

**TOWNSHIP OF UPPER
2100 TUCKAHOE ROAD
PETERSBURG, NJ 08270
CAPE MAY COUNTY
MINUTES FOR TUESDAY MAY 29, 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	Present

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

APPROVAL OF MINUTES - **May 14, 2012 Regular Meeting and Closed Session Minutes** Motion was made by Jay Newman, second by Anthony Inserra to approve the Minutes as written. During roll call vote all five Committee members present voted in the affirmative.

REPORT OF GOVERNING BODY MEMBERS

Edward Barr, Committeeman, complimented Michael Jones and the staff of the Upper Township Lacrosse Coordinator for running a very successful Lacrosse Tournament, he also thanked the Rescue Squad for helping with the event as well as Public Works and Recreation for preparing the fields. Next he reported that Public Works and Recreation have coordinated an effort with all of our coaches to provide increased handicap accessibility to our fields and in addition to that they have addressed complaints regarding the handicap accessibility to the Beesley’s Point Boat Ramp. A ramp has been installed which will allow easier access to the pier. He next reported that Paul Dietrich is continuing his research on Solar projects.

Anthony Inserra, Committeeman, discussed replacement of trash trucks or suggested moving forward with privatization. It was discussed that funds held in the recycling account could be used for the purchase of one truck. The Committee discussed the possibility that the County MUA may begin to co-mingle recyclables in the near future which would determine the type of

truck needed. Mr. Dietrich was directed to obtain more information on the purchase of a new truck and the Mayor directed they continue to discuss this matter at the next meeting.

Mr. Inserra also discussed the agreement whereby Township employees are used to assist the schools by completing various maintenance projects for school buildings. He wants to see what the schools do with the money that is saved by this arrangement; how the schools are using the money that is saved. Stephen Martinelli from the School Board and Chairman of the Building and Grounds Committee, asked to speak. Please see Stephen Martinelli's comments on this matter later in the Minutes under "Public Comment".

Jay Newman, Committeeman, he reported that a parade was held today to welcome home a soldier returning from Afghanistan, Brandon Meyers. Fire trucks from all departments and State Police vehicles participated and residents stood on the roadside waiving to the soldier and his family.

He reported that the EMS was fairly quiet during the Memorial Day weekend with relatively minor calls. However this afternoon the EMS Dept. was very busy aiding a youth that was severely injured by jumping off the railroad bridge over the Tuckahoe River.

Richard Palombo, Mayor, reported on the meeting he attended recently with representatives of the B.L. England plant, Rockland Capital. The owners of the generating station plan to convert the plant from coal to natural gas. The conversion will require a significant investment from Rockland Capital estimated at \$200 million and will extend the life of the facility, which is estimated to be 25 years. The conversion includes the refitting of a huge oil burner to utilize natural gas and withdrawing from use the 2 large coal burners onsite. It also requires the installation of approximately 20 miles of gas pipeline. The conversion will also satisfy concerns from the NJDEP by greatly reducing emissions and could create one of the cleanest new generators in the country. The conversion would also reduce water withdrawal from the Great Egg Harbor Bay and eliminate coal and lime deliveries, and storage and handling. In addition the gas conversion at the plant would help maintain critical power generation serving southern coastal New Jersey and the Pinelands, it would bring significant number of construction jobs over the 2-year construction term, and it would increase tax money to this community for the life of the project. There was a brief discussion about the potential benefits to the Township in possibly making the area a redevelopment zone and further investigation is necessary. The Mayor also reported on another meeting he attended with Committeeman Inserra on the Marmora economic redevelopment project. Mayor Palombo and Committeeman Inserra both commented that this was a very productive meeting and a good presentation. The Planners as well as local business people were in attendance. They reported that comments were very favorable from the 2 largest stakeholders that were present at the meeting and that this was a very positive step in creating a walkable downtown area in Marmora.

The Mayor reported a resignation of one of the members of the Planning Board and by executive order appointed Joseph Harney as an alternate member.

He also mentioned that the General Slocum Memorial Service will be held at the beach on Prescott on June 15th at 10AM. The event is held every year by the Coast Guard Auxiliary to remember the victims of the fire on board the PS General Slocum in 1904. During the ceremony lifeguards row out to the wreck and place flower wreaths in the water.

OTHER REPORTS

Wanda Gaglione, Municipal Clerk, reported on correspondence received from the District Manager of the US Postal Service in response to the Township's request for zip code consolidation. They have requested a Township map, current list of property owners, and any information on planned new development and 911 conversions within the Township. The Postal Service will review the data and if determined that the request is valid they will then conduct a survey of postal patrons. More information will be provided as it is received.

Daniel Young, Municipal Attorney, reported on a letter received from Priscilla Moore regarding 611 Ocean Avenue and the recent Adoption of Ordinance No. 004-2012 for a roadway easement on this property. Ms. Moore recently purchased this property, therefore the ordinance is not appropriate because it deals with the prior owner. Motion by Jay Newman, second by Anthony Inserra to direct Mr. Young to speak to Ms. Moore's attorney to confirm the acquisition of the property. During roll call vote all five Committee members voted in the affirmative. He also reported that there are a number of items for closed session; contract negotiations and litigation matters.

Paul Dietrich, Municipal Engineer, reminded everyone that Public Works is now on their summer schedule from 6:00 a.m. to 2:30 p.m. Also briefly discussed were the various potential Capital Bond projects such as roadway improvements and the replacement of public works trucks and several pieces of equipment.

Barbara Spiegel, Chief Finance Officer, requested permission for Finance Office employee, Rosemary Trout, to attend Purchasing Classes. Motion made by Richard Palombo, second by Curtis Corson to approve the request. During roll call vote all five Committee members voted in the affirmative.

PRESENTATIONS

- 1. Honoring Margaret Caroline Emma, Carolyn Michelle Hoke, Jessica Christine Mruz, and Victoria Wyand on attaining the Girl Scout Gold Award.** Copies of the resolutions are available from the Clerk's Office.

1A. Acceptance of AED's from the Jennifer Ward Memorial Fund. At this time Mr. and Mrs. Ward were invited to step forward to speak about their daughter Jennifer and the foundation that raises funds to buy AED's (Automatic External Defibrillators) for various community organizations. To date the foundation has donated 8 AED's to various Township churches and organizations including 1 for the Beach Patrol Headquarters. They are donating another 5 AED's to Upper Township to be placed in the various sports fields throughout the Township. A resolution is on tonight's agenda that formerly accepts them. Mrs. Ward stated that she and her husband lost their daughter suddenly on January 7, 2005 from a cardiac event. She explained that the Jennifer Ward Memorial Fund was formed in 2005 to generate public support to be able to donate AED's to organizations so that another family might not have to endure what they have gone through with the loss of their beloved Jennifer. The Township Committee thanked Mr. and Mrs. Ward for their generous gift to the people of Upper Township.

RESOLUTIONS

2. Appointing Christopher Chanaux as part-time seasonal employee 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. 121-2012**

**RE: APPOINTING CHRISTOPHER CHANAUX AS PART-TIME SEASONAL EMPLOYEE TO
THE UPPER TOWNSHIP PUBLIC WORKS DEPARTMENT**

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

WHEREAS, a recommendation has been made to the Township Committee and duly considered at the meeting of May 14, 2012; and

WHEREAS, this Resolution is intended to ratify the action heretofore taken; and

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

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

2. Christopher Chanaux is hereby appointed to a part-time seasonal position pending successful pre-employment testing at an hourly rate of \$10.50 in accordance with the Salary Ordinance.

3. This Resolution ratifies, confirms and approves action taken by the Township Committee at the meeting of May 14, 2012.

Resolution No. 121 - 2012

Offered by: Newman

Seconded by: Inserra

Adopted: May 29, 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>X</u>	<u> </u>	<u> </u>	<u> </u>

3. Resolution and certification with respect to the 2011 Annual Audit and in compliance with the Local Finance Board of the State of New Jersey.

**TOWNSHIP OF UPPER
CAPE MAY COUNTY
RESOLUTION**

RESOLUTION NO. 122-2012

**Re: RESOLUTION AND CERTIFICATION WITH RESPECT TO THE 2011
ANNUAL AUDIT AND IN COMPLIANCE WITH THE LOCAL FINANCE BOARD
OF THE STATE OF NEW JERSEY**

WHEREAS, N.J.S.A. 40A:5-4 required the governing body of every local unit to have made an annual audit of its books, accounts and financial transaction; and

WHEREAS, the Annual Report of Audit for the year 2011 has been filed by a Registered Municipal Accountant with the Municipal Clerk as per the requirements of N.J.S.A. 40A:5-6, and a copy has been received by each member of the governing body; and

WHEREAS, the Local Finance Board of the State of New Jersey is authorized to prescribe reports pertaining to the local fiscal affairs, as per R.S. 52:27BB-34; and

WHEREAS, the Local Finance Board has promulgated a regulation requiring that the governing body of each municipality shall by resolution certify to the Local Finance Board of the State of New Jersey that all members of the governing body have reviewed, as a minimum, the sections of the annual audit entitled:

GENERAL COMMENTS

AND

RECOMMENDATION

WHEREAS, the members of the governing body have personally reviewed as a minimum the Annual Report of Audit, and specifically the sections of the Annual Audit entitled:

GENERAL COMMENTS

RECOMMENDATIONS

as evidenced by the group affidavit form of the governing body; and

WHEREAS, such resolution of certification shall be adopted by the governing body no later than forty-five days after the receipt of the annual audit, as per the regulations of the Local Finance Board; and

WHEREAS, all members of the governing body have received and have familiarized themselves with, at least, the minimum requirements of the Local Finance Board of the State of New Jersey, as stated aforesaid and have subscribed to the affidavit, as provided by the Local Finance Board; and

WHEREAS, failure to comply with the promulgations of the Local Finance Board of the State of New Jersey may subject the members of the local governing body to the penalty provisions of R.S. 52:27BB-52 - to wit:

R.S.52:27BB-52 -"A local officer or member of a local governing body who, after a date fixed for compliance, fails or refuses to obey an order of the Director of Local Government Services, under the provisions of this Article, shall be guilty of a misdemeanor and, upon conviction, may be fined not more than one thousand dollars (\$1,000.00) or imprisoned for not more than one year, or both, in addition shall forfeit his office."

NOW, THEREFORE BE IT RESOLVED, that the governing body of the Township of Upper, hereby states that it has complied with the promulgation of the Local Finance Board of the State of New Jersey dated July 30, 1968 and does hereby submit a certified copy of this resolution and the required affidavit to said Board to show evidence of said compliance.

Resolution No. 122-2012

Offered by: Corson

Seconded by: Newman

Adopted: May 29, 2012

Roll Call Vote:

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>X</u>	<u> </u>	<u> </u>	<u> </u>

- 4. Authorizing the Township of Upper and the Division of EMS to accept a donation from the Jennifer Ward Memorial Foundation of P.O. Box 172 Marmora, NJ 08223 for Automatic External Defibrillators.**

**TOWNSHIP OF UPPER
CAPE MAY COUNTY
RESOLUTION
RESOLUTION NO. 123-2012**

**RE: A RESOLUTION AUTHORIZING THE TOWNSHIP OF UPPER AND THE
DIVISION OF EMS TO ACCEPT A DONATION FROM THE
JENNIFER WARD MEMORIAL FOUNDATION OF P.O. BOX 172, MARMORA, NJ 08223 FOR
AUTOMATIC EXTERNAL DEFIBRILLATORS**

WHEREAS, the Jennifer Ward Foundation wishes to donate Automatic External Defibrillators (AED) to the Township of Upper for placement at various township facilities; and

WHEREAS, the Township of Upper deems it in the best interest of the Township and the Township will best be served by the acceptance of the donation; 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 Township of Upper hereby accepts the donation from the Jennifer Ward Memorial Foundation for the donation of Automatic External Defibrillators, subject to any and all recommendations of the Solicitor and Risk Management Consultant of the Township.
2. The Township Committee hereby authorizes the Mayor, the Chief E.M.T. of the Division of EMS and Township Clerk to execute any documents necessary, and otherwise perform all acts necessary to accomplish the intent of this resolution.
3. This Resolution shall become effective on the date of its approval by the Township Committee.

Resolution No. 123-2012
Offered by: Newman Seconded by: Barr

Adopted: May 29, 2012

Roll Call Vote:

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

5. Refund EMS Ambulance Billing overpayment to AETNA.

**TOWNSHIP OF UPPER
CAPE MAY COUNTY
RESOLUTION
RESOLUTION NO. 124-2012
RE: REFUND EMS AMBULANCE BILLING OVERPAYMENT
TO AETNA**

WHEREAS, an overpayment has occurred in the account of an EMS ambulance billing patient, where the monies sent to the Township of Upper by Aetna 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>AMOUNT</u>	<u>NAME</u>
\$200.88	Aetna P.O. Box 14079 Lexington, KY 40512-4079

Resolution No. 124-2012

Offered by: Newman

Seconded by: Inserra

Adopted: May 29, 2012

ROLL CALL VOTE:

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

6. Resolution authorizing the Township of Upper to enter into a cooperative pricing agreement for HVAC services with the Upper Township School District for the 2012/2013 school year.

**TOWNSHIP OF UPPER
CAPE MAY COUNTY
RESOLUTION
RESOLUTION NO. 125-2012**

RE: RESOLUTION AUTHORIZING THE TOWNSHIP OF UPPER TO ENTER INTO A COOPERATIVE PRICING AGREEMENT FOR HVAC SERVICES WITH THE UPPER TOWNSHIP SCHOOL DISTRICT FOR THE 2012/2013 SCHOOL YEAR

WHEREAS, N.J.S.A. 40A:11-10 authorizes contracting units to establish a Cooperative Pricing System and to enter into Cooperative Pricing Agreements for its administration; and

WHEREAS, the Upper Township Board of Education hereinafter referred to as the “Lead Agency” has offered voluntary participation in a Cooperative Pricing System for an HVAC vendor of record; and

WHEREAS, the Township of Upper wishes to participate with the Lead Agency in a Cooperative Pricing Agreement for an HVAC Vendor of Record; and

WHEREAS, the needs of the Township of Upper were bid by the Lead Agency and received on May 10, 2012 and a contract and recommendation by the Lead Agency for HVAC Vendor of Record – 2012/2013 School Year with Marlee Contractors, LLC of 364 South Egg Harbor Rd., Hammonton, NJ 08037; and

WHEREAS, the Township Engineer has reviewed the above described bid and the contract awarded by the Lead Agency and recommends participation by the Township; and

WHEREAS, it is recommended that the Township Committee of the Township of Upper approve the HVAC Vendor of Record – 2012/2013 School Year with Marlee Contractors, LLC of 364 South Egg Harbor Rd., Hammonton, NJ 08037 from the Cooperative Pricing Agreement for use in Township HVAC needs.

NOW, THEREFORE BE IT RESOLVED, by the Township Committee of the Township of Upper, Cape May County, that the Township hereby authorizes participation in the Cooperative Pricing Agreement with the Upper Township Board of Education for award of a contract for HVAC Vendor of Record – 2012/2013 School Year with Marlee Contractors, LLC of 364 South Egg Harbor Rd., Hammonton, NJ 08037 for use in Township HVAC needs.

Resolution No. 125-2012

Offered by: Corson

Seconded by: Newman

Adopted: May 29, 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> X </u>	<u> </u>	<u> </u>	<u> </u>

- 7. Renewal of Alcoholic Consumption Licenses for the license year commencing July 1, 2012.**

**TOWNSHIP OF UPPER
CAPE MAY COUNTY
RESOLUTION
RESOLUTION NO. 126-2012
RE: RENEWAL OF ALCOHOLIC CONSUMPTION LICENSES
FOR THE LICENSE YEAR COMMENCING JULY 1, 2012.**

WHEREAS, holders of the alcoholic beverage licenses in the Township of Upper have applied for renewal of licenses in the prescribed manner; and

WHEREAS, said holders of alcoholic beverage licenses have complied with all requirements of law and regulations of the Division of Alcoholic Beverage Control; and

WHEREAS, no objections have been filed with the Township Committee as the issuing authority of the Township of Upper.

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, that the following licenses be authorized for issue for the license year effective July 1, 2012:

**Twisties, Inc.
T/A Twisties
236 Bayview Drive
Strathmere, N.J. 08248
P.O. Box 88, Marmora, NJ 08223
License # 0511-33-001-005
Plenary Retail Consumption License
Municipal Fee Paid: \$700.00
State Fee Paid: \$200.00**

**Tyan's Incorporated
T/A Tuckahoe Inn
1 Harbor Rd., Beesleys Point
Marmora, N.J. 08223
License # 0511-33-004-003
Plenary Retail Consumption License
Municipal Fee Paid: \$700.00
State Fee Paid: \$200.00**

**SJL Group, LLC
T/A Yesterdays
316 Roosevelt Blvd. (Southwest Side)
Marmora, N.J. 08223
License # 0511-32-005-005
Plenary Retail Consumption License with
Broad Package Privilege**

Municipal Fee Paid: \$700.00
State Fee Paid: \$200.00

UMMAC Corp.
T//A Obadiah's
311-301 & 321 Roosevelt Blvd,
Marmora, N.J. 08223
License # 0511-33-007-008
Plenary Retail Consumption License
Municipal Fee Paid: \$700.00
State Fee Paid: \$200.00

MAH, Inc. a N.J. Corp.
T/A Seaville Tavern
South Side Route 50 and New Bridge Road
Ocean View, N.J. 08230
License # 0511-33-008-004
Plenary Retail Consumption License
Municipal Fee Paid: \$700.00
State Fee Paid: \$200.00

Boulevard Liquor Store, Inc.
T/A Boulevard Liquor Store
501 & 503 Roosevelt Boulevard
Marmora, N.J. 08223
License # 0511-44-002-003
Plenary Retail Distribution License
Municipal Fee Paid: \$400.00
State Fee Paid: \$200.00

Levariland, Inc.
T/A Levari's Seafood and American Grill
1291 State Highway Route 50
P.O. Box 17
Tuckahoe, N.J. 08250
License # 0511-33-006-005
Plenary Retail Consumption License
Municipal Fee Paid: \$700.00
State Fee Paid: \$200.00

Deauville Inn, Inc.
201 Willard Avenue
P.O. Box 406
Strathmere, N.J. 08248
License # 0511-33-003-006
Plenary Retail Consumption License

Municipal Fee Paid: \$700.00
State Fee Paid: \$200.00

BE IT FURTHER RESOLVED that the aforesaid alcoholic beverage licenses which have been authorized to be issued pursuant to this Resolution shall be delivered to the licensee or his authorized agent at such time as the licensee or his authorized agent shall sign an actual receipt therefore in the stub of the license book and otherwise satisfy the requirements of N.J.A.C. 13:2-3.2.

Resolution No. 126-2012

Offered by: Newman

Seconded by: Corson

Adopted: May 29, 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> X </u>	<u> </u>	

8. Authorizing the extension of a Shared Services Agreement with the Borough of Woodbine and the Township of Dennis for the sharing of a radar equipped vehicle for an additional term of one (1) year commencing July 1, 2012 to June 30, 2013.

**TOWNSHIP OF UPPER
CAPE MAY COUNTY**

R E S O L U T I O N

RESOLUTION NO. 127-2012

RE: AUTHORIZING THE EXTENSION OF A SHARED SERVICES AGREEMENT WITH THE BOROUGH OF WOODBINE AND THE TOWNSHIP OF DENNIS FOR THE SHARING OF A RADAR EQUIPPED VEHICLE FOR AN ADDITIONAL TERM OF ONE (1) YEAR COMMENCING JULY 1, 2012 TO JUNE 30, 2013

WHEREAS, pursuant to Ordinance No. 4-1999, the Township of Upper was authorized to enter into a Shared Services Agreement with the Municipalities of Woodbine and Dennis Township for the sharing of a radar equipped vehicle; and

WHEREAS, the parties desire to extend the term of such Agreement for an additional term of one (1) year; and

WHEREAS, the matter has been duly considered by the Township Committee, which has concluded that such extension is in the public interest and will promote the public health, safety and welfare;

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 reference.
2. The Shared Services Agreement, dated May 10, 1999, entered into by municipalities of Woodbine and Dennis Township for sharing of a radar equipped vehicle is hereby extended for an additional term of one (1) year, commencing July 1, 2012 through and inclusive of June 30, 2013, upon the same terms and conditions.
3. In accordance with paragraph 3 of the Agreement of May 10, 1999, Upper Township and Woodbine agree to compensate Dennis Township, as purchaser of the radar vehicle, an annual payment in the amount of \$1,000.00; and in accordance with paragraph 4 of the Agreement, Dennis Township will provide evidence of insurance in the prescribed amounts naming the Township of Upper as an additional insured.
4. Paragraph 5 of Item 2 of the Agreement of May 10, 1999 is hereby deemed amended so that the Contract term will expire on June 30, 2013.
5. This Resolution extending the term of the aforesaid Contract is conditioned upon similar action being taken by the Governing Body of the Borough of Woodbine and the Township of Dennis.
6. All officers and officials of the Township of Upper are authorized, directed and empowered to take such action as may be reasonable, required or necessary to carry out the intent and purpose of this Resolution.

Resolution No. 127-2012

Offered by: Corson

Seconded by: Newman

Adopted: May 29, 2012

Roll Call Vote:

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

ORDINANCES

9. Public Hearing and Final Adoption 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.

During the public comment section of the public hearing there were no speakers. Motion by Anthony Inserra, second by Jay Newman to adopt Ordinance No. 005-2012. During roll call vote all five Committee members 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**

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.

ATTEST:

WANDA GAGLIONE, Township Clerk

RICHARD PALOMBO, Mayor

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 30th 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 29th 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
TOWNSHIP OF UPPER

CORRESPONDENCE

NEW BUSINESS

10. Greater Tuckahoe Area Merchants' Association, Inc.--request to hold Kayak Raffle on August 5, 2012 at Upper Township Beach, Mosquito Landing Road.

Motion was made by Jay Newman, second by Anthony Inserra to approve the request. During roll call vote all five Committee members voted in the affirmative.

11. James F. Bonner--request for a street vacation of a public alley between Prescott and Putnam Roads in Strathmere. The Committee directed Engineer, Paul Dietrich to contact the adjacent property owners prior to proceeding with the Ordinance. Motion was made by Anthony Inserra, second by Jay Newman to approve the request. During roll call vote all five Committee members voted in the affirmative.

UNFINISHED BUSINESS:

DISCUSSION

PAYMENT OF BILLS:

12. "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 was made by Jay Newman second by Richard Palombo to approve all bills submitted for payment. During roll call vote all five Committee members voted in the affirmative.

Payroll: \$162,413.67

Bills approved for payment: \$233,468.21

REPORT OF MUNICIPAL DEPARTMENTS:

13. MUA Report

The report is available from the Clerk's Office.

PUBLIC COMMENT

Stephen Martinelli, from Petersburg-Chairman of the Building and Grounds Committee and member of the School Board responded to Committeeman Inserra's question earlier in the meeting. His question was with regards to utilizing Township employees to assist the schools in various maintenance projects--Mr. Inserra inquired as to how funds the money saved from the Township's assistance are utilized. Mr. Martinelli stated that money saved by the Township's assistance goes to repairs of other items, and listed various repairs and supplies purchased such as new doors at the Middle School, HVAC repairs, windows, etc.

Janice Betts and Barbara Young, from Tuckahoe; spoke about their concerns with the incident that occurred today involving the young man that was injured when he dove off of the railroad bridge over the Tuckahoe River. The site is a very popular swimming area that attracts people from all over the county. They explained that during high tide wood pilings are hidden just below the surface and the many people that congregate there are not familiar with the river; it poses a dangerous situation. In addition, trash is left behind, there is loud music, and ATV's and motorcycles constantly ride up and down the tracks. They stated that the noise can be very loud making it difficult for them to enjoy their homes. The Mayor directed that Conrail be contacted to replace the traffic barrier at the end of the street, that signage be placed and that the State Police keep a watch on the area. Mrs. Betts and Mrs. Young also thanked the UTEMS for their quick response to this incident.

CLOSED SESSION

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

TOWNSHIP OF UPPER
CAPE MAY COUNTY
RESOLUTION NO. 128-2012
MOTION GOING INTO CLOSED SESSION
May 29, 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. Contract negotiations –
 - A. EMS Billing
 - B. Louis Bonato Appraisal Services
 - C. Shared Services Agreement with Egg Harbor Township for use of facilities for vehicle and equipment washing
 - D. Shared Services Agreement with Sterling High School for technology support, supplies and materials
 - E. Maser Consulting, PA
 - F. McManimon & Scotland, LLC
 - G. Purchase of vehicle for EMS
2. Litigation –
 - A. Grubb v Township of Upper, et al.
 - B. Potential tort claim
 - C. Potential Litigation – EMS Billing

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.
- C. With respect to litigation matters such discussions will be made public when litigation is complete and the applicable appeal period has expired.

Moved by Jay Newman

Seconded by Richard Palombo

During roll call vote all five 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 9:05 P.M.
Next meeting scheduled for June 11, 2012 at 7:30 P.M.

Minutes prepared by

**Wanda Gaglione, RMC
Municipal Clerk**

Bill List

57611 05/29/12 A0025 ADVANTAGE RENTAL ACE HARDWARE 194.40 2730
57612 05/29/12 A0081 ARMSTRONG, RALON I. 145.77 2730
57613 05/29/12 A0091 ATLANTIC CITY ELECTRIC 3,241.00 2730
57614 05/29/12 A0167 HESS CORPORATION 2,888.87 2730
57615 05/29/12 B0024 BCMCAA 225.00 2730
57616 05/29/12 B0182 BRIGGS LAW OFFICE, P.C. 1,798.87 2730
57617 05/29/12 B0201 BUCK'S ELECTRICAL SERVICE, INC 180.00 2730
57618 05/29/12 B0207 BARLOW CHEVROLET, INC 430.39 2730
57619 05/29/12 C0048 CAPE MAY COUNTY MUA 32,792.04 2730
57620 05/29/12 C0060 CAPRIONI'S PORTABLE TOILETS 2,206.50 2730
57621 05/29/12 C0068 COMCAST 239.32 2730
57622 05/29/12 C0101 CHATTEN, LINWOOD R. 150.00 2730
57623 05/29/12 C0156 COMPUTER HOUSE OF SOUTH JERSEY 9,922.00 2730
57624 05/29/12 C0171 COLONIAL ELECTRIC SUPPLY CO. 73.40 2730
57625 05/29/12 C0201 CRUZAN'S TRUCK SERVICE INC. 279.64 2730
57626 05/29/12 C0223 CASA PAYROLL SERVICE 224.55 2730
57627 05/29/12 C0246 CRAFT OIL CORPORATION 847.67 2730
57628 05/29/12 C0247 CMRS-FP 2,000.00 2730
57629 05/29/12 D0015 DAN'S WELDING 805.00 2730
57630 05/29/12 D0040 DELTA DENTAL OF N.J. INC. 7,130.21 2730
57631 05/29/12 D2002 DUFFY, THOMAS 26.00 2730
57632 05/29/12 E0012 EHRlich PEST CONTROL INC 78.11 2730
57633 05/29/12 E0038 EMSAR NEW JERSEY 136.00 2730
57634 05/29/12 F0013 FARM RITE INC. 5.46 2730
57635 05/29/12 F0016 FAZZIO, JOSEPH INC. 2,282.40 2730
57636 05/29/12 F0049 FOGLIO'S CARPET & DESIGN CENTE 992.00 2730
57637 05/29/12 G0014 GARDEN STATE HWY PRODUCTS INC. 624.00 2730
57638 05/29/12 G0028 GENTILINI FORD 50.21 2730
57639 05/29/12 G0147 GREATAMERICA LEASING CORP. 176.97 2730
57640 05/29/12 H0095 HORIZON BCBSNJ 116,937.28 2730
57641 05/29/12 H0131 HPI PROCESSES, INC 2,945.42 2730
57642 05/29/12 H0136 HUNTSMAN, KEVIN 30.00 2730
57643 05/29/12 H0144 HOOVER TRUCK CENTERS, INC 320.61 2730
57644 05/29/12 H0145 HEILMAN, JAMES C. 26.00 2730
57645 05/29/12 H0146 HARTMAN, RICHARD 26.00 2730
57646 05/29/12 J0014 JC MILLER'S 58.57 2730
57647 05/29/12 L0031 LORCO PETROLEUM SERVICES 219.50 2730
57648 05/29/12 L0087 LINE SYSTEMS INC 2,692.23 2730
57649 05/29/12 L0099 LEA, KENNETH 26.00 2730
57650 05/29/12 M0039 MacMURRAY,WAYNE 26.00 2730
57651 05/29/12 M0136 MUNICIPAL RECORD SERVICE 81.25 2730
57652 05/29/12 M0188 MCCARTHY TIRE SERVICE OF PHILA 1,998.56 2730
57653 05/29/12 M0209 MAYBERRY, JOHN D 177.88 2730
57654 05/29/12 M0231 MORRIS, DEVON 26.00 2730
57655 05/29/12 N0043 NAPA AUTO PARTS OF S.JERSEY 165.93 2730
57656 05/29/12 N0052 NATL YOUTH SPORTS COACHED ASSN 160.00 2730
57657 05/29/12 N0100 N.J. LEAGUE OF MUNICIPALITIES 32.00 2730
57658 05/29/12 N0107 N.J.DIV ALCHOLOIC BEV CONTROL 24.00 2730
57659 05/29/12 N0131 DEFINED CONTRIB RETIRE PROGRAM 19.70 2730
57660 05/29/12 O0005 OFFICE BUSINESS SYSTEMS INC 1,374.00 2730
57661 05/29/12 O0006 SJSHORE MARKETING,LLC 220.63 2730
57662 05/29/12 O0025 OLD DOMINION BRUSH 2,661.00 2730
57663 05/29/12 O0042 ORCHARDS HYDRAULIC SERVICE INC 818.26 2730
57664 05/29/12 P0001 PC WEATHER PRODUCTS INC. 755.00 2730
57665 05/29/12 P0032 PEDRONI FUEL CO. 2,144.41 2730
57666 05/29/12 P0050 PARSIO, ANTHONY 272.72 2730
57667 05/29/12 P0056 TURF EQUIPMENT AND SUPPLY CO 71.04 2730
57668 05/29/12 P0073 POGUE INC. 1,064.00 2730
57669 05/29/12 P0109 NJ DIV OF PENSIONS & BENEFITS 8,176.70 2730
57670 05/29/12 P0121 PENGUIN COMMUNICATION LLC 48.48 2730
57671 05/29/12 R0029 RIDDELL/ALL AMERICAN 3,730.77 2730
57672 05/29/12 R0030 RIGGINS, INC. 6,164.68 2730

57673 05/29/12 S0121 SMUZ, THERESE A 100.12 2730
57674 05/29/12 S0134 SO. JERSEY GAS COMPANY 1,768.85 2730
57675 05/29/12 S0153 STERICYCLE, INC. 318.84 2730
57676 05/29/12 S0165 S.E.T. COMMUNICATIONS INC 117.50 2730
57677 05/29/12 S0196 STEWART BUSINESS SYSTEMS LLC 535.82 2730
57678 05/29/12 S0209 STAPLES ADVANTAGE 227.29 2730
57679 05/29/12 S0239 SHORE VET. ANIMAL CONTROL LLC 2,550.00 2730
57680 05/29/12 S0261 SLAUGHTER, KATHRYN 26.00 2730
57681 05/29/12 T0044 THOMSON, KERRY AGENCY 1,007.25 2730
57682 05/29/12 T0048 TILL PAINT CO/D. FITZGERALD 2,200.00 2730
57683 05/29/12 T0067 TOWNSHIP OF UPPER PETTY CASH 1.50 2730
57684 05/29/12 T0157 SEAVILLE MOTOR SPORTS INC 205.00 2730
57685 05/29/12 U0012 U.T. SOCCER ASSOCIATION 471.75 2730
57686 05/29/12 V0024 VAL-U AUTO PARTS L.L.C. 236.14 2730
57687 05/29/12 V0026 VITAL COMPUTER RESOURCES, INC. 61.75 2730
Total: \$233,468.21
