAS, a resolution is required authorizing the award of a contract for the aforesaid professional services and the Township Committee has determined that it is in the best interest of the Township to award such contract to Maser Consulting, P.A. as

set forth in the proposal provided by Maser Consulting, P.A. dated April 30, 2009 and attached hereto as Exhibit A; and

WHEREAS, Maser Consulting P.A. has completed and submitted a Business Entity Disclosure Certification which certifies that Maser Consulting P.A. has not made any reportable contributions to a political or candidate committee in the Township that would bar the award of this contract and that the contract will prohibit Maser Consulting P.A. from making any reportable contributions through the term of the contract; 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. Maser Consulting P.A. with offices at Perryville III Corporate Park, 53 Frontage Road, Suite 120, Clinton, New Jersey is hereby appointed Professional Planner for the Township of Upper for the purposes specified in this Resolution and the proposal provided by Maser Consulting, P.A. dated April 30, 2009 and attached hereto as Exhibit A.

3. The term of this contract is for a period not to exceed the length of time necessary for completion of the aforesaid project, unless sooner terminated by the Township of Upper, at the option of the Township of Upper.

4. This Contract is awarded without competitive bidding as a “professional service” in accordance with N.J.S.A. 40A:11-5(1)(a) of the New Jersey Local Public Contract Law because Maser Consulting P.A. has professional knowledge as to municipal planning issues which knowledge is particularly valuable to the Township Committee and this service is acquired as a non-fair and open contract pursuant to N.J.S.A. 19:44A-2.05.

#### NOTICE OF CONTRACT AWARD

5. The Township Committee of the Township of Upper, State of New Jersey has awarded the contract without competitive bidding as a professional service pursuant to N.J.S.A. 40A:11-5(1)(a) to Maser Consulting P.A. for planning services. This contract and the resolution authorizing same shall be available for public inspection in the office of the municipal clerk of the Township of Upper, State of New Jersey.

6. A certificate from the Chief Financial Officer of Upper Township showing the availability of adequate funds for this contract and showing the line item appropriation of the official budget to which this contract will be properly charged must be provided to the governing body and shall be attached to this Resolution and kept in the files of the municipal clerk.

7. Maser Consulting P.A. 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.

8. The Mayor and the Township Clerk are hereby authorized and directed to execute, on behalf of the Township of Upper, a Professional Contract with Maser Consulting P.A. in accordance with the terms and provisions of the Local Public Contracts Law, subject to and in accordance with the limitations imposed herein. Upon execution of all parties thereto said contract shall become effective.

9. A copy of this Resolution shall be published in the official newspaper of the Township of Upper within ten (10) days from the date of adoption.

10. This Resolution shall be effective as of adoption.

Resolution No. 131-2009

Offered by: Corson

Seconded by: Camp

Adopted: May 26, 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>

**16. Authorizing the Mayor to sign the New Jersey Board of Public Utilities Local Government Energy Audit Program grant application.**

**TOWNSHIP OF UPPER  
CAPE MAY COUNTY  
RESOLUTION**

**RESOLUTION NO. 132-2009**

**RE: AUTHORIZING THE MAYOR TO SIGN  
THE NEW JERSEY BOARD OF PUBLIC UTILITIES  
LOCAL GOVERNMENT ENERGY AUDIT PROGRAM GRANT APPLICATION**

---

**WHEREAS**, the New Jersey Board of Public Utilities, Office of Clean Energy administers the Local Government Energy Audit Program (Program), an incentive program to assist local government agencies to conduct energy audits and to encourage implementation of energy conservation measures; and

**WHEREAS**, the Governing Body of Township of Upper has decided to apply to participate in the Local Government Energy Audit Program; and

**WHEREAS**, the facilities to be audited are in New Jersey, are owned by the Township of Upper, are served by a New Jersey regulated public utility, and that the Township of Upper has not already reserved \$100,000 in the Program this year as of this application; and,

**WHEREAS**, it is acknowledged that acceptance into the Program is dependent on the Scope of Work and cost proposal, and that Program rules will have to be met in order to receive incentive funds; and,

**WHEREAS**, upon acceptance into the Program, the Township of Upper will prepare Facility Data Forms and Scopes of Work for each facility to be audited, solicit quotations from the authorized contractors, and submit the Part B application; and,

**WHEREAS**, the Township of Upper understands that energy audit work cannot proceed until an Application Approval Notice is received from the Program; and,

**WHEREAS**, the Township Committee fully supports and endorses the actions of the Township Engineer in his filing of the grant application.

**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 submit an Application for participation in the Local Government Energy Audit Program of the New Jersey Board of Public Utilities outlined above.
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.
4. A certified copy of this Resolution shall be provided to the Township Engineer for insertion into the grant application.

Offered by: Camp  
Adopted: May 26, 2009

Seconded by: Conrad

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>

**17. Resolution to Deny the Petition for De-annexation of Strathmere and Whale Beach.**

TOWNSHIP OF UPPER

CAPE MAY COUNTY

R E S O L U T I O N

RESOLUTION NO. 133-2009

RE: RESOLUTION TO DENY THE PETITION FOR DE-ANNEXATION OF STRATHMERE  
AND WHALE BEACH

---

WHEREAS, on November 27, 2007 a petition was presented to the Township Committee of the Township of Upper by a group of legal voters residing in the Strathmere and Whale Beach sections of the Township, organized and known as "Citizens for Strathmere and Whale Beach" (hereinafter "Petitioners"), requesting that said sections of the Township be de-annexed from Upper Township and annexed to Sea Isle City (hereinafter "Petition"); and

WHEREAS, pursuant to N.J.S.A. 40A7-12, the Township Committee referred said Petition to the Upper Township Planning Board for the issuance of a report to the Township Committee on the impact of the de-annexation upon the municipality; and

WHEREAS, the Upper Township Planning Board held 18 public meetings from February 2008 through April 2009 to consider this request for de-annexation; and

WHEREAS, the Upper Township Planning Board, on April 16, 2009, issued an Impact Report on the Petition for De-annexation of Strathmere and Whale Beach (hereinafter "Impact Report") which was formally adopted pursuant to Special Resolution No. STRATH01-09 and recommended that the Township Committee deny the Petitioners' request for de-annexation; and

WHEREAS, a copy of the Impact Report on the Petition is attached hereto as Exhibit A and incorporated herein; and

WHEREAS, at its meeting on May 11, 2009 the Township Committee heard a presentation and argument on behalf of the Petitioners by their legal counsel which objected to the findings of the Impact Report and the recommendations therein and

asserted that the Petitioners are entitled to the consent of the municipal governing body to their Petition; and

WHEREAS, at the May 11, 2009 Township Committee meeting the Township Committee also heard reviews from the Planning Board Chairperson, the Planning Board Professional Planner and the Township's Auditor on various aspects of the Impact Report and the de-annexation request; and

WHEREAS, the Township Committee has thoroughly reviewed the record before the Planning Board, the Impact Report and its exhibits and the arguments of counsel for the Petitioners; and

WHEREAS, the Township Committee also met at a special meeting on May 21, 2009 to deliberate, make findings of fact and make a determination on the Petition; and

WHEREAS, the Township Committee of the Township of Upper hereby makes the following findings:

1. The Strathmere and Whale Beach sections of Upper Township make up less than 1% of the total area of Upper Township, but constitute 17.5% of the total tax ratables of Upper Township;
2. Experts for both the Petitioners and the Township testified and agreed that the de-annexation of Strathmere and Whale Beach will result in an estimated tax increase to the balance of the residents of the Township of \$700.00 to the owner of a home assessed at \$350,000.00 and the tax rate for the balance of the Township would increase 20 cents per \$100 of assessed value. With the de-annexation of the Strathmere and Whale Beach sections of the Township the municipality would lose over \$393 million worth of tax ratable property;
3. With the de-annexation of Strathmere and Whale Beach the overall bonding capacity of the municipality will be reduced;

4. The de-annexation of Strathmere and Whale Beach will not provide a significant reduction in municipal services to offset the loss of ratables. De-annexation will result in substantial injury to the well being of Upper Township resulting primarily from a substantial loss in tax ratable property and an estimated school tax rise of 19.7%. In addition, the significant and substantial reduction in tax ratable property will affect the Township in the future when a local purpose tax becomes necessary;

5. De-annexation will affect the economic and social well being of the majority of the residents of Strathmere and Whale Beach as follows:

- a. They will receive a tax reduction of 40% to 50% if annexed to Sea Isle City;
- b. They would be annexed to a contiguous barrier island with similar geographic aspects;

- c. They will be part of a homogenous community but would suffer a loss of social and economic diversity as well;
- d. With respect to police response time, general response times may be less but it is questionable whether this will have any positive effect on an already very low crime rate compared to Sea Isle City and other municipalities;
- e. Emergency medical services and fire safety services may suffer given the fact that representatives of Strathmere and Whale Beach previously requested that backup to these services be provided by Ocean City rather than Sea Isle City due to their dissatisfaction with such services from Sea Isle City;
- f. There may be an increase in frequency of trash pickup if annexed to Sea Isle City.

6. If de-annexation were to occur Upper Township would suffer a loss of social diversity in that it would lose one of the most prestigious and upscale communities within its borders. Upper Township would also lose its only beachfront community.

7. Upper Township is made up of numerous villages and individual communities, one of which is Strathmere and Whale Beach. Each such community has its own character and history as part of Upper Township. Upper Township would lose one of its most significant villages if de-annexation were to occur.

8. Many of the complaints regarding municipal services and police

protection were not raised to the Township Committee or the municipality. Rather, these complaints surfaced at the

Planning

Board de-annexation petition hearings. The State Police barracks

has no record of complaints regarding response time from residents of Strathmere and Whale Beach.

9. The State Police response times in Strathmere and Whale Beach are acceptable as evidenced by the low crime rate compared to other municipalities. The response time is uniform throughout the Township and it is acceptable.
  
10. The testimony at the Planning Board of a number of individuals in favor of de-annexation, as well as statements on the Petitioners' web site and press releases of the Petitioners in the record, indicate that the motivation for the petition was taxes. Since "tax shopping" is not a permitted basis for de-annexation, Petitioners were advised on their initial web site to focus on a lack of municipal services. Consequently, the testimony and evidence presented at the Planning Board hearings

encompassed numerous complaints regarding municipal services, many of which were never raised prior to the filing of the de-annexation petition. The complaints are not credible evidence that the denial of the Petition is detrimental to the well being of a majority of the residents of Strathmere and Whale Beach.

WHEREAS, the Township Committee of the Township of Upper finds that a refusal to consent to the de-annexation request of the Petitioners is detrimental to the economic and social well being of a majority of the residents of the Strathmere and Whale Beach sections of the Township due to the fact that annexation to Sea Isle City will result in a 40%-50% tax decrease for those residents paying real estate taxes; and

WHEREAS, the Township Committee of the Township of Upper finds that the de-annexation proposed by the Petitioners will cause a significant injury to the well being of Upper Township for the reasons set forth above and as outlined in the Impact Report and summarized as follows:

- i. Loss of tax ratables;



Newman          x          \_\_\_\_\_  
 Palombo         x          \_\_\_\_\_

Planning Board Resolution and Impact Report Attached.

*Clerk  
 File Copy*

**UPPER TOWNSHIP PLANNING BOARD  
 UPPER TOWNSHIP NEW JERSEY  
 SPECIAL RESOLUTION NO. STRATH01-09**

WHEREAS, a private citizen organization known as the Citizens for Strathmere and Whale Beach have submitted a petition to the governing body of the Township of Upper requesting that the Township consent to a deannexation of a portion of Upper Township commonly known as Strathmere and Whale Beach with the intent of requesting annexation of same to Sea Isle City, New Jersey, and

WHEREAS, after receipt of said petition, the governing body of the Township of Upper, pursuant to NJSA 40A:7-12 et seq referred the petition to the Upper Township Planning Board to report to the governing body on the impact of the deannexation upon both Strathmere/Whale Beach and the Township of Upper, and

WHEREAS, the Upper Township Planning Board retained the services of Stuart Wiser, Professional Planner of Remington, Vernick & Walberg, to assist them in their investigation and hearings in preparation for the creation of the impact report required pursuant to NJSA 40A:7-12 et seq, and

WHEREAS, with the consent of the petitioners and in order to facilitate a full and complete investigation of the impact of the deannexation upon both Strathmere/Whale Beach and the Township of Upper, the time limitation set forth in NJSA 40A:7-12 et seq was expanded to permit a thorough investigation and sufficient time for all parties to present testimony to the Planning Board, and

WHEREAS, the Planning Board convened public hearings on February 2, 2008, February 12, 2008, February 26, 2008, March 18, 2008, April 7, 2008, April 30, 2008, May 21, 2008, June 17, 2008, July 21, 2008, August 18, 2008, September 15, 2008, October 21, 2008, November 20, 2008, December 18, 2008, January 22, 2009, February 19, 2009 and March 19, 2009 at which time the Board

accepted public comment from citizens of Strathmere and Whale Beach, professionals retained by the petitioners in support of the deannexation request, professionals called at the request of the Planning Board to testify on specific issues of concern and from general members of the public, and

WHEREAS, at the meetings of January 22, 2009 and February 19, 2009, the Board received testimony from its professional planner, Stuart Wiser as to his independent investigation and professional opinion as to the potential short term and long term effects of a deannexation of Strathmere and Whale Beach from the Township of Upper, and

WHEREAS, during the March 19, 2009 Planning Board meeting, the individual members of the Upper Township Planning Board set forth their findings of facts and conclusions as to the potential impact of the deannexation application of the petitioners upon both Strathmere/Whale Beach and the Township of Upper after having considered all of the evidence and testimony received during the meetings set forth above and after careful consideration of the statutory criteria and the appropriate considerations as found in relevant New Jersey Case Law regarding deannexation applications, and

WHEREAS, unanimously, the Planning Board of the Township of Upper found that, while many concerns raised by the petitioners had merit in that the problems presented were founded in fact and required additional attention by the Township of Upper, the petitioners had not satisfied their burden of proof in evidencing that the refusal to consent to deannexation would be detrimental to the economic and social well-being of a majority of the residents of Strathmere and Whale Beach, and

WHEREAS, after reviewing the testimony and evidence presented at these hearings the Planning Board of the Township of Upper specifically found that the deannexation would cause significant social and economic injury to the well-being to the Township of Upper as set forth in detail during the March 19, 2009 hearing and as incorporated into the impact report annexed to this Resolution, and

WHEREAS, during the March 19, 2009 hearing, the Upper Township Planning Board directed its professional planner and board solicitor to draft an impact report summarizing the procedural history of this matter, a summation of the relevant law regarding deannexation, a summary of the testimony and evidence presented to the Planning Board, a summary of the Board's findings of facts, conclusions and recommendations to be submitted to the governing body of the Township of Upper, and

WHEREAS, the Upper Township Planning Board is in receipt of said impact report which is hereby attached as Exhibit A and the Board having reviewed the report and determined that same is an accurate presentation of the procedural history, applicable law, testimony and evidence presented and of the Board's findings of facts, conclusions and recommendations, and

WHEREAS, in satisfaction of its obligation pursuant to NJSA 40A:7-12 et seq, the Board is directed to forward said impact report to the governing body of the Township of Upper.

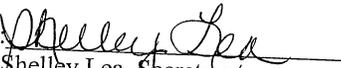
NOW, THEREFORE, BE IT RESOLVED by the Planning Board of the Township of Upper on this 16<sup>th</sup> day of April 2009, that the Upper Township Planning Board does hereby adopt the impact report dated April 16, 2009, as amended on the record, which is hereby attached as Exhibit A as representing a full and complete summary of its hearings, investigation, conclusions and recommendations and does hereby direct that the board secretary forward a copy of this Resolution and impact report to the Township Committee of the Township of Upper for their consideration with the specific finding that the Board does not recommend that the Township of Upper governing body consent to the petitioners' request for the deannexation of the area commonly known as Strathmere and Whale Beach from the Township of Upper for the reasons set forth therein.

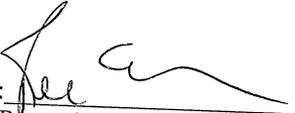
**ROLL CALL VOTE**

THOSE IN FAVOR: Kelly, Brown, Ragan, Bready, Schroder, Corson,  
Palombo, Scrocca

THOSE OPPOSED: None

AND BE IT FURTHER RESOLVED, that a copy of this Resolution be forwarded to the applicant and to all who request a copy for a reasonable fee. In addition, a copy of this Resolution shall be filed in the Office of the Clerk of the Township of Upper.

By:   
Shelley Lea, Secretary

By:   
Renee Scrocca, Chairperson

Dated: April 16, 2009

The foregoing is a true copy of a Resolution adopted by the Planning Board at a meeting of April 16, 2009.

By:   
Shelley Lea, Secretary

***IMPACT REPORT***  
***ON THE***  
***PETITION for DE-ANNEXATION***  
***STRATHMERE & WHALE BEACH***  
***Township of Upper***  
***Cape May County, New Jersey***



Planning Board  
Township of Upper

April 16, 2009

UPPER TOWNSHIP  
PLANNING BOARD  
REPORT ON  
IMPACT OF DEANNEXATION  
OF STRATHMERE & WHALE BEACH

Dated

APRIL 16, 2009  
(REVISED)

**UPPER TOWNSHIP PLANNING BOARD**

Renee Scrocca, Chairperson  
Richard Palombo, Mayor  
Curtis Corson, Committeeman  
Daniel Bready  
William Brown  
James Kelly  
Susan Ragan  
Gary Riordan (Recused)  
Duane Terwilliger  
Donald Kissling, Alternate #1  
James Schroder, Alternate #2

Shelley Lea, Board Secretary  
Dean R. Marcolongo, Esquire, Board Solicitor

Special Retained Professional Planner  
Stuart B. Wiser, PP, AICP  
Remington, Vernick & Walberg Engineers

**TABLE OF CONTENTS**

Procedural History ..... 1  
Legal Standards ..... 6  
Synopsis of Testimony ..... 12  
Findings and Conclusions of Board ..... 74  
Recommendation ..... 80  
Exhibits to be presented in a separate bound binder

## PROCEDURAL HISTORY

Upper Township is a 63.7 square mile municipality located in the northeastern section of Cape May County, New Jersey. A majority of the Township is generally considered to be the mainland section and is primarily a residential, rural and agricultural community best described as suburban.

There exists within the Township of Upper, an approximately 407.5 acre portion of a barrier island known locally as Strathmere and Whale Beach (hereinafter referred to as "Strathmere"). This section of the Township is described as Block 750 through 869 (inclusive) on the Township's official tax map.

On September 18, 2007, a private citizen organization calling itself "Citizens for Strathmere and Whale Beach" (hereinafter referred to as "Petitioners"), representing at least 60% of the legal voters residing in Strathmere, through their retained attorney Mary D'Arcy Bittner, Esquire, filed a petition with the Upper Township Committee and Municipal Clerk to seek deannexation of Strathmere from the Township with the asserted intention to petition to have Strathmere annexed to the contiguous municipality of Sea Isle City. Said petition was filed pursuant to NJSA 40A:7-12 et seq, the controlling New Jersey statute governing the municipal annexation/deannexation process.

On October 1, 2007, the Upper Township Committee held a special meeting for the purpose of reviewing the request of the Petitioners to commence the deannexation process. At that hearing, the Upper Township Committee adopted a resolution finding that submissions by the Petitioners did not comply with the statutory requirements of NJSA 40A:7-12 and, as such, did not refer the matter to the Upper Township Planning Board for consideration.

The Petitioners then filed a Complaint in Lieu of Prerogative Writ together with

an accompanying Order to Show Cause in the Cape May County Law Division entitled Citizens for Strathmere and Whale Beach and Randall Roash vs. Upper Township Committee under Docket No. CPM-L-640-07 requesting injunctive relief requiring the Upper Township Committee to refer the matter to the Upper Township Planning Board for action.

By order of the Honorable Valerie H. Armstrong, AJSC dated October 18, 2008, the Petitioners' request for injunctive relief was denied with the court determining that the Petitioners' petition for deannexation was defective. The complaint in question was dismissed with prejudice.

On November 27, 2007, the Petitioners submitted an amended petition for deannexation to the Upper Township Clerk and Upper Township Committee. This petition was accepted by the Township Committee and referred to the Upper Township Planning Board for the issuance of an impact report on the proposed deannexation from the municipality.

As the deannexation statute, specifically, NJSA 40A:7-12 et seq, does not set forth a procedural mechanism by which a planning board should compile its information for the issuance of an impact report, the Upper Township Planning Board (hereinafter referred to as "Board") determined that, in the interest of fairness and justice, open public hearings should occur with regard to the Petitioners' application. Counsel for the Planning Board and Petitioners, noting the need for significantly more time than established in the deannexation statute for the completion of the impact report, agreed to extend the period of time for the board to issue its impact report. During these discussions, it was learned that the Township of Upper had retained counsel to represent the Township during the deannexation hearings and that counsel, Frank L. Corrado, Esquire of the Law Office of Barry, Corrado, Grassi & Gibson, P.C. anticipated participating in the hearing including cross-examining witnesses appearing on behalf of

the Petitioners. During preliminary procedural discussions, the Petitioners related that they intended to object to the participation of the Township of Upper in the Planning Board hearings and to the cross examination of witnesses by counsel for the Township.

In order to insure no procedural defects in the process occurred before the Planning Board, the Upper Township Planning Board filed a Complaint for Declaratory Judgment and a Notice of Motion for Summary Judgment requesting an order authorizing the Township of Upper, through special counsel, to appear before the Upper Township Planning Board at all scheduled public meetings with regard to the deannexation petition and to permit them to cross examine all witnesses appearing at the hearing together with the submission of a presentation to the Planning Board. That complaint was filed on December 13, 2007 in the Cape May County Law Division under Docket No. CPM-L-814-07.

All parties submitted answers to the complaint and briefs on the issues raised in the Notice of Motion for Summary Judgment. Oral argument occurred before the Honorable Valerie H. Armstrong on January 15, 2008. By written opinion, an order dated January 22, 2008, Judge Armstrong denied the Upper Township Planning Board's request to permit the Township of Upper to appear by way of special counsel during the planning board hearings by way of affirmative presentation to the Board and cross-examination of witnesses on behalf of the Petitioners.

The first regularly scheduled Planning Board hearing on the Petitioners' application for deannexation from the Township of Upper occurred on Saturday, February 2, 2008. Subsequent meetings occurred on February 12, 2008, February 26, 2008, March 18, 2008, April 7, 2008 and April 30, 2008 at which time the Petitioners completed its affirmative presentation to the Planning Board.

After the completion of the Petitioners' affirmative presentation to the Board, the

Board requested additional witnesses appear before it for the purposes of supplementing the record. Those witnesses appeared at subsequent meetings occurring on May 21, 2008, June 17, 2008, July 21, 2008, August 19, 2008 and September 15, 2008.

With the Board having heard from all additional witnesses requested to appear before the Board to present information, which the Board deemed relevant, and necessary in order to prepare their impact report, the Board then prepared to hear from general members of the public who wished to testify on the deannexation petition. An issue was raised as to whether the attorney for the Petitioners would have the right to cross-examine general members of the public who wish to express their opinions to the Board on the impact of the deannexation petition upon Upper Township. After deliberation, the Board voted that there would be no cross examination of general members of the public who wish to testify at further hearings.

As a result of that determination of the Board and prior to the next scheduled Planning Board meeting, counsel for the Petitioners filed a Complaint for Declaratory Judgment and a Motion for Summary Judgment to obtain an order to permit the Petitioners to cross-examine general members of the public. This complaint was filed in the Cape May County Law Division under Docket No. CPM-L-622-08. The Planning Board filed an answer and letter brief in opposition to the Complaint for Declaratory Judgment. Oral argument was heard before the Honorable Valerie H. Armstrong on October 14, 2008 at which time the Court entered an Order that the Petitioners' attorney would not be permitted to question members of the public who spoke during the public portion of the remaining hearings before the Board. The Court further ordered that, if Stuart Wisner, a professional planner retained by the Planning Board to assist the Board during these hearings, testified at the impact hearings as to new and independent information not previously presented by other witnesses, he would be subject to cross-examination by Petitioners' attorney. That order was entered on October 14, 2008.

Subsequent hearings occurred before the Planning Board on October 21, 2008, November 20, 2008, December 18, 2008, January 22, 2009, February 19, 2009 and a final hearing occurred on March 19, 2009. At the March 19, 2009 hearing, the Board set forth its findings of fact as to the impact of the deannexation petition upon the Township of Upper and the Petitioners, and set forth its recommendation that the Township Committee not consent to the Petitioners' application for deannexation. The Board instructed the board solicitor and board planner to prepare an impact report and resolution for adoption at the April 16, 2009 meeting.

## LEGAL STANDARDS

The New Jersey Legislature set forth the authority and mechanism upon which land in one municipality may be annexed to another municipality to which said land is contiguous in NJSA 40A:7-12, et seq. Procedurally, the owners of land in one municipality desiring to annex to another contiguous municipality must submit a petition in writing to the governing body of the municipality to which such annexation is sought. This petition should specifically set forth the boundaries of such land and be signed by at least 60% of the legal voters residing thereon. The petition should be duly verified by one of the signers and to have attached to it the oath of the assessor of the municipality where said land is located, or of some other person having access to the assessor's books, setting forth the assessed value of the real estate contained within the boundaries for the preceding year and the amount of real estate assessed to any of the persons whose names are signed to the petition. The petition should also have attached thereto a certified copy of a resolution adopted by two-thirds of the governing body of the municipality in which said land is located consenting to such annexation.

Prior to action on a resolution to consent to or deny the petition for annexation, the governing body of the municipality in which the land is located shall, within 14 days of the receipt of the petition, refer the petition to its planning board which shall, within 45 days of its receipt, report to the governing body on the impact of the annexation upon the municipality. Action on the resolution to accept or deny the annexation shall be taken within 30 days of the receipt of the planning board's report.

The statute also sets forth the standard for judicial review in the event that the governing body of the municipality where the land in question is located does not consent to the deannexation and an appeal is taken of that decision. NJSA 40A:7-12.1 states that, in any judicial review of the refusal of the governing body of the municipality in which the land is located or the governing body of the municipality to which annexation is sought to consent to the annexation, the petitioner shall have the burden of establishing

that the refusal to consent to the petition was arbitrary or unreasonable, that refusal to consent to annexation is detrimental to the economic and social well-being of the majority of the residents of the affected land, and that the annexation will not cause significant injury to the well-being of the municipality in which the land is located.

With regard to the subject matter of this report, the Citizens for Strathmere and Whale Beach have submitted a valid and approved petition requesting deannexation of Strathmere and Whale Beach from Upper Township with the intent of annexing same to Sea Isle City. That petition submitted under NJSA 40A:7-12 was received by the Upper Township Committee which referred it to the Upper Township Planning Board to prepare a report on the impact of the deannexation upon the municipality which will be submitted to the Township Committee. As set forth herein, the statute itself provides no guidance on the procedure, which the planning board should use in preparing its report or the standards in which the planning board should use in evaluating the impact of the deannexation. As such, a review of relevant case law is necessary to assist the Planning Board in its assigned duties.

Prior to 1982, with the adoption of NJSA 40A:7-12 et seq, the deannexation law in the State of New Jersey was governed by NJSA 40:43-26 et seq. The significant differences between these two statutes are twofold. First, after the adoption of NJSA 40A:7-12, the burden of proof in these matters shifted from the municipality to the petitioner wishing to deannex from the municipality. The second significant change is the inclusion of the referral of the deannexation petition to the planning board to report upon the impact of the deannexation upon the parties.

In a factually similar case, in the year 2000, the Avalon Manor Improvement Association filed a petition for deannexation from the Township of Middle with the intention of annexing that portion of Middle Township to the Borough of Avalon. After the petition was submitted to the Township Committee it was referred to the Middle

Township Planning Board, which conducted a series of public meetings over the course of a year. At the end of the hearings, the Board issued a comprehensive report and in that report made factual findings and recommendations to the governing body concluding that the plaintiffs' petition should be denied. Thereafter, on July 16, 2001, the governing body of the Township of Middle voted to deny the petition resulting in a Complaint in Lieu of Prerogative Writ filed with the Superior Court Law Division, Cape May County, under Docket No. CPM-L-2594-01.

On January 24, 2003, the Honorable Steven P. Perskie, JSC issued his opinion affirming the decision of the Township Committee and finding that their decision was not arbitrary and unreasonable. The court held that the record in that matter did not establish the kind of long term, structural and inherently irremediable detriment that the legislature had in mind when it authorized a petition for deannexation. The court held that municipal boundaries may, indeed, be changed with or without a governing body's approval but that the legislature has directed that this should occur without consent only in the most compelling circumstances (*emphasis added*).

In reviewing the record below, the court considered the geographic size and isolation of Avalon Manor in relation to the Township of Middle. The court also reviewed the tax ratables of Avalon Manor and the impact upon the Township's local, fire and school taxes if the deannexation occurred. The court also reviewed Middle Township's formal flood plan and the affect of deannexation on municipal services and the potential savings to the Township.

Judge Perskie concluded that the Petitioners had, in fact, sustained its burden of proof in showing a detriment to the economic and social well-being of the residents of Avalon Manor particularly with regard to the tax savings that would accrue to the residents of Avalon Manor from deannexation. However, the court specifically held that the Petitioners had not sustained its burden of proof in showing that the annexation would

not cause significant injury to the well-being of the municipality in which the land is located. Specifically, the court held that the Township of Middle's determination that either a \$67.97 or \$75.52 annual tax increase was significant enough to support a finding that the Township of Middle's refusal to consent to deannexation was not arbitrary or unreasonable.

The court stated that appropriate considerations by a planning board included the social impact of deannexation and the fact that the Township would be deprived of participation of residents in Avalon Manor in the religious, civic, cultural, charitable and intellectual activities of the municipality, their meaningful interaction of other members of the community and their contributions to the prestige and social standing, the part they play in the general scheme of their municipality's social diversity and conceivably the wholesome effect on racial integration. The court stated specifically that the properties in question proposed for deannexation are a significantly higher value than the general profile of residential properties in the Township, a fact that would suggest implication for the Township's social diversity and prestige and social standing. The loss of such a disproportionately highly valued sector of the municipality of necessity would inflict a significant social injury on the Township and its ability to continue to attract the kinds of residents desirable to any community.

The New Jersey Appellate Division affirmed Judge Perskie's decision in the case of Avalon Manor Improvement Association, Inc. vs. Township of Middle, 370 NJ Super 73 (2004). In its decision, the Appellate Division reviewed the record developed before the planning board in precise detail. The court further reviewed the legal analysis performed by the trial court and affirmed its validity and appropriateness.

The Appellate Court quoted Judge Serpentelli's decision in Russell vs. Stratford Township supra where Judge Serpentelli wrote that the amended statute "imposed a heavier burden upon the Petitioners thereby making deannexation more difficult or

perhaps discouraging attempts to undertake the effort at all”.

The Court conducted an examination of the history of case law associated with deannexation applications and all of the factors that had been considered relevant by the particular parties and the courts, all of which have been set forth in the cases listed above. Based upon those criteria and the record presented to the Appellate Division, the court sustained the Township’s decision to deny deannexation particularly noting that the Township appropriately considered the economic detriment it would suffer with the loss of ratables.

As a result of an analysis of the relevant deannexation statute in preparation for its impact report, the Planning Board must determine whether the Petitioners have sustained their burden of proof in evidencing that refusal to consent to deannexation is detrimental to the economic and social well-being of a majority of the residents of the affected land and that the deannexation will not cause a significant injury to the well-being of the municipality in which the land is located. The Board need not consider the third prong of the Petitioners’ burden (whether a refusal to consent to deannexation was arbitrary and unreasonable) since that decision will be made in the future and is not within the province of the Planning Board.

In evaluating the impact of deannexation upon both the affected lands and the Township, case law has pointed to the following factors as potentially relevant areas of investigation, although certainly not an exhaustive list. Those areas of investigation are:

1. Any substantial social injury or detriment that might be found in the community being deprived of Petitioners’ participation in religious, civic, cultural, charitable and intellectual activities or their meaningful interaction with other members of the community or their contribution to the township’s prestige and social standing and/or the part they play in the general scheme of social diversity.

2. Any long term or short term economic impacts, such as loss of ratables, impacts upon local, fire or school taxes of the municipality and the deannexing areas including the cost or savings in providing municipal services and what types of municipal services have been provided to date.
3. The impact upon emergency services and equipment including the cost of providing same and the need to provide same in the future.
4. The impact upon recreational and school facilities in both the municipality and deannexation area.
5. An analysis of the tax assessments of the relevant land including the total tax assessment of the municipality as it relates to the affected lands and the total area of the municipality as it relates to the affected lands.
6. Zoning and planning considerations.
7. Population, demographics and geographic matters.

Finally, the Planning Board should consider that the courts have held that the deannexation statute is intended to give precedence to the policy of preservation of municipal boundaries and the maintenance of their integrity against challenges prompted by short term or even frivolous considerations such as tax shopping.

## SYNOPSIS OF TESTIMONY

This is Planning Board's synopsis of testimony and exhibits. It is and does not purport to be a transcript of the hearings. Transcripts of the hearings are available upon request and all exhibits are available in a bound volume on file with the board secretary and municipal clerk.

### Meeting of February 2, 2008

Chairman Scrocca opened the meeting and set forth the procedures to be followed during these hearings. Thereafter, Solicitor Marcolongo summarized the relevant statute together with an overview of important case law on the deannexation process. Mr. Marcolongo also introduced Stuart Wiser, Professional Planner of Remington, Vernick & Walberg, who had been hired by the Planning Board to assist them in this process. Mary D'Arcy Bittner, Esquire of South Dennis, New Jersey appeared representing the Petitioners, Citizens for Strathmere and Whale Beach.

Ed Tetterer of 26 Sherman Avenue, Strathmere, New Jersey appeared and was sworn in preparation for his testimony. He testified as to the geographic disconnect between Strathmere/Whale Beach and the remainder of Upper Township and what he believed to be cultural differences between the two sections of the municipality. He alleged a policy of benign neglect on the part of the governing body toward Strathmere/Whale Beach raising issues regarding failure to maintain infrastructure, failure to provide a police force, failure to adequately protect the beaches, dunes and adjacent homes as a result of a lack of understanding of the needs of Strathmere/Whale Beach. Mr. Tetterer noted that he was an officer in the citizens' organization which is the Petitioner in this matter and that the organization was originally founded as a taxpayer's organization but that its mandate has grown since then.

Bob Roland of 18 West Seacliff Road, Strathmere, New Jersey appeared, was

sworn and testified. He testified as to a drainage pipe located near his house, which is often clogged by sand. He alleged that the Upper Township maintenance department fails to clear the pipe and that citizens would often do this work on their own at their own peril. A series of photographs of the site was marked as Exhibit A-1. Mr. Roland acknowledged work completed by the Township including extending the pipe but that difficulties still exist.

Randy Roash of 124 Prescott Street, Strathmere, New Jersey appeared, was sworn and testified. Mr. Roash testified that the water ponding around the drainage pipe discussed by Mr. Roland often freezes creating a difficult situation. He further testified as to his concerns regarding transportation of children from Strathmere to the Upper Township schools on the mainland. He believed that the length of the school bus trip was onerous, bus transportation unreliable and alleged certain negligent decisions by school bus drivers regarding protection of children. He believed that smaller children should attend the Sea Isle City school system with high school students attending Ocean City High School.

Linda Stires of 9 Sherman Drive, Strathmere, New Jersey appeared, was sworn and read a statement on behalf of her mother, Katherine Cheesman. Ms. Cheesman wrote that her family had owned the house in Strathmere since 1955 and their taxes have gone from \$136.00 a year to \$8,000.00 a year and they do not even have a local police force. She would prefer protection from the Sea Isle City police force rather than the State Police.

Judith Rainear of 9 Putnam Avenue, Strathmere, New Jersey appeared, was sworn and testified as to her concerns regarding lack of law enforcement. She also expressed concerns of what she believed to be a lack of municipal services during the President's Day snowstorm.

Lynn Fayter of 118 Putnam Avenue, Strathmere, New Jersey appeared, was

sworn and testified as to the President's Day storm of 2003. She did not believe that the response for snow removal was satisfactory.

Thomas D'Intino, a lieutenant with the Sea Isle City Police Department appeared, as a result of a subpoena, was sworn and testified. He testified as to the composition of the Sea Isle City Police Department and their work shifts. He further noted the change in the number of police officers and shift changes that occur during the summer tourist season. In addition, he testified as to the equipment available to the Sea Isle City Police Department. The lieutenant addressed issues regarding curfew, bonfires and fireworks on the beach and the Sea Isle City noise ordinance.

Testifying from a series of documents that would be marked as S-3, Lt. D'Intino testified as to response times of the Sea Isle City Police Department to north end properties on particular dates and particular times. Differing response times were noted for different events based upon the day and time in question. He also testified as to cooperation between the Sea Isle City Police Department and its beach patrol. The lieutenant answered questions regarding the possible effect of Strathmere upon the Sea Isle City's police force, size and budget along with his understanding of the Sea Isle City and Strathmere beach patrols. He further testified as to flooding and snow conditions in Sea Isle City, specifically, during the President's Day snowstorm.

Charles Dall'Acqua of 33 Sumner Avenue, Strathmere, New Jersey appeared, was sworn and testified as to his concerns with garbage and trash on the Strathmere beach. He expressed concerns regarding the lack of dune replenishment, improper installation and maintenance of dune fencing, bonfires and fireworks. Photographs by Mr. Dall'Acqua were marked as Exhibits S-4 through S-11. These photographs evidenced the use of Christmas trees and snow fencing on the beach to enhance the dunes.

Albert Lord of 29 East Seaview Avenue, Strathmere, New Jersey appeared, was sworn and testified that, as a sixteen-year taxpayer, township services are inadequate for the needs of Strathmere and that township services do not match the level of taxes paid by the residents. The needs of Strathmere are different from the needs of the mainland and residents. He noted that he had installed a seawall in front of his house in order to protect same as a result of significant beach erosion. Significant discussion took place regarding government permits necessary for the construction of a beach wall. Exhibit S-12 contained a portion of a document created by Dr. Farrell, a Coastal Geologist and Director of the Richard Stockton Colleges Coastal Research Center, regarding dune protection.

Edward Beal of 1 North Bayview Drive, Strathmere, New Jersey appeared, was sworn and testified that as being a taxpayer for thirty-four years. He is concerned about police and safety protections. He also believed that he should get trash pickup more than once a week.

Roy Diamond of 509 Bayview Drive, Strathmere, New Jersey appeared, was sworn and testified as to the disconnect between the mainland of Upper Township and the barrier island. Upper Township's recreation priorities are on the mainland and the beach is ignored. He noted that after the 1962 storm, Sea Isle City purchased many privately owned properties on the beach and Upper Township did not. Mr. Diamond was critical of Upper Township's lack of attention to its beach protection program which has resulted in a serious beach erosion problem at present. Mr. Diamond introduced Exhibits S-14 being the cover sheet and three pages from the 1962 Upper Township Master Plan, S-15 - a letter dated February 24, 1967 from the New Jersey Department of Conservation to Upper Township, S-16 - Upper Township Beach and Recreation Spending Chart, S-17 - a three page document from the New Jersey Beach Profile Network regarding Cape May County, S-18 - one sheet from the final report of 2006 from Stockton Coastal Research Center.

John F. Vassallo, Jr., Esquire doing business at 630 Burlington-Rancocas Road, Willingboro, New Jersey appeared, was sworn and testified that his business is primarily specialized in alcohol beverage control issues. He noted that Upper Township presently has seven plenary retail consumption licenses, two of which are located in Strathmere. If Strathmere was deannexed to Sea Isle City, the licenses would transfer to Sea Isle City. If, however, Strathmere/Whale Beach annexed to Ocean City, the licenses would, in all likelihood, be lost.

Neil Sagot residing at 2400 Commonwealth Avenue, Strathmere, New Jersey appeared, was sworn and testified that he has resided in Strathmere for 10 years. Three times his house alarm has gone off and the state police did not show up for an hour and a half. He commented on illegal bonfires and fireworks on the beach and public drinking on the beach. He also noted that many people speed along Commonwealth Avenue. He does not believe that the state police adequately serves this area. He testified that all of the lifeguards are at the north end of the island and not down at the south end. He would be willing to pay taxes and beach fees to have lifeguards at the south end beach. He stated that he was not overtaxed but underserved. He also expressed concerns regarding the once a week trash pickup. He notes that he shops, eats his meals and goes to church in Sea Isle City.

Maureen Sagot of 2400 Commonwealth Avenue, Strathmere, New Jersey appeared, was sworn and testified that she believes that she does not receive any protection or services. The lack of a police force results in many speeders on Commonwealth Avenue, which is dangerous to the public.

Herb Hollinger of 113 Putnam Road, Strathmere, New Jersey appeared, was sworn and testified that he has been a resident since 1962 and is a volunteer fireman with the Strathmere Fire Company and past president of the Strathmere Fishing and Environmental Club. He expressed concerns regarding the lack of a police presence and

that the state police are undermanned to supply adequate services. The lack of a police presence causes people to speed, light illegal bonfires and fireworks and hold drunken parties on the beach. The Strathmere Fire Company hired an off-duty state trooper to patrol a few hours each weekend during the summer with donations from the Strathmere Improvement Association and other concerned citizens.

Greg Bennett of 21 East Winthrop Avenue, Strathmere, New Jersey appeared, was sworn and testified that he is the president of the Strathmere Fire Company and that the fire company had contracted with the state police for an off-duty officer on Friday and/or Saturday nights and paid them \$80.00 per hour. The state police officer would normally work a four-hour shift on either a Friday or Saturday night to provide a police presence. This began in 2006. They hoped that the presence, on occasion, would result in a deterrent to illegal activities. He further testified that Sea Isle City also has a volunteer fire department and he does not know the impact upon the Strathmere Fire Department if the deannexation occurred.

Rex Schutte of 18 Sumner Road, Strathmere, New Jersey appeared, was sworn and testified as to the quality of life difficulties associated with illegal fireworks, noise issues and illegal parking.

Colleen Cox Snee of 14 Webster Avenue, Strathmere, New Jersey appeared, was sworn and testified that, during the winter months, someone had broke into her then vacant home and severely vandalized same and no one noticed it for two weeks. More than \$40,000.00 worth of damage occurred and the next winter they were vandalized again. She believes that a lack of police presence contributed to the vandalism.

Dennis Sigovich of 3800 North Commonwealth Avenue, Strathmere, New Jersey appeared, was sworn and testified as to the drainage pipe problems testified to by Mr.

Roland. A photograph was marked S-19 showed water ponding as a result of the drainage pipe blockage. He also testified to two drunken parties when the state police did not respond stating that Upper Township has no noise ordinance to enforce.

Ken Weaver of 212 Bayview Drive, Strathmere, New Jersey appeared, was sworn and entered four photographs marked S-20 to S-23 into evidence. He noted that his family has been coming to Strathmere for 99 years and had owned a general store. He testified as to his concerns regarding Upper Township's failure to properly manage the beaches. He noted that in 2007 there was a severe seaweed problem on the beaches that Upper Township did not resolve since Upper Township does not rake its beaches. The massive seaweed problem was there for almost a month and the smell was terrible.

Nancy Fullam of 14 East Seaview Avenue, Strathmere, New Jersey appeared, was sworn and testified as to the massive seaweed problem that occurred in the summer of 2007 and was critical of the Township's response or non-response to same. She was also critical as to the lack of response to the beach erosion at the north end and expressed frustration regarding the lack of a police presence, bonfires and fireworks on the beach. She also commented on the overflowing trashcans at the ends of the beach, which are not emptied when filled. A police presence would improve quality of life issues.

Mary Lynne Finelli of 38 East Webster Avenue, Strathmere, New Jersey and her husband, Joseph Finelli appeared, were sworn and testified that, as a result of a lack of police presence, there are always fires on the beach and noise associated with same. These loud parties on the beach disrupt their peace and quiet. These parties also leave trash and dangerous debris on the beach, which is not cleaned up by the Township. A police presence is necessary to enforce the law. He believes that being part of Sea Isle City would resolve those issues because there is a local police department to enforce it.

Tony Addario of 512 Bayview Drive, Strathmere, New Jersey appeared, was

sworn and testified that he has been coming to Strathmere since 1965 and testified that the Upper Township government does not appear to allocate funds appropriately for the issues concerning Strathmere and the public has not been kept informed of its actions. He expressed concern regarding flooding along his street and the failure of the public works department to resolve drainage issues. He also listed his concerns regarding parking, noise, trash, vandalism and housing break-ins. He also expressed concerns however of Strathmere becoming like Ocean City or Sea Isle City with high-rises and condos.

Harry Geisser of 200 South Commonwealth Avenue, Strathmere, New Jersey appeared, was sworn and testified as to three break-ins at his duplex including having to confront two of the vandals in person – one of which got in bed with him.

Ted Kingston of 5 East Willard Road, Strathmere, New Jersey appeared, was sworn and testified that he had lived in Strathmere since 1963 and is a member of the fire company and Strathmere Improvement Association. He testified as to, what he phrased, an indifference of the Township to the people of Strathmere going as far back as the 1962 storm. The Township would not build a bulkhead so the people of Strathmere built it themselves. The people of Strathmere had to go to Court to have their water issue resolved after fighting with the Township. The Township built a lifeguard shack on the beach against the wishes of the people and have ignored the warnings of their own beach protection expert regarding the dunes and northern point. He does not believe that the Upper Township governing body considers the needs of Strathmere. He marked as Exhibit A-24 a package of six letters, which had been forwarded between numerous governmental agencies regarding Strathmere.

**February 12, 2008**

Frederick Jacob, Esquire of 1900 Commonwealth Avenue, Whale Beach, New Jersey appeared, was sworn and had marked into evidence S-25 through S-32, 11 photographs evidencing poison ivy along the stairs leading to the beach. The photographs also evidenced the significant seaweed accumulation on the beach during the summer of 2007, which was a public health nuisance and the smell was nauseating. It was noted that Upper Township has an agreement with the state not to rake its beaches. He testified that he does not believe that Upper Township properly maintains its beach snow fence and that the failure to maintain same is both ineffective and dangerous. He testified that once he set off his own burglar alarm and the state police took an hour and a half to appear. He testified that it would be better for Sea Isle City to provide beach protection to the Citizens for Strathmere and Whale Beach.

Ted Bramford of 1912 Commonwealth Avenue, Whale Beach, New Jersey appeared, was sworn and testified that he has lived in Whale Beach since 1963 and recalls when it was necessary to sue the Township, Sea Isle City and Ocean City in order to fix the water problem. He states that when the Township has not done it, he has put up a snow fence himself on the beaches. He expressed concerns regarding Township responsiveness on issues such as trash collection and other municipal services.

Larry Weaver of 122 Putnam Avenue, Strathmere, New Jersey appeared, was sworn and testified that he has been coming to Strathmere for thirty-six years. He believes that, in the case of an emergency, assistance from Sea Isle City would be much quicker than from the state police. Strathmere was once a part of Sea Isle City and is geographically connected to it. The governing body of Sea Isle City is more focused on shore-related issues. He also suggested that the Township hold a town meeting in Strathmere once a year to discuss Upper Township's long term plans for Strathmere.

David Townsend of 17 Winthrop Road, Strathmere, New Jersey appeared, was sworn and testified that his family has lived in this area for generations. He noted that the boat ramp in Strathmere, while free, is not maintained as well as the one in Beesley's Point. He expressed concern regarding noise and drainage issues and storage containers for trash cans.

Paul Kroeger of 224 Bayview Drive, Strathmere, New Jersey appeared, was sworn and testified that Upper Township neglects Strathmere particularly in the area of public safety and sanitation. He noted that flooding in the front of his house has resulted in the road department not picking up his trash. The road department simply does not clear the drainage culverts and storm sewers, which causes the flooding to be worse than necessary. He marked as Exhibit S-33, Dr. Farrell's annual report to the Township dated March 11, 2004.

Debbie Vandegift of 9 South Commonwealth Avenue, Strathmere, New Jersey appeared, was sworn and testified that her family has lived in Strathmere for generations also. She testified as to the devastating effects of the 1962 storm. She testified as to the cultural differences between the islanders and the mainlanders and does not believe that the municipal government understands Strathmere's particular problems. She entered into evidence S-34, a copy of the Upper Township Gazette dated February 7, 2008.

Charles Vandegift of 9 South Commonwealth Avenue, Strathmere, New Jersey appeared, was sworn and testified as to his concerns regarding police protection. He testified as to an incident that occurred in front of his house and when the state police were called they took forty-five minutes to appear. He expressed concerns regarding the loud music, fireworks and drinking on the beach which may be deterred with a local police force. He also advised that the citizens were upset by the placement of the lifeguard stand without notice to the public. He presented a petition regarding the lifeguard stand, which was marked as Exhibit S-35.

Candy Kruse of 17 East Sherman Avenue, Strathmere, New Jersey appeared, was sworn and testified that her family has lived in Strathmere for generations. When her taxes were raised as a result of the reevaluation, the Township did nothing to help. She expressed concerns with the lack of responsiveness during the President's Day snowstorm. She testified that she believed that painting the water tower with "Strathmere Upper Township" was spiteful.

Ms. Bittner called Leah Furey, a professional planner with Bach Associates, who was retained by the Petitioners to do an analysis of the alignment of the municipal boundary between Upper Township, Strathmere and Whale Beach and to form an opinion as to whether the Petitioners were better served by an alternate alignment with Sea Isle City. She testified as to her background investigation and concluded that Strathmere should be able to annex to Sea Isle City given the distinct visual, physical and cultural characteristics of the barrier island community. She further testified that the deannexation would not have any lasting negative impact upon the remaining residents of Upper Township. She commented that the Upper Township Master Plan is not visionary as it relates to Strathmere and that Sea Isle's Master Plan contains better planning elements for a barrier island community. Sea Isle City's zoning districts are compatible with the development in Strathmere and, additionally, the police department would be a more consistent law enforcement presence for the citizens of Strathmere.

Ms. Furey noted that her investigation did not include any fiscal impact analysis upon Strathmere or the Township of Upper. She testified that she did not believe that Upper Township had any capital improvement plan in place for Strathmere including a plan to fight beach erosion. In her opinion a significant loss of ratables would not change her opinion as to a negative impact upon Upper Township since Upper Township could find ways to more efficiently provide public services. Ms. Furey's report was marked as Exhibit S-37 dated February 12, 2008. Ms. Furey summarized the conclusions of her report that Strathmere would be better served by annexing to Sea Isle City and that there

would be no negative impact to Upper Township since its overall planning scheme did not consider Strathmere.

Upon questioning from the Board, Ms. Furey again acknowledged that she had provided no economic fiscal impact information in her report or to the Board. There have been no calculations to the savings to the Township as a result of not providing services to Strathmere. There have been no calculation of the effect upon the municipal or school budgets.

**February 26, 2008**

Marion Ingram of 19 Vincent Road, Strathmere, New Jersey appeared, was sworn and testified that she has lived in Strathmere since 1973. She stated that the citizens of Strathmere are socially and geographically disconnected from the mainland and use Sea Isle City and Ocean City for their churches, doctors, dentists, pharmacies, grocery stores and libraries. They also use the Sea Isle City recreation facilities and senior center. The close proximity of Sea Isle City to Strathmere better serves the elderly citizens of Strathmere.

Curtis McDaniel of 9 South Bayview Drive, Strathmere, New Jersey appeared, was sworn and testified that he is a full time resident of Strathmere of 30 years. He lives near a local bar, which plays music late into the night. Upper Township does not have a noise ordinance to prevent the disturbance of his peace and quiet. He has sent many letters to the Township Committee on this issue, all of which were marked as Exhibit S-38.

Herb Hollinger of 113 Putnam Avenue, Strathmere, New Jersey appeared again before the Board, this time in the capacity as the vice president of the Fishing and Environmental Club. He testified as to the extreme beach erosion at the north end of the

island and was critical of Upper Township's protection of same. He noted that his organization installs the snow fence that is often delivered to the end of the streets by the public works department. He criticized the lack of maintenance of the beach fencing, which has caused it to be ineffective and dangerous. He also noted that the Christmas trees are delivered to the street ends and his organization places same on the dunes to help the protection of the dunes. Testimony was elicited that county and state prisoners are sometimes used to install the dune fencing. He marked as Exhibit S-39, a three page packet consisting of a cover sheet of a report from Dr. Farrell from 2005 together with pages 26 and 27 of that report.

William Tierney of 46 Vincent Road, Strathmere, New Jersey appeared, was sworn and testified as to his concerns about fireworks and bonfires on the beach. He expressed concern about the lack of police presence and often feels scared in his home. This is a quality of life issue to him.

Randy Roash of 124 Prescott Street, Strathmere, New Jersey appeared, was sworn and testified that the Strathmere Fishing and Environmental Club, for the last eighteen years, has put up trash corrals at the ends of the street, the boat ramp and the beach entrances. The organization also does beach cleanups.

Ms. Bittner then called Ed Kirschenbaum, a former law enforcement officer and now a principal owner of an investigation company and law enforcement consulting firm, to speak on operating procedures for law enforcement agencies. He was retained by the Petitioners and asked to analyze and assess the law enforcement needs of Strathmere and determine whether the residents of Strathmere would be better served by the Sea Isle City Police Department. Mr. Kirschenbaum opined that Strathmere would be better served by law enforcement protection from Sea Isle City. He noted his experience in law enforcement in beach communities in the Monmouth County area. Dealing with issues such as supervision of the beaches, open containers of alcohol, bathing in unprotected

waters, fireworks, bonfires, etc., he believes the quality of life issues such as these are improved when there is local law enforcement providing a deterrent effect. The public is better served when the law enforcement agents are well-versed with the area and have a smaller area to canvas. He discussed the potential of 24 hour beach access being mandated by the state and the effects that will result from that situation.

Mr. Kirschenbaum stated that, logically, since Sea Isle City is closer, police officers would have a shorter response time to the citizens of Strathmere. He testified that a police presence is the key as a deterrent to quality of life concerns. He further testified that, in his opinion, inter-local agreements simply do not work since the police are not vested in the neighboring municipality. Mr. Kirschenbaum acknowledged that he was not aware of the inter-local agreement between Cape May Point, West Cape May and Cape May whereby police services are provided by Cape May to these neighboring municipalities.

James Fallon of Spring Heights, New Jersey appeared, was sworn and testified that he is retired but was a former major in the New Jersey State Police. He is now operating his own law enforcement consulting firm. Mr. Fallon expressed concerns regarding access to Strathmere by the state police if the bridges were out and also noted that state police personnel are stretched very thin and each barrack is understaffed. The Woodbine barracks has to cover a large area including Upper Township, Dennis Township and Woodbine. In his opinion, a patrol from the Sea Isle City Police Department would certainly respond to calls for service faster than a patrol from the Woodbine station based upon geographic distance alone. He also noted that the trooper stationed at the Woodbine barracks would not be overly familiar with Strathmere and lack local knowledge which is relevant to effective policing.

Mr. Fallon stated that he reviewed documentation obtained from the state police for service calls to both Upper Township and Strathmere for the calendar year of 2007.

The information stated that there were 140 calls to Strathmere with the average response time of 12 minutes, 38 seconds. Taking out motor vehicle stops and aid to motorist calls, the average response time was about 17 minutes to Strathmere. There were a total of 118 calls to Strathmere if motor vehicle stops were removed from the equation. Mr. Fallon noted that the computer-assisted dispatch (CAD) system prioritizes calls when there are insufficient patrols to handle all of the calls. An emergency situation will obtain a higher priority than a non-emergent call. In extreme emergencies the state police will call out for mutual aid to adjacent municipalities.

In conclusion, Mr. Fallon noted that he did not believe that Strathmere was adequately served by the New Jersey State Police which is reactionary rather than proactive and it would be safer if police service was provided by the Sea Isle City Police Department. The state police CAD report was admitted into evidence as S-41.

**March 18, 2008**

Herb Hollinger of 113 Putnam Road, Strathmere, New Jersey appeared again, was sworn and testified regarding the dune fencing issue. He marked as Exhibit S-42, 12 photographs of beach fencing on the Strathmere beach and asserted that the Township was not doing a good job in maintaining same. He marked five additional photographs as S-43 through S-47, of how dune fencing should be installed and maintained.

John Manganaro of 7 Saw Mill Road, Monroeville, New Jersey appeared, was sworn and testified that he is the public works director in Sea Isle City. He testified that the number of employees in his department increases in the summer and that they do twice a week trash pickup in the summer. The Public Works Department also does beach raking, sets up dune fencing, removes trash from the beach and other general maintenance on the beach paths and dunes. His affidavit was marked as Exhibit S-40 into evidence. Upon questioning from the Board, Mr. Manganaro acknowledged that Sea

Isle City also floods during storms. He testified that outfall drainage pipes sometimes clog in Sea Isle City too. The public works budget in Sea Isle City was marked as S-48. The general capital fund budget for Sea Isle City was marked as S-49. Mr. Manganaro acknowledged that he did not know that a program was available to utilize prison labor for beach maintenance. He stated that he would consider this in the future.

Robert Swartz of 106 Bishop Court, Egg Harbor Township, New Jersey appeared, was sworn and testified as a certified public accountant and registered municipal accountant. He was retained by the Petitioners and asked to analyze the fiscal impact of the Petitioners' deannexation from Upper Township on both the Petitioner and Upper Township. He testified that as a result of a recent reevaluation, there was a \$2,000,000.00 shift of taxes paid from the mainland to the barrier island. In his opinion, deannexation will not affect the municipal taxes paid by the mainland and homeowners since there is no local purpose tax. He believed that the deannexation of Strathmere could save approximately \$400,000.00 in the municipal spending.

Mr. Swartz testified that the barrier island represents 17% of the total tax valuation of Upper Township. He believed that deannexation would result in a positive long-term impact on school taxes. Based upon the new school funding formula, with Strathmere removed, formula aide would have been 1.7 million dollars higher. He acknowledged that this statement was, as a result, of the regulations as they currently exist and that they may change. He further testified that Upper Township would see a savings of about \$600,000.00 on county taxes since county taxes are based upon equalized value.

In conclusion, Mr. Swartz testified that the average home in Upper Township is assessed at \$350,000.00 and, as such, the average property owner would see an increase in their property tax of \$700.00 per year. Mr. Swartz suggested that in order to make up this money, Upper Township could annex Corbin City, however, he acknowledged that

he had not done a thorough analysis of this issue. He acknowledged that the loss of Strathmere would cost the Township, \$3,750,000.00 and that annexing Corbin City could save Upper Township \$750,000.00. Mr. Swartz marked, as Exhibit S-50, a packet consisting of ten pages of charts showing the impact of deannexation under various tax scenarios. From them, Mr. Swartz testified that, if Strathmere deannexed, the tax rate would go up by 20 cents and that Upper Township would need \$3,750,000.00 of additional revenue to keep the tax rate at zero. He further testified that if a resident in Strathmere had a property that was valued at \$950,000.00, they would pay real estate taxes of \$4,000.00 in Sea Isle City versus the \$11,000.00 paid in Upper Township. The witness marked as Exhibit S-51, the 2008 proposed municipal budget of the Township of Upper.

Douglas Gaffney of 1500 Walnut Avenue, Voorhees, New Jersey appeared, was sworn and testified in his position as a coastal engineer. After reviewing the photographs previously entered into evidence, Mr. Gaffney testified that he did not believe that dune fencing in Strathmere was properly maintained. Mr. Gaffney testified that the Army Corps of Engineers suggests a five-year renourishment plan yet Upper Township's last beach fill was in 2001. He suggested that action needs to be taken immediately to avoid increased erosion particularly at the north end. He testified that the north ends of most of many islands have a hard seawall but that Upper Township has chosen, to date, not to pursue that route. Mr. Gaffney suggested that the Township, through its engineer and a retained coastal engineer, inspect and assess the groins and bulkhead owned by Upper Township in order to replace or repair them. He suggested numerous options that would be effective in order to protect Strathmere from future beach erosion.

#### **Meeting April 7, 2008**

James Iannone of 570 1<sup>st</sup> Street, Sea Isle City appeared, was sworn and testified that he is the former commissioner in Sea Isle City. He testified that, in approximately

1999, he met with Mayor Palombo of Upper Township and preliminarily discussed the possibility of Sea Isle City providing police services to Strathmere.

Douglas Gaffney continued his testimony regarding the beaches and marked as Exhibit S-52, an aerial map of Strathmere. He noted that he had done an inspection of the beach including a beach fill that had recently been placed on the beach. His investigation found some dune fencing that was in the wrong position or completely removed. He commented critically on the quality of the fencing. He recommended that the Township assign one member of the recreation department to monitor the beach and be trained in the installation of dune fencing. He testified that the groins at the north end of the island were quite dilapidated while the groins at the south end were in good condition. Testimony occurred regarding the definition of “engineered beach” versus “managed beach” and the availability of FEMA funds in the event of an emergency. He marked as Exhibit S-53, FEMA definitions of these terms.

During Mr. Gaffney’s testimony, Nancy Fullam of 14 East Seaview Avenue, Strathmere, New Jersey appeared, was sworn and testified and presented photographs marked as S-54 through S-65 taken on April 7, 2008, which were submitted to the Board. They evidenced the current condition of the north end of the island.

Mr. Gaffney continued his testimony regarding his preferred beach replenishment plan, which should be done in a periodic and predictable manner, rather than dealing with emergencies as they arise. He further testified that dredging and placing the sand on the beach would be a better alternative than trucking in sand. It would also improve navigation in the inlet. Mr. Gaffney further addressed the availability of state and federal funding for beach replenishment projects.

In terms of recommendations, he believed that Upper Township should immediately start looking at funding for the development of a true beach management

plan and that the Township needs to be more proactive in pursuing state and federal funds. Mr. Gaffney testified that beach erosion is cyclical and that the beach erosion on the north end is probably not the farthest south than it has ever been historically. However, now portions of that area are developed residentially.

Continued testimony took place regarding the Upper Township Master Plans and how it related to the beach protection issues. The 1993 Upper Township Master Plan was marked as S-66. The 2001 Master Plan Re-examination was marked as S-67 and the 2006 Master Plan was marked as S-68. Mr. Wisner noted that each of these three Master Plans addressed the issue of beach protection and replenishment. Mr. Gaffney acknowledged that Sea Isle City does not have an engineered beach because they do not have a five-year renourishment cycle. In conclusion, Mr. Gaffney's opinion that the Strathmere beaches would be better protected as a part of Sea Isle City since they have a more coastal perspective of Upper Township. Ms. Bittner marked as Exhibit S-69, a copy of the Strathmere Beach Management Plan of November 2002.

Joseph J. Hoffman of 55 Summit Avenue, Berlin, New Jersey appeared, was sworn and testified that he is a certified public accountant and registered municipal accountant and retained by the Petitioners to discuss costs associated with capital projects specific to Strathmere. His report was marked as Exhibit S-70. Mr. Hoffman testified as to the total budgetary expense associated with the beaches for both Strathmere and Sea Isle City and Sea Isle City's revenues obtained from the beaches. Mr. Hoffman had collected data regarding the "Ludlam Island Project" which is the large beach replenishment project to be completed in conjunction with the Army Corps of Engineers. The total cost for the Ludlam Island is \$13,000,000.00 with Upper Township's share being approximately \$700,000.00 to \$800,000.00.

Mr. Hoffman also estimated the cost of providing police protection to the Citizens of Strathmere/Whale Beach. His estimation of an inter-local agreement with Sea Isle

City to provide this service would be a cost to Upper Township of between \$126,000.00 to \$368,000.00. Other suggested scenarios would be however more expensive.

Douglas Gaffney again testified before the Board that, in the event that Upper Township attempted to complete the Ludlam Island Project without same being in coordination with other municipalities, the cost to Upper Township could increase.

Joseph Hoffman further testified that Upper Township could generate additional revenues by instituting a beach tag program and acknowledged that Upper Township in 2006 budgeted more for capital costs than did Sea Isle City but, as a result of the way the budgets were put together, it was not a true reflection of the actual monies expended by the municipality.

**April 30, 2008**

George Welker of 702 Bayview Drive, Strathmere, New Jersey appeared, was sworn and testified (read) from a pre-written statement, which was to be considered as the summation for the Petitioners.

Mr. Welker noted that it is his opinion that the Upper Township mainland mindset creates an inability to care for a coastal community and has resulted in the benign neglect that has occurred over the years. He testified that the deannexation petition is only taking the advice of those people who have stated that if they are unhappy with their tax assessment and low quality of services and that they should move. The move that they have decided to make is to Sea Isle City. He testified as to discussions regarding annexation of Strathmere/Whale Beach in 1983 as a result of a water crisis (Exhibits S-71 and S-72). Finally, court intervention solved the water supply crisis.

He noted Upper Township's failure to acquire control of portions of the privately

owned beach (Exhibit S-74), Strathmere paying for their own bulkhead (Exhibit S-77), and a lack of sufficient beach maintenance program. Multiple additional photographs were marked Exhibits S-78 through S-97. He further noted that the lack of police protection has resulted in Strathmere hiring an off-duty state police trooper a few hours a week during the summer to provide a police presence.

Mr. Welker was critical of the lack of attention to Strathmere in Upper Township's Master Plan and of the Township's failure to adequately advocate with the county regarding evacuation routes and bridges. Additional Master Plans of Upper Township, Avalon, Ocean City and Sea Isle City were marked as Exhibits S-99 through S-105.

It was noted in the record that EMT response services and 911 services for Strathmere were previously handled by Sea Isle City, however, as a request of the Strathmere Fire Company, after asserting that those services were insufficient, these services are now being provided by Ocean City.

This completed the affirmative portion of the Petitioners' presentation.

Leon Costello of 200 Simpson Avenue, Ocean City, New Jersey with the accounting firm of Ford, Scott & Associates appeared, was sworn and marked as Exhibit P-1, a report from which he testified. This report analyzes the financial impacts that would result from the deannexation of Strathmere from Upper Township.

Mr. Costello noted that Strathmere's ratable base was \$393,461,300.00. He testified that Upper Township has no local purpose tax. He further testified that there would be no savings to Upper Township in its county tax if Strathmere deannexed since the tax monies would simply follow the property to the next municipality.

Most importantly, he noted that, if Strathmere deannexed, the school tax rate would increase by \$.20 from \$0.94.4 to \$0.1.14 and agreed with Mr. Swartz that deannexation would result, to the average property owners of a \$350,000.00 home, of a \$700.00 property tax increase per year. The local purpose tax would not change since there is none.

Mr. Costello testified that, if Strathmere would deannex to Sea Isle City, the Citizens of Strathmere would see their property taxes reduced by approximately 40%.

Mr. Costello testified as to his review of the Upper Township municipal budget. The majority of the budget would not change with the deannexation of Strathmere unless there was a reduction in the workforce, specifically in the road department and recreation department, which provides municipal services to Strathmere. There would be a savings in that Upper Township would not have to pay Ocean City by providing ambulance service, the trash-tipping fee would in all likelihood go down, there would be a savings in not providing a lifeguard service and the savings on the electric bill for streetlights. There would also be a saving as a result of no capital projects and expenses for beach protection. He estimated that savings at approximately \$500,000.00. He again noted, however, that since there were no local purpose tax that there would be no savings to the taxpayer. The municipal government would simply have more money to spend on other projects.

Commenting on the State School Funding Program, he noted that the state has not followed its own funding program for the last six years, essentially ignoring it. Upper Township received no increase in aid even though they were supposed to under the state funding formula. He noted that it is impossible to figure out what the state will do in the future regarding state school funding as evidenced by the fact that Upper Township lost \$175,000.00 in state aid this year. He completely disagreed with the prior testimony that Upper Township would receive a \$1.7,000,000.00 to \$2,000,000.00 increase in state aid

if Strathmere deannexed.

In conclusion, Mr. Costello testified:

1. The county tax would not change.
2. The school budget would not change.
3. The fire tax would not change.
4. Upper Township would save \$500,000.00 in municipal services provided to Strathmere.
5. The school tax rate would go up by \$.20 resulting in an increased property tax to the average \$350,000.00 home in Upper Township of \$700.00 per year.
6. There would be no change in the local purpose tax which does not exist.

When questioned about the possible annexation of Corbin City as suggested by Mr. Swartz, Mr. Costello said that any such consideration would be speculative without a full analysis. He noted, however, that Corbin City's ratables were \$30,000,000.00 whereby Strathmere is almost \$400,000,000.00. It was learned that Corbin City had 116 children in the school system versus less than 10 from Strathmere. He raised issues of other intangibles and possible negative effects upon the citizens of Upper Township.

Being the municipal accountant for 14 of the 16 county municipalities, including Cape May, West Cape May and Cape May Point, Mr. Costello was able to testify as to the inter-local agreement made between Cape May City, West Cape May and Cape May Point regarding providing police protection services. The program has worked very well and all parties seem pleased. The program has been in effect for seven years. Mr. Costello further testified that Upper Township, if necessary has the available bonding capacity between \$70,000,000.00 and \$80,000,000.00, however, that available figure would decrease as a result of Strathmere's deannexation.

May 21, 2008

Dr. Stewart Farrell of 342 English Creek Road, Port Republic, New Jersey appeared, was sworn and testified that he has a Master's Degree in Geology and is employed with The Richard Stockton College Marine Science and Geology Department and in that capacity has been retained by the Township of Upper to study its beaches and report to the Township Committee on a quarterly basis for many years. Initially during his presentation, he discussed how dunes and beaches are created and eroded often in a cyclical manner. He noted that the entire Ludlam Island is starved for sand with no major source of sand anywhere. It is also controlled by Corson's Inlet to the north and Townsend's Inlet to the south. From aerial photography, he testified as to the changing inlets, channels and location of beaches since the 1920's. He further testified as to beach replenishment and protection work that have occurred during the last thirty years.

Dr. Farrell testified that even minor changes in the channel or channels within Corson's Inlet could result in the re-establishment of the shoreline at the north end of Strathmere and solve the current existing crisis naturally. Dr. Farrell's presentation was made by way of a power point presentation.

Dr. Farrell testified as to the proper installation of dune fencing. Additionally he noted that it is not possible to install hard structures at the north end as a result of State of New Jersey deed restrictions.

In Dr. Farrell's expert opinion, he believed that the Township had done an adequate job in protecting and maintaining the beach and dune structure. He noted that historically the beach erosion at the north end has never gone past Sea Cliff Avenue, however, now there is development north of Sea Cliff Avenue. He advised becoming proactive in lobbying to override the New Jersey Land Trust and allow the creation of a

hard wall structure at the north end; although the likelihood of success is small.

Dr. Farrell testified as to numerous options regarding dredging the channel and also noted the tremendous difficulties in dealing with multiple governmental agencies to resolve beach protection and funding issues. Dr. Farrell's presentation, which consisted of a power point program of 16 slides, was marked as P-2.

Dr. Farrell marked as Exhibit P-3, a document that summarized his reports to the Township Committee starting in 1995, which also documented the erosion studies and land beach fills from as early as 1984. Dr. Farrell characterized the Township's response to his quarterly reports as positive and would grade the Township's reaction to beach protection issues as a solid B; the same grade that he would assign to Sea Isle City who has had similar crises recently.

Dr. Farrell addressed the large Army Corps of Engineers' project, which is scheduled for Ludlam Island. He noted that, while this project has been permitted, there is no federal funding at this time. However, this is a huge project, which will have a significantly positive impact upon the beaches. Dr. Farrell also addressed in detail the types of managed beach plans that could be created which may result in more assistance from the federal or state governments.

**June 17, 2008**

Lieutenant Robert Watkins, the barracks commander of the Woodbine State Police Barracks, appeared, was sworn and testified on numerous law enforcement issues. He testified that he had read the transcripts of prior hearings regarding state police response times and was prepared to respond to those statements.

Lieutenant Watkins noted that the state police do not respond to false alarms when they are provided with information that it is in fact a false alarm. He disagreed with Mr. Kirschenbaum's testimony that there is no police presence in Strathmere. That area is covered as well as Upper Township, Woodbine and Dennis Township.

Lieutenant Watkins had reviewed the testimony of Lieutenant D'Intino of the Sea Isle City Police Department and the testimony of Mr. Fallon regarding response times. He questioned the accuracy of the information previously provided to the Board, particularly since the CAD system had already removed motor vehicle stops from the equation. It would appear then the response times would be closer to the 12-minute figure rather than the larger figure stated by Mr. Fallon.

Lieutenant Watkins disagreed that the state police is a reactionary police department. In fact, he believes that they are proactive and pride themselves in having an aggressive approach to law enforcement. He testified as to the Woodbine station's personnel and its goal to deter crime. He testified as to the innumerable resources of the New Jersey State Police including helicopters and bomb squads together with specialty units such as rapid responders and special tac pacs.

Lieutenant Watkins testified that the most important information is crime rate statistics. These statistics were marked as Exhibit P-5. He noted that Upper Township's crime rate per 1,000 is 16.5, while Sea Isle City's crime rate is 100.1.

He further noted that response rates are affected by New Jersey State Police protocol, which will often increase the response time actually recorded. Any time a response time is more than 20 minutes that matter is reviewed to determine the reason for same. Most of the time there is a legitimate reason determined for a response time of more than 20 minutes. Lieutenant Watkins noted that manpower at his barracks increases during the summer as a result of tourist industry. He acknowledged the additional state

trooper hired by the Strathmere Volunteer Fire Department and believes that it is a good thing while not necessary. He testified that all calls are responded to while acknowledging that a trooper would respond to a motor vehicle accident before a bonfire if they were called in at the same time. This type of stacking, however, rarely occurs.

Lieutenant Watkins testified that he has never personally received any complaint calls from citizens from Strathmere and his review of his barrack records also contain no such complaints. He also disagreed with Mr. Fallon that the service to Strathmere was inadequate. He also disagreed that the State Police would, at any time, contact the Sea Isle City Police Department and request that they handle a certain job. He did note, however, that the Parkway State Police would often assist them even though they are not assigned to the Woodbine Barracks. Lieutenant Watkins discussed the Computer Assisted Dispatch Program and how individual troop cars were assigned to particular service jobs. He further testified as to communications between the troopers and other law enforcement arms such as beach patrols and the prosecutor's office.

Upon questioning from Ms. Bittner, Lieutenant Watkins acknowledged that the higher crime rate in Sea Isle City is affected by the seasonal increases in population. However, the total number of crimes, both violent and non-violent, is higher in Sea Isle than Upper Township and Strathmere combined.

Lieutenant Watkins testified as to new technologies such as GPS systems which are making it easier for troopers to get to specific locations easier and quicker. However, old technologies such as maps, calling dispatch and other troopers for directions are still used. Many of the troopers, however, live in this area and know their zone very well.

Richard Cushinotto of 2240 Route 50, Petersburg, New Jersey, appeared, was sworn and testified as the transportation supervisor of the Upper Township schools. He testified as to how the school bus routes are established and the efficiency of his staff.

One year the Upper Township Transportation Unit was ranked number two in the county and the last few years has been within the top 100 schools in the state for efficiency.

He candidly acknowledged that there are occasionally complaints from parents from both the mainland and Strathmere regarding the buses, but they try to resolve those matters effectively. He also acknowledged problems associated in Strathmere regarding road construction, flooding and bridge difficulties.

Mr. Cushinotto testified as to the length of rides taken by the children. While he noted that a Strathmere child would have a 20 minute ride to the elementary school, that child would have a much shorter ride to the high school. Alternately, a child from the Steelmantown area may have a shorter ride to the middle school, that same child would have a significantly longer ride to the high school.

He further testified that he is involved in a joint transportation agreement with Sea Isle, which also sends their children to Ocean City High School so that the Sea Isle children and Strathmere children take the same bus to high school. Mr. Cushinotto had his efficiency report marked as P-6. He testified that Upper Township has been rated as number two in school bus transportation efficiency for the last seven years. Sea Isle City has been rated sixth or lower over that same period of time.

Michael Garcia of 11 Coventry Lane, Palermo, New Jersey, employed by Ford Scott & Associates as a certified public accountant and registered municipal accountant, appeared, was sworn and testified as the auditor for the Upper Township School District. His report was marked as Exhibit P-7. Mr. Garcia testified that he prepared his report as an analysis of the financial impact of removing Strathmere from Upper Township and specifically on how that deannexation would relate to the Board of Education budget. His report summarized those conclusions.

He testified that tuition paid to Ocean City High School represented more than 40% of the total school district budget. The total budget was more than \$34,000,000.00. Total revenues were \$13,000,000.00, and as a result \$21,169,226.00 were raised by property taxes. The net valuation taxable for Upper Township is \$2,248,016,808.00 and therefore establishes the school tax rate at \$.94.4 for 2007-2008.

Mr. Garcia testified that if Strathmere deannexed there would be a tuition savings to the Board of Education of \$15,115.00. There would also be a transportation savings of \$4,400.00, for a total savings to the school budget of \$19,515.00.

Mr. Garcia attempted to explain to the Board the state school aid formula, which is broken down into numerous categories including general state aid, special education aid, transportation aid and adjustment aid. He discussed the variables in the state aid formula including adjustments for bilingual students, at risk pupils and adjustments when a school population increases or decreases by more than five percent. The deannexation of Strathmere would not drive an enrollment decrease of any significance.

Mr. Garcia noted that he had contacted the Department of Education in an attempt to have them quantify the proposed state aid available to the Upper Township Board of Education with or without Strathmere included. There would be a change in both equalization aid and adjustment aid, but the bottom line is that state aid without Strathmere would increase by \$13,499.00. For purpose of the school budget, there would be a total savings then of \$19,515.00 in reduced expenses together with \$13,499.00 of increased revenue, for a total savings to the district of \$33,014.00.

He also noted that, if Strathmere deannexes, there would be a loss of ratables of \$393,461,300.00; so the ratable base for Upper Township would go from \$2,248,000,000.00 to \$1,854,000,000.00. As a result of the loss of those ratables, the school tax rate would increase by almost \$.20 even given the minor savings set forth

above. Thus, on a \$350,000.00 home there would be a school tax increase of approximately \$700.00 per year. This information comports with both Mr. Swartz and Mr. Costello's evaluation.

Discussing costs per pupil, the state average was \$7,129.00 per year per pupil. For K-8, the Upper Township cost is \$6,020.00 per pupil, below the state average. Similar evaluations were done for the Sea Isle City school system, which was significantly higher.

In summary, Mr. Garcia noted that, if deannexation occurred, the school district tax base would reduce by \$393,461,300.00 or a 17 ½% reduction. The resulting tax increase to Upper Township taxpayers would be 19.7% per 100 or approximately \$700.00 for a \$350,000.00 tax assessed home. There would be a \$19,515.00 savings in expenditures and a \$13,499.00 increase in a \$10,000,000.00 state aid package. He further noted that under the state funding formula there would be no negative impact by Strathmere remaining as a part of Upper Township. Based upon all of those items, it is clear that removing Strathmere from Upper Township would have a severe negative impact on the finances of the Upper Township School District.

**July 21, 2008**

Michael Garcia, auditor for the Upper Township School Board, commenced the meeting by summarizing his report given at the last meeting and submitted same as Exhibit P-7. He reiterated that in his opinion the statement that state aid would increase by \$13,499.00 if Strathmere left was correct and that he stood by the conclusions set forth at the last meeting.

Upon questioning from Ms. Bittner, significant testimony was given regarding the State School Funding Plan. Mr. Garcia noted, however, that the numbers set forth in his

report were obtained directly from the New Jersey Department of Education. Ms. Bittner attempted to cross-examine Mr. Garcia asking him to make certain assumptions for future evaluation of the state funding formula. Mr. Garcia was unable to do so and it was requested that Mr. Garcia again contact the Department of Education to see if they could provide Mr. Garcia with additional information as to the effect upon the deannexation of Strathmere from Upper Township on future state aid given certain conditions. Mr. Garcia was asked to complete that before the next meeting.

Paul Dietrich of 235 Tyler Road, Dennisville, New Jersey, appeared, was sworn and testified, noting that he is employed full time by the Township of Upper as a professional engineer, professional planner and certified municipal engineer. He is also the Upper Township Superintendent of Public Works, computer director, municipal housing liaison and stormwater coordinator. Mr. Dietrich appeared before the Board to testify on multiple issues.

As to the stormwater drainage issues at Sea Cliff Avenue testified to by Mr. Roland, Mr. Dietrich testified as to the public works' actions to resolve the clogging of that pipe which included extending the outfall pipe farther towards the bay after obtaining Department of Environmental Protection (DEP) approvals after two years.

Mr. Dietrich testified as to the street lighting in Strathmere, which he noted is similar to that on the mainland. He noted that the Township Committee, to the best of his information, has never turned down a request for additional street lighting.

On the issue of snow removal, Mr. Dietrich testified that the Township is broken up into zones. Strathmere has its own dedicated snowplow which goes there first prior to attending to any other portion of the municipality. The President's Day storm was an extremely large storm but Strathmere was probably one of the top two neighborhoods cleaned and the first to open. There were three pieces of equipment over there full time

and in his opinion Strathmere was cleaned quicker than Ocean City and Sea Isle City.

Mr. Dietrich acknowledged that, at the request of the Strathmere Fishing and Environmental Club, Christmas trees from the mainland are trucked to Strathmere for use to stabilize the dunes and are left at the street ends per their request. He also stated that he coordinates two to three beach cleanups per year.

Mr. Dietrich acknowledged the erosion problems on the beach as a continuous, yet cyclical problem. He testified as to his coordinated efforts with Dr. Farrell, the Army Corps of Engineers and the DEP. He discussed both the major and minor beach replenishment projects and other beach work completed in the Strathmere area over the last decade together with the anticipated major beach replenishment project in coordination with the state this year and the pending Ludlam Island federal project, which is still pending.

Mr. Dietrich testified as to the purchase and installation of dune fencing together with its partnership with the Strathmere Fishing and Environmental Club. He also testified as to the type of dune fencing purchased.

Mr. Dietrich further testified as to trash collection in Strathmere which is once a week as it has been and which is also the standard on the mainland. Additional trash collection on the barrier island is done on holidays in Strathmere only. Mr. Dietrich noted that twice a week trash collection in Strathmere would be inefficient and not cost effective since it would not result in full trash truckloads. He noted however that, while there is not more than once a week pickup of trash from residents, they pick up trash at the street ends near the beach three times a week. In addition, there is trash pickup in Strathmere on summer holidays.

Mr. Dietrich noted that there are concerns regarding fireworks, beach fires and children having parties on the mainland also including the gravel pits. These types of events also leave the same type of debris on the mainland.

Expressing concerns regarding the Whale Beach area, Mr. Dietrich stated that we had been fortunate in that the southern portion of the beach had increased in size prior to a storm in 2001. He noted that while the Upper Township dunes sustained damage it did effectively protect Commonwealth Avenue. In the alternative, the geotubes in Sea Isle City were ineffective and beach sand clogged and cut off Commonwealth Avenue.

On the issue of the boat ramp, he noted that there are two boat ramps in Strathmere versus only one on the mainland. The Strathmere boat ramps are free and, unlike the Beesley's Point boat ramp, are accessible to larger boats even at low tide.

On the issue of flooding, Mr. Dietrich acknowledged that certain portions of Strathmere, specifically Bay View Avenue, are prone to flooding, particularly on unusual high tides. This, however, is not any different than most barrier islands, including but not limited to, Sea Isle City. He discussed the tie-flex gate valves, which have been installed to prevent tidewater from backing up into the storm water system and the continuous public works' projects to avoid street flooding. He further testified as to the desires of the citizens of Strathmere to remain a small hamlet and not become like Sea Isle City by resisting the sewerage of this area.

Mr. Dietrich discussed in detail the Army Corps of Engineers' Ludlam Island project and the proposed smaller beach replenishment project being coordinated with the State of New Jersey together with the funding issues related to same. His estimates of the yearly costs of same were substantially less than those testified to by the Petitioners.

Mr. Dietrich noted that many of the issues raised by citizens of Strathmere and

Whale Beach were similar to complaints that he receives from the citizens on the mainland. As set forth above, whether it is trash collection, leaf collection or children partying in the pits, they are all quality of life issues that must be dealt with. He also testified that the mainland portion of the Township experiences a significant increase in population during the summer as a result of the multiple campgrounds that exist on the mainland, which results in the need for increased municipal services that may or may not be available. Mr. Dietrich testified that he attempts to respond to all concerns of the citizens to the best of his ability.

**August 18, 2008**

Michael Garcia, an auditor for the Upper Township Board of Education, again appeared before the Board. He advised that he had contacted the New Jersey Department of Education per the request of the Board in writing (Exhibit P-8) in an attempt to get clarification regarding the prior information provided and to make an estimate based upon a certain calculation for a five-year period after proposed deannexation of Strathmere. The response from the state was that future calculations could not be made since there are too many variables, which would effect the calculations on the state profile. The state stated that based upon these variables it was almost impossible to do reliable projections into the future but that future years, in all likelihood, could be expected to be similar as the first year, which would result in a \$13,499.00 increase in state school funding.

Ms. Bittner contended that Mr. Garcia's question submitted to the State was not comprehensive which has caused the difficulty. It was suggested that Ms. Bittner then frame the question and Mr. Garcia will submit that question to the state. Ms. Bittner agreed to submit the appropriate questions to Mr. Marcolongo who will forward them to Mr. Garcia who will then forward those questions to the State of New Jersey.

Paul Dietrich, Township Engineer, reappeared before the Board to continue his testimony and to answer questions of the Board and from the Petitioners. Initially he spoke to the significant seaweed that had washed up on the beaches in the summer of 2007. He noted that, while the seaweed was picked up, it kept coming back. It was an extraordinary circumstance.

Mr. Dietrich testified as to the annual road paving program throughout the Township including portions of Strathmere and believed that the road-paving program is similar on both the mainland and Strathmere and that the roads in Strathmere are kept in as good a shape as the mainland. Two roads in Strathmere were scheduled for repaving this year. He also testified as to the development of speed humps in Strathmere to slow cars down. These speed humps were first tried in Strathmere.

Mr. Dietrich testified as to the Township's stormwater management plan which included cleaning all stormwater basins at least once a year including Strathmere, which is the first place to be cleaned. He also noted that a street sweeper is often brought to Strathmere to clean those areas. He noted that Sea Isle City had previously requested to use Upper Township's drain cleaning truck since they did not have one.

Mr. Dietrich testified that the Township does use convicts for beach cleaning and snow fence installation. Additionally, those individuals are used for cleaning on the mainland.

Mr. Dietrich testified as to his coordinated efforts with Dr. Farrell regarding the beach reports and beach preservation. He testified that it would be appropriate to examine whether geotubes would be valuable to be added to the Strathmere beaches. Ms. Bittner questioned Mr. Dietrich regarding communications between him and Dr. Farrell, which was marked as Exhibit S-106.

Ms. Bittner questioned Mr. Dietrich regarding his inspections of the Corson's Inlet Bridge. Although he was aware of certain deterioration, he had not inspected it because it is a county bridge and, therefore, not under the jurisdiction of the Township. Ms. Bittner marked as Exhibit S-107 an Upper Township Resolution regarding concerns of the Upper Township Committee with regard to the Corson's Inlet Bridge.

Upon questioning from Ms. Bittner, Mr. Dietrich testified regarding the federal beach replenishment project which he acknowledged has been permitted and designed but there is no funding available at this time. It appears that this project is at least three years away. Testimony was elicited regarding his lobbying efforts with Congressman LoBiondo.

Mr. Dietrich continued to testify based upon questions from Ms. Bittner regarding the dune fencing, the way the fence is attached to the post and the quality of the dune fencing. Photographs were marked as Exhibits S-108 and S-110 through 114. He also testified as to small garbage bags available at the entrance to the state park at the north end of the island.

Ms. Bittner questioned Mr. Dietrich regarding his work with the DEP in planning and permitting past and future beach replenishment projects. He was further questioned regarding permitting work done between the 2001 beach replenishment project and the current project that is pending for 2009. He further testified that Upper Township is now looking into whether it would be advantageous to have an engineered beach management plan.

**September 15, 2008**

Mr. Dietrich again appeared before the Board for examination by Ms. Bittner. Ms. Bittner questioned Mr. Dietrich regarding his preliminary work as to the development of an engineered beach plan. Mr. Dietrich testified that he had contacted several persons to discuss engineered beaches including Upper Township's emergency management coordinator and the county emergency management coordinator. Ms. Bittner marked as Exhibit S-120 a large unbound packet regarding FEMA requirements. Ms. Bittner also marked as Exhibits S-121 and 122 correspondences between Mr. Dietrich and the DEP regarding the beach replenishment project. Ms. Bittner also marked as Exhibit S-124 a correspondence from Dr. Farrell dated July 14, 2008.

Mr. Dietrich testified as to the steel bulkhead that is being created along the north end of the island, which has been attached to the Lord bulkhead previously developed. It is hopeful that the Township will obtain authorization to place sand in front of this bulkhead. He noted that Dr. Farrell has been directed to conduct a study regarding modifications to the channel, which would allow the beach to expand northwardly from the newly installed steel bulkhead. Ms. Bittner marked as Exhibit S-126 a deed from the Natural Lands Trust to the State of New Jersey, Department of Conservation and Economic Development dated September 23, 1969. Exhibit S-127 was a deed dated June 10, 1965 from the Philadelphia Conservationist, Inc. to Natural Lands Trust. Ms. Bittner questioned Mr. Dietrich on the conditions and restrictions contained or not contained in these deeds and whether they would prohibit the Township from constructing any hard structures on same.

Ms. Bittner marked as Exhibit S-129 - a Cape May County Bridge Commission Report of October 2005, Exhibit S-130 - a letter from John Olandt regarding the condition of the bridges from June 14, 2006, Exhibit S-131 - the Cape May County Bridge Commission Report of October 2003 and Exhibit S-132 - a six-page document

from Mr. Olandt to Mr. Foster dated May 10, 2004.

Ms. Bittner questioned Mr. Dietrich regarding snowplow logs for the President's Day 2006 storm, with the Board thereafter questioning Mr. Dietrich regarding FEMA requirements, regulations and beach easements. Mr. Dietrich testified that the bulkhead project is occurring on private property but within the Township right-of-way and he noted that the cost of this bulkhead was being shared between the property owners and the Township. Mr. Dietrich presented the Board with what was marked Exhibit P-9, Dr. Farrell's final report for 2006. This report noted that from December 2005 to December 2006, the beach gained 21,662 cubic feet of sand. Mr. Dietrich noted that this information is presented to evidence that the current crisis situation could not have been anticipated, as the erosion was of a greater intensity than ever seen before. Mr. Dietrich also marked as Exhibit P-10, documentation to evidence that Upper Township participated in the 1967 Bulkhead Shore Protection Project. This information was presented to rebut testimony submitted that the Township did not participate in any projects after the 1962 storm. It evidences a beach fill project in 1964 and 1967, which included the Timber Bulkhead structure.

Mr. Dietrich then marked as Exhibit P-11, photographs of dune fencing in Ocean City and Sea Isle City to evidence their installation and maintenance. It also evidences how the wooden slats are attached to the pole.

Lynn Fayter of 118 Putnam Avenue, Strathmere, New Jersey, appeared, was sworn and submitted photographs of the President's Day blizzard of 2003. Those photographs were marked as Exhibits F-1 through F-3 and they represent a series of photographs. Exhibit F-4 was internet documentation regarding the storm itself.

Stephen Martinelli of 1923 Tuckahoe Road, Upper Township, New Jersey, appeared and requested a separate meeting scheduled for general members of the public

to appear and testify on behalf of this petition. Ms. Bittner questioned whether she would have an opportunity to cross-examine general members of the public. The Board determined that it would not permit cross-examination of members of the public.

Prior to that, Mr. Dietrich marked as Exhibit P-12 information regarding the total amount of acreage or square miles of Strathmere vs. the totality of Upper Township. He noted that the total square miles for Upper Township is 60.7 together with about seven and a half miles of roads. Strathmere is .47 square miles or .08% of the total acreage of the town. In terms of total valuation, Upper Township has \$3,147,630,400.00 of total valuation; 85.7% of that is on the mainland and 14.3% is Strathmere.

The Board then again considered the question of cross-examination of both members of the public and Mr. Wisner by Ms. Bittner. The Board voted that Ms. Bittner would not be entitled to cross-examine members of the public. Discussion regarding Ms. Bittner's right to cross-examine Mr. Wisner was held to a later date.

**October 21, 2008**

Michael Garcia, auditor for the Upper Township Board of Education returned to the Board having submitted the four questions created by Ms. Bittner to the State Department of Education requesting additional information on state funding matters. Mr. Garcia's e-mail and the response consisting of four sheets were marked as Exhibit P-13. The state's response was that the information requested requires future assumptions that the state cannot make. Specifically, they cannot assume consumer price index, wealth, income, property value, local fair share, state aide package, etc. not to mention trying to predict through 2013/2014. Based upon the information given, they could not provide the information requested.

Ellen Barker of 3600 Centerville Road, Greenville, Delaware with a Strathmere address of 408 North Commonwealth Avenue appeared, was sworn and testified that she is asking everyone to help her save her property.

Greg Bennett of 21 East Winthrop Avenue, Strathmere, New Jersey appeared, was sworn and testified that as a result of the reevaluation his taxes have gone from \$4,200.00 a year to \$10,500.00 per year. He also testified that he believed that the beach fencing installed was aesthetically bad and unsafe. He marked photographs of the beach fencing as Exhibits F-5 through F-8.

John Edinger, Jr. of 22 Seaview Road, Strathmere, New Jersey appeared, was sworn and testified that he has been a summer resident of Strathmere since he was born. The current state of the erosion at the north end is the worse that he has ever seen. He believes that the beach erosion is a result of neglect from Upper Township, which is more concerned with mainland issues. He believes that the Township should hire lobbyists, such that is with Sea Isle City, to advocate for their coastal concerns. He believes that Strathmere would be better protected and served with an annexation to Sea Isle City.

Gina Macom of 5 Marissa Court, Seaville, New Jersey appeared, was sworn and testified that she grew up in Ocean City and with every full moon and every nor'easter there is flooding. She is against deannexation as it would result in significant budgeting problems with the schools. She does not understand why Strathmere wants to leave Upper Township, which has a great reputation, only to partner with Sea Isle City, which is known as a party town.

Linda Brown of 201 Willard Road, Strathmere, New Jersey appeared, was sworn and testified that, as the owner of the Deauville Inn, she is satisfied with the services obtained from Upper Township and believes that deannexation is inappropriate. She noted that while Sea Isle City installed geotubes, they failed to maintain it and parts of it

are now dry rotted. Ms. Brown further testified that the Township was responsive when they were asked to contract with Ocean City for EMT and fire backup. This was asked for since Sea Isle City's departments were too slow. She also noted the problems that Sea Isle City and Ocean City have had with permitting matters with the State of New Jersey. She also expressed concerns that if Strathmere annexed to Ocean City, she would lose her liquor license.

Jeffrey Pierson of 49 Run Creek Drive, Marmora, New Jersey appeared, was sworn and testified that he is not in favor of deannexation. He testified that deannexation would increase his property taxes significantly, which would negatively impact him. As a citizen of Cape May County for sixty-five years, he knows that flooding can occur on any one of the barrier islands at any time. Beach erosion is simply a part of life at the shore.

As a member of the Marmora Fire Department, he is well aware of the mutual aid agreements with Ocean City to provide EMT services and backup fire services as requested by the citizens of Strathmere and they have worked well. He stated that the Township and the Petitioners should work together to solve their problems rather than separate.

Stephen Martinelli of 1923 Tuckahoe Road, Petersburg, New Jersey appeared, was sworn and testified to his opposition to deannexation. Mr. Martinelli noted his numerous volunteer work within the community and he believed that deannexation would have a severe negative impact upon his life, his family's life and the well-being of Upper Township as a whole. He further testified that he had circulated a petition in opposition to deannexation, which he was not permitted to enter into evidence.

Mr. Martinelli testified that he has been enjoying the Strathmere beach since he was a child and now takes his own children there to play. He remembers the 1962 storm which effected both Strathmere and Sea Isle City. His relatives had a beachfront home

in Sea Isle City and they were forced to abandon same since Sea Isle City would not let them rebuild. He testified that he learned to swim in the back bays of Strathmere and that he has spent his life on the Strathmere beaches.

He testified that his daughters enjoy the beaches of Strathmere and participate in the Upper Township Mascot Lifeguard Program. He loves that the Strathmere beaches are free and so is the parking, unlike the Sea Isle City beaches. He believes that the beaches of Strathmere are valuable natural resources and a major part of Upper Township's recreation program.

As a professional land surveyor and professional planner, he is well aware of some of the changes that have occurred in Strathmere over the years. He notes that the Upper Township Planning and Zoning Boards have taken great care in insuring the overall appearance of Strathmere particularly in maintaining the single-family housing feature. If Strathmere is deannexed to Sea Isle City, which has sewer systems, he fears that Strathmere will begin to look like Sea Isle City with condominiums, duplexes and rooming houses that Sea Isle City seems to embrace.

Mr. Martinelli testified that the Upper Township school systems are some of the best around. If Strathmere should deannex, the school system will degrade as a result of a loss of revenue and the school system is already financially burdened with overcharges from Ocean City High School. He noted that the transportation problems with buses affect everyone and that the comments by Mr. Roash about his child's transportation, while unconscionable, unfortunately happen everywhere including Sea Isle City. Mr. Martinelli testified that the geographic distance of Strathmere from the schools is no greater than that of children residing in Marshallville or Steelmantown.

Mr. Martinelli testified that his trash is only picked up once a week and if that day is a holiday it does not get picked up until the next week. It appears that Upper Township

provides Strathmere with better trash service than that which is received on the mainland. He also noted that he is involved in an adopted highway program in Upper Township, which cleans up trash along the roads similar to that testified to by the Petitioners.

Mr. Martinelli believes that any statement made by the Petitioners that the critical issue here is not taxes but services is being disingenuous. His experience at the 4th of July parade whereby governmental officials were booed solidified his opinion. He reminded the Board that the citizens do not pay a local purpose tax and therefore, in essence, all services within the municipality are free.

Mr. Martinelli noted that Strathmere's geographic separation from Upper Township is not unique and that Cape May County has many such situations including Avalon Manor's separation from Middle Township, Diamond Beach's separation from Lower Township, Schellenger Landing's separation from Cape May and the separation of Reed's Beach from Middle Township, among many.

While not a supporter of beach fills, Mr. Martinelli positively noted the actions taken by the Upper Township Committee in order to assist property owners in protecting their properties. He believed however that the property owners themselves have the primary obligation to protect their own property, which they chose to purchase and build upon. He further testified that the dune fencing was satisfactory.

Mr. Martinelli testified that Corson's Inlet is one of the last unaltered natural inlets within the State of New Jersey and everyone is aware from history that this inlet is in constant motion. The fact that it is still in its natural state makes these beaches the best in Cape May County. The north end beaches are fantastic for fishing, the center beaches are great for swimming and sunbathing and the southern beaches are fantastic for surfing.

Mr. Martinelli noted that Upper Township was voted the number two place to live

in the State of New Jersey by New Jersey Magazine. One of the reasons that Upper Township was so positively spotlighted was due to the Upper Township beaches. Deannexation would then negatively impact upon Upper Township's prestige, which would affect the entire community. Mr. Martinelli requested the following documents be entered into the record:

1. Exhibit F-11 – Strathmere's project list
2. Exhibit F-12 – information from the recreation department regarding services and costs
3. Exhibit F-13 – tax assessment and ratables information consisting of 15 pages
4. Exhibit F-14 – 4<sup>th</sup> of July raid video
5. Exhibit F-15 – Strathmere/Whale Beach website information
6. Exhibit F-16 – The Press of Atlantic City article dated October 7, 2008
7. Exhibit F-17 – New Jersey Magazine of March 2008
8. Exhibit F-18 – boat ramp permit application
9. Exhibit F-19 – real estate listings
10. Exhibit F-20 – package of 133 photographs
11. Exhibit F-21 – map of Cape May County evidencing portions of municipalities separated from others
12. Exhibit F-22 – flood map
13. Exhibit F-23 – documentation regarding top 100 towns in the State of New Jersey.

Mr. Martinelli commented on the significant work done by the recreation department of Upper Township regarding beach cleanups, trash collection and repairs. He commented on the significant tax increase occurring on Harbor Road on the mainland which is water front property. Mr. Martinelli testifying from Exhibit F-15, the Petitioners' website, believes that this document highlights the strategy of the Petitioners

to de-emphasize the tax issue and push issues regarding health, safety and welfare.

Mr. Martinelli further testified that Strathmere will be negatively impacted by joining Sea Isle City except for the tax issues. By joining Sea Isle City, sewers will be in Strathmere's future together with beach tags and parking meters. Mr. Martinelli discussed the photographs submitted which show the lifeguard stand, emergency management equipment, rescued Sea Doos and kyacks, a picture of a state police officer in Strathmere, the beautiful homes in Strathmere, dune fencing, Christmas trees, bulkheads, the playground in Strathmere, the boat ramp, speed humps, beach walkways, trashcans and porta potties for the beach, jetties, all of which evidenced the benefits that Strathmere receives from Upper Township. The remaining pictures evidenced development in Sea Isle City and development along Harbor Road, which is waterfront property on the mainland.

Ray Lepis of 1150 Route 50, Petersburg, New Jersey appeared, was sworn and testified that the parties needed to work together to resolve these issues, possibly through mediation. He noted that his taxes had also increased significantly as a result of the reevaluation.

**November 20, 2008**

Matthew Unsworth of Beesley's Point, New Jersey appeared, was sworn and testified in opposition to the deannexation. On the issue of police service, he noted that Strathmere's distance from Woodbine Station is no farther than the residents in Beesley's Point, however, he also agreed that an increased police presence would be appropriate for Strathmere in the summer and that arrangements should be made.

Mr. Unsworth testified that drainage and flooding problems occur in other places in addition to Strathmere but the Township is always working to resolve these problems.

Similar problems regarding trash, school bus issues and bridge problems occur everywhere including the mainland and in all parts of New Jersey.

Different parts of our community have different problems. Beesley's Point is home to the B. L. England Electric Plant. That is a cash cow for the Township but the citizens of that area must deal with the additional pollution, truck noise and traffic together with the train noise. He wishes that everyone would simply work together to solve these problems.

Paul Casaccio of 5 Cedar Hollow Court, Beesley's Point, New Jersey appeared, was sworn and requested that the Board mark the following exhibits:

1. F-23 – internet site of Strathmere News
2. F-24 – Zoning Board Resolution BA 36-06 regarding Alfred and Suzanne Lord
3. F-25 – map quest search
4. F-26 – Egg Harbor Township document dated August 27, 2008
5. F-27 – two maps of Egg Harbor
6. F-28 – Strathmere video.

Mr. Casaccio testified that he is also against deannexation. His map quest information showed the distance from his house in Beesley's Point to the Woodbine barracks as farther from the Woodbine barracks from Strathmere. He also testified that the Ocean City ambulance squad is now providing faster and better service to the citizens of Strathmere than they were receiving previously from Sea Isle City.

Mr. Casaccio testified as to areas of Atlantic County, which are geographically disconnected from the main town including Seaview Harbor, Anchorage Point and West Atlantic City. These areas also have difficulties with bulkheads since bulkheads must be

permitted through the DEP. Many times, problems arise when one state agency's regulations differ from others. Unfortunately however, living by the coast, we are forced to deal with the DEP rules and regulations.

Mr. Casaccio confirmed that beachfront communities always have to deal with problems regarding trash and he sees it, also, in Beesley's Point. Unlike Strathmere however, this Beesley's Point area does not receive special holiday trash pickup. He testified that noise problems are a part of life in our tourist area and you will endure them whether you are a part of Ocean City or Sea Isle City. The mainland area has similar problems in their pits from parties, dirt bikes, etc. As to large party houses, that is the responsibility of the landlord as much as the municipality.

Mr. Casaccio testified that his family uses the beaches in Strathmere all of the time and enjoys the free beach without parking meters. The recreational programs of the lifeguard mascot and the surfing lessons allow children not involved in other sports to participate.

Mr. Casaccio reviewed Zoning Board Resolution BA 36-06 where the Upper Township Planning Board permitted Mr. Lord to build with a rear yard setback variance. Mr. Lord had testified that there would be no problem with this development and the applicant submitted Dr. Farrell's report from December 2006 for the proposition that the beaches were growing.

Mr. Casaccio firmly believed that this entire application was as a result of the reevaluation and the increase in the Petitioners' taxes. He claims his allegation is supported by the information provided in the applicants' website. He also submitted a video from Channel 40 News where some of the residents acknowledged this fact on the air.

Mr. Casaccio believed that, if Strathmere annexes into Sea Isle City, the character of the beaches and the town will become like Sea Isle City, which is not as family-friendly as Strathmere is currently.

Jules Korschak of 305 South Shore Road, Marmora, New Jersey appeared, was sworn and testified in opposition to the deannexation petition. As a land-use attorney specializing in applications presented to Upper Township and Strathmere, he does not believe that Upper Township is insensitive to the needs of Strathmere. Zoning ordinances have continued to protect the single-family nature of living in both the mainland portions of Upper Township and in Strathmere. The loss of Strathmere would deprive the Township of a very upscale portion of the municipality. The Township would be diminished by the loss of its beach and a very unique part of its culture. It would be like Ocean City losing the area known as the "Gardens". The citizens of Upper Township are proud to say that Strathmere is a part of Upper Township.

The loss of Strathmere would mean that Upper Township is no longer a beachfront community, a beachfront community without beach tags and free access to the beach. The loss of the beach would result in a loss of the beach patrol, which would also have a detrimental effect upon the municipality.

Mr. Korschak testified that many social events in Upper Township are held in Strathmere. If Strathmere became a part of Sea Isle City that social cohesiveness would be lost. There would also be a loss of a social connection with the 4<sup>th</sup> of July parade.

Mr. Korschak noted that while Upper Township schools are currently excellent, the loss of ratables would have a detrimental financial effect upon the rest of the Township by an increase in taxes and/or a loss of the quality of the school system.

Mr. Korschak testified that the Upper Township's public works and recreation

departments do a fine job and that having an office in Ocean City he is certainly aware of trash and flooding problems occurring in all communities existing on barrier islands. He believes that Upper Township is as effective as any community dealing with these matters. He further opined that taxes are really the key element of this petition.

Mr. Kenschak noted as a result of his land use work within the municipality that Strathmere has always been represented on these boards with the inclusion of Mrs. Bergus, Mr. Riordan and Mr. Schroder who have always raised the best interest of Strathmere while evaluating applications.

Maddie Martinelli of 1923 Tuckahoe Road, Petersburg, New Jersey appeared, was sworn and testified that she is in the Lifeguard Mascot Program and enjoys it. She enjoys playing in the gullies on the beach and the easy and free parking for her mother.

Donna Martinelli of 1923 Tuckahoe Road, Petersburg, New Jersey appeared, was sworn and testified that her children had been in the Lifeguard Mascot Program for two years and hopefully can continue to do so. The program is run by the Upper Township Recreation Department and the lifeguards. It is a great program that she hopes will continue in the future.

Donald Steel of 12 Homestead Court, Beesley's Point, New Jersey appeared, was sworn and testified that he is in opposition to the deannexation. He believes that it will have a significant impact on the Upper Township school system, both in terms of taxes and services. He does not believe that the Petitioners have provided any compelling reason for deannexation. He testified that Strathmere is a great asset to the Township and the loss of same will be detrimental to the entire community.

Robert DiNicolantonio of 746 Ocean Crest Drive, Marmora, New Jersey appeared, was sworn and testified in opposition to the deannexation. He has lived in

Upper Township since 1971. He enjoys using the beach, which is more relaxed and laid back than other beach communities. He noted that flooding occurs on all barrier islands.

Olivia Martinelli of 1923 Tuckahoe Road, Petersburg, New Jersey appeared, was sworn and testified that she enjoys the Lifeguard Mascot Program, the gullies and the hermit crabs and hopes that her beaches do not go away.

Chris Phifer of 18 Elizabeth Lane, Seaville, New Jersey appeared, was sworn and testified that he also believes that the taxes is the crux of the petition now before the Board. He is fearful that if Strathmere, which is currently a peaceful and quiet place, were to annex to Sea Isle City that the culture of Sea Isle City would ruin the unique ambience of Strathmere. The town would become louder and more development would occur.

Ernest Casaccio of 1731 Route 9, Seaville, New Jersey appeared, was sworn and stated that Strathmere's issues should be resolved by way of negotiation rather than deannexation.

David Beyel of 15 Dirt Road, Beesley's Point, New Jersey appeared, was sworn and testified that the main issue is really taxes. If Strathmere deannexes, Upper Township would be required to have a local purpose tax and it would become much more expensive to live in the community. The loss of ratables and the loss of prestige would be a significant detriment to the municipality.

Kitty Naegler of 1401 Woodbine Road, Tuckahoe, New Jersey appeared, was sworn and testified in opposition to deannexation. Her testimony asserted that insufficient reasons for deannexation had been brought up by the Petitioners and that the Petitioners who may have been short-sighted had bought their homes where beach erosion could impact them.

Frank Roach of 1731 Route 9, Seaville, New Jersey appeared, was sworn and testified that he was in opposition to deannexation. He stated that here in Upper Township we work together to solve problems and that is what needs to be done now. Increased taxes will have a significant impact on senior citizens.

Ted Kingston of 5 East Willard Road, Strathmere, New Jersey appeared, was sworn and testified and marked photographs S-133 through S-144. These photographs evidence the inlet and waterfront on various dates from September 1 through October 31, 2008. Aerial photographs of Whale Beach were also submitted from internet websites. He also noted that the Sea Isle City geotube actually crosses the border into Upper Township. Mr. Kingston also asked as Exhibit S-145, a package containing a series of letters that Mr. Kingston submitted to the newspaper. Ms. Bittner also marked as Exhibit S-146, a binder containing articles from the The Press of Atlantic City regarding Strathmere and the beach nourishment project.

**December 18, 2008**

Vincent Palmiera of 423 Turn Bridge Drive, Galloway, New Jersey appeared, was sworn and testified that he was the superintendent of the Upper Township School Board. He was asked to appear to testify regarding the surf camp run by the Community Education Upper Township (CEUT) Program. He marked as Exhibit P-12, a document with information regarding the program. The program runs from three to five weeks and has been in effect from 2004 through 2008. It is anticipated to continue in the future and over the years there have been between 14 and 69 members. There is a modest cost for same, which supplements the school budget. Mr. Palmiera appeared to provide the information since the person in charge of the program, Mr. Besaric, was unavailable. Mr. Palmieri testified that the program generally has no age restrictions and no residency restrictions. He further testified that the program was established prior to 2004 but that he did not have records regarding same.

William Handley of 321 Marshallville Road, Tuckahoe, New Jersey appeared, was sworn and testified that he is the captain of the Strathmere Beach Patrol. He testified that the Lifeguard Mascot Program began in 1990 and over the last two seasons he has had 60 to 70 mascots. It is open to all township residents from five to eleven years old and has continuously expanded over the years. The program lasts for six weeks over the summer and it is also a junior lifeguard program for 12 to 16 year olds. Many junior lifeguards have graduated and been hired as regular lifeguards. He believes that the junior lifeguard program is also an opportunity for children who do not gravitate toward team sports to become more involved. This program is only open to Upper Township residents or residents that have a seasonal home here. Mr. Handley noted that if Strathmere annexes to Sea Isle City that in all likelihood the Upper Township Beach Patrol would disband since there would only be a need for a few lifeguards to work Beesley's Point. In that likelihood, the mascot and junior lifeguard program would also be eliminated. Mr. Handley provided testimony regarding the lifeguard hours of operation, the services provided and salaries. He also noted that the lifeguards, many of whom are school teachers, come back year after year.

Paul Dietrich, Township Engineer, appeared, was sworn and testified as to several issues. He testified as to the use of prisoners for installation of snow fencing which will continue in the spring. Mr. Dietrich testified as to beach erosion along the north end of the island and that the Township Committee declared a state of emergency and authorized the construction of a stone revetment along the north end at a cost of just over \$700,000.00. Approximately 8,600 tons of stone and material were used in order to protect from further north end erosion. This construction coordinated with a scheduled paving project for that area of Strathmere.

Mr. Dietrich further testified as to the beach fill process and the final revisions to plans. He also noted that the outfall pipe at Seacliff Avenue had been extended by an additional 20 feet with hopes that that would resolve that issue.

Mr. Dietrich testified as to additional meetings with Dr. Farrell, the Army Corps of Engineers and the state coastal engineers regarding the beach replenishment project scheduled for the spring/summer of 2009 including the extent of the borrow zones where sand will be removed and placed on the Strathmere beaches. He also testified that the Township is in negotiation with Dr. Farrell to expand the scope of his services. Additionally he noted that the Township continues to complete its condemnation process to obtain the rights to complete the beach fill as proposed.

Mr. Dietrich noted that, between the steel bulkhead and the stone revetment that has now been placed, this is acting in the function of a hardened structure and the DEP only permitted this as a result of the emergent situation that had occurred.

Upon questioning from Ms. Bittner, Mr. Dietrich explained in detail the modifications to the final plans to the beach fill project, which includes the lowering of the berm elevation and the spreading of the beach out farther. This plan is also done in an attempt to close off the channel, which has caused the erosion at the north end. The new project will also extend the beach fill into Whale Beach.

Ms. Bittner questioned Mr. Dietrich as to the timing of the beach replenishment project and the condemnation proceedings that were currently occurring. Permitting will be completed after the condemnation proceedings and after the final plans have been completed. Additional discussion took place regarding the permitting for the steel wall and stone revetment at the north end of the island.

**January 22, 2009**

In lieu of a closing statement, Ms. Bittner informed the Board that a member of the Petitioners would like to make a final statement to the Board.

Ed Tetteimer of 26 Sherman Avenue, Strathmere, New Jersey, appeared and provided a final closing summary on behalf of the Petitioners. Mr. Tetteimer stated that it would be in the best interest of the entire Township for the deannexation petition to be granted.

Mr. Tetteimer noted that Strathmere will continue to be an action oriented community and demand a disproportionate share of the Township conversation in the future. He believes that the Petitioners have evidenced that the mainland government cannot possibly meet its responsibilities to its coastal community as well as another coastal community can. He argued that Upper Township has failed to provide adequate police and public safety, failed to design and maintain infrastructure and public services, has failed in its beach and water front management and acted fiscally irresponsibly.

Mr. Tetteimer argued that common sense dictates that the Sea Isle City police force would be able to provide better police protection to Strathmere, which would permit the New Jersey State Police to provide better coverage for the rest of Upper Township.

He noted that a review of the recent expenditures for infrastructure at Strathmere's north end evidences the strain that Strathmere places upon the municipal budget and that deannexation will allow future monies to be expended on the mainland. He argues that Upper Township's lack of beach planning and management has resulted in the current crisis situation and together with its misguided frugality will not be up to the challenges in the future.

Mr. Tetteimer opined that the only reason that Upper Township may resist this deannexation petition is ratables. He further states that the associated costs of keeping Strathmere will outweigh its benefit in the future. He further alleges that the concerns for the loss of school tax revenues will be made up immediately by the State through its school funding program. Mr. Tetteimer argued that Strathmere suffers the double wound

of mismanagement together with taxation without representation. As a result of Upper Township's government's failure to maintain its contract with the Citizens of Strathmere, justice dictates that the Planning Board recommend to the Township Committee that deannexation be approved.

Stuart Wisner, a licensed professional planner with Remington, Vernick & Walberg and special planner for the Planning Board, presented all members of the Board with his report on the deannexation proceedings. He gave each member a hard copy of a power point presentation that was marked PB-1 into evidence.

After setting forth his educational and experience qualifications, Mr. Wisner summarized the relevant statutory procedures and standards to be applied by the Planning Board, pursuant to the deannexation statute NJSA 40A:7-12. He further reviewed relevant New Jersey case law and discussed what considerations the Courts have found to be appropriate when reviewing deannexation applications.

Initially, Mr. Wisner reviewed the potential economic impact of deannexation upon both the Citizens of Strathmere and Whale Beach and the Township of Upper. Consideration was given to the cost of beach maintenance and services associated with the barrier island. This was contrasted with the loss of ratables with the understanding that Upper Township has no local purpose tax. In the end, Mr. Wisner noted that all economic experts that were brought before the Board agreed that, while there will be no impact to the mainland citizens in terms of their county tax, local purpose tax or fire district tax, there would be a significant increase in the mainland citizens' school tax. Specifically, an average home on the mainland assessed at \$350,000.00 would see a \$700.00 per year property tax increase post-deannexation. This would result from a \$.20 increase in the school tax assessment.

Mr. Wisner then discussed non-financial school issues, particularly related to

transportation issues and the geographic disconnect of Strathmere from the mainland schools. Mr. Wisner marked as Exhibit PB-2, a newspaper article noting that Upper Township had just obtained approvals for an \$8,000,000.00 beach replenishment project for Strathmere.

Mr. Wisner testified that in his professional opinion assertions that the school funding formula will protect Upper Township from the catastrophic loss of ratables and increase in the school tax is purely speculation particularly given the current financial crisis occurring at the state level. Mr. Wisner then marked as Exhibit PB-3 recent newspaper articles discussing the closure of the Sea Isle City schools and pondered the result of same upon the children of Strathmere.

Mr. Wisner then reviewed the beach issues raised during the hearings. He noted the Petitioners' allegations that the Township is not qualified to deal with beach protection issues and their neglect over the years has resulted in the worst beach erosion in recent history. He reiterated the allegation that the Township's lack of management of the beaches has left a severe threat to life and properties in Strathmere and eroded the potential of receiving state and federal aid in the future. Mr. Wisner also summarized the affirmative actions taken by the Township's government including proposed projects through both the state and federal government and its actions in response to the current beach erosion crisis. He further noted the efforts of the Township through its association with Dr. Farrell from Stockton College to provide the Township with meaningful information, which will be used now and in the future.

Mr. Wisner also commented on miscellaneous issues including dune fencing, trash and trash collection issues, trash corrals and seaweed. Mr. Wisner noted the significant testimony received by the Board regarding the proper installation and maintenance of dune fencing on the beach, which was acknowledged to be critical towards the protection

of the beaches over time. It was noted that there was differing testimony presented to the Board on this issue. The installation and maintenance of geotubes by Sea Isle City at the north end of their beach was also addressed.

Mr. Wiser reviewed the testimony of both Mr. Gaffney and Mr. Dietrich as to the adequacy of Upper Township's beach maintenance planning and the differing philosophies available regarding beach management.

Turning to Planning issues, Mr. Wiser noted the Petitioners' argument that the Upper Township Master Plans generally do not deal with the special needs of Strathmere and Strathmere is barely considered. The argument is that Strathmere is more like Sea Isle City than the remaining portions of Upper Township and this compatibility lends itself to a conclusion that Strathmere should be permitted to annex to Sea Isle City.

Mr. Wiser, however, noted that the amount of discussion in a Master Plan regarding one particular issue does not mean that the matter has not been appropriately addressed. He believes that Upper Township has tried to preserve the unique single-family nature of Strathmere by preventing the development of duplexes and condominiums which both the Township and Strathmere desires to maintain. As opposed to the Petitioners' assertions, Mr. Wiser also found Strathmere's census data located in governmental indexes and documentation to that effect was marked as Exhibit PB-4.

Mr. Wiser noted that Upper Township has been very active in its planning process for the totality of the Township, specifically finding that the Township has already developed a COAH plan but Sea Isle City has not. He commented that both Sea Isle City and Upper Township filed for plan endorsement and, while Sea Isle City's petition has been rejected by the Department of Consumer Affairs, Upper Township has received plan endorsement (See PB-5).

The fact that Strathmere was not included as a center in the plan endorsement process relates more to the understanding that significant growth will not occur in Strathmere in the future, which is the purpose of center designation. This does not mean the lack of Strathmere as a center is in any way a negative factor in evaluating Upper Township's planning activities.

Mr. Wisner noted that the Bach Associates conclusion that both Strathmere and Upper Township would benefit from the deannexation was deficient in failing to review fiscal elements. While the report correctly identifies savings to the Township as a result of a reduced need to provide municipal services as a result of the deannexation, the Bach report ignores the issue of the inevitable school tax increase as a result of the lost ratables.

The concerns for drainage and flooding issues were addressed in depth by both the Petitioners and representatives of the Township. Most of the testimony involved events occurring after the 1962 storm. The Petitioners' concerns regarding clogged outflow drains, flooding along Bay View Drive, snow removal and frozen water making streets impassable, were summarized. Mr. Wisner also reviewed the Township's response to those concerns and allegations, noting the numerous Township activities set forth in the record to resolve existing problems and the testimony presented regarding the appropriate response to the snowstorms that were discussed in depth. Mr. Wisner, however, testified that no barrier island is immune to the types of difficulties, which were testified to during these hearings.

Mr. Wisner reviewed the concerns of the Petitioners regarding the lack of police protection and their effects on quality of life. He summarized the concerns regarding noise, fireworks, bonfires, break-ins and speeding in the town, which occurs because there is no police presence. He also noted the allegations of failures of the State Police to appear in a reasonable time or at all under certain situations. The testimony of Mr.

Kirschenbaum and Mr. Fallon were reviewed. The testimony of Lieutenant Watkins of the New Jersey State Police, Woodbine Barracks, was also reviewed in response to the allegations regarding inadequate response time and quality of life issues. It was particularly noted that Upper Township and Strathmere has the lowest crime rate in the county and as Lieutenant Watkins stated the crime rate speaks for itself. Mr. Wisner noted that Lieutenant Watkins testified that he believes that the State Police are providing appropriate police protection to the citizenry of Strathmere and Whale Beach. It was further noted that his offices had no complaints on record from the Petitioners. Mr. Wisner also noted that testimony was received that the inter-local agreement between West Cape May, Cape May Point and Cape May City appears to be successful and that an inter-local agreement with Sea Isle City may be an effective tool to resolve these issues without the necessity of deannexation.

Mr. Wisner noted the Township's response to these quality of life issues including the installation of speed humps on Commonwealth Avenue to slow speeders and an inter-local agreement with Ocean City to provide EMS first responders and 911 services when requested by the Strathmere Volunteer Fire Department after complaints regarding inadequate service from Sea Isle City. Discussion also took place regarding lifeguard services within Strathmere.

Quality of life issues were addressed at length during Mr. Wisner's presentation. Many issues were raised by the Petitioners as summarized by Mr. Wisner together with the responsive counterargument for each particular issue. Concerns regarding street lighting, bridge maintenance, beach curfews and law enforcement associated with the beach, trash pickup, recreation spending, the boat ramp and parking enforcement were all summarized and addressed. The social impact of an approval of deannexation was also reviewed from both sides. Mr. Wisner noted that Strathmere residents alleged that more of their social activities were tied to Sea Isle City than to Upper Township and they would prefer to formalize those ties. Arguments in opposition to deannexation noted that the citizens

could continue to utilize the Sea Isle City cultural and social resources without the need to deannex. Mr. Wisner noted that testimony was received that Upper Township would be diminished by the loss of this upscale, single-family area of the community and that having Strathmere as a part of Upper Township creates a sense of pride within its citizens. The mainland citizens commented on their ties to Strathmere through its beach, 4<sup>th</sup> of July parade, lifeguard programs, surfing programs and other social activities. The citizens of Upper Township consider Strathmere to be the jewel of Upper Township and deannexation would result in a loss of this extraordinary resource.

**February 19, 2009**

Mr. Wisner then generally summarized his impressions of the position of the Petitioners. He believed that their position was that Upper Township was guilty of benign neglect of Strathmere, which results from its different and incompatible municipal mindset, which is focused upon mainland issues rather than issues critical to a barrier island. The Petitioners allege cultural differences and disconnections from the mainland caused by the geographic disconnection and years of indifference suffered at the hands of the Township. They feel that they are overtaxed and underserved since they receive no real protection or services from the mainland government. They assert too many excuses and a shirking of blame and responsibility by the municipal government. In response to these allegations including acknowledgement of the realities of problems associated with all barrier islands, Mr. Wisner noted that deannexation will not solve many of the social and cultural problems and that many of the problems asserted are wounds of the past or as a result of revisionist history.

In reaching his conclusions, Mr. Wisner evaluated the evidence submitted during the 14 months of hearings against the statutory language regarding the deannexation statute and the relevant considerations set forth in the New Jersey Case Law.

Mr. Wisner concluded that the Petitioners have evidenced that a refusal to consent to deannexation would be detrimental to them in terms of their tax obligations. Clearly there would be a savings to the Petitioners resulting from annexation to Sea Isle City. In the alternative, however, he did not believe that they had satisfied their burden of proof and that they would be better off annexed to Sea Isle City than remaining with Upper Township from a social aspect.

Mr. Wisner then concluded that the Petitioners had not satisfied their burden of proof in evidencing that deannexation would not cause significant injury to the well-being of the Township. He noted that the economic injury would be clear as a result of the loss of Strathmere's ratables, which would result in a significant increase in school taxes to the citizenry of the mainland. Aside from the economic detriment, the Township would also be diminished in terms of its prestige and culture by the loss of Strathmere.

Ms. Bittner on behalf of the Petitioners cross-examined Mr. Wisner on his summary and conclusion questioning his evaluation of the relevant statutory and case law in the State of New Jersey. Mr. Wisner also testified as to his own independent investigation including conversations with other Township employees. In questioning Mr. Wisner, Ms. Bittner marked as Exhibits S-147 through 149, North Wildwood's Master Plan of 1979, 1993 and 2003. Ms. Bittner questioned Mr. Wisner as to his planner role with the City of North Wildwood.

Ms. Bittner questioned Mr. Wisner regarding the school budget and school funding program at length. Other miscellaneous issues including interlocal service agreements were explored. Mr. Wisner recommended that the municipality explore the feasibility of an interlocal agreement to provide law enforcement services to the Strathmere/Whale Beach area. Ms. Bittner further questioned Mr. Wisner as to what types of issues may be relevant to his evaluation of the deannexation process.

At the conclusion of the hearing, the chairperson instructed the Board Members to return to the March 19<sup>th</sup> hearing in order to set forth their findings of fact and conclusions on the record.

## **FINDINGS AND CONCLUSIONS OF BOARD**

The Petitioners, "Citizens for Strathmere and Whale Beach" is a private citizen organization generally consisting of property owners residing on a barrier island commonly known as Strathmere and Whale Beach, which is a portion of the municipality known as Upper Township, Cape May County.

The Petitioners submitted a petition to the Township Committee of the Township of Upper signed by no less than 60% of the registered voters of the affected area requesting consent to deannex the affected area from Upper Township with the intention of annexing the affected lands to the adjoining municipality of Sea Isle City.

The petition was submitted to the Upper Township Committee in November 2007 and the Township Committee, on November 27, 2007 referred the petition to the Upper Township Planning Board for the issuance of an impact report on the proposed deannexation from the municipality.

The Petitioners were represented by Mary D'Arcy Bittner, Esquire.

By agreement entered into between the Petitioners' attorney and the Planning Board, the timeframe for the issuance of the impact report was extended to permit a full and complete investigation of the relevant facts necessary to compile and complete the report.

The Planning Board retained the services of Stuart Wisner, professional planner of the firm Remington, Vernick & Walberg to assist it in its investigation and review of the relevant factors necessary to prepare said impact report.

Public hearings were held by the Planning Board on February 2, 2008, February

12, 2008, February 26, 2008, March 18, 2008, April 7, 2008, April 30, 2008, May 21, 2008, June 17, 2008, July 21, 2008, August 18, 2008, September 15, 2008, October 21, 2008, November 20, 2008, December 18, 2008, January 22, 2009, February 19, 2009. At its March 19, 2009 meeting, no testimony was solicited by the Board and the board set forth on the record its findings of facts, conclusions and recommendations, which were to become the sum and substance of the final impact report.

The hearings generally consisted of the Board receiving testimony and documentation from the following classes of persons:

1. Members of the Petitioners' organization or property owners from Strathmere and Whale Beach in favor of the deannexation petition.
2. Professionals retained by the Petitioners in support of the deannexation petition.
3. Professionals or other persons with relevant knowledge requested to appear at the hearings by the Planning Board.
4. General members of the public.
5. The Planning Board professional planner.

The barrier island of Strathmere and Whale Beach encompasses 1.47 square miles. The Township of Upper excluding its roads and Strathmere/Whale Beach consists of 60.7 square miles. As such, the affected lands constitute 2.42% of the total area of Upper Township.

Based upon the most recent tax assessment data from the Cape May County records (2007), the total tax valuation of Upper Township is \$2,248,016,808.00 and the total tax valuation of Strathmere/Whale Beach is \$393,461,300.00. As such the affected lands constitute 17.5% of the total tax ratable based of the Township of Upper.

Upper Township is a unique municipality in that as a result of energy receipt funds received by the municipality hosting the B.L. England Electric Generating Plant, Upper Township currently has no local purpose tax.

The concerns set forth by the Petitioners regarding trash and trash collection, noise and ordinance violations, parking, erosion and flooding, while certainly occurring within the affected area, are common to most barrier island municipalities and would, in all likelihood, not be greatly improved by deannexation and in and of themselves are insufficient rationale in support of a deannexation petition.

The stability of municipal boundaries is crucial toward effective municipal planning, particularly regarding budgetary planning and, as such, deannexation is disfavored except in the most extreme circumstances with the Petitioners charged with a heavy burden of proof of evidencing both that failure to consent to deannexation on the part of the host municipality would have a substantial negative impact upon the affected lands and that the deannexation would not negatively impact the host community both socially and economically. The Petitioners have not sustained its burden of proof.

The Township of Upper has adequately addressed the need for general municipal services, beach planning and maintenance, infrastructure maintenance and police protection as evidenced by the crime rate and as such a failure to provide these services has not been proved in support of the Petitioners' application for deannexation.

The Board specifically finds that any testimony suggesting that the current State School Funding Formula will result in increased state aid to the Upper Township Board of Education which would reduce or eliminate the anticipated increase in the school tax as a result of the deannexation of Strathmere is unreliable given the state's previous unexplained adjustments to the formula and the current state budgetary crisis. In

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addition, testimony received that the annexation of Corbin City to Upper Township may cushion the loss of Strathmere ratables is unreliable, speculative and not appropriate consideration for this Board.

The Board finds that deannexation would result in a positive effect to the Petitioners and the affected lands in the following manner:

1. In all likelihood, with a deannexation to Sea Isle City, the Petitioners may receive faster police response times, although the service quality may be reduced. The crime rate in Upper Township and the affected areas evidence that current police enforcement is more than adequate.
2. Property owners in the affected area will pay between 40% to 50% lower property taxes if annexed to Sea Isle City.
3. If annexed to Sea Isle City, the Petitioners would, in all likelihood, receive twice a week trash collection.
4. The Petitioners would be annexed to a contiguous barrier island community.

If the deannexation were approved, a positive impact would occur to the remaining portion of Upper Township in the following manner:

1. As a result of the removal of the need to provide municipal services to the affected area, it is estimated that the Upper Township Municipal budget could be reduced by approximately \$400,000.00 per year.
2. The Upper Township Board of Education would save \$15,505.00 in tuition costs and \$4,400.00 in transportation costs.
3. The Upper Township Board of Education would receive an estimated additional \$13,499.00 in state aid under the current formula.

If the affected areas were permitted to deannex from Upper Township, the following negative impacts would result:

1. If the affected lands were annexed to Ocean City, two commercial establishments would, in all likelihood, lose their liquor licenses.
2. If the affected lands were annexed to Sea Isle City, their municipal government and development philosophy would, in all likelihood, result in the loss of the affected area's free beaches, lack of parking meters and the affected area's unique single family residential development features.
3. The loss of social diversity associated with the mainland portion of the community.

If the deannexation were consented to, the following negative impacts would result to the Township of Upper:

1. The loss of approximately 370 acres of precious beach and wetland areas and the natural resources associated with same.
2. The loss of more than \$393,461,300.00 of tax ratable property.
3. An expected substantial increase in the school tax for property owners in the remaining mainland portion of the community. For an average property assessed at \$350,000.00, it is anticipated that they would pay approximately \$700.00 per year in school taxes. It is estimated that the school tax would rise by 19.7%.
4. The loss of one of the most prestigious and upscale areas of the community together with its loss of identification as a beachfront community.
5. A significantly reduced bonding capacity.
6. The probable elimination of the Upper Township Beach Patrol, Junior

Lifeguard Programs and surfing classes.

7. Upper Township is comprised of many different villages each of which has provided a valuable benefit and resource to the entire community. Upper Township has been rated as one of the most desirable places to live in New Jersey. The loss of Strathmere and Whale Beach will result in a diminishment of the entire Upper Township community.

## **RECOMMENDATION**

Based upon the evidence and testimony submitted to the Board over a period of fourteen months and based upon the Board's independent review of same, the Planning Board for the Township of Upper does hereby find that the Petitioners have not satisfied their burden of proof in evidencing that the refusal to consent to deannexation is detrimental to the economic and social well-being of a majority of the Citizens of Strathmere and Whale Beach and that the deannexation will not cause a significant social or economic injury to the well-being of the Township of Upper. Accordingly, the Planning Board of the Township of Upper does hereby submit this report to the Upper Township Committee and recommend that the Upper Township Committee deny the Petitioners' request for deannexation.

**ORDINANCES**

**18. Public Hearing and Final Adoption 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.**

It was discussed that this ordinance allows the Township to collect fees on new structures. The fees will be used to fund the affordable housing program within the Township. Otherwise, without this ordinance in place the nonresidential fees would go to the state and any Affordable Housing project not funded through another source would be funded through out budget. During the Public Comment portion of the meeting there were no speakers. Motion was made by Jay Newman, second by Barbara Camp to adopt Ordinance 013-2009. During roll call vote all five Committee members voted in the affirmative.

**TOWNSHIP OF UPPER  
CAPE MAY COUNTY  
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**

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**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.

**19. Introduction and First Reading of Ordinance No. 014-2009, AN ORDINANCE VACATING A PORTION OF THAT PAPER STREET KNOWN AS ATLANTIC AVENUE, WITHIN THE TOWNSHIP OF UPPER, COUNTY OF CAPE MAY AND STATE OF NEW JERSEY.**

Motion was made by Curtis Corson, second by Jay Newman to introduce Ordinance 014-2009 with Public Hearing and Final Adoption set for 6/22/2009. During roll call vote all five Committee members voted in the affirmative.

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

ORDINANCE NO. 014-2009

AN ORDINANCE VACATING A PORTION OF THAT PAPER STREET KNOWN AS  
ATLANTIC AVENUE, WITHIN THE TOWNSHIP OF UPPER,  
COUNTY OF CAPE MAY AND STATE OF NEW JERSEY

---

WHEREAS, N.J.S.A. 40:67-1 authorizes the Governing Body of a municipality to adopt an Ordinance, among other things, to vacate any street, highway,

lane, alley, square, place or park, or any part thereof, dedicated to public use but not accepted by the municipality, whether or not the same, or any portion, has been actually opened or improved; and

WHEREAS, Warren Georgetti is the owner of Block 625, Lot 9 and has requested that the Township vacate a portion of a certain street described in this Ordinance; and

WHEREAS, the Township Committee has duly considered the matter and it appears reasonable to agree to the request since there is no present or foreseeable need or intention to utilize said roadway; and

WHEREAS, it is deemed to be in the public interest to vacate a portion of Atlantic Avenue within the Township of Upper, as hereinafter provided.

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

SECTION 1: The public right in, along, upon and over the following described land is hereby vacated, surrendered and extinguished:

DESCRIPTION  
FOR THE VACATION OF A PORTION  
OF AN UNIMPROVED STREET, ATLANTIC AVENUE  
IN THE TOWNSHIP OF UPPER  
COUNTY OF CAPE MAY, AND  
STATE OF NEW JERSEY

That portion of Atlantic Avenue extending in a Northwesterly direction from Stagecoach Road (County Road 667) BEGINNING at a point at the intersection of the Northwesterly line of Stagecoach Road and the Southwesterly line of Atlantic Avenue, extending in a Northwestwardly direction along the Southwesterly line of Atlantic Avenue and Block 625 to a point at the corner of Lots 4 and 9 in Block 625; then 40 feet in a Northeastwardly direction across Atlantic Avenue to a point at the corner of Lots 4 and 5 in Block 622; then in a Southeastwardly direction along the Northeasterly line of Atlantic Avenue and Block 622 to the point of intersection of the Northwesterly line of Stagecoach Road and the Northeasterly line of Atlantic Avenue; then extending in a Southwestwardly direction across Atlantic Avenue along the Northwesterly line of Stagecoach Road to the place of beginning; as shown on the current Official Tax Map of The

Township of Upper, Cape May County, New  
Jersey.

SECTION 2: This Ordinance vacates no portion of Atlantic Avenue except that portion set forth and described in SECTION 1 above.

SECTION 3: EXCEPTION: This Ordinance expressly reserves and excepts from vacation all rights and privileges now possessed by public utilities, as defined in R.S. 48:2-13, and by any cable television company, as defined in the "Cable Television Act", P.L. 1972, c. 186, (C.48:5A-1, et seq.), to maintain, repair and replace their existing facilities in, adjacent to, over or under the street, highway, lane, alley, square, place or park, or any part thereof, to be vacated, as hereinabove described.

SECTION 4: REPEALER: All Ordinances or parts of Ordinances inconsistent with this Ordinance are hereby repealed to the extent of such inconsistency only.

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

NOTICE IS HEREBY GIVEN THAT THE FOREGOING ORDINANCE WAS INTRODUCED FOR FIRST READING AT A MEETING OF THE TOWNSHIP COMMITTEE OF THE TOWNSHIP OF UPPER HELD ON THE 26TH DAY OF MAY, 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 22ND DAY OF JUNE, 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

**20. Introduction and First Reading of Ordinance No. 015-2009, RE: AN ORDINANCE AMENDING REVISED GENERAL ORDINANCE CHAPTER IX (RECREATION FACILITIES) OF THE CODE OF UPPER TOWNSHIP CONCERNING BOAT**

**RAMP FEES.** Motion was made by Curtis Corson, second by Frank Conrad to introduce Ordinance 015-2009 with Public Hearing and Final Adoption set for 6/22/2009. During roll call vote all five Committee members voted in the affirmative.

TOWNSHIP OF UPPER

CAPE MAY COUNTY

O R D I N A N C E

ORDINANCE NO. 015-2009

RE: AN ORDINANCE AMENDING REVISED GENERAL ORDINANCE CHAPTER IX  
(RECREATION FACILITIES) OF THE CODE OF UPPER TOWNSHIP CONCERNING  
BOAT RAMP FEES

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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 IX 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:

Section 9-4 is revised as follows:

9-4 BOAT RAMP.

9-4.1-6 Unchanged.

9-4.7 Township Resident.

A resident of the Township of Upper, including any part time or seasonal resident, shall be entitled to a discount for noncommercial vessels equal to one-half of the seasonal rate under the following conditions:

- a. The individual must reside within the municipal boundaries of the Township of Upper at the time of application for the seasonal noncommercial pass; and
- b. Such resident must complete an application on forms prescribed by

the Township of Upper which demonstrates such residency;

and

- c. Verification of such residency shall be based on a copy of a current lease (seasonal lease is acceptable), tax bill, voter registration, or

a

State of New Jersey driver's license, or proof of filing of a State of New Jersey income tax return from a Township of Upper address.

- d. If a Township resident owns more than one (1) vessel such resident shall be charged one-half of the resident rate for each additional noncommercial vessel.

9-4.8 and 9 Unchanged.

**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 26<sup>th</sup> DAY OF MAY, 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 22<sup>ND</sup> DAY OF JUNE, 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

**21. New Jersey Ride Against Aids, September 27, 2009 request for permission to hold a bicycle ride through a portion of Upper Township.**

Motion made by Rich Palombo to grant permission for the bike a thon to ride through a portion of Upper Township, second by Frank Conrad. All five committee members voted in affirmative.

**22. ALS Express Bike Ride, June 20, 2009—request for permission to run event through a portion of Upper Township.**

Motion made by Rich Palombo to grant permission for the bike a thon to ride through a portion of Upper Township, second by Frank Conrad. All five committee members voted in affirmative.

**23. CityTri 3<sup>rd</sup> annual Tuckahoe Triathlon and Duathlon—request for permission for use of the Beesley’s Point Beach on August 16<sup>th</sup>, 2009.**

Alexandra Reagan was present representing City Tri. The boat ramp will be closed in morning and alerting public by sign. Motion made by Rich Palombo to grant permission for use of Beesleys Point Beach, subject to approval providing required documents, second by Curtis Corson. All five Committee members voted in the affirmative.

## UNFINISHED BUSINESS:

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

It was discussed that the sale should take place after July 2009 and after the completion of the street vacation. Motion made by Rich Palombo to allow purchase, second by Curtis Corson. All five committee members voted in affirmative.

**25. Humane Society of Ocean City--request to hold fundraising event at the Beesleys Point Beach on Saturday July 25, 2009, Dawg Days of Summer Biathlon.**

Motion made by Curtis Corson to grant permission, subject to approval providing required documents, second by Barbara Camp. All five Committee members voted in 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.”** motion by Jay Newman, second by Barbara Camp with all five Committee members present voting in the affirmative.

Payroll: \$156,964.93  
Bills submitted for payment: \$57,732.12

## REPORT OF MUNICIPAL DEPARTMENTS:

**26. Municipal Court**

## **27. Safety Committee-quarterly safety report**

### **PUBLIC COMMENT**

There were no speakers.

### **CLOSED SESSION**

There were no items for discussion in closed session.

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

### **ADJOURNMENT**

There was no further business for this evening and the meeting was adjourned at 8:45 P.M., motion by Rich Palombo, second by Barbara Camp with all five Committee members present voting in the affirmative. The next meeting is scheduled for June 8, 2009 at 7:30 P.M.

Minutes prepared by

Wanda Gaglione, RMC Municipal Clerk

### **Bill list**

48933 05/26/09 A0004 A+ COMMERCIAL OFFICE CLEANERS 1,080.00 2531  
48934 05/26/09 A0006 ADVANCE TREADS INC 544.00 2532  
48935 05/26/09 A0025 ADVANTAGE RENTAL ACE HARDWARE 728.51 2531  
48936 05/26/09 A0033 A.M./P.M.SERVICES 99.00 2531  
48937 05/26/09 A0042 ALL AMERICAN SPORTS CORP. 89.25 2531  
48938 05/26/09 A0075 ADAMS, JOSHUA 142.47 2531  
48939 05/26/09 A0091 ATLANTIC CITY ELECTRIC 2,506.44 2531  
48940 05/26/09 A0117 AT&T 22.07 2531  
48941 05/26/09 A0125 AVALON WEED & INSECT CONTROL 1,000.00 2531  
48942 05/26/09 B0018 BARRETT,GERALD INC. 118.15 2531  
48943 05/26/09 B0023 BENCO, INC. 725.00 2531  
48944 05/26/09 B0035 BELMONT & CRYSTAL SPRINGS 142.55 2531  
48945 05/26/09 B0052 BENNETT BATTERIES,LLC. 108.90 2531  
48946 05/26/09 B0061 BILLOWS ELECTRIC 17.68 2531  
48947 05/26/09 B0092 BROKER, EUGENE JR. 68.00 2531  
48948 05/26/09 B0152 BUCHANAN, KAREN A. 430.82 2531  
48949 05/26/09 B0182 BRIGGS LAW OFFICE, P.C. 123.82 2531  
48950 05/26/09 B0184 BUSHONG, BRIAN 70.50 2531  
48951 05/26/09 C0068 COMCAST 219.96 2531  
48952 05/26/09 C0116 CINTAS CORPORATION #100 51.81 2531  
48953 05/26/09 C0138 COASTAL PLUMBING & HEATING INC 196.00 2531  
48954 05/26/09 C0143 CODY'S POWER EQUIPMENT 141.39 2531  
48955 05/26/09 C0169 COOPER ELECTRIC SUPPLY CO. 39.00 2531  
48956 05/26/09 C0201 CRUZAN'S TRUCK SERVICE INC. 622.88 2531  
48957 05/26/09 C0216 COMPULAN CONSULTANTS, INC. 2,000.00 2531  
48958 05/26/09 C0221 CRAGER, GARY 232.90 2531  
48959 05/26/09 C0223 CASA PAYROLL SERVICE 235.85 2531  
48960 05/26/09 D0031 DEGLER-WHITING, INC. 325.00 2531  
48961 05/26/09 D0040 DELTA DENTAL OF N.J. INC. 5,551.48 2531  
48962 05/26/09 G0006 GARBUTT,PATRICIA A. 4.00 2531  
48963 05/26/09 G0014 GARDEN STATE HWY PRODUCTS INC. 1,475.00 2531  
48964 05/26/09 G0016 GARDNER HARDWARE INC. 37.85 2531  
48965 05/26/09 G0028 GENTILINI FORD 303.57 2531  
48966 05/26/09 H0012 HALL,ARTHUR 92.00 2531  
48967 05/26/09 H0018 HAROLD RUBIN/L & H SUPPLY 184.71 2531  
48968 05/26/09 H0022 H.R.DIRECT 113.28 2531

48969 05/26/09 H0083 HUBER LOCKSMITHS, INC. 27.00 2531  
 48970 05/26/09 J0006 JDS GENERAL CONTRACTING, INC. 3,850.00 2531  
 48971 05/26/09 J0033 JANKOWSKI, MATTHEW 400.00 2531  
 48972 05/26/09 K0007 KACZMARSKI, RICHARD 204.24 2531  
 48973 05/26/09 L0026 LAFAYETTE YARD MARRIOTT 139.00 2531  
 48974 05/26/09 L0031 LORCO PETROLEUM SERVICES 290.00 2531  
 48975 05/26/09 L0034 LAYTON, BRENDA MRS. 183.10 2531  
 48976 05/26/09 L0080 LOWES, INC. 161.66 2531  
 48977 05/26/09 M0021 MASER CONSULTING, P.A. 7,180.00 2531  
 48978 05/26/09 M0055 MAY, JUDITH 36.00 2531  
 48979 05/26/09 M0070 MID ATLANTIC WASTE SYSTEMS 305.61 2531  
 48980 05/26/09 M0209 MAYBERRY, JOHN D 66.50 2531  
 48981 05/26/09 N0043 NAPA AUTO PARTS OF S.JERSE 120.86 2531  
 48982 05/26/09 N0100 N.J. LEAGUE OF MUNICIPALITIES 55.00 2531  
 48983 05/26/09 N0112 NJ MUNICIPAL COURT LAW REVIEW 20.00 2531  
 48984 05/26/09 O0006 OCS PRINTING 445.50 2531  
 48985 05/26/09 O0025 OLD DOMINION BRUSH 730.00 2531  
 48986 05/26/09 P0026 PAYNTER, JOSEPH 234.97 2531  
 48987 05/26/09 P0032 PEDRONI FUEL CO. 1,478.10 2531  
 48988 05/26/09 P0056 TURF EQUIPMENT AND SUPPLY CO 192.29 2531  
 48989 05/26/09 P0059 PROPAC 2,648.36 2531  
 48990 05/26/09 P0064 PITNEY BOWES 210.00 2531  
 48991 05/26/09 R0030 RIGGINS, INC. 4,359.39 2531  
 48992 05/26/09 R0055 ROSIAK, CAROL 20.00 2531  
 48993 05/26/09 R0073 RICOH AMERICAS CORPORATION 1,959.15 2531  
 48994 05/26/09 R0085 RICOH 775.25 2531  
 48995 05/26/09 S0016 SAMPSON, MICHELLE 12.00 2531  
 48996 05/26/09 S0020 AM SAN 792.67 2531  
 48997 05/26/09 S0126 SPIEGEL, BARBARA 329.70 2531  
 48998 05/26/09 S0134 SO. JERSEY GAS COMPANY 681.11 2531  
 48999 05/26/09 S0139 SO. JERSEY WATER COND. INC. 295.50 2531  
 49000 05/26/09 T0018 TEKK COMM COMMUNICATIONS 169.70 2531  
 49001 05/26/09 T0032 THE PRESS & SUNDAY PRESS 449.92 2531  
 49002 05/26/09 T0034 THE PAPER OF U.T./GAZETTE 270.00 2531  
 49003 05/26/09 T0042 THE TREE SURGEON 450.00 2531  
 49004 05/26/09 T0044 THOMSON, KERRY AGENCY 2,223.38 2531  
 49005 05/26/09 T0067 TOWNSHIP OF UPPER PETTY CASH 57.44 2531  
 49006 05/26/09 T0095 TRI-COUNTY ANIMAL CONTROL 1,500.00 2531  
 49007 05/26/09 U0030 UPPER TOWNSHIP LACROSSE 428.99 2531  
 49008 05/26/09 V0022 VERIZON 2,541.11 2531  
 49009 05/26/09 V0024 VAL-U AUTO PARTS L.L.C. 5.00 2531  
 49010 05/26/09 W0030 WEST PUBLISHING CO. 305.00 2531  
 49011 05/26/09 W0038 WILLIAMS, JEREMIAH J. 17.04 2531  
 49012 05/26/09 W0082 WHARTON HARDWARE & SUPPLY CO 928.80 2531  
 49013 05/26/09 Z0001 ZOLL MEDICAL CORPORATION 338.94 2531

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Total Paid: \$57,732.12