

**TOWNSHIP OF UPPER  
2100 TUCKAHOE ROAD  
PETERSBURG, NJ 08270  
CAPE MAY COUNTY  
MINUTES FOR APRIL 30, 2012**

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

**CALL TO ORDER**

**SUNSHINE ANNOUNCEMENT**

**SALUTE TO THE FLAG**

**ROLL CALL**

Edward Barr	Present
Curtis Corson	Present
Antonio Inserra	Present
John “Jay” Newman	Present
Richard Palombo	Absent

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

**APPROVAL OF MINUTES - April 16, 2012 Regular Meeting and  
Closed Session Minutes**

Motion was made by Jay Newman, second by Curtis Corson to approve the Minutes as written. During roll call vote all four Committee members present voted in the affirmative.

**REPORT OF GOVERNING BODY MEMBERS**

**Anthony Inserra, Committeeman**, reported that loose leaf collection has been completed. Leaves will now be picked up in compost bags or in containers. He next inquired into the status of the re-alignment of the Township ZIP codes. Wanda Gaglione stated that a resolution and formal request needs to be sent to the USPS Southern District Manager. Motion was made by Anthony Inserra, second by Jay Newman to place a resolution on the next agenda that requests the Postal Service create one zip code for Upper Township. During roll call vote all four Committee members voted in the affirmative. Mr. Inserra next inquired into the status of the solar panels. Paul Dietrich reported that he spoke to the consultant that is doing the work for the school. The school is currently in the process of an energy audit. The consultant advised waiting until the audit is complete to see what recommendations come out of that process; and which could possibly save the Township from having to do some of the initial steps. Mr. Inserra next stated that for the record he was not the one that proposed privatizing public works.

**Jay Newman, Committeeman**, reported that a resident recently notified him that there are a few potholes in the road in front of the Marmora Fire house and on Roosevelt Boulevard in front of the Shop Rite that needed repair. He asked Mr. Dietrich to notify County Engineer Dale Foster.

Mr. Dietrich stated that he would do so and informed everyone that the County website has a link for residents to report potholes on County roads. Mr. Newman next reminded everyone of the fundraising event on May 12 for the Eggie family. There will be a walk/run starting at the Marmora Fire House, a golfing tournament at Heritage Links, and a barbecue from 3-8 pm at the field just north of the Acme in Seaville.

**Curtis Corson, Deputy Mayor**, asked Mr. Dietrich about the status of the remediation at Sam's Gulf Station in Tuckahoe. Paul reported that changes in NJDEP regulations now allow towns to be able to hire consultants to oversee the remediation process and certify that the project is being completed according to State rules and regulations. A consultant that has previously worked with the Township is preparing a cost proposal.

### **OTHER REPORTS**

**Wanda Gaglione, Municipal Clerk**, requested the addition of a resolution Designating the 1<sup>st</sup> Thursday in May as "A Day of Prayer in Upper Township" to the agenda.

**Daniel Young, Municipal Attorney**, reported that he had three litigation matters for closed session; Estate of Alan Burgh, Upper Township v. Yank, and Upper Township v. Sansone.

**Paul Dietrich, Municipal Engineer**, requested Brian Bushong, a laborer in the Public Works Department, be promoted to truck driver effective the next pay period. Motion was made by Anthony Inserra, second by Curtis Corson to promote Brian Bushong to truck driver. During roll call vote all four Committee members present voted in the affirmative. He next requested the appointment of Matthew Edwards, Robert Pelli, and James Heilman as part time seasonal public works employees, pending successful pre-employment testing. Motion made by Anthony Inserra, second by Jay Newman to approve the request. During roll call vote all four Committee members voted in the affirmative.

**Barbara Spiegel, Chief Finance Officer**, reported that due to the Township withdrawing from the New Jersey State Health Benefits program, employees who have elected not to receive health insurance because they are covered under their spouse's insurance, are now eligible to receive a waiver. Before the Township enrolled in NJSHB, a waiver of \$2,000 was offered. She questioned whether the Committee was willing to offer the waiver again, prorated from June 1 to the end of the year. Mr. Young advised that as an incentive for employees not to double dip on coverage, the waiver would save the Township a considerable amount of money. Motion was made by Curtis Corson, second by Jay Newman to offer the health insurance waiver prorated from June 1 for employees who elect not to enroll in the Township health benefits. During roll call vote all four Committee members present voted in the affirmative.

### **RESOLUTIONS**

1. **Designating the 1<sup>st</sup> Thursday in May "A Day of Prayer in Upper Township".**

**TOWNSHIP OF UPPER  
CAPE MAY COUNTY  
R E S O L U T I O N  
RESOLUTION NO. 94 -2012**

**RE: DESIGNATING THE 1<sup>ST</sup> THURSDAY IN MAY  
“ A DAY OF PRAYER IN UPPER TOWNSHIP”**

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**WHEREAS**, Civic Prayers and National Days of Prayer have a long and revered history in our constitutional democracy, dating back to the First Continental Congress in 1775; and

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

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

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

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

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

**NOW, THEREFORE, BE IT RESOLVED** by the Township Committee of the Township of Upper, that they designate the first Thursday in May, 2012 as “**A DAY OF PRAYER IN UPPER TOWNSHIP**” and encourage the citizens of Upper Township to observe the day in ways appropriate to its importance and significance.

**GIVEN UNDER OUR HANDS** and the seal of the Township of Upper this 30th day of April,  
2012.

Resolution No. 94-2012  
Offered by: Newman  
Adopted: April 30, 2012

Seconded by: Corson

Roll Call Vote:

NAME	YES	NO	ABSTAINED	ABSENT
Barr	<u>  X  </u>	<u>      </u>	<u>      </u>	<u>      </u>
Corson	<u>  X  </u>	<u>      </u>	<u>      </u>	<u>      </u>
Inserra	<u>  X  </u>	<u>      </u>	<u>      </u>	<u>      </u>
Newman	<u>  X  </u>	<u>      </u>	<u>      </u>	<u>      </u>
Palombo	<u>      </u>	<u>      </u>	<u>      </u>	<u>  X  </u>

**2. Honoring Margaret Caroline Emma, Carolyn Michelle Hoke, Jessica Christine Mruz, and Victoria Wyand on attaining the Girl Scout Gold Award.**

**TOWNSHIP OF UPPER  
CAPE MAY COUNTY  
R E S O L U T I O N  
RESOLUTION NO. 95A-2012  
RE: HONORING MARGARET CAROLINE EMMA ON ATTAINING THE  
GIRL SCOUT GOLD AWARD**

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**WHEREAS**, Margaret Caroline Emma has recently achieved the Gold Award in the Girl Scouts of the USA, North Cape May Unit, Troop 46721; and

**WHEREAS**, the Township of Upper wishes to acknowledge this outstanding accomplishment; 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:

**RESOLVED THAT** the Township Committee extends its sincere congratulations to Margaret on the occasion of her receiving the Gold Award and commends her for this excellent achievement and the completion of her Gold Award project consisting of teaching families about nutrition using the Japanese bento box model, a philosophy which focuses on using grains, protein, fruits, and vegetables in a fun and artistic way; and

**BE IT FURTHER RESOLVED** that the Township Committee extends its congratulations and best wishes to Margaret's parents, family and friends on this happy occasion; and it is

**FURTHER RESOLVED** that the Township Committee also extends its congratulations and appreciation to the Girl Scout Leaders and others who give so freely and generously of their time for the benefit of our youth.

**GIVEN UNDER OUR HANDS** and the seal of the Township of Upper this 30th day of April, 2012.

Resolution No. 95A-2012

Offered by: Newman

Seconded by: Inserra

Adopted: April 30, 2012

Roll Call Vote:

NAME	YES	NO	ABSTAINED	ABSENT
Barr	<u>  X  </u>	<u>      </u>	<u>      </u>	<u>      </u>
Corson	<u>  X  </u>	<u>      </u>	<u>      </u>	<u>      </u>
Inserra	<u>  X  </u>	<u>      </u>	<u>      </u>	<u>      </u>
Newman	<u>  X  </u>	<u>      </u>	<u>      </u>	<u>      </u>
Palombo	<u>      </u>	<u>      </u>	<u>      </u>	<u>  X  </u>

**TOWNSHIP OF UPPER  
CAPE MAY COUNTY  
R E S O L U T I O N  
RESOLUTION NO.95B-2012  
RE: HONORING CAROLYN MICHELLE HOKE ON ATTAINING THE  
GIRL SCOUT GOLD AWARD**

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**WHEREAS**, Carolyn Michelle Hoke has recently achieved the Gold Award in the Girl Scouts of the USA, North Cape May Unit, Troop 46721; and

**WHEREAS**, the Township of Upper wishes to acknowledge this outstanding accomplishment; 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:

**RESOLVED THAT** the Township Committee extends its sincere congratulations to Carolyn on the occasion of her receiving the Gold Award and commends her for this excellent achievement and the completion of her Gold Award project consisting of working with the Cape May County Office of Disability Services to develop a new award for volunteerism in the disabled community. The award was presented at the Cape May County Disabilities

Awareness Day, where she also ran a children's entertainment area. Carolyn also created an interactive website to publicize both the award and the event; and

**BE IT FURTHER RESOLVED** that the Township Committee extends its congratulations and best wishes to Carolyn's parents, family and friends on this happy occasion; and it is

**FURTHER RESOLVED** that the Township Committee also extends its congratulations and appreciation to the Girl Scout Leaders and others who give so freely and generously of their time for the benefit of our youth.

**GIVEN UNDER OUR HANDS** and the seal of the Township of Upper this 30th day of April, 2012.

Resolution No. 95B-2012

Offered by: Newman

Seconded by: Inserra

Adopted: April 30, 2012

Roll Call Vote:

NAME	YES	NO	ABSTAINED	ABSENT
Barr	<u>  X  </u>	<u>      </u>	<u>      </u>	<u>      </u>
Corson	<u>  X  </u>	<u>      </u>	<u>      </u>	<u>      </u>
Inserra	<u>  X  </u>	<u>      </u>	<u>      </u>	<u>      </u>
Newman	<u>  X  </u>	<u>      </u>	<u>      </u>	<u>      </u>
Palombo	<u>      </u>	<u>      </u>	<u>      </u>	<u>  X  </u>

**TOWNSHIP OF UPPER  
CAPE MAY COUNTY  
R E S O L U T I O N  
RESOLUTION NO. 95C-2012  
RE: HONORING JESSICA CHRISTINE MRUZ ON ATTAINING THE  
GIRL SCOUT GOLD AWARD**

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**WHEREAS**, Jessica Christine Mruz has recently achieved the Gold Award in the Girl Scouts of the USA, North Cape May Unit, Troop 44474; and

**WHEREAS**, the Township of Upper wishes to acknowledge this outstanding accomplishment; 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:

**RESOLVED THAT** the Township Committee extends its sincere congratulations to Jessica on the occasion of her receiving the Gold Award and commends her for this excellent achievement and the completion of her Gold Award project consisting of establishing a "Smiles for Seniors" program which benefits residents at the Ocean View Center for Rehabilitation and Continuing Care, by ensuring the residents have visitors year round and not just during the holidays. The visits include activities, games, and crafts which are enjoyed by all; and

**BE IT FURTHER RESOLVED** that the Township Committee extends its congratulations and best wishes to Jessica's parents, family and friends on this happy occasion; and it is

**FURTHER RESOLVED** that the Township Committee also extends its congratulations and appreciation to the Girl Scout Leaders and others who give so freely and generously of their time for the benefit of our youth.

**GIVEN UNDER OUR HANDS** and the seal of the Township of Upper this 30th day of April, 2012.

Resolution No. 95C-2012

Offered by: Newman

Seconded by: Inserra

Adopted: April 30, 2012

Roll Call Vote:

NAME	YES	NO	ABSTAINED	ABSENT
Barr	<u>  X  </u>	<u>      </u>	<u>      </u>	<u>      </u>
Corson	<u>  X  </u>	<u>      </u>	<u>      </u>	<u>      </u>
Inserra	<u>  X  </u>	<u>      </u>	<u>      </u>	<u>      </u>
Newman	<u>  X  </u>	<u>      </u>	<u>      </u>	<u>      </u>
Palombo	<u>      </u>	<u>      </u>	<u>      </u>	<u>  X  </u>

**TOWNSHIP OF UPPER  
CAPE MAY COUNTY  
R E S O L U T I O N  
RESOLUTION NO.95D-2012**

**RE: HONORING VICTORIA WYAND ON ATTAINING THE  
GIRL SCOUT GOLD AWARD**

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**WHEREAS**, Victoria Wyand has recently achieved the Gold Award in the Girl Scouts of the USA, North Cape May Unit, Troop 46853; and

**WHEREAS**, the Township of Upper wishes to acknowledge this outstanding accomplishment; 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:

**RESOLVED THAT** the Township Committee extends its sincere congratulations to Victoria on the occasion of her receiving the Gold Award and commends her for this excellent achievement and the completion of her Gold Award project consisting of collecting donations and filling forty backpacks with a bible, journal, drawing supplies, pens, pencils, hair clips, and other small personal items. The items were then given to teens living at Victory House, which is a part of Ranch Hope, a treatment and care facility for abused, abandoned and neglected children; and

**BE IT FURTHER RESOLVED** that the Township Committee extends its congratulations and best wishes to Victoria's parents, family and friends on this happy occasion; and it is

**FURTHER RESOLVED** that the Township Committee also extends its congratulations and appreciation to the Girl Scout Leaders and others who give so freely and generously of their time for the benefit of our youth.

**GIVEN UNDER OUR HANDS** and the seal of the Township of Upper this 30th day of April, 2012.

Resolution No. 95D-2012

Offered by: Newman

Seconded by: Inserra

Adopted: April 30, 2012

Roll Call Vote:

NAME	YES	NO	ABSTAINED	ABSENT
Barr	<u>  X  </u>	<u>        </u>	<u>        </u>	<u>        </u>

Corson	<u>  X  </u>	<u>      </u>	<u>      </u>	<u>      </u>
Inserra	<u>  X  </u>	<u>      </u>	<u>      </u>	<u>      </u>
Newman	<u>  X  </u>	<u>      </u>	<u>      </u>	<u>      </u>
Palombo	<u>      </u>	<u>      </u>	<u>      </u>	<u>  X  </u>

**3. Congratulating employee Patricia Smyth of the Upper Township Tax Office for her winning entry in the Upper Township Safety Award Program for the 2<sup>nd</sup> quarter of 2012.**

**TOWNSHIP OF UPPER  
 CAPE MAY COUNTY  
 R E S O L U T I O N  
 RESOLUTION NO. 96-2012  
 RE: CONGRATULATING EMPLOYEE PATRICIA SMYTH  
 OF THE UPPER TOWNSHIP TAX OFFICE  
 FOR HER WINNING ENTRY IN  
 THE UPPER TOWNSHIP SAFETY AWARD PROGRAM  
 FOR THE 2ND QUARTER OF 2012**

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

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

**WHEREAS**, Patricia should be publicly recognized for reporting the safety hazard of a broken curb at the entrance to the Municipal Building; and

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

1. That the Committee extends its appreciation and publicly recognizes Patricia Smyth on her commitment to safety by identifying a potential safety hazard and presenting a solution through participation in the program.
2. That the Committee, on behalf of our employees and the citizens of the Township of Upper extend to

Patricia our congratulations and present her with the "Safety Day Award" of one day off with pay.

**GIVEN UNDER OUR HANDS** and the seal of the Township of Upper

this 30th day of April, 2012.

Resolution No. 96-2012

Offered by: Inserra

Seconded by: Newman

Adopted: April 30, 2012

Roll Call Vote:

NAME	YES	NO	ABSTAINED	ABSENT
Barr	<u>  X  </u>	<u>      </u>	<u>      </u>	<u>      </u>
Corson	<u>  X  </u>	<u>      </u>	<u>      </u>	<u>      </u>
Inserra	<u>  X  </u>	<u>      </u>	<u>      </u>	<u>      </u>
Newman	<u>  X  </u>	<u>      </u>	<u>      </u>	<u>      </u>
Palombo	<u>      </u>	<u>      </u>	<u>      </u>	<u>  X  </u>

**4. Appointing Michael Pfaff, Devon Morris, and Dennis Neville as Part-time Seasonal Beach Sweepers to the Upper Township Public Works Department.**

**TOWNSHIP OF UPPER**

**CAPE MAY COUNTY**

**R E S O L U T I O N**

**RESOLUTION NO. 97-2012**

**RE: APPOINTING MICHAEL PFAFF, DEVON MORRIS AND DENNIS NEVILLE  
AS PART-TIME SEASONAL BEACH SWEEPERS  
TO THE UPPER TOWNSHIP PUBLIC WORKS DEPARTMENT**

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

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

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

2. Michael Pfaff, Devon Morris, and Dennis Neville are 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 shall be effective immediately and is further intended to ratify, confirm and approve any formal action taken by the Township Committee.

Resolution No. 97-2012

Offered by: Newman

Seconded by: Barr

Adopted: April 30, 2012

Roll Call Vote:

NAME	YES	NO	ABSTAINED	ABSENT
Barr	<u>  X  </u>	<u>      </u>	<u>      </u>	<u>      </u>
Corson	<u>  X  </u>	<u>      </u>	<u>      </u>	<u>      </u>
Inserra	<u>  X  </u>	<u>      </u>	<u>      </u>	<u>      </u>
Newman	<u>  X  </u>	<u>      </u>	<u>      </u>	<u>      </u>
Palombo	<u>      </u>	<u>      </u>	<u>      </u>	<u>  X  </u>

**5. Canceling taxes on exempt property.**

**TOWNSHIP OF UPPER  
CAPE MAY COUNTY  
RESOLUTION  
Resolution No. 98-2012  
Canceling Taxes on Exempt Property**

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**WHEREAS**, certain corrections have been recommended by the Upper Township Tax Collector in order to correct tax records,

**WHEREAS**, certain properties became tax exempt for the year 2011,

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

Resolution No. 98-2012

Offered by: Corson

Seconded by: Inserra

Adopted: April 30, 2012

Roll Call Vote:

NAME	YES	NO	ABSTAINED	ABSENT
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Barr	<u>  X  </u>	<u>      </u>	<u>      </u>	<u>      </u>
Corson	<u>  X  </u>	<u>      </u>	<u>      </u>	<u>      </u>
Inserra	<u>  X  </u>	<u>      </u>	<u>      </u>	<u>      </u>
Newman	<u>  X  </u>	<u>      </u>	<u>      </u>	<u>      </u>
Palombo	<u>      </u>	<u>      </u>	<u>      </u>	<u>  X  </u>

**2011 Taxes**

564            28                            \$2,324.58 (Stephen Savage)

**2012 Taxes**

564            28                            \$1,991.14 (Stephen Savage)

**100% Totally Disabled Veteran - Tax Exempt for 2011**

- 6. Reimbursement of property taxes paid for portions of the 2011 tax year to totally disabled veteran Stephen G. Savage for Block 564, Lot 28 on the Municipal Tax Map.**

**TOWNSHIP OF UPPER  
CAPE MAY COUNTY  
R E S O L U T I O N  
RESOLUTION NO. 99-2012**

**RE: REIMBURSEMENT OF PROPERTY TAXES PAID FOR PORTIONS OF THE  
2011 TAX YEAR TO TOTALLY DISABLED VETERAN STEPHEN G. SAVAGE FOR  
BLOCK 564, LOT 28 ON THE MUNICIPAL TAX MAP**

WHEREAS, Stephen G. Savage is a 100% disabled American veteran residing at 23 Hope Corson Rd, Block 564, Lot 28 on the municipal tax map of Upper Township, New Jersey; and

WHEREAS, the Department of Veteran Affairs has determined that Mr. Savage's 100% permanent wartime service-connected disability was effective June 1, 2011; and

WHEREAS, pursuant to N.J.S.A. 54:4-3.30 & 54:4-3.32, the governing body of any municipality may, at it's discretion, refund the amount of taxes collected on any property which would have been exempt from taxation; and

WHEREAS, the Township Committee of the Township of Upper has determined that it is just and appropriate in this instance to reimburse Stephen G. Savage the real estate taxes paid for portions of the 2011 tax year for Block 564, Lot 28; and

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

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

2. The Township of Upper shall hereby reimburse Stephen G. Savage in the amount of \$2,324.58 for real estate taxes paid from the effective date of disability of June 1 to December 31 of the 2011 tax year for Block 564, Lot 28.

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

Resolution No. 99-2012  
Offered by: Corson  
Adopted: April 30, 2012

Seconded by: Barr

Roll Call Vote:

<u>NAME</u>	<u>YES</u>	<u>NO</u>	<u>ABSTAINED</u>	<u>ABSENT</u>
Barr	<u>X</u>	<u>      </u>	<u>      </u>	<u>      </u>
Corson	<u>X</u>	<u>      </u>	<u>      </u>	<u>      </u>
Inserra	<u>X</u>	<u>      </u>	<u>      </u>	<u>      </u>
Newman	<u>X</u>	<u>      </u>	<u>      </u>	<u>      </u>
Palombo	<u>      </u>	<u>      </u>	<u>      </u>	<u>  X  </u>

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

**TOWNSHIP OF UPPER  
CAPE MAY COUNTY  
RESOLUTION**

**RESOLUTION NO. 100-2012**

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

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

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

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

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

**WHEREAS**, the Chief Financial Officer of the Township has certified the availability of funds to allow the award of Contract for the purchase herein authorized and has certified that adequate funds have been appropriated for this purpose in the 2012 Municipal Budget;

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

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

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

(A) Renewal of the Annual Maintenance/Annual Support Agreement for Alchemy software version upgrades, service patches, hot fixes, telephone technical support, one (1) on-site visit for up to four (4) hours and discounts of twenty percent (20%) on additional training and/or consulting, for a term commencing June 29, 2012 and ending June 29, 2013, at a cost of \$4,995.00. A copy of the proposal dated March 12, 2012 is attached hereto as Exhibit "A".

(B) Acceptance of the proposal for Preventive Maintenance Agreement, for the period commencing April 30, 2012 through April 30, 2013, at a cost of \$95 per month (one year prepaid \$1,140.00). A copy of the proposal is attached hereto as Exhibit "B".

(C) Acceptance of the proposal for a bi-annual component-level restoration of the Township of Upper's Alchemy Database Server to conform to the Township's IT Disaster Prevention/Recovery Plan for the certification of scanning and archiving of public records for the State of New Jersey Division of Archives and Records Management, to include bi-annual test cycle, for a total annual cost of \$2,700.00. A copy of the proposal dated March 12, 2012, is attached hereto as Exhibit "C".

(D) Acceptance of the proposal for Technical Services and Prepaid Support for a cost of \$1,000.00. A copy of the proposal dated March 12, 2012 is attached hereto as Exhibit "D".

(E) Acceptance of the proposal for Renewal of the AVG Network Antivirus Agreement (one year prepaid \$587.00) A copy of the proposal dated March 12, 2012, is attached hereto as Exhibit "E".

3. This Resolution is awarded subject to and conditioned upon the following:

- (i) Computer House Of South Jersey, LLC, in providing the services contemplated in this Resolution and in the attachments hereto, acknowledges that it is an independent contractor and not an employee of the Township. As such, Computer House Of South Jersey, LLC, represents and warrants that it will maintain in full force and effect workers compensation coverage and disability coverage for all of its employees.
- (ii) During the term of the Contract and any renewal or extension thereof, Computer House Of South Jersey, LLC, will maintain in full force and effect the following insurance:
  - (a) Commercial general liability insurance on an occurrence basis with limits of liability of not less than \$500,000.00 per occurrence and/or aggregate combined single limit, personal injury, bodily injury and property damage.
  - (b) Motor vehicle liability insurance, including applicable no-fault coverage, with limits of liability of not less than \$500,000.00 per accident, combined single limit, bodily injury and property damage. Coverage shall include all owned vehicles, all non-owned vehicles and all hired vehicles.
  - (c) Computer House Of South Jersey, LLC shall not be required to name the Township as an additional insured.
- (iii) Computer House Of South Jersey, LLC agrees to indemnify the Township and to hold it harmless from and against any and all damages, claims,

losses and/or liabilities of any sort (including attorney's fees), which the Township may incur as a result of the performances of services under this Resolution and the attachments hereto by Computer House, LLC or its agents, servants and employees.

- (iv) Computer House Of South Jersey, LLC acknowledges that it must comply with the Affirmative Action requirements of the State of New Jersey, which requirements are attached to this Resolution as Exhibit "F".
- (v) Computer House Of South Jersey, LLC, has registered with the State of New Jersey pursuant to c.57, Laws of 2004 and has provided proof of that registration to the Township of Upper.
- (vi) Computer House Of South Jersey, LLC, has not made and will not make any reportable contributions pursuant to N.J.S.A. 19:44A-1 et seq. that, pursuant to P.L. 2004, c.19 would bar the award of this contract and Computer House, LLC, shall not make any such reportable contributions during the term of this contract.

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

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

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

7. The Chief Financial Officer is hereby authorized, directed and empowered to issue a purchase order consistent with the intention and purpose of this Resolution. All other Township officers

and officials are authorized to take such action as may be necessary or required in order to carry out the intent and purpose of this Resolution.

Resolution No. 100-2012

Offered by: Newman

Seconded by: Barr

Adopted: April 30, 2012

Roll Call Vote:

<u>NAME</u>	<u>YES</u>	<u>NO</u>	<u>ABSTAINED</u>	<u>ABSENT</u>
Barr	X	_____	_____	_____
Corson	X	_____	_____	_____
Inserra	X	_____	_____	_____
Newman	X	_____	_____	_____
Palombo	_____	_____	_____	X

**8. Appointment of Norman W. Briggs to act as special legal counsel.**

**TOWNSHIP OF UPPER  
CAPE MAY COUNTY  
RESOLUTION  
RESOLUTION NO. 101 -2012  
RE: APPOINTMENT OF NORMAN W. BRIGGS  
TO ACT AS SPECIAL LEGAL COUNSEL**

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**WHEREAS**, the Township requires legal counsel to provide legal services in the event a conflict of interest arises in regard to the services provided by the regular Township Solicitor; and

**WHEREAS**, a resolution is required authorizing the award of such contract for professional services; and

**WHEREAS**, the Township has decided to acquire the services of Norman W. Briggs, Esquire as a non-fair and open contract pursuant to the provisions of N.J.S.A. 19:44A-2.05; and

**WHEREAS**, Norman W. Briggs, Esquire has completed and submitted a Business Entity Disclosure Certification which certifies that Norman W. Briggs, Esquire 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 Norman W. Briggs, Esquire 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. Norman W. Briggs, Esquire with offices at 110 Roosevelt Boulevard, Suite 201, Marmora, New Jersey is hereby appointed Special Legal Counsel to handle matters in which the regular Township Solicitor has a conflict of interest as well as other matters directed by the Township Committee.
3. This contract shall have a term of one (1) year from date of full execution.
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 Norman W. Briggs, Esquire has professional knowledge as to legal matters 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**

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 Norman W. Briggs, Esquire for legal 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.

5. 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 has been provided to the governing body and shall be attached to this Resolution and kept in the files of the municipal clerk.
6. The contractor has registered with the State of New Jersey pursuant to c.57, Laws of 2004 and has provided proof of that registration to the Township of Upper.
7. The Mayor and the Township Clerk are hereby authorized and directed to execute, on behalf of the Township of Upper, a Professional Contract with Norman W. Briggs, Esquire 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.

8. 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.

9. This Resolution shall be effective as of adoption.

Resolution No. 101 -2012

Offered by: Newman

Seconded by: Corson

Adopted: April 30, 2012

Roll Call Vote:

<u>NAME</u>	<u>YES</u>	<u>NO</u>	<u>ABSTAINED</u>	<u>ABSENT</u>
Barr	<u>  X  </u>	<u>    </u>	<u>    </u>	<u>    </u>
Corson	<u>  X  </u>	<u>    </u>	<u>    </u>	<u>    </u>
Inserra	<u>  X  </u>	<u>    </u>	<u>    </u>	<u>    </u>
Newman	<u>  X  </u>	<u>    </u>	<u>    </u>	<u>    </u>
Palombo	<u>    </u>	<u>    </u>	<u>    </u>	<u>  X  </u>

**9. Authorizing a contract with CASA Payroll Service of Pleasantville, New Jersey for payroll services.**

TOWNSHIP OF UPPER

CAPE MAY COUNTY

R E S O L U T I O N

RESOLUTION NO. 102-2012

RE: AUTHORIZING A CONTRACT WITH CASA PAYROLL SERVICE OF  
PLEASANTVILLE, NEW JERSEY FOR PAYROLL SERVICES

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WHEREAS, CASA Payroll Services ("CASA") has submitted a proposal to  
the Township for payroll services; and

WHEREAS, N.J.A.C. 5:30-17.3 et seq. provides for electronic disbursement controls for payroll purposes and applies to entities which execute disbursements from and/or take possession of municipal bank accounts or funds; and

WHEREAS, the proposal of CASA does not permit CASA to execute disbursements from the Township's bank account or give CASA possession of Township funds and as such N.J.A.C. 5:30-17.3 et seq. does not apply; and

WHEREAS, the Township wishes to accept said proposal and to authorize a contract with CASA; and

WHEREAS, the proposal has been reviewed and approved by the Municipal Attorney and will be on record in the office of the Township Clerk and available for public inspection; and

WHEREAS, CASA has completed and submitted a Business Entity Disclosure Certification which certifies that CASA 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 CASA 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. The Mayor and Township Clerk are hereby authorized, directed and empowered to enter into a contract with CASA attached hereto as Exhibit "A", to provide payroll service within the Township of Upper commencing immediately.
3. CASA 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.
4. All Township officials and officers are hereby authorized and empowered to take all action deemed necessary or advisable to carry into effect the intent and purpose of this Resolution.

Resolution No. 102-2012

Offered by: Newman

Seconded by: Inserra

Adopted: April 30, 2012

Roll Call Vote:

<u>NAME</u>	<u>YES</u>	<u>NO</u>	<u>ABSTAINED</u>	<u>ABSENT</u>
Barr	<u>  X  </u>	<u>      </u>	<u>      </u>	<u>      </u>
Corson	<u>  X  </u>	<u>      </u>	<u>      </u>	<u>      </u>
Inserra	<u>  X  </u>	<u>      </u>	<u>      </u>	<u>      </u>
Newman	<u>  X  </u>	<u>      </u>	<u>      </u>	<u>      </u>
Palombo	<u>      </u>	<u>      </u>	<u>      </u>	<u>  X  </u>

**10. Refund EMS ambulance billing overpayment to Unite Here Health.**

**TOWNSHIP OF UPPER  
CAPE MAY COUNTY  
RESOLUTION  
RESOLUTION NO. 103-2012  
RE: REFUND EMS AMBULANCE BILLING OVERPAYMENT  
TO UNITE HERE HEALTH**

**WHEREAS**, an overpayment has occurred in the account of Kathleen Cronin, an EMS ambulance billing patient, where the monies sent to the Township of Upper by Unite Here Health were in excess as evidenced by the attached copy of a letter attached hereto as Exhibit A.

**NOW, THEREFORE BE IT RESOLVED**, by the Township Committee of the Township of Upper, Cape May County, that a refund is hereby authorized and the Chief Financial Officer is hereby directed to refund monies as indicated below:

<u><b>AMOUNT</b></u>	<u><b>NAME</b></u>
\$237.46	Unite Here Health P.O. Box 6680 Aurora, IL 60598-0020

Resolution No. 103-2012

Offered by: Newman

Seconded by: Inserra

Adopted: April 30, 2012

ROLL CALL VOTE:

<u>NAME</u>	<u>YES</u>	<u>NO</u>	<u>ABSTAINED</u>	<u>ABSENT</u>
Barr	<u>  X  </u>	<u>      </u>	<u>      </u>	<u>      </u>
Corson	<u>  X  </u>	<u>      </u>	<u>      </u>	<u>      </u>

Inserra	<u>    X    </u>	<u>          </u>	<u>          </u>	<u>          </u>
Newman	<u>    X    </u>	<u>          </u>	<u>          </u>	<u>          </u>
Palombo	<u>          </u>	<u>          </u>	<u>          </u>	<u>    X    </u>

**11. Authorizing the Chief Financial Officer to sign a group agreement with Horizon Blue Cross Blue Shield of New Jersey for medical and prescription insurance.**

**TOWNSHIP OF UPPER  
CAPE MAY COUNTY  
R E S O L U T I O N  
RESOLUTION NO. 104-2012  
RE: AUTHORIZING THE CHIEF FINANCIAL OFFICER TO  
SIGN A GROUP AGREEMENT WITH HORIZON BLUE CROSS BLUE SHIELD  
OF NEW JERSEY FOR MEDICAL AND PRESCRIPTION INSURANCE**

**WHEREAS**, the Township of Upper terminated participation in the State Health Benefits Program pursuant to Resolution 78-2012 adopted March 30, 2012, thereby canceling medical and prescription drug coverage to eligible employees effective June 1, 2012; and

**WHEREAS**, the Township wishes to accept a group agreement with Horizon Blue Cross Blue Shield of New Jersey to provide medical and prescription drug coverage for eligible employees effective June 1, 2012 attached hereto as Exhibit A; and

**WHEREAS**, the renewal of said agreement will be January 1, 2014, thereby saving the Township an estimated \$232,500 over a 19-month period.

**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 Group Agreement between the Township of Upper and Horizon Blue Cross Blue Shield of New Jersey is approved and the Chief Financial Officer is hereby authorized, directed and empowered to execute said Group Agreement on behalf of the Township of Upper.
3. All Township officials, officers and employees are empowered to take such action as may be necessary or advisable in order to carry out the intent and purpose of this Resolution.

Resolution No. 104-2012

Offered by: Inserra

Seconded by: Newman

Adopted: April 30, 2012

Roll Call Vote:

<u>NAME</u>	<u>YES</u>	<u>NO</u>	<u>ABSTAINED</u>	<u>ABSENT</u>
Barr	<u>X</u>	<u>          </u>	<u>          </u>	<u>          </u>
Corson	<u>X</u>	<u>          </u>	<u>          </u>	<u>          </u>
Inserra	<u>X</u>	<u>          </u>	<u>          </u>	<u>          </u>
Newman	<u>X</u>	<u>          </u>	<u>          </u>	<u>          </u>
Palombo	<u>          </u>	<u>          </u>	<u>          </u>	<u>X</u>

**12. Resolution requesting review and approval of a Municipal Affordable Housing Trust Fund Spending Plan.**

TOWNSHIP OF UPPER

CAPE MAY COUNTY

R E S O L U T I O N

RESOLUTION NO. 105-2012

RE: RESOLUTION REQUESTING REVIEW AND APPROVAL OF A MUNICIPAL AFFORDABLE HOUSING TRUST FUND SPENDING PLAN

WHEREAS, the Township Committee of the Township of Upper authorized a petition to the Council on Affordable Housing (“COAH”) (now known as Fair Housing Act Administration “FHAA”) for substantive certification on December 22, 2008; and

WHEREAS, on December 22, 2008 the Township of Upper requested approval from COAH of its development fee ordinance; and

WHEREAS, the development fee ordinance and growth share ordinance establish an affordable housing trust fund that includes development fees, payments from

developers in lieu of constructing affordable units on-site, barrier free escrow funds, rental income, repayments from affordable housing program loans, recapture funds, proceeds from the sale of affordable units, and other funds collected in connection with the Township's affordable housing program; and

WHEREAS, N.J.A.C. 5:97-8.1(d) requires a municipality with an affordable housing trust fund to receive approval of a spending plan from FHAA prior to spending any of the funds in its housing trust fund; and

WHEREAS, N.J.A.C. 5:97-8.10 requires a spending plan to include the following:

1. A projection of revenues anticipated from imposing fees on development, based on pending, approved and anticipated developments and historic development activity;
2. A projection of revenues anticipated from other sources, including payments in lieu of constructing affordable units on sites zoned for affordable housing, funds from the sale of units with extinguished

controls, proceeds from the sale of affordable units, rental income, repayments from affordable housing program loans, and interest earned;

3. A description of the administrative mechanism that the municipality will use to collect and distribute revenues;
4. A description of the anticipated use of all affordable housing trust funds pursuant to N.J.A.C. 5:97-8.7, 8.8, and 8.9;
5. A schedule for the expenditure of all affordable housing trust funds;
6. If applicable, a schedule for the creation or rehabilitation of housing units;
7. A pro-forma statement of the anticipated costs and revenues associated with the development if the municipality envisions supporting or sponsoring public sector or non-profit construction of housing; and

8. A plan to spend the trust fund balance as of July 17, 2008 within four years of the Council's approval of the spending plan, or in accordance with an implementation schedule approved by the Council;
9. A plan to spend and/or contractually commit all development fees and any payments in lieu of construction within three years of the end of the calendar year in which funds are collected, but no later than the end of third round substantive certification period;
10. The manner through which the municipality will address any expected or unexpected shortfall if the anticipated revenues from development fees are not sufficient to implement the plan; and
11. A description of the anticipated use of excess affordable housing trust funds, in the event more funds than anticipated are collected, or projected funds exceed the amount necessary for satisfying the municipal affordable housing obligation.

WHEREAS, the Township of Upper has prepared a spending plan consistent with N.J.A.C. 5:97-8.10 and P.L. 2008, c.46.

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 requests that FHAA review and approve the Township of Upper's spending plan.
  
3. All Township officials and officers are hereby authorized and empowered to take all action deemed necessary or advisable to carry into effect the intent and purpose of this Resolution.

Resolution No. 105-2012

Offered by: Newman                      Seconded by: Inserra

Adopted: April 30, 2012

Roll Call Vote:

<u>NAME</u>	<u>YES</u>	<u>NO</u>	<u>ABSTAINED</u>	<u>ABSENT</u>
Barr	<u>  X  </u>	<u>      </u>	<u>      </u>	<u>      </u>
Corson	<u>  X  </u>	<u>      </u>	<u>      </u>	<u>      </u>
Inserra	<u>  X  </u>	<u>      </u>	<u>      </u>	<u>      </u>

Newman	<u>  X  </u>	<u>      </u>	<u>      </u>	<u>      </u>
Palombo	<u>      </u>	<u>      </u>	<u>      </u>	<u>  X  </u>

**ORDINANCES**

13. **Public Hearing and Final Adoption of Ordinance No. 002-2012-A, RE: AN ORDINANCE AMENDING REVISED GENERAL ORDINANCE CHAPTER VI (ALCOHOLIC BEVERAGE CONTROL) OF THE CODE OF UPPER TOWNSHIP.** During the public comment section of the public hearing there were no speakers. Motion by Jay Newman, second by Anthony Inserra to adopt Ordinance No. 002-2012-A. During roll call vote all four Committee members present voted in the affirmative.

**TOWNSHIP OF UPPER  
 CAPE MAY COUNTY  
 ORDINANCE  
 ORDINANCE NO. 002-2012-A  
 RE: AN ORDINANCE AMENDING REVISED GENERAL ORDINANCE  
 CHAPTER VI (ALCOHOLIC BEVERAGE CONTROL)  
 OF THE CODE OF UPPER TOWNSHIP**

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

**SECTION 1.** Chapter VI, Section 6-4.1 (entitled “Hours of Sale”) of the Revised General Ordinances of the Township of Upper, also known as the Code of Upper Township, shall be amended as hereinafter provided:

**6-4.1 Hours of Sale:**

**(a) Plenary Retail Distribution Licenses.** The holder of a Plenary Retail Distribution License shall not sell or deliver or allow, permit or suffer the sale or delivery of any alcoholic beverage or allow, permit or suffer the removal of any alcoholic beverage from licensed premises on weekdays before 9:00 a.m. or after 10:00 p.m. and on Sundays before 10:00 a.m. or after 10:00 p.m., with the exception of wine and malt alcoholic beverages.

**(b) Plenary Retail Consumption Licenses.**

1. **On-Premises Consumption.** The holder of a Plenary Retail Consumption License shall not sell, serve, deliver or allow, permit or

suffer the sale, service, or delivery of any alcoholic beverage for on-premises consumption on weekdays between the hours of 3:00 a.m. and 7:00 a.m. and on Sundays between the hours of 3:00 a.m. and 10:00 a.m.

2. **Off-Premises Consumption.** The holder of a Plenary Retail Consumption License shall not sell, serve, deliver or allow, permit or suffer the sale, service or delivery of any malt alcoholic beverage or wine for off-premises consumption on weekdays between the hours of 3:00 a.m. and 7:00 a.m. and on Sundays between the hours of 3:00 a.m. and 10:00 a.m. Such licensees shall not sell, serve, deliver or allow, permit or suffer the sale, service or delivery of any distilled liquors for off-premises consumption on any weekdays between the hours of midnight and 9:00 a.m. or after 10:00 p.m. and on Sunday between the hours of midnight and 10:00 a.m. or after 10:00 p.m.

**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 30<sup>th</sup> DAY OF March, 2012 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 30th DAY OF April, 2012 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

14. **Public Hearing and Final Adoption of Ordinance No. 003-2012-A, RE: AN ORDINANCE AMENDING REVISED GENERAL ORDINANCE CHAPTER VII OF THE CODE OF UPPER TOWNSHIP.** During the public comment section of the public hearing there were no speakers. Motion by Jay Newman, second by Edward Barr to adopt Ordinance No. 003-2012-A. During roll call vote all four Committee members present voted in the affirmative.

**TOWNSHIP OF UPPER  
CAPE MAY COUNTY  
O R D I N A N C E  
ORDINANCE NO. 003-2012-A  
RE: AN ORDINANCE AMENDING REVISED GENERAL ORDINANCE  
CHAPTER VII OF THE CODE OF UPPER TOWNSHIP**

---

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

**SECTION 1.** Chapter 7, Schedule XVIII (entitled “Parking Area For Handicapped Persons”) of the Revised General Ordinances of the Township of Upper, also known as the Code of Upper Township, shall be supplemented as hereinafter provided:

**SCHEDULE XVIII – PARKING AREA FOR HANDICAPPED PERSONS**

Amend to include the following:

<b>Street</b>	<b>Location</b>
Putnam Avenue	Southerly side of Putnam Avenue beginning a distance of one hundred fifty five (155’) feet from the Easterly curblin of Commonwealth Avenue and extending twenty-two (22’) feet Easterly.

**SECTION 3: 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 4: SEVERABILITY:** If any section, paragraph, subdivision, subsection, clause or provision of this Ordinance shall be adjudged invalid, such adjudication shall apply only to the section, paragraph, subdivision, subsection, clause or provision declared invalid and the remainder of this Ordinance shall remain in full force and effect and shall be enforceable.

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

**SECTION 6: 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 30<sup>th</sup> OF MARCH, 2012 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 30<sup>th</sup> OF APRIL, 2012 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

15. **Introduction and First Reading of Ordinance No. 005-2012 Re: AN ORDINANCE AMENDING REVISED GENERAL ORDINANCE CHAPTER XVI OF THE CODE OF UPPER TOWNSHIP TO GRANT MUNICIPAL CONSENT TO COMCAST OF AVALON, L.L.C. AND COMCAST OF SOUTH JERSEY, L.L.C. TO CONSTRUCT, CONNECT, OPERATE AND MAINTAIN CABLE TELEVISION AND COMMUNICATIONS SYSTEMS IN UPPER TOWNSHIP, NEW JERSEY.** Mr. Young stated that this is a renewal of the Township's Comcast franchises. It is essentially the same terms, however there is an additional technology grant of \$50,000, as well as some extra services for the schools, libraries, and emergency services. Motion by Jay Newman second by Anthony Inserra to introduce Ordinance No.

005-2012 with public hearing scheduled for May 29, 2012 at 7:30 P.M. During roll call vote all four Committee members present voted in the affirmative.

**TOWNSHIP OF UPPER  
CAPE MAY COUNTY  
ORDINANCE  
ORDINANCE NO. 005-2012  
RE: AN ORDINANCE AMENDING REVISED GENERAL ORDINANCE  
CHAPTER XVI OF THE CODE OF UPPER TOWNSHIP TO GRANT MUNICIPAL CONSENT  
TO COMCAST OF AVALON, L.L.C. AND COMCAST OF SOUTH JERSEY, L.L.C. TO  
CONSTRUCT, CONNECT, OPERATE AND MAINTAIN CABLE TELEVISION AND  
COMMUNICATIONS SYSTEMS IN UPPER TOWNSHIP, NEW JERSEY**

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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 XVI of the Revised General Ordinances of the Township of Upper, also known as the Code of Upper Township is hereby amended to delete the existing chapter in its entirety (Sections 16-1, 16-2 and 16-3) and is replaced same with the following:

**CHAPTER XVI – CABLE TELEVISION**

**16-1 Franchise with Comcast of Avalon, L.L.C.:**

**16-1.1 Purpose of the Ordinance.** The municipality hereby grants to Comcast renewal of its non-exclusive Municipal Consent to place in, upon, across, above, over and under highways, streets, alleys, sidewalks, easements, public ways and public places in the municipality, poles, wires, cables, underground conduits, manholes and other television conductors, fixtures, apparatus and equipment as may be necessary for the construction, operation and maintenance in the Municipality of a cable television and communications system.

**16-1.2 Definitions.** For the purpose of this Ordinance, the following terms, phrases, words and their derivations shall have the meaning given herein. Such meaning or definition of terms is supplemental to those definitions of the Federal Communications Commission ("FCC") rules and regulations, 47 C.F.R. Subsection 76.1 et seq., and the Cable Communications Policy Act, 47 U.S.C. Section 521 et seq., as amended, and the Cable Television Act, N.J.S.A. 48:5A-1 et seq., and shall in no way be construed to broaden, alter or conflict with the federal and state definitions:

- a. "Township" or "Municipality" is the Township of Upper, County of Cape May, State of New Jersey.
- b. "Company" is the grantee of rights under this Ordinance and is known as Comcast of Avalon, L.L.C.
- c. "Act" or "Cable Television Act" is Chapter 186 of the General Laws of New Jersey, and subsequent amendments thereto, N.J.S.A. 48:5A-1, et seq.

- d. "FCC" is the Federal Communications Commission.
- e. "Board" or "BPU" is the Board of Public Utilities, State of New Jersey.
- f. "Office" or "OCTV" is the Office of Cable Television of the Board.
- g. "Basic Cable Service" means any service tier, which includes the retransmission of local television broadcast signals as defined by the FCC.
- h. "Application" is the Company's Application for Renewal of Municipal Consent.
- i. "Primary Service Area" or "PSA" consists of the area of the Municipality currently served with existing plant as set forth in the map annexed to the Company's Application for Municipal Consent.

**16-1.3 Statement of Findings.** Public hearings conducted by the municipality, concerning the renewal of Municipal Consent herein granted to the Company were held after proper public notice pursuant to the terms and conditions of the Act and the regulations of the Board adopted pursuant thereto. Said hearings, having been fully open to the public, and the municipality, having received at said public hearings all comments regarding the qualifications of the Company to receive this renewal of Municipal Consent, the Municipality hereby finds that the Company possesses the necessary legal, technical, character, financial and other qualifications and that the Company's operating and construction arrangements are adequate and feasible.

**16-1.4 Duration of Franchise.** The non-exclusive Municipal Consent granted herein shall be for a term of fifteen years from the date of issuance of a Certificate of Approval by the Board, with a 10-year automatic renewal as provided by N.J.S.A. 48:5A-19 and 25, and N.J.A.C. 14:18-13.6.

In the event that the Municipality shall find that the Company has not substantially complied with the material terms and conditions of this Ordinance, the Municipality shall have the right to petition the OCTV, pursuant to N.J.S.A. 48:5A-47, for appropriate action, including modification and/or termination of the Certificate of Approval; provided however, that the Municipality shall first have given the Company written notice of all alleged instances of non-compliance and an opportunity to cure same within ninety (90) days of that notification.

**16-1.5 Franchise Fee.** Pursuant to the terms and conditions of the Act, the Company shall, during each year of operation under the consent granted herein, pay to the Municipality two percent (2%) of the gross revenues from all recurring charges in the nature of subscription fees paid by subscribers for cable television reception service in the Municipality or any higher amount permitted by the Act or otherwise allowable by law, whichever is greater.

**16-1.6 Franchise Territory.** The consent granted herein to the Company shall apply to the Strathmere area of the Township (including Whale Beach) and any property hereafter annexed by the Township by law. The right to use and occupy said streets, and other public ways for the purpose herein set forth, shall not be exclusive, and the Township reserves the right to grant a similar use in said streets to any other person.

**16-1.7 Extension of Service.** The Company shall be required to proffer service to any residence or business along any public right-of-way in the Primary Service Area,

as set forth in the Company's Application. Any extension of plant beyond the Primary Service Area shall be governed by the Company's Line Extension Policy, as set forth in the Company's Application.

**16-1.8 Construction Requirements.** Restoration: In the event that the Company or its agents shall disturb any pavement, street surfaces, sidewalks, driveways, or other surface in the natural topography, the Company shall, at its sole expense, restore and replace such places or things so disturbed in as good a condition as existed prior to the commencement of said work.

Relocation: If at any time during the period of this consent, the Municipality shall alter or change the grade of any street, alley or other way or place the Company, upon reasonable notice by the Municipality, shall remove, re-lay or relocate its equipment, at the expense of the Company.

Removal or Trimming of Trees: During the exercise of its rights and privileges under this franchise, the Company shall have the authority to trim trees upon and overhanging streets, alleys, sidewalks or other public places of the municipality so as to prevent the branches of such trees from coming in contact with the wires and cable of the Company. Such trimming shall be only to the extent necessary to maintain proper clearance of the Company's wire and cables.

**16-1.9 Customer Service.** In providing services to its customers, the Company shall comply with N.J.A.C. 14:18-1, et seq. and all applicable state and federal statutes and regulations. The Company shall strive to meet or exceed all voluntary company and industry standards in the delivery of customer service and shall be prepared to report on it to the municipality upon written request of the Municipality Administrator or Clerk.

- a. The Company shall continue to comply fully with all applicable state and federal statutes and regulations regarding credit for outages, the reporting of same to regulatory agencies and notification of same to customers.
- b. The Company shall continue to fully comply with all applicable state and federal statutes and regulations regarding the availability of devices for the hearing impaired and the notification of same to customers.
- c. The Company shall use every reasonable effort to meet or exceed voluntary standards for telephone accessibility developed by the National Cable Television Association (NCTA).
- d. Nothing herein shall impair the right of any subscriber or the Municipality to express any comment with respect to telephone accessibility to the Complaint Officer, or impair the right of the Complaint Officer to take any action that is permitted under law.

**16-1.10 Municipal Complaint Officer.** The Office of Cable Television is hereby designed as the Complaint Officer for the Municipality pursuant to N.J.S.A. 48:5A-26(b). All complaints shall be received and processed in accordance with N.J.A.C. 14:17-6.5. The Municipality shall have the right to request copies of records and reports pertaining to complaints by Municipality customers from the OCTV.

**16-1.11 Local Office.** During the term of this franchise, and any renewal thereof, the Company shall maintain a business office or agent in accordance with N.J.A.C. 14:18-5.1 for the purpose of receiving, investigating and resolving all local

complaints regarding the quality of service, equipment malfunctions, and similar matters. Such a business office shall have a publicly listed toll-free telephone number and be open during standard business hours, and in no event (excepting emergent circumstances) less than 9:00 A.M. to 5:00 P.M., Monday through Friday.

**16-1.12 Performance Bonds.** During the life of the franchise the Company shall give to the municipality a bond in the amount of twenty-five thousand (\$25,000.00) dollars. Such bond shall be to insure the faithful performance of all undertakings of the Company as represented in its application for municipal consent incorporated herein.

**16-1.13 Subscriber Rates.** The rates of the Company shall be subject to regulation as permitted by federal and state law.

**16-1.14 Commitments by the Company.**

- a. The Company shall provide Expanded Basic or a similar tier of cable television service on one (1) outlet at no cost to each qualified existing and future school in the Municipality, public and private, elementary, intermediate and secondary, provided the school is within 175 feet of active cable distribution plant. Each additional outlet installed, if any, shall be paid for on a materials plus labor basis by the school requesting service. Monthly service charges shall be waived on all additional outlets.
- b. The Company shall provide Expanded Basic or a similar tier of cable television service at no cost on one (1) outlet to each qualified existing and future police, fire, emergency management facility and public library in the Municipality, provided the facility is located within 175 feet of active cable distribution plant. Each additional outlet installed, if any, shall be paid for on a materials plus labor basis by the Municipality. Monthly service charges shall be waived on all additional outlets.
- c. The Company shall provide free basic Internet service, via high-speed cable modem, to one (1) non-networked personal computer in each qualified existing and future public school in the City, elementary, intermediate and secondary, at no charge provided the facility is located within 175 feet of active cable distribution plant. The Internet service shall be installed on a personal computer that is accessible to the students and not for administrative use only.
- d. The Company shall provide free basic Internet access via high-speed cable modem on one (1) non-networked personal computer in each qualified existing and future public library at no charge provided the facility is located within 175 feet of active cable distribution plant. The Internet service shall be installed on a personal computer that is accessible to library patrons and not for administrative use only.

**16-1.15 Educational and Governmental Access.**

- a. The Company will continue to provide one channel for educational and governmental (“EG”) access on the most basic tier of service offered by the Company in accordance with the Cable Act, Section 623, and as further set forth below. Educational access video programming shall be provided by the governing body of Upper Township or a designated educational institution. Government video programming shall be provided by the governing body of

Upper Township. Unused capacity may be utilized by the Company subject to the provisions for “fallow time” below.

- b. The Company does not relinquish its ownership of or ultimate right of control over a channel by designating it for EG use. An EG access user – whether an educational or government user – acquires no property or other interest by virtue of the use of a channel so designated, and may not rely on the continued use of a particular channel number, no matter how long the same channel may have been designated for such use.
- c. The Company shall not exercise editorial control over any educational or governmental use of channel capacity, except Company may refuse to transmit any educational or governmental access program or portion of an educational or governmental access program that contains obscenity, indecency, or nudity.
- d. The governing body of Upper Township shall be responsible for developing, implementing, and enforcing rules for EG Access Channel.
- e. Educational Access. “Educational Access” shall mean noncommercial use by educational institutions such as public or private schools, but not “home schools,” community colleges, and universities.
- f. Government Access. “Government Access” shall mean noncommercial use by the governing body of Upper Township for the purpose of showing the public local government at work.
- g. Company Use of Fallow Time. Because blank or under utilized EG channels are not in the public interest, in the event the Municipalities or other EG access users elect not to fully program their EG access channel, Company may program unused time on those channels subject to reclamation by the Municipality upon no less than 60 days written notice.
- h. Indemnification. The Municipalities shall indemnify Company for any liability, loss, or damage it may suffer due to violation of the intellectual property rights of third parties on the EG channel and from claims arising out of the Municipalities’ rules for or administration of access.

**16-1.16 Emergency Uses.** The Company will comply with the Emergency Alert System (“EAS”) rules in accordance with applicable state and federal statutes and regulations.

The Company shall in no way be held liable for any injury suffered by the municipality or any other person, during an emergency, if for any reason the municipality is unable to make full use of the cable television system as contemplated herein.

**16-1.17 Liability Insurance.** The Company shall at all times maintain a comprehensive general liability insurance policy with a single limit amount of \$1,000,000 covering liability for any death, personal injury, property damages or other liability arising out of its construction and operation of the cable television system, and an excess liability (or “umbrella”) policy in the amount of \$5,000,000.

**16-1.18 Incorporation of the Application.** All of the statements and commitments contained in the Application or annexed thereto and incorporated therein, and any

amendment thereto, except as modified herein, are binding upon the Company as terms and conditions of this consent. The Application and other relevant writings submitted by the Company shall be annexed hereto and made a part hereof by reference provided same do not conflict with applicable State or Federal law.

**16-1.19 Competitive Equity.** Should the Municipality grant a franchise to construct, operate and maintain a cable television system to any other person, corporation or entity on terms materially less burdensome or more favorable than the terms contained herein, the Company may substitute such language that is more favorable or less burdensome for the comparable provision of this Ordinance subject to the provisions of N.J.A.C. 14:17-6.7.

**16-1.20 Separability.** If any section, subsection, sentence, clause, phrase or portion of this Ordinance is for any reason held invalid or unconstitutional by any court or federal or state agency of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision, and its validity or unconstitutionality shall not affect the validity of the remaining portions of the Ordinance.

**16-1.21 Third Party Beneficiaries.** Nothing in this Franchise or in any prior agreement is or was intended to confer third-party beneficiary status on any member of the public to enforce the terms of such agreements or Franchise.

**16-1.22 Effective Date.** This Ordinance shall take effect immediately upon issuance of a Renewal Certificate of Approval from the BPU.

## **16-2 Franchise with Comcast of South Jersey, L.L.C.:**

**16-2.1 Purpose of the Ordinance.** The municipality hereby grants to Comcast renewal of its non-exclusive Municipal Consent to place in, upon, across, above, over and under highways, streets, alleys, sidewalks, easements, public ways and public places in the municipality, poles, wires, cables, underground conduits, manholes and other television conductors, fixtures, apparatus and equipment as may be necessary for the construction, operation and maintenance in the Municipality of a cable television and communications system.

**16-2.2 Definitions.** For the purpose of this Ordinance, the following terms, phrases, words and their derivations shall have the meaning given herein. Such meaning or definition of terms is supplemental to those definitions of the Federal Communications Commission ("FCC") rules and regulations, 47 C.F.R. Subsection 76.1 et seq., and the Cable Communications Policy Act, 47 U.S.C. Section 521 et seq., as amended, and the Cable Television Act, N.J.S.A. 48:5A-1 et seq., and shall in no way be construed to broaden, alter or conflict with the federal and state definitions:

- a. "Township" or "Municipality" is the Township of Upper, County of Cape May, State of New Jersey.
- b. "Company" is the grantee of rights under this Ordinance and is known as Comcast of South Jersey, L.L.C.
- c. "Act" or "Cable Television Act" is Chapter 186 of the General Laws of New Jersey, and subsequent amendments thereto, N.J.S.A. 48:5A-1, et seq.
- d. "FCC" is the Federal Communications Commission.

- e. "Board" or "BPU" is the Board of Public Utilities, State of New Jersey.
- f. "Office" or "OCTV" is the Office of Cable Television of the Board.
- g. "Basic Cable Service" means any service tier, which includes the retransmission of local television broadcast signals as defined by the FCC.
- h. "Application" is the Company's Application for Renewal of Municipal Consent.
- i. "Primary Service Area" or "PSA" consists of the area of the Municipality currently served with existing plant as set forth in the map annexed to the Company's Application for Municipal Consent.

**16-2.3 Statement of Findings.** Public hearings conducted by the municipality, concerning the renewal of Municipal Consent herein granted to the Company were held after proper public notice pursuant to the terms and conditions of the Act and the regulations of the Board adopted pursuant thereto. Said hearings, having been fully open to the public, and the municipality, having received at said public hearings all comments regarding the qualifications of the Company to receive this renewal of Municipal Consent, the Municipality hereby finds that the Company possesses the necessary legal, technical, character, financial and other qualifications and that the Company's operating and construction arrangements are adequate and feasible.

**16.2-4 Duration of Franchise.** The non-exclusive Municipal Consent granted herein shall be for a term of fifteen years from the date of issuance of a Certificate of Approval by the Board, with a 10-year automatic renewal as provided by N.J.S.A. 48:5A-19 and 25, and N.J.A.C. 14:18-13.6.

In the event that the Municipality shall find that the Company has not substantially complied with the material terms and conditions of this Ordinance, the Municipality shall have the right to petition the OCTV, pursuant to N.J.S.A. 48:5A-47, for appropriate action, including modification and/or termination of the Certificate of Approval; provided however, that the Municipality shall first have given the Company written notice of all alleged instances of non-compliance and an opportunity to cure same within ninety (90) days of that notification.

**16-2.5 Franchise Fee.** Pursuant to the terms and conditions of the Act, the Company shall, during each year of operation under the consent granted herein, pay to the Municipality two percent (2%) of the gross revenues from all recurring charges in the nature of subscription fees paid by subscribers for cable television reception service in the Municipality or any higher amount permitted by the Act or otherwise allowable by law, whichever is greater.

**16-2.6 Franchise Territory.** The consent granted under this Ordinance to the renewal of the franchise shall apply to the entirety of the Municipality and any property subsequently annexed hereto.

**16-2.7 Extension of Service.** The Company shall be required to proffer service to any residence or business along any public right-of-way in the Primary Service Area, as set forth in the Company's Application. Any extension of plant beyond the Primary Service Area shall be governed by the Company's Line Extension Policy, as set forth in the Company's Application.

**16-2.8 Construction Requirements.** Restoration: In the event that the Company or its agents shall disturb any pavement, street surfaces, sidewalks, driveways, or other surface in the natural topography, the Company shall, at its sole expense, restore and replace such places or things so disturbed in as good a condition as existed prior to the commencement of said work.

Relocation: If at any time during the period of this consent, the Municipality shall alter or change the grade of any street, alley or other way or place the Company, upon reasonable notice by the Municipality, shall remove, re-lay or relocate its equipment, at the expense of the Company.

Removal or Trimming of Trees: During the exercise of its rights and privileges under this franchise, the Company shall have the authority to trim trees upon and overhanging streets, alleys, sidewalks or other public places of the municipality so as to prevent the branches of such trees from coming in contact with the wires and cable of the Company. Such trimming shall be only to the extent necessary to maintain proper clearance of the Company's wire and cables.

**16-2.9 Customer Service.** In providing services to its customers, the Company shall comply with N.J.A.C. 14:18-1, et seq. and all applicable state and federal statutes and regulations. The Company shall strive to meet or exceed all voluntary company and industry standards in the delivery of customer service and shall be prepared to report on it to the municipality upon written request of the Municipality Administrator or Clerk.

- a. The Company shall continue to comply fully with all applicable state and federal statutes and regulations regarding credit for outages, the reporting of same to regulatory agencies and notification of same to customers.
- b. The Company shall continue to fully comply with all applicable state and federal statutes and regulations regarding the availability of devices for the hearing impaired and the notification of same to customers.
- c. The Company shall use every reasonable effort to meet or exceed voluntary standards for telephone accessibility developed by the National Cable Television Association (NCTA).
- d. Nothing herein shall impair the right of any subscriber or the Municipality to express any comment with respect to telephone accessibility to the Complaint Officer, or impair the right of the Complaint Officer to take any action that is permitted under law.

**16-2.10 Municipal Complaint Officer.** The Office of Cable Television is hereby designed as the Complaint Officer for the Municipality pursuant to N.J.S.A. 48:5A-26(b). All complaints shall be received and processed in accordance with N.J.A.C. 14:17-6.5. The Municipality shall have the right to request copies of records and reports pertaining to complaints by Municipality customers from the OCTV.

**16-2.11 Local Office.** During the term of this franchise, and any renewal thereof, the Company shall maintain a business office or agent in accordance with N.J.A.C. 14:18-5.1 for the purpose of receiving, investigating and resolving all local complaints regarding the quality of service, equipment malfunctions, and similar matters. Such a business office shall have a publicly listed toll-free telephone number and be open during standard business hours, and in no event (excepting emergent circumstances) less than 9:00 A.M. to 5:00 P.M., Monday through Friday.

**16-2.12 Performance Bonds.** During the life of the franchise the Company shall give to the municipality a bond in the amount of twenty-five thousand (\$25,000.00) dollars. Such bond shall be to insure the faithful performance of all undertakings of the Company as represented in its application for municipal consent incorporated herein.

**16.2-13 Subscriber Rates.** The rates of the Company shall be subject to regulation as permitted by federal and state law.

**16.2-14 Commitments by the Company.**

- a. The Company shall provide Expanded Cable or a similar tier of cable television service on one (1) outlet at no cost to each qualified existing and future school in the Municipality, public and private, elementary, intermediate and secondary, provided the school is within 175 feet of active cable distribution plant. Each additional outlet installed, if any, shall be paid for on a materials plus labor basis by the school requesting service. Monthly service charges shall be waived on all additional outlets.
- b. The Company shall provide Expanded Basic or a similar tier of cable television service at no cost on one (1) outlet to each qualified existing and future police, fire, emergency management facility and public library in the Municipality, provided the facility is located within 175 feet of active cable distribution plant. Each additional outlet installed, if any, shall be paid for on a materials plus labor basis by the Municipality. Monthly service charges shall be waived on all additional outlets.
- c. The Company shall provide free basic Internet service, via high-speed cable modem, to one (1) non-networked personal computer in each qualified existing and future public school in the City, elementary, intermediate and secondary, at no charge provided the facility is located within 175 feet of active cable distribution plant. The Internet service shall be installed on a personal computer that is accessible to the students and not for administrative use only.
- d. The Company shall provide free basic Internet access via high-speed cable modem on one (1) non-networked personal computer in each qualified existing and future public library at no charge provided the facility is located within 175 feet of active cable distribution plant. The Internet service shall be installed on a personal computer that is accessible to library patrons and not for administrative use only.
- e. Within forty-five (45) of the issuance of a Renewal Certificate of Approval the Company shall provide to the Municipality a one-time Technology Grant in the amount of fifty thousand dollars (\$50,000) to meet the technology and/or cable related needs of the community.

**16-2.15 Educational and Governmental Access.**

- a. The Company will continue to provide one channel for educational and governmental (“EG”) access for the residents of Upper Township.

The Company will provide and maintain the cable, modulators and equipment necessary for the Township education-government access channel

to send a signal to the Companies, and to receive the return feed signal. The Companies will not be responsible for the acquisition or maintenance of any studio equipment used for the access channel including, but not limited to cameras, editing decks, monitors, character generators, etc.

- b. The Company does not relinquish its ownership of or ultimate right of control over a channel by designating it for EG use. An EG access user – whether an educational or government user – acquires no property or other interest by virtue of the use of a channel so designated, and may not rely on the continued use of a particular channel number, no matter how long the same channel may have been designated for such use.
- c. The Company shall not exercise editorial control over any educational or governmental use of channel capacity, except Company may refuse to transmit any educational or governmental access program or portion of an educational or governmental access program that contains obscenity, indecency, or nudity.
- d. The governing bodies shall be responsible for developing, implementing, and enforcing rules for EG Access.
- e. Educational Access. “Educational Access” shall mean noncommercial use by educational institutions such as public or private schools, but not “home schools,” community colleges, and/or universities.
- f. Government Access. “Government Access” shall mean noncommercial use by the governing bodies, for the purpose of showing the public local government at work.
- g. Company Use of Fallow Time. Because blank or underutilized EG channels are not in the public interest, in the event the Municipality or other EG access users elect not to fully program their EG access channel, Company may program unused time on those channels (at its discretion and for any purpose), subject to reclamation by the Municipality upon no less than 60 days written notice.
- h. Indemnification. The Municipality shall indemnify the Company for any liability, loss, or damage it may suffer due to violation of the intellectual property rights of third parties on the EG channel and from claims arising out of the Municipalities’ rules for or administration of access.

**16-2.16 Emergency Uses.** The Company will comply with the Emergency Alert System (“EAS”) rules in accordance with applicable state and federal statutes and regulations.

The Company shall in no way be held liable for any injury suffered by the municipality or any other person, during an emergency, if for any reason the municipality is unable to make full use of the cable television system as contemplated herein.

**16-2.17 Liability Insurance.** The Company shall at all times maintain a comprehensive general liability insurance policy with a single limit amount of \$1,000,000 covering liability for any death, personal injury, property damages or other liability arising out of its construction and operation of the cable television system, and an excess liability (or “umbrella”) policy in the amount of \$5,000,000.

**16-2.18 Incorporation of the Application.** All of the statements and commitments contained in the Application or annexed thereto and incorporated therein, and any amendment thereto, except as modified herein, are binding upon the Company as terms and conditions of this consent. The Application and other relevant writings submitted by the Company shall be annexed hereto and made a part hereof by reference provided same do not conflict with applicable State or Federal law.

**16-2.19 Competitive Equity.** Should the Municipality grant a franchise to construct, operate and maintain a cable television system to any other person, corporation or entity on terms materially less burdensome or more favorable than the terms contained herein, the Company may substitute such language that is more favorable or less burdensome for the comparable provision of this Ordinance subject to the provisions of N.J.A.C. 14:17-6.7.

**16-2.20 Separability.** If any section, subsection, sentence, clause, phrase or portion of this Ordinance is for any reason held invalid or unconstitutional by any court or federal or state agency of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision, and its validity or unconstitutionality shall not affect the validity of the remaining portions of the Ordinance.

**16-2.21 Third Party Beneficiaries.** Nothing in this Franchise or in any prior agreement is or was intended to confer third-party beneficiary status on any member of the public to enforce the terms of such agreements or Franchise.

**16-2.22 Effective Date.** This Ordinance shall take effect immediately upon issuance of a Renewal Certificate of Approval from the BPU.

**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. 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 30<sup>th</sup> DAY OF April, 2012 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 29<sup>th</sup> DAY OF May, 2012 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

**CORRESPONDENCE**

- 16. Letter from NJ Conference of Mayors, requesting support to reinstate full funding for PILOT (payment in lieu of taxes) program---for State and tax exempt non-profit Conservation and recreation land.** Motion was made by Curtis Corson, second by Edward Barr to place a resolution supporting reinstating the full funding for the PILOT program on the next agenda. During roll call vote all four Committee members present voted in the affirmative.

**NEW BUSINESS**

- 17. Planning Board--Special Resolution endorsing Wastewater Facilities and Service Areas Map.** Paul Dietrich reported that back in January 2012 the State Legislature enacted a law requiring towns and counties to submit a future wastewater management plan map within a 180 days to the NJDEP. The law also removed some environmental requirements so that towns and counties can use the plans as a planning tool for long range future planning. The Planning Board has already been working on the Wastewater Management Plan as a whole with the County and is planning on submitting it to the DEP in December. They are submitting the map portion of the plan now to be in compliance with this new law. The referenced PB Resolution endorsing the Wastewater Facilities and Service Areas map was adopted at a scheduled and advertised Planning Board meeting and did not receive any public comment. Motion was made by Mr. Inserra, second by Jay Newman to place a resolution on the next agenda. During roll call vote all four Committee members voted in the affirmative.

**UNFINISHED BUSINESS:**

**DISCUSSION**

**PAYMENT OF BILLS:**

- 18. "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 seconded by Curtis Corson. During roll call vote all four Committee members present voted in the affirmative.

Payroll: \$ 152,466.97  
Bills submitted for payment: \$ 2,927,604.27

**REPORT OF MUNICIPAL DEPARTMENTS:**

**19. MUA Report**

**Reports are available in the Clerk's Office.**

**PUBLIC COMMENT**

**Russel Morano, Red Oak Drive**, questioned whether the health insurance bills are paid monthly, or quarterly. Barbara Spiegel informed him that the bills were paid monthly. He next stated that the Upper Township website does not have any of the 2012 meeting minutes posted. Paul Dietrich stated that he would look into it. Mr. Morano next requested if the bill list could be included with the agenda. Barbara Spiegel stated that the bill list is posted on the bulletin board at Township hall on Friday afternoon. Mr. Morano stated that they should be made available online for people who are not able to come to Township Hall. The Committee advised that they certainly could be provided online, and that it had just never been requested before. Mr. Morano next asked whether the Township could do a shared services with the school for technology services. Paul Dietrich stated that the school has someone on staff because of the amount of computers the school has to maintain, and is not available to perform some of the services the Township requires.

### **CLOSED SESSION**

20. **Resolution to conduct a closed meeting pursuant to N.J.S.A. 10:4-12, from which the public shall be excluded.** The following was read into the record by Jay Newman.

TOWNSHIP OF UPPER  
CAPE MAY COUNTY  
RESOLUTION NO. 106-2012  
MOTION GOING INTO CLOSED SESSION  
April 30, 2012

I hereby move that a resolution be incorporated into the minutes authorizing the Township Committee to enter into an executive session for the following matters pursuant to the Open Public Meetings Act:

**MATTERS:**

1. Litigation – Estate of Allan O. Bergh, deceased
2. Litigation – Upper Township v. Sansone
3. Litigation – Upper Township v. Yank

I also include in my motion the estimated time and the circumstances under which the discussion conducted in closed session can be disclosed to the public as follows:

- A. It is anticipated that the matters discussed in closed session may be disclosed to the public upon the determination of the Township Committee that the public interest will no longer be served by such confidentiality.
- B. With respect to contract negotiations such matters will be made public when negotiations have ceased and there is no longer a reason for confidentiality.

Moved by Jay Newman

Motion seconded by Curtis Corson

During roll call vote all four Committee members present voted in the affirmative.

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

### **ADJOURNMENT**

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

There was no further business for this evening and the meeting was adjourned at 8:45 P.M. The May 2012 meetings are scheduled for May 14<sup>th</sup> and Tuesday May 29<sup>th</sup> at 7:30 P.M.

Minutes prepared by

Wanda Gaglione, RMC  
Municipal Clerk

Bill List

57441 04/30/12 A0004 A+ COMMERCIAL OFFICE CLEANERS 425.00 2724  
57442 04/30/12 A0006 ADVANCE TREADS INC 420.50 2724  
57443 04/30/12 A0017 ATLANTIC CO. MUNICIPAL JIF 89,963.00 2724  
57444 04/30/12 A0018 ACTION SUPPLY INC. 397.80 2724  
57445 04/30/12 A0020 ACU-THERM SUPPLY CO.,INC. 60.80 2724  
57446 04/30/12 A0025 ADVANTAGE RENTAL ACE HARDWARE 1,031.19 2724  
57447 04/30/12 A0070 ALBERTSONS/ACME 0.00 2724  
57448 04/30/12 A0091 ATLANTIC CITY ELECTRIC 3,465.90 2724  
57449 04/30/12 A0134 ANSELL ZARO GRIMM & AARON, PC 122.50 2724  
57450 04/30/12 A0167 HESS CORPORATION 3,233.25 2724  
57451 04/30/12 B0020 BLAKER,RAYMOND 462.36 2724  
57452 04/30/12 B0035 BELMONT & CRYSTAL SPRINGS 35.38 2724  
57453 04/30/12 B0052 BENNETT BATTERIES,LLC. 219.80 2724  
57454 04/30/12 B0076 BOND,LAURENCE E. 150.00 2724  
57455 04/30/12 B0148 BLUE FLAME/PARACO GAS 728.77 2724  
57456 04/30/12 B0152 BUCHANAN, KAREN A. 611.66 2724  
57457 04/30/12 C0011 CAPE OFFICE MACHINES & SERVICE 765.00 2724  
57458 04/30/12 C0052 CAPE MAY COUNTY TREASURER 1,210,647.61 2724

57459 04/30/12 C0060 CAPRIONI'S PORTABLE TOILETS 1,174.00 2724  
57460 04/30/12 C0068 COMCAST 239.32 2724  
57461 04/30/12 C0122 CMC LEAGUE OF MUNICIPALITIES 400.00 2724  
57462 04/30/12 C0143 CODY'S POWER EQUIPMENT 159.99 2724  
57463 04/30/12 C0223 CASA PAYROLL SERVICE 228.25 2724  
57464 04/30/12 C0247 CMRS-FP 2,000.00 2724  
57465 04/30/12 D0040 DELTA DENTAL OF N.J. INC. 6,506.27 2724  
57466 04/30/12 D0077 DIETRICH,PAUL 210.00 2724  
57467 04/30/12 E0012 EHRlich PEST CONTROL INC 77.54 2724  
57468 04/30/12 F0016 FAZZIO, JOSEPH INC. 3,488.50 2724  
57469 04/30/12 F0053 FORD, SCOTT & ASSOCIATES 11,000.00 2724  
57470 04/30/12 F0054 FORT DEARBORN LIFE INSURANCE 466.35 2724  
57471 04/30/12 G0074 GPA OF NEW JERSEY, INC. 90.00 2724  
57472 04/30/12 G0147 GREATAMERICA LEASING CORP. 202.97 2724  
57473 04/30/12 G0148 GARDEN STATE DIESEL 950.00 2724  
57474 04/30/12 H0135 HANSON AGGREGATES, INC. 2,941.15 2724  
57475 04/30/12 I0030 IMPERATIVES,INC. 1,520.00 2724  
57476 04/30/12 L0034 LAYTON, BRENDA MRS. 150.00 2724  
57477 04/30/12 L0087 LINE SYSTEMS INC 2,718.56 2724  
57478 04/30/12 M0035 MARMORA FIRE CO. DISTRICT #3 503,720.00 2724  
57479 04/30/12 M0188 MCCARTHY TIRE SERVICE OF PHILA 53.75 2724  
57480 04/30/12 M0209 MAYBERRY, JOHN D 49.65 2724  
57481 04/30/12 N0004 NJ-AMERICAN WATER CO. 77.74 2724  
57482 04/30/12 N0024 N.J. DIVISION OF FIRE SAFETY 148.00 2724  
57483 04/30/12 N0043 NAPA AUTO PARTS OF S.JERSEY 117.45 2724  
57484 04/30/12 O0006 SJSHORE MARKETING,LLC 1,137.00 2724  
57485 04/30/12 P0032 PEDRONI FUEL CO. 2,615.60 2724  
57486 04/30/12 P0053 PFAFF, MICHAEL 26.00 2724  
57487 04/30/12 P0073 POGUE INC. 133.00 2724  
57488 04/30/12 P0132 PICKERT, TANYA 26.00 2724  
57489 04/30/12 R0030 RIGGINS, INC. 12,989.72 2724  
57490 04/30/12 R0092 RUTGERS, THE STATE UNIVERSITY 250.00 2724  
57491 04/30/12 S0020 AM SAN 26.05 2724  
57492 04/30/12 S0031 SCHULER SECURITY, INC. 90.00 2724  
57493 04/30/12 S0065 SEAVILLE FIRE CO. DISTRICT #4 491,796.00 2724  
57494 04/30/12 S0108 SOUTHERN NEW JERSEY NIGP 55.00 2724  
57495 04/30/12 S0121 SMUZ, THERESE A 19.43 2724  
57496 04/30/12 S0134 SO. JERSEY GAS COMPANY 1,298.92 2724  
57497 04/30/12 S0169 STATE TREASURER 150.00 2724  
57498 04/30/12 S0185 STOCKTON STATE COLLEGE 45,629.03 2724  
57499 04/30/12 S0191 STRATHMERE FIRE CO.DISTRICT #1 74,869.00 2724  
57500 04/30/12 S0196 STEWART BUSINESS SYSTEMS LLC 172.45 2724  
57501 04/30/12 S0209 STAPLES ADVANTAGE 41.80 2724  
57502 04/30/12 S240 STERLING HIGH SCHOOL DISTRICT 180.00 2724  
57503 04/30/12 T0028 TRACTOR SUPPLY COMPANY CREDIT 139.99 2724  
57504 04/30/12 T0044 THOMSON, KERRY AGENCY 1,638.60 2724  
57505 04/30/12 T0067 TOWNSHIP OF UPPER PETTY CASH 1.50 2724  
57506 04/30/12 T0080 TREASURER STATE OF N.J. 334.00 2724  
57507 04/30/12 T0117 TUCKAHOE FIRE DISTRICT #2 437,268.00 2724  
57508 04/30/12 T0158 TELECORP, INC. 521.00 2724  
57509 04/30/12 V0001 VCI EMERGENCY VEHICLE 244.10 2724  
57510 04/30/12 V0005 VAN EMBDEN, NATHAN, ATTORNEY 3,480.00 2724  
57511 04/30/12 V0024 VAL-U AUTO PARTS L.L.C. 44.28 2724  
57512 04/30/12 W0030 WEST PUBLISHING CO. 374.79 2724  
57513 04/30/12 W0050 WIRELESS ELECTRONICS, INC. 450.00 2724  
57514 04/30/12 W0063 WRESTLER'S WORLD 173.00 2724  
Total Paid : \$2,927,604.27