

**TOWNSHIP OF UPPER
2100 TUCKAHOE ROAD
PETERSBURG, NJ 08270
CAPE MAY COUNTY
MINUTES FOR DECEMBER 5, 2016**

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

CALL TO ORDER

SUNSHINE ANNOUNCEMENT

SALUTE TO THE FLAG

ROLL CALL

Edward Barr	Present
John Coggins	Present
Curtis Corson	Present
Hobart Young	Present
Richard Palombo	Absent

Also present were Municipal Clerk Barbara Young, Municipal Attorney Daniel Young, Municipal Engineer Paul Dietrich, and Chief Financial Officer Barbara Spiegel.

APPROVAL OF MINUTES - November 21, 2016 Regular Meeting and Closed Session Minutes

Motion by John Coggins, second by Hobie Young, to approve the November 21, 2016 Regular Meeting and Closed Session Minutes as submitted. During roll call vote all four Committeemen present voted in the affirmative.

REPORT OF GOVERNING BODY MEMBERS

John Coggins, Committeeman, reminded all Township departments that all budget requests must be submitted to the CFO by the week before Christmas for consideration in the 2017 Budget.

Hobie Young, Committeeman, reported that the Township sports teams had a very good year with the Youth Soccer teams taking home wins at the State level and the JV Football team defeating Galloway Township over the weekend to win the 2016 League Championship.

Edward Barr, Committeeman, encouraged everyone to give to those less fortunate and reminded everyone that there is a Toys for Tots bin located in Township Hall foyer. He also reminded everyone that the next Committee meeting is Monday December 19th. He next asked for a report from the Superintendent of Public Works on the progress of leaf collection; crews are currently finishing up in the Seaville and Petersburg sections of the Township and will be starting their second round once those areas are complete. Mr. Barr next reported that the Township will be implementing a new program for leaf collection. Yard signs be placed

in neighborhoods prior to leaf collection to notify residents when DPW crews will be in their neighborhood to collect leaves.

OTHER REPORTS

Daniel Young, Municipal Attorney, reported there are contract negotiation, litigation and personnel matters for closed session.

Paul Dietrich, Municipal Engineer, gave an update on the progress of the Bayview Avenue Boat Ramp project; the contractor anticipates construction on the ramp to be completed by the end of the year. He next reported on a request from the County Engineer for a resolution of support for road improvements on Corson Tavern Rd. Motion by Hobie Young, second by John Coggins to direct a resolution be placed on the next agenda in support of the Corson Tavern Road project. During roll call vote all four Committee members voted in the affirmative.

Barbara Spiegel, Chief Financial Officer, requested approval for a Senior EMT to attend a three-day class on emergency response to domestic biological incidents in Gloucester County at no cost to the Township. Motion by John Coggins, second by Curtis Corson, to approve the request. During roll call vote all four Committeemen present voted in the affirmative.

RESOLUTIONS

1. A Resolution in Support of Senate Bill S-2254 and Assembly Bill A-3821 which affirms the language and legislative intent of the Fair Housing Act.

TOWNSHIP OF UPPER CAPE MAY COUNTY RESOLUTION

RESOLUTION NO. 268-2016

A RESOLUTION IN SUPPORT OF SENATE BILL S-2254 AND ASSEMBLY BILL A-3821 WHICH AFFIRMS THE LANGUAGE AND LEGISLATIVE INTENT OF THE FAIR HOUSING ACT

WHEREAS, the Township Committee of the Township of Upper supports the provision of affordable housing in a reasonable, rational and achievable way, consistent with economic realities and sound planning; and

WHEREAS, pursuant to the March 2015 New Jersey Supreme Court order which transferred oversight of the Fair Housing Act (FHA) to the courts, hundreds of municipalities filed declaratory judgment actions to voluntarily comply with their State imposed affordable housing requirements; and

WHEREAS, in February, the Ocean County Superior Court included a distinct “gap period” analysis retroactively over an additional 16 year period, separate and apart from the normal 10 year present and prospective need; and

WHEREAS, the Appellate Division recently in a unanimous decision overturned the February Ocean County Superior Court decision and held that municipalities are only responsible to address the ten year present and prospective need, not any “gap period” number; and

WHEREAS, the New Jersey Supreme Court has, for the stated purposes of, “*..judicial economy and efficiency based on the large number of actions involved. The Court makes no findings as to the reasonable probability of success on the merits, irreparable harm, or the relative hardship to the parties,*” agreed to hear an appeal of the Appellate Division ruling in late November; and

WHEREAS, the Fair Housing Act (FHA) and existing case law, requires that “present and prospective fair share of the housing need in a given region ... shall be computed for a 10-year period.” [N.J.S.A. 52:27D-307(c)]; and

WHEREAS, the “gap issue” arises out of the inability of the New Jersey Council on Affordable Housing to promulgate third round regulations from 1999 to the present or make any final determination as to state and regional housing need, as well as constant litigation by certain groups; and

WHEREAS, any retroactive “gap” obligations could have significant and unfunded impacts on municipalities, may double count households under both present and prospective need, and will likely result in forcing municipalities and their property taxpayers to subsidize development; and

WHEREAS, this issue needs a resolution which provides both certainty and an achievable path forward so municipalities can proceed with planning for and implementing their affordable housing obligations; and

WHEREAS, Senate Bill S-2254, sponsored by Senators Greenstein and Bateman, and Assembly Bill A-3821, sponsored by Assemblymen DeAngelo and Benson, re-affirm the language and legislative intent of the Fair Housing Act, so as to preclude significant unfair impacts and instead further progress toward a more rational statewide housing policy, including reasonable and achievable obligations for municipalities, facilitate municipal compliance and the actual provision of affordable housing.

NOW, THEREFORE, BE IT RESOLVED, on this 5th day of December, 2016 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 strongly urges New Jersey Legislators to immediately reaffirm the language and legislative intent of the Fair Housing Act (FHA) and expressly clarify that the municipal affordable housing share is the sum of present and prospective need for the enumerated ten year period.

3. The Township Committee supports Senate Bill S-2254 and Assembly Bill A-3821.

4. A copy of this Resolution shall be forwarded to New Jersey Governor Christopher Christie, Lieutenant Governor Kim Guadagno, New Jersey Senate President Steve Sweeney, New Jersey Assembly Speaker Vincent Prieto, New Jersey Senator Linda Greenstein, New Jersey Senator Christopher “Kip” Bateman, New Jersey Assemblyman Wayne DeAngelo, New Jersey Assemblyman Daniel Benson, New Jersey State Senator Jeff Van Drew, New Jersey Assemblyman R. Bruce Land, New Jersey Assemblyman Bob Andrzejczak, New Jersey Senator Ronald Rice, New Jersey Assemblyman Jerry Green, New Jersey Assemblywoman Mila Jasey, the New Jersey League of Municipalities and the New Jersey Conference of Mayors.

Resolution No. 268–2016

Offered by: Coggins Seconded by: Young

Adopted: December 5, 2016

Roll Call Vote:

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

2. Authorizing a one-year extension of the contract with Danziger & Markhoff, LLP for Actuarial Services.

**TOWNSHIP OF UPPER
CAPE MAY COUNTY
RESOLUTION**

RESOLUTION NO. 269-2016

**RE: AUTHORIZING A ONE YEAR EXTENSION OF THE CONTRACT WITH DANZIGER
& MARKHOFF, LLP FOR ACTUARIAL SERVICES**

WHEREAS, the Township of Upper and Danziger & Markhoff, LLP, entered into a Contract on December 22, 2015 for GASB Statement No. 45-related Actuarial Services pursuant to Resolution No. 279-2015; and

WHEREAS, the Township of Upper desires to extend the terms of the Contract, as stipulated within, for an additional one year; and

WHEREAS, Danziger & Markhoff, LLP has completed and submitted a Business Entity Disclosure Certification which certifies that Danziger & Markhoff, LLP has not made any contributions to a political or candidate committee in the Township that would bar the award of this contract and that the contract will prohibit Danziger & Markhoff, LLP from making any 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 Contract with Danziger & Markhoff, LLP for GASB Statement No. 45-related Actuarial Services, is hereby renewed for an additional one year term for the period commencing December 22, 2016 through December 21, 2017.
3. Danziger & Markhoff, LLP 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. 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 the 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.
5. All Township officials and officers are hereby authorized and empowered to take all action deemed necessary or advisable to carry into effect the intent and purpose of this Resolution.

Resolution No. 269-2016

Offered by: Coggins Seconded by: Corson

Adopted: December 5, 2016

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>
Coggins	<u> X </u>	<u> — </u>	<u> — </u>	<u> — </u>
Corson	<u> X </u>	<u> — </u>	<u> — </u>	<u> — </u>
Young	<u> X </u>	<u> — </u>	<u> — </u>	<u> — </u>
Palombo	<u> — </u>	<u> — </u>	<u> — </u>	<u> X </u>

3. Accepting the conveyance of Real Property known as Block 331, Lot 6 on the Municipal Tax Map of the Township of Upper, County of Cape May and State of New Jersey, by gift.

TOWNSHIP OF UPPER

**CAPE MAY COUNTY
RESOLUTION**

RESOLUTION NO. 270-2016

**RE: ACCEPTING THE CONVEYANCE OF REAL PROPERTY KNOWN AS
BLOCK 331, LOT 6 ON THE MUNICIPAL TAX MAP OF THE TOWNSHIP OF
UPPER, COUNTY OF CAPE MAY AND STATE OF NEW JERSEY, BY GIFT**

WHEREAS, the Township of Upper has received an offer to convey property to the Township by gift from Bruce A. Nicholson; and

WHEREAS, said property is commonly known as Block 331, Lot 6 on the municipal tax map; and

WHEREAS, the Township has received evidence satisfactory to the Township that there are no liens or encumbrances affecting the property except for ad valorem real estate taxes; that the title is marketable; that there are no undisclosed ownership interests; that the property is not subject to any environmental hazards or conditions; and is not subject to any pending or threatened environmental enforcement action; and

WHEREAS, the Township Committee of the Township of Upper pursuant to Township Code Section 2-15 has determined to accept said real property by gift pursuant to its stated policy of acquiring certain properties.

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 is hereby authorized to accept the conveyance of the property, known as Block 331, Lot 6 on the municipal tax map of the Township of Upper, by gift from Bruce A. Nicholson so long as the title at the time of the gift remains as indicated above.

3. The Municipal Attorney is hereby authorized to procure a Deed of conveyance, to submit said Deed to the Office of the Clerk of Cape May County to be recorded and obtain title insurance on behalf of the Township.

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. 270-2016

Offered by: Corson Seconded by: Coggins

Adopted: December 5, 2016

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>
Coggins	<u> X </u>	<u> </u>	<u> </u>	<u> </u>
Corson	<u> X </u>	<u> </u>	<u> </u>	<u> </u>
Young	<u> X </u>	<u> </u>	<u> </u>	<u> </u>
Palombo	<u> </u>	<u> </u>	<u> </u>	<u> X </u>

4. Authorizing the execution of a subcontract with the County of Cape May for the State Fiscal Year 2018 Municipal Alliance Program.

**TOWNSHIP OF UPPER
COUNTY OF CAPE MAY
RESOLUTION**

RESOLUTION NO. 271-2016

**AUTHORIZING THE EXECUTION OF A SUBCONTRACT
WITH THE COUNTY OF CAPE MAY FOR THE
STATE FISCAL YEAR 2018 MUNICIPAL ALLIANCE PROGRAM**

WHEREAS, pursuant to P. L. 1989, Ch. 51, the Municipal Alliance Program has been made available to each county in order to increase drug and alcohol prevention services; and

WHEREAS, the City of Ocean City and the Township of Upper have agreed to participate together in this effort and have designated Upper Township as the lead municipality; and

WHEREAS, the Township of Upper has agreed to organize and coordinate efforts involving schools, law enforcement, businesses, local organizations and the community to

work toward the development and implementation of community based alcoholism and drug abuse education, awareness, and alternative and prevention programs for our school aged children; and

WHEREAS, the Cape May County Department of Human Services has informed the Township of Upper/City of Ocean City Municipal Alliance Committee of its eligibility to apply for Municipal Alliance funds in the amount of:

DEDR Funds.....	\$24,393.00
Amount of Local Cash Match.....	\$ 6,098.00
Amount of Local In-Kind Match.....	\$18,295.00
TOTAL AMOUNT OF SUBCONTRACT.....	\$48,786.00

WHEREAS, the Township of Upper wishes to apply for said funding; and

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

1. The allegations of the preamble are incorporated herein by this reference.
2. The Township as lead agency is hereby authorized to submit an application and strategic plan for Municipal Alliance funding for the Fiscal Grant Cycle July 1, 2017 to June 30, 2018 grant funds in the amount specified in this Resolution or for such other amounts as may become available, and the Mayor and Township Clerk are further authorized and directed to execute a Sub-Contract on behalf of the Township with the County of Cape May for the period of July 1, 2017 to June 30, 2018. Such actions of the Township are contingent upon the proper authorization of the participation of the City of Ocean City.
3. Upon confirmation of such authorization from the City of Ocean City, the Chief Financial Officer, Mayor, or Municipal Clerk of the Township of Upper, as appropriate, is hereby authorized and directed to execute the section of the subcontract entitled “Statement of Assurances”.

4. A certified copy of this Resolution shall be submitted to the County of Cape May in the Department of Human Services, together with the completed application.

5. All Township officials and officers are hereby authorized and directed to take all action necessary in order to carry out the intent and purpose of this Resolution.

Resolution No. 271-2016

Offered by: Coggins

Seconded by: Barr

Adopted: December 5, 2016

Roll Call Vote:

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

5. Appointing Elyse G. Crawford to act as Special Legal Counsel.

**TOWNSHIP OF UPPER
CAPE MAY COUNTY
RESOLUTION**

RESOLUTION NO. 272-2016

RE: APPOINTING ELYSE G. CRAWFORD TO ACT AS SPECIAL LEGAL COUNSEL

WHEREAS, the Township requires special legal counsel to provide legal services;
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 Elyse G. Crawford, Esquire, of the firm of Parker McCay P.A., as a non-fair and open contract pursuant to the provisions of N.J.S.A. 19:44A-20.5; and

WHEREAS, Elyse G. Crawford has completed and submitted a Business Entity Disclosure Certification which certifies that Elyse G. Crawford has not made any contributions to a political or candidate committee in the Township that would bar the award of this contract and that

the contract will prohibit Elyse G. Crawford from making any 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. Elyse G. Crawford Esquire, of the firm of Parker McCay P.A., with offices at 9000 Midlantic Drive, Suite 300, Mount Laurel, New Jersey 08054 is hereby appointed Special Legal Counsel to handle such matters as 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 Elyse G. Crawford 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-20.5.

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 Elyse G. Crawford 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 Elyse G. Crawford 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 notice of this contract award 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. 272-2016

Offered by: Coggins Seconded by: Young

Adopted: December 5, 2016

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>
Coggins	<u> X </u>	<u> </u>	<u> </u>	<u> </u>
Corson	<u> X </u>	<u> </u>	<u> </u>	<u> </u>
Young	<u> X </u>	<u> </u>	<u> </u>	<u> </u>
Palombo	<u> </u>	<u> </u>	<u> </u>	<u> X </u>

6. Appointing Jeffrey R. Surenian and Associates, LLC to act as Special Legal Counsel in matters involving Affordable Housing obligations.

**TOWNSHIP OF UPPER
CAPE MAY COUNTY
RESOLUTION**

RESOLUTION NO. 273-2016

**RE: APPOINTING JEFFREY R. SURENIAN AND ASSOCIATES, LLC
TO ACT AS SPECIAL LEGAL COUNSEL IN MATTERS INVOLVING
AFFORDABLE HOUSING OBLIGATIONS**

WHEREAS, the Township of Upper requires legal counsel to provide legal assistance with respect to the Township’s affordable housing obligations involving the New Jersey Council on Affordable Housing (COAH), and/or a New Jersey court of competent jurisdiction; 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 Jeffrey R. Surenian and Associates, LLC as a non-fair and open contract pursuant to the provisions of N.J.S.A. 19:44A-20.5; and

WHEREAS, Jeffrey R. Surenian and Associates, LLC has completed and submitted a Business Entity Disclosure Certification which certifies that Jeffrey R. Surenian and Associates, LLC has not made any contributions to a political or candidate committee in the Township that would bar the award of this contract and that the contract will prohibit Jeffrey R. Surenian and Associates, LLC from making any 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. Jeffrey R. Surenian and Associates, LLC with offices at 707 Union Avenue, Suite 301, Brielle, New Jersey is hereby appointed Special Legal Counsel to handle legal matters with respect to the Township's affordable housing obligations as directed by the Township Committee.
3. This contract shall have a term of one (1) year, commencing January 1, 2017 and expiring December 31, 2017.
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 Jeffrey R. Surenian and Associates, LLC 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-20.5.

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 Jeffrey R. Surenian and Associates, LLC 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 Jeffrey R. Surenian and Associates, LLC 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 notice of this contract award 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. 273-2016

Offered by: Coggins

Seconded by: Corson

Adopted: December 5, 2016

Roll Call Vote:

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

7. Authorizing the Engineer to sign and submit applications for Recreation Development to the Cape May County Open Space Program.

**TOWNSHIP OF UPPER
CAPE MAY COUNTY
RESOLUTION**

RESOLUTION NO. 274-2016

**RE: AUTHORIZING THE ENGINEER TO
SIGN AND SUBMIT APPLICATIONS FOR RECREATION DEVELOPMENT
TO THE CAPE MAY COUNTY OPEN SPACE PROGRAM**

WHEREAS, the County of Cape May Open Space Program is soliciting requests for funding for recreation and historic preservation to be funded from the Open Space Trust Fund; and

WHEREAS, the goal of the program is to enhance and protect the community assets, provide quality of life and economic stabilization benefits to the Municipalities in the County; and

WHEREAS, the Township of Upper wishes to take advantage of this Program and to authorize the execution and submittal of applications for the Harbor Road Bicycle/Pedestrian Gateway project and the Route 9 and Roosevelt Boulevard Open Space Acquisition and Site Improvement Project; 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 Municipal Engineer of the Township of Upper is hereby authorized, directed, and empowered to sign and submit Recreation Development Applications for the Harbor Road Bicycle/Pedestrian Gateway project and the Route 9 and Roosevelt Boulevard Open Space Acquisition and Site Improvement Project.
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. 274-2016

Offered by: Young Seconded by: Coggins

Adopted: December 5, 2016

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>
Coggins	<u> X </u>	<u> </u>	<u> </u>	<u> </u>
Corson	<u> X </u>	<u> </u>	<u> </u>	<u> </u>
Young	<u> X </u>	<u> </u>	<u> </u>	<u> </u>
Palombo	<u> </u>	<u> </u>	<u> </u>	<u> X </u>

8. **Accepting the Bid and authorizing the execution of a contract for the 2016 Paving Project.** The Municipal Attorney explained that four bids were received with Arawak being the lowest bidder at approximately \$16,000 less than the next lowest bidder, South State. Shortly after receipt and review of the bids an objection by South State to Arawak’s bid was filed by their legal counsel who is arguing that the Bid Bond submitted by Arawak Paving company was defective, arguing that it did not have the name of the company listed where the President signed and allegedly did not have the contract attached. The Municipal Attorney stated that in his review of the lowest bid along with the review of the CFO, Engineer and Special Counsel the bid submitted by Arawak Paving was found to be accurate and not materially or fatally defective as claimed by South State, therefore it is his recommendation along with the Townships Special Counsel that the Township award the bid to the lowest bidder, Arawak Paving Company.

**TOWNSHIP OF UPPER
CAPE MAY COUNTY
RESOLUTION**

RESOLUTION NO. 275-2016

**RE: ACCEPTING THE BID AND AUTHORIZING THE
EXECUTION OF A CONTRACT WITH ARAWAK PAVING COMPANY, INC.,
FOR 2016 PAVING PROJECT**

WHEREAS, on October 17, 2016, the Township of Upper solicited bids for its 2016 Paving Project, which four (4) bids were received on November 1, 2016; and

WHEREAS, the purpose of the competitive-bidding process is to secure the most economical result in the expenditure of public moneys by promoting uninhibited competition and guarding against favoritism, improvidence, extravagance and corruption; and

WHEREAS, the bid solicitation called for the submission of pricing for twenty nine (29) items making up the 2016 Paving Project; and

WHEREAS, at the time and place for bidding, the Township received four (4) bids as follows:

1. Arawak Paving Company Inc.
Items 1 to 29 Total - \$1,557,600.00
2. South State, Inc.
Items 1 to 29 Total - \$1,573,731.36
3. Landberg Construction, LLC
Items 1 to 29 Total - \$1,835,485.29
4. AE Stone, Inc.
Items 1 to 29 Total - \$1,809,000.00

WHEREAS, the Township Solicitor's office reviewed the bids and determined that each was legally compliant; and

WHEREAS, on or about November 11, 2016, the Township received a letter of protest from counsel for South State arguing that Arawak's bid was defective and must be

disqualified because 1.) Arawak inadvertently did not attach the form of contract to its bid bond; and 2) Arawak's President, John Barret, signed the Form of Bid document as President but did not indicate that he was the President of Arawak(a true and correct copy of the November 11, 2016, protest letter is attached hereto as Exhibit "A"); and

WHEREAS, on or about November 18, 2016, counsel for Arawak responded to the protest letter, arguing that the allegations of South State amounted to minor, non-material clerical errors in its bid, which must be waived (a true and correct copy of the November 18, 2016 correspondence from Arawak's counsel is attached hereto as Exhibit "B"); and

WHEREAS, on November 18, 2016, counsel for South State responded to Arawak's letter of the same day, again arguing that Arawak's bid must be disqualified and the contract should be awarded to South State (a true and correct copy of the November 18, 2016 correspondence from counsel for South State is attached hereto as Exhibit "C"); and

WHEREAS, the Township Solicitor's office reviewed the issues raised by South State concerning the validity of Arawak's bid; and

WHEREAS, thereafter, in an abundance of caution, the Township retained special construction counsel, Elyse Crawford of Parker McCay, PA, to review the bids and provide a legal opinion as to the validity of Arawak's bid and the import of the issues raised by South State, Inc.; and

WHEREAS, N.J.S.A. 40A:11-1 et seq., requires that a publically advertised contract must be awarded to the "lowest responsible bidder." Meadowbrook Carting Co., Inc. v. Borough of Island Heights, 138 N.J. 307, 313 (1994). The overriding purpose of the Local Public Contracts Law is to "secure for the public the benefits of unfettered competition." See Meadowbrook, *supra*, 138 N.J. at 313 (citing Terminal Construction Corp. v. Atlantic County Sewerage Authority, 67 N.J. 403, 410(1974)); and

WHEREAS, while strict compliance with public-bidding guidelines is required, competitive bidding provisions should not be construed in such a way as to thwart the primary purpose of achieving economy. Tec Electric, Inc. v. Franklin Lakes Board of Education, 284 N.J. Super. 480, 484 (Law Div. 1995). As such, material conditions contained in bidding specifications may not be waived, while immaterial deficiencies may be waived. See Meadowbrook at 314; and

WHEREAS, Courts must apply two criteria in determining whether a bidder's noncompliance with the terms of the advertised bid solicitations constitutes a material, non-waivable defect: 1.) whether [the effect] of the waiver of the bidding error would [be to] deprive the public entity of its assurance that the contract will be entered into, performed and guaranteed by the bidder according to its specified requirements; and 2.) whether the noncompliance is of such a nature that its waiver would adversely affect the competitive bidding process by placing the bidder who erred in a position of advantage over other bidders or by otherwise undermining the necessary common standard of competition. Meadowbrook, supra, 138 N.J. at. 315 (1994).

WHEREAS, Arawak's failure to include the contract with its bid submission cannot be seen in any way to have provided it a competitive advantage of any kind in that it is indisputable that the successful bidder would be bound by the contract included in the bid specifications, or deprives the Township of its assurance that the contract will be entered into, performed and guaranteed by Arawak; and

WHEREAS, further, Arawak's failure to identify Mr. Barret as the President of Arawak on the bid form also does not constitute a material defect under the standard highlighted above; and

WHEREAS, "where the irregularity is not substantial, it may well be the duty as well as the right of the municipality to waive it." Township of River Vale v. R.J. Longo Constr. Co., 127 N.J. Super. 207, 222 (Law Div. 1974); and

WHEREAS, the issues raised by South State are minor clerical errors, which are waivable under Public Bidding Laws; and

WHEREAS, the aforesaid bids were thereafter reviewed by the Chief Financial Officer; and

WHEREAS, the Chief Financial Officer of the Township of Upper has certified the availability of funds attached hereto as “Exhibit A” in a sufficient amount to award a contract in the aggregate amount of \$1,557,600.00; and

WHEREAS, the Township intends to take formal action awarding the bid to Arawak as hereinafter provided;

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 hereby accepts the bid submitted by Arawak Paving Company, Inc., for the 2016 Paving Project in the amount of \$1,557,600.00.
3. The Mayor and Township Clerk are further authorized to execute a Contract with Arawak Paving Company, Inc., in the amount authorized in this Resolution.

Resolution No. 275-2016
Offered by: Coggins Seconded by: Young
Adopted: December 5, 2016

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>
Coggins	<u> X </u>	<u> </u>	<u> </u>	<u> </u>
Corson	<u> X </u>	<u> </u>	<u> </u>	<u> </u>
Young	<u> X </u>	<u> </u>	<u> </u>	<u> </u>
Palombo	<u> </u>	<u> </u>	<u> </u>	<u> X </u>

ORDINANCES

CORRESPONDENCE

NEW BUSINESS

9. **Approval for B & K Enterprise to have a Craft and Home show on April 8 and 9, 2017 at the Community Center.** Motion by Curtis Corson, second by John Coggins, to approve the request. During roll call vote all four Committeemen present voted in the affirmative. A resolution for formal action will be placed on the next agenda.
10. **South Shore Stitchers request to hold Raffle RA #468 at the Tuckahoe Methodist Church on November 13, 2017.** Motion by Curtis Corson, second by John Coggins, to approve the request. During roll call vote all four Committeemen present voted in the affirmative.

UNFINISHED BUSINESS

DISCUSSION

11. **Draft 2017 Residents Information packet.** The Superintendent of Public Works, Paul Dietrich reviewed the draft information packet with Committee. He stated that there are no major changes in the information for 2017. A proposed program to pick up for leaves and grass clippings by cart was discussed. Mr. Dietrich explained that DPW is still reviewing the pros and cons of the proposed program. Mr. Dietrich next discussed Commercial trash collection; A recommendation was made to repeat the language under the Rules and Regulations pertaining to the requirements for commercial pick up for anyone that generates more than 96 gallons of trash. A recommendation was also made to offer Commercial establishments the option to purchase up to three 96 gallon containers or a 2- cubic yard container in addition to the one 96-gallon container that the Township provides instead of a 3- cubic yard container which is much heavier than the 2-yard container. The Municipal Attorney stated that an Ordinance amendment would be required in order to allow for the change in container size. He recommended that the matter be tabled to make the recommended language changes and for further review and discussions internally. The Clerk was directed to place the matter on the next agenda.
12. **Change Order for the Reconstruction of Bayview Drive Boat Ramp.** Paul Dietrich reported that a change order is needed to adjust the quantities for payment with the final as-built measurements of the work completed. Motion by John Coggins, second by Curtis Corson, to approve the Change Order. During roll call vote all four Committee members present voted in the affirmative. A resolution for formal action will be placed in the next agenda.

PAYMENT OF BILLS

13. **“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 John Coggins, second by Curtis Corson. During roll call vote all four Committeemen present voted in the affirmative.

Bills approved for payment: \$589,126.75

Payroll: \$146,229.23

REPORT OF MUNICIPAL DEPARTMENTS

14. Construction Code

15. Division of EMS

Motion by Edward Barr, second by Curtis Corson, to accept the reports as submitted. During roll call vote all four Committeemen present voted in the affirmative.

PUBLIC COMMENT

Nathalie Neiss, Route 50 Petersburg, spoke with regard to an on-going issue in which Ms. Neiss claims her neighbor's dog is running at large on her property. She has notified Animal Control and the New Jersey State Police, which have both informed her that unless they witness the animal running at large, they cannot file a complaint against the owners. Ms. Neiss was again informed that she can file a complaint herself with the Municipal Court.

CLOSED SESSION

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

**TOWNSHIP OF UPPER
RESOLUTION NO. 276-2016
MOTION GOING INTO CLOSED SESSION
DECEMBER 5, 2016**

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 negotiation - Annual Appointments
2. Contract negotiation - Fire District Website Services
3. Potential litigation - Tax Lien Foreclosure Judgment
4. Personnel

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 employment and personnel matters such discussions will be made public if and when formal action is taken or when the individuals involved consent that it can be made public.

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

Moved by: John Coggins

Motion seconded by: Curtis Corson

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

RECONVENE PUBLIC PORTION OF MEETING

Motion by John Coggins, second by Curtis Corson, to reconvene the public portion of the meeting. During roll call vote all four Committeemen present voted in the affirmative.

ADJOURNMENT

There being no further business this evening the meeting was adjourned at 8:56 P.M., with a motion by Curtis Corson, second by John Coggins, and all four Committeemen present voting in the affirmative. The next regular meeting is scheduled for December 19, 2016 at 7:30 P.M.

Minutes prepared by,

Barbara L. Young, RMC

Bill List

68293 12/05/16 A0018 ACTION SUPPLY INC. 63.84 2948
68294 12/05/16 A0091 ATLANTIC CITY ELECTRIC 6,335.71 2948
68295 12/05/16 A0193 ATLANTIC INVESTIGATIONS, LLC 166.00 2948
68296 12/05/16 A0200 AIG LIFE INSURANCE COMPANY 189.38 2948
68297 12/05/16 A0209 ATLANTIC MARINE CONSTRUCTION 125,242.63 2948
68298 12/05/16 B0020 BLAKER,RAYMOND 600.00 2948
68299 12/05/16 B0035 BELMONT & CRYSTAL SPRINGS 18.56 2948
68300 12/05/16 B0184 BUSHONG, BRIAN 43.84 2948
68301 12/05/16 B0201 BUCK'S ELECTRICAL SERVICE, INC 94.00 2948
68302 12/05/16 B0220 BERGEY'S TRUCK CENTERS 1,111.91 2948
68303 12/05/16 B0236 Beall, William 24.20 2948
68304 12/05/16 C0021 CIVIL SOLUTION A DIVISION 800.00 2948
68305 12/05/16 C0068 COMCAST 486.04 2948
68306 12/05/16 C0083 CAMFEL PRODUCTIONS 695.00 2948
68307 12/05/16 C0116 CINTAS CORPORATION 17.86 2948
68308 12/05/16 C0143 CODY'S POWER EQUIPMENT 449.00 2948
68309 12/05/16 C0171 COLONIAL ELECTRIC SUPPLY CO. 1,782.15 2948
68310 12/05/16 C0204 CUMBERLAND INSURANCE GROUP 1,376.00 2948
68311 12/05/16 C0223 CASA PAYROLL SERVICE 245.65 2948
68312 12/05/16 C0246 CRAFT OIL CORPORATION 503.00 2948
68313 12/05/16 C0247 CMRS-FP 4,000.00 2948
68314 12/05/16 E0012 EHRlich PEST CONTROL INC 86.00 2948
68315 12/05/16 E0059 TRISTATE EZ DOCK, INC. 27,825.58 2948
68316 12/05/16 G0028 GENTILINI FORD 639.57 2948
68317 12/05/16 G0035 GENRON FIRE PROTECTION 1,261.15 2948
68318 12/05/16 G0169 GROFF TRACTOR NEW JERSEY LLC 821.35 2948
68319 12/05/16 G0172 GOVT. FORMS AND SUPPLIES, LLC 73.03 2948
68320 12/05/16 G0175 Girl Scout Troop 41361 300.00 2948
68321 12/05/16 H0073 HOME DEPOT CRC/GECF 1,363.47 2948
68322 12/05/16 H0095 HORIZON BCBSNJ 161,836.53 2948
68323 12/05/16 H0131 HPI PROCESSES, INC 2,702.00 2948
68324 12/05/16 H0135 HANSON AGGREGATES, INC. 1,125.00 2948
68325 12/05/16 J0036 JOHNSON, MICHELLE 57.09 2948
68326 12/05/16 J0041 JONES, JAMES M. 50.00 2948

68327 12/05/16 J0072 JERSEY WEB DESIGNS 3,677.50 2948
68328 12/05/16 K0047 KLINE, EDWARD T. 208.38 2948
68329 12/05/16 L0007 LC EQUIPMENT, INC. 30.00 2948
68330 12/05/16 L0038 LAYTON, WILLIAM 150.00 2948
68331 12/05/16 L0113 LIBERTY MUTUAL INSURANCE 99,025.00 2948
68332 12/05/16 L0127 LIBERTY KENWORTH OF SO. JERSEY 115.40 2948
68333 12/05/16 M0016 McAFEE, MEGAN 125.00 2948
68334 12/05/16 M0076 MGL PRINTING SOLUTIONS 263.00 2948
68335 12/05/16 M0121 McCROSSON, JANET 91.26 2948
68336 12/05/16 M0142 MASON, NICHOLAS 156.21 2948
68337 12/05/16 M0180 MED-TECH RESOURCE,LLC 353.92 2948
68338 12/05/16 M0188 MCCARTHY TIRE SERVICE OF PHILA 993.95 2948
68339 12/05/16 M0269 MULTI-TEMP MECHANICAL, INC. 1,914.91 2948
68340 12/05/16 N0100 N.J. LEAGUE OF MUNICIPALITIES 923.00 2948
68341 12/05/16 N0125 N.J. REGISTRAR'S ASSOCIATION 75.00 2948
68342 12/05/16 O0006 SJSHORE MARKETING,LLC 109.23 2948
68343 12/05/16 O0014 ATLANTIC SALT, INC. 9,387.00 2948
68344 12/05/16 O0025 OLD DOMINION BRUSH 1,471.24 2948
68345 12/05/16 P0008 PALMER, NANCY 73.38 2948
68346 12/05/16 P0032 PEDRONI FUEL CO. 1,541.08 2948
68347 12/05/16 R0030 RIGGINS, INC. 3,512.37 2948
68348 12/05/16 R0114 RUDEMAN,HORN & ESMERADO, PC 20,312.50 2948
68349 12/05/16 R0115 RID PEST CONTROL INC. 48.15 2948
68350 12/05/16 R106 RUMER, LISA 177.19 2948
68351 12/05/16 S0001 SAM'S CLUB 90.00 2948
68352 12/05/16 S0031 SCHULER SECURITY, INC. 185.00 2948
68353 12/05/16 S0075 SHARP, RHONDA L. 50.00 2948
68354 12/05/16 S0121 SMUZ, THERESE A 163.82 2948
68355 12/05/16 S0134 SO. JERSEY GAS COMPANY 759.78 2948
68356 12/05/16 S0196 STEWART BUSINESS SYSTEMS LLC 81.69 2948
68357 12/05/16 S0209 STAPLES ADVANTAGE 188.98 2948
68358 12/05/16 S0279 SPECTROTEL, INC 1,138.03 2948
68359 12/05/16 S0292 JEFFREY SURENIAN & ASSOC. LLC 1,091.44 2948
68360 12/05/16 T0074 TRANSAXLE LLC 106.80 2948
68361 12/05/16 T0079 TREASURER,STATE OF N.J. 74,619.38 2948
68362 12/05/16 T0158 TELECORP, INC. 500.00 2948
68363 12/05/16 T0166 TREASURER, STATE OF NEW JERSEY 148.00 2948
68364 12/05/16 T0168 TOWNSHIP OF UPPER 328.55 2948
68365 12/05/16 U0013 U.T. WRESTLING ASSOC. 300.00 2948
68366 12/05/16 U0028 UPPER TOWNSHIP BD.OF EDUCATION 343.32 2948
68367 12/05/16 V0001 VCI EMERGENCY VEHICLE 2,137.64 2948
68368 12/05/16 V0013 VERIZON WIRELESS 1,138.55 2948
68369 12/05/16 V0024 VAL-U AUTO PARTS L.L.C. 804.06 2948
68370 12/05/16 W0030 WEST PUBLISHING CO. 686.56 2948
68371 12/05/16 W0087 W.B. MASON 579.70 2948
68372 12/05/16 W0101 WORLDWIDE SPORT SUPPLY 1,207.49 2948
68373 12/05/16 Y0008 YOUNG, DANIEL J. ESQUIRE PC 15,115.75 2948
68374 12/05/16 Y0020 YOUNG, BARBARA L. 200.00 2948
68375 12/05/16 Y0026 YOUNG, ROBERT 42.00 2948

Total: 589,126.75