

**TOWNSHIP OF UPPER  
2100 TUCKAHOE ROAD  
PETERSBURG, NJ 08270  
CAPE MAY COUNTY  
MINUTES FOR JULY 12, 2021**

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

**CALL TO ORDER**

**SUNSHINE ANNOUNCEMENT**

Mayor Palombo read the following Open Public meeting notice into the record.

“In compliance with the Open Public Meetings Law, I wish to state that on July 9, 2021 the notice of this meeting of the Upper Township Committee was posted on the official Township Bulletin Board, the Upper Township Website, and the Town Hall Foyer, mailed to the Cape May County Gazette, the Atlantic City Press, the Ocean City Sentinel-Ledger, the Herald Times and filed with the Township Clerk. Tonight’s meeting is being audio recorded up until the closed session portion of this meeting and will be available on the Upper Township website. I hereby direct that this announcement be made a part of the minutes of this meeting.”

**SALUTE TO THE FLAG**

**ROLL CALL**

Edward Barr	Present
John Coggins	Present
Curtis Corson	Present
Kimberly Hayes	Present
Richard Palombo	Present

Also present were Municipal Clerk Barbara L. Young, Township Administrator Scott Morgan, Township Engineer Paul Dietrich, Chief Financial Officer Barbara Ludy, Municipal Attorney Daniel J. Young and Special Legal Counsel Mark Ruderman (via phone conference).

**APPROVAL OF MINUTES** - June 28, 2021 Regular and Closed Session Minutes

Motion by Edward Barr, second by Curtis Corson, to approve the June 28, 2021 Regular Meeting and Closed Session Minutes as submitted. During roll call vote all five Committee members voted in the affirmative.

**REPORT OF GOVERNING BODY MEMBERS**

**John Coggins, Committeeman**, congratulated and recognized CFO Barbara Ludy for obtaining a zero findings audit. Mrs. Ludy stated that the clean audit is a credit to all Township Departments.

**Kimberly Hayes, Committeewoman**, thanked all that assisted, attended, and participated in the Fourth of July events, and gave a brief rundown of specific people and their assistance.

**Edward Barr, Committeeman**, congratulated Committeewoman Hayes and all those that assisted with the Fourth of July festivities.

**Curtis Corson, Committeeman**, stated that the Fourth of July festivities were phenomenal, and a good time was held by all. Next, he reported on the beach patrol’s results in recent lifeguard races, and stated that the Beach Patrol will be hosting the MS Bay race on July 20<sup>th</sup> starting at 6:00 pm.

**Richard Palombo, Mayor**, reported that he attended a Habitat for Humanity home dedication last Friday on Redwood Avenue. He stated that it was well attended, and he was happy to meet with the family.

## **OTHER REPORTS**

**Scott Morgan, Township Administrator**, acknowledged all that participated and assisted with the preparations and execution of the Fourth of July events. Last, he reported on a request for EMT John Brittin to attend a 10 day out of state National Fire Academy course in 2022. He stated that there is no cost for the course or lodging, just the time off needed to attend. Motion by Curtis Corson, second by Kimberly Hayes to approve the request. During roll call vote all five Committee members voted in the affirmative.

**Barbara Young, Municipal Clerk**, briefly commented on the Fourth of July event. She stated that it was very enjoyable and thanked the township administrator for his help in organizing the event.

**Paul Dietrich, Township Engineer**, reported that he sent out notices to the public regarding a flood insurance information promotional meeting to be held on Saturday July 24<sup>th</sup> at 9:00 am at the Strathmere Fire Hall. All interested residents are encouraged to attend.

## **RESOLUTIONS**

1. Honoring Daniel Schuler on his retirement from the Township of Upper.

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

#### **RESOLUTION NO. 196-2021**

#### **HONORING DANIEL SCHULER ON HIS RETIREMENT FROM THE TOWNSHIP OF UPPER**

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**WHEREAS**, Daniel Schuler has retired after thirty-two years of exemplary public service to this community within the Department of Public Works; and

**WHEREAS**, Dan began his career with the Township in 1989 and has served as a Laborer, Mechanics Helper, Mechanic, Senior Mechanic, and Supervising Mechanic; and

**WHEREAS**, throughout his tenure, Dan always executed his duties with diligence and skill; and

**WHEREAS**, it is most appropriate that Dan's tenure of public employment and his years of hard work and dedicated service to this Township be publicly recognized.

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

1. That Dan be publicly congratulated on the occasion of his retirement from the

Township of Upper.

2. That he be publicly thanked for his many years of dedicated public service to our community.
3. That this Committee, on behalf of all the citizens of the Township of Upper extend to Daniel Schuler, our fellow employee and friend, our very best of wishes on his retirement and his future.

**GIVEN UNDER OUR HANDS** and the seal of the Township of Upper this 12<sup>th</sup> day of July, 2021.

2. Appointing Elizabeth Oaks as a full-time employee to the Upper Township Zoning Office.

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

**RESOLUTION NO. 197-2021**

**RE: APPOINTING ELIZABETH OAKS AS A FULL-TIME EMPLOYEE TO THE  
UPPER TOWNSHIP ZONING OFFICE**

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**WHEREAS**, a need exists to appoint qualified personnel as full-time employee to the Upper Township Zoning Office to ensure optimal operation; and

**WHEREAS**, Elizabeth Oaks possesses all the requisite qualifications for appointment to said position; and

**WHEREAS**, the individual's appointment is conditioned upon successful completion of pre-employment testing; 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. Elizabeth Oaks is hereby conditionally appointed, pending successful completion of pre-employment testing to the Upper Township Zoning Office as a full-time Keyboarding Clerk 1 at an annual salary of \$55,000 and Zoning Officer at an annual salary of \$0 in accordance with the Salary Ordinance.

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

Resolution No. 197-2021

Offered by: Barr  
Adopted: July 12, 2021  
Roll Call Vote:

Seconded by: Coggins

NAME	YES	NO	ABSTAIN	ABSENT
Barr	X			
Coggins	X			
Corson	X			
Hayes	X			
Palombo	X			

3. Resolution and Certification with respect to the 2020 Annual Audit and in compliance with the Local Finance Board of the State of New Jersey.

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

**RESOLUTION NO. 198-2021**

**RESOLUTION AND CERTIFICATION WITH RESPECT TO THE 2020 ANNUAL AUDIT  
AND IN COMPLIANCE WITH THE LOCAL FINANCE BOARD OF THE STATE OF NEW  
JERSEY**

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**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 transactions; and

**WHEREAS**, the Annual Report of Audit for the year 2020 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

RECOMMENDATIONS

**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

AND

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. 198-2021

Offered by: Coggins

Seconded by: Barr

Adopted: July 12, 2021

Roll Call Vote:

NAME	YES	NO	ABSTAIN	ABSENT
Barr	X			
Coggins	X			
Corson	X			
Hayes	X			

Palombo	X			
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4. Accepting the donation of a beach wheelchair from Bruckner Chase to the Township of Upper.

**TOWNSHIP OF UPPER  
CAPE MAY COUNTY  
RESOLUTION**

**RESOLUTION NO. 199-2021**

**RE: ACCEPTING THE DONATION OF A BEACH WHEELCHAIR FROM BRUCKNER  
CHASE TO THE TOWNSHIP OF UPPER**

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**WHEREAS**, Bruckner Chase wishes to donate a beach wheelchair to the Township of Upper for use by the Upper Township Beach Patrol along with the residents and visitors of the Township of Upper; 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 beach wheelchair 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 allegations of the preamble are incorporated herein by this reference.
2. The Township of Upper hereby accepts the donation of a beach wheelchair from Bruckner Chase, subject to any and all recommendations of the Solicitor and Risk Management Consultant of the Township.
3. The Township shall not be responsible for damage to, destruction of or loss of the beach wheelchair. The Township is not responsible for replacement of the beach wheelchair for any reason.
4. The Township Committee hereby authorizes the Mayor, CFO, and Township Clerk to execute any documents necessary, and otherwise perform all acts necessary to accomplish the intent of this resolution.

Resolution No. 199-2021

Offered by: Barr

Seconded by: Corson

Adopted: July 12, 2021

NAME	YES	NO	ABSTAIN	ABSENT
Barr	X			
Coggins	X			
Corson	X			

Hayes	X			
Palombo	X			

5. Authorizing the Township of Upper to enter into a contract with Cape Physicians Associates to provide pre-employment physical examinations.

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

**RESOLUTION NO. 200-2021**

**RE: AUTHORIZING THE TOWNSHIP OF UPPER TO ENTER INTO A  
CONTRACT WITH CAPE PHYSICIANS ASSOCIATES TO PROVIDE  
PRE-EMPLOYMENT PHYSICAL EXAMINATIONS**

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**WHEREAS**, pursuant to Section 9 of the Supervisor’s Personnel Policies and Procedures Manual, the Township of Upper provides for a pre-employment physical examination to a prospective employee in order to insure that they can perform the duties of their position without injury to themselves or others; and

**WHEREAS**, Cape Physicians Associates possesses the requisite skill and knowledge to perform these services; and

**WHEREAS**, a Resolution is required authorizing the award of a contract for professional services to Cape Physicians Associates as a non-fair and open contract pursuant to the provisions of N.J.S.A. 19:44A-20.5; and

**WHEREAS**, the proposed contract has been reviewed and approved by the Township’s Legal Counsel and will be on record in the office of the Township Clerk and available for public inspection and is attached hereto as Exhibit “A”; and

**WHEREAS**, Cape Physicians Associates has completed and submitted a Business Entity Disclosure Certification which certifies that Cape Physicians Associates has not made any reportable contributions to a political or candidate committee in the Township that would bar the award of this contract and that the contract will prohibit Cape Physicians Associates from making any reportable contributions through the term of the contract; and

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

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

2. The Mayor and Township Clerk are hereby authorized, directed and empowered to execute a contract with Cape Physicians Associates to provide hearing examinations.

3. Cape Physicians Associates 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. 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 Cape Physicians Associates has professional knowledge which 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**

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

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

7. 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. 200-2021

Offered by: Coggins

Seconded by: Hayes

Adopted: July 12, 2021

Roll Call Vote:

NAME	YES	NO	ABSTAIN	ABSENT
Barr	X			
Coggins	X			
Corson	X			
Hayes	X			
Palombo	X			

6. Authorizing a refund to Andre Rivera of Second Capital Running LLC for facility use at Amanda's Field in Upper Township due to the cancellation of the Gateway Quarter Marathon.



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

**RESOLUTION NO. 201-2021**

**RE: AUTHORIZING A REFUND TO ANDRE RIVERA OF SECOND CAPITAL RUNNING  
LLC FOR FACILITY USE AT AMANDA’S FIELD IN UPPER TOWNSHIP DUE TO THE  
CANCELLATION OF THE GATEWAY QUARTER MARATHON**

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**WHEREAS**, a refund has been requested by Andre Rivera of Second Capital Running LLC for the facility use fee submitted to hold the Gateway Quarter Marathon at Amanda’s Field in Upper Township on July 12, 2021; and

**WHEREAS**, the Upper Township Committee approved the Facility Use for the event scheduled at Amanda’s Field in Upper Township; and

**WHEREAS**, Andre Rivera of Second Capital Running LLC was renting the Bike Path and Center Parking Lot at Amanda’s Field in Upper Township for a Gateway Quarter Marathon, in which the event needed to be cancelled due to lack of interest; and

**WHEREAS**, it is appropriate to refund the facility use fee paid by Andre Rivera of Second Capital Running LLC; and

**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:

**AMOUNT  
\$836.50**

**NAME  
Andre Rivera  
12 S. Seventh Street, 4  
Vineland, NJ 08360**

Resolution No. 201-2021

Offered by: Coggins

Seconded by: Hayes

Adopted: July 12, 2021

Roll Call Vote:

NAME	YES	NO	ABSTAIN	ABSENT
Barr	X			
Coggins	X			
Corson	X			
Hayes	X			
Palombo	X			

7. Authorize payments from the Affordable Housing Trust Fund of Upper Township.

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

**RESOLUTION NO. 202-2021**

**RE: AUTHORIZE PAYMENTS FROM THE  
AFFORDABLE HOUSING TRUST FUND OF UPPER TOWNSHIP**

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**WHEREAS**, the Township of Upper adopted an Affordable Housing Trust Fund Spending Plan (hereinafter “Spending Plan”) on April 30, 2012 pursuant to Resolution No. 105-2012; and

**WHEREAS**, the Township of Upper replaced this Spending Plan pursuant to Resolution No. 167-2020 adopted on May 26, 2020 and consistent with P.L. 2008, c.46 COAH regulations and the Fair Share Housing Center Settlement Agreement, which was subsequently approved by the Court on June 30, 2020 in connection with the Township’s Declaratory Judgment Action; and

**WHEREAS**, the Township of Upper’s Affordable Housing Trust Fund collects development fee revenues consistent with the Township of Upper’s development fee ordinance for both residential and non-residential developments in accordance with FHAA’s rules and P.L. 2008, c.46, sections 8 (C. 52:27D-329.2) and 32-28 (C. 40:55D-8.1 through 8.7).; and

**WHEREAS**, pursuant to the terms of the current Spending Plan, the release of funds requires the adoption by the Township Committee of a resolution; and

**WHEREAS**, the Township Committee has reviewed the requested release of funds from the Affordable Housing Trust Fund for the specific use set forth herein and has determined it is in the best interest of the Township to authorize the release of payment from said fund.

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

1. The allegations of the preamble are incorporated herein by this reference.
2. The Chief Financial Officer is authorized to release the following funds pursuant to the Township’s Market to Affordable Program:

Triad Associates (MTA Technical Assistance)	\$ 75.00
Triad Associates (Admin Agent Rentals Wait List)	\$ 150.00

Resolution No. 202-2021

Offered By: Coggins

Seconded By: Barr

Adopted: July 12, 2021

Roll Call Vote:

NAME	YES	NO	ABSTAIN	ABSENT
Barr	X			
Coggins	X			
Corson	X			
Hayes	X			
Palombo	X			

8. Authorizing the purchase of a portable light tower with funds from the 2020 Capital Improvement Bond Ordinance in the amount of \$3,266.10.

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

**RESOLUTION NO. 203-2021**

**RE: AUTHORIZING THE PURCHASE OF A PORTABLE LIGHT TOWER  
WITH FUNDS FROM THE 2020 CAPITAL IMPROVEMENT BOND ORDINANCE  
IN THE AMOUNT OF \$3,266.10**

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**WHEREAS**, it is necessary for the Township of Upper to make certain capital purchases; and

**WHEREAS**, the Township Committee adopted the 2020 Capital Improvement Bond Ordinance 010-2020 on November 9, 2020 and subsequently amended on March 8, 2021; and

**WHEREAS**, the Township's QPA has reviewed and approved the quote for the purchase of a portable light tower by United Rentals of Pleasantville, New Jersey.

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

1. The allegations of the preamble are incorporated herein by this reference.
2. The Township Committee of the Township of Upper, County of Cape May, New Jersey hereby authorizes the Qualified Purchasing Agent to enter into a contract with United Rentals for the purchase of a portable light tower in the amount of \$3,266.10 from the 2020 Capital Improvement Bond.
3. The Chief Financial Officer is hereby authorized, directed and empowered to execute any and all necessary documents in order to implement the intent of this Resolution.

NAME	YES	NO	ABSTAIN	ABSENT
Barr	X			
Coggins	X			
Corson	X			
Hayes	X			
Palombo	X			

**ORDINANCES**

9. **Introduction and first reading of Ordinance 013-2021 RE: AN ORDINANCE AMENDING REVISED GENERAL ORDINANCE CHAPTER XIX (LAND SUBDIVISION, SITE PLAN AND LAND USE ADMINISTRATION) AND CHAPTER XX (ZONING) OF THE CODE OF UPPER TOWNSHIP.** Motion by Curtis Corson, second by Edward Barr, to introduce Ordinance 013-2021 with the public hearing scheduled for August 9, 2021. During roll call vote all five Committee members voted in the affirmative.

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

**ORDINANCE NO. 013-2021**

**RE: AN ORDINANCE AMENDING REVISED GENERAL ORDINANCE CHAPTER XIX (LAND SUBDIVISION, SITE PLAN AND LAND USE ADMINISTRATION) AND CHAPTER XX (ZONING) OF THE CODE OF UPPER TOWNSHIP**

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**WHEREAS**, the Upper Township Committee finds that Chapter XIX and Chapter XX of the Code of Upper Township require revisions; and

**WHEREAS**, the Upper Township Planning Board reviewed and discussed the proposed revisions to Chapters XIX and XX and found same to be consistent with the Upper Township 2020 Master Plan Reexamination and Land Use Plan Element; and

**WHEREAS**, the municipal clerk has provided notice pursuant to N.J.S.A. 40:55D-62.1 of the proposed change in zoning boundary resulting in a zone change from Conservation (C) to Resort Residential (RR) for certain developed lots;

**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 19 of the Revised General Ordinances of the Township of Upper, also known as the Code of Upper Township, shall be amended and supplemented as hereinafter provided:

Add the following to **Section 19-6.2a Details of Sketch Plat-Subdivision:**

19. Boundary for Special Flood Hazard Area, flood hazard designation and line of Limit of Moderate Wave Action (LIMWA).

Add the following to **Section 19-6.2b Details of Sketch Plat-Subdivision:**

6. Boundary for Special Flood Hazard Area, flood hazard designation and line of Limit of Moderate Wave Action (LIMWA).

Add the following to **Section 19-6.3 Details of Preliminary Plat – Major Subdivision:**

- aa. Boundary for Special Flood Hazard Area, flood hazard designation and line of Limit of Moderate Wave Action (LIMWA).

Add the following to **Section 19-6.4 Details of Final Plat – Major Subdivision:**

- j. Boundary for Special Flood Hazard Area, flood hazard designation and line of Limit of Moderate Wave Action (LIMWA).

Add the following to **Section 19-6.5 Site Plan Details for Preliminary Approval:**

- g. Boundary for Special Flood Hazard Area, flood hazard designation and line of Limit of Moderate Wave Action (LIMWA).

Add the following to **Section 19-6.6 Site Plan Details for Final Approval:**

- g. Boundary for Special Flood Hazard Area, flood hazard designation and line of Limit of Moderate Wave Action (LIMWA).

Replace **Section 19-7.3a Curbs, Gutters and Catch Basins** as follows:

Curbs and catch basins shall be installed in the following districts established in the Upper Township Zoning Ordinance:

CM2	Commercial District
CM4	Rural Density Commercial District
CMP	Commercial District Pinelands
MTCD	Marmora Town Center District
RR	Resort Residential
RC	Resort Commercial
TC	Town Center
TCC	Town Center Core
TV	Tuckahoe Village
WTC	Waterfront Town Center

Replace **Section 19-7.4 Sidewalks** as follows:

- a. Sidewalks shall be provided in the following zones as designated in the Upper Township Zoning Ordinance:

CM2	Commercial District
CM4	Rural Density Commercial District
CMP	Commercial District Pinelands
MTCD	Marmora Town Center District
RR	Resort Residential
RC	Resort Commercial

TC  
TCC  
TV  
WTC

Town Center  
Town Center Core  
Tuckahoe Village  
Waterfront Town Center

- b. Where required sidewalks shall be five (5') feet wide and located within the street right-of-way four feet from the curb face. The sidewalk shall be constructed of concrete in accordance with New Jersey Department of Transportation Specifications.
- c. All sidewalks shall be constructed of four inches of concrete except where the sidewalk acts as a driveway apron at which is shall be at least six inches.
- d. The street right-of-way outside the cartway shall be graded to produce a slope of ¼ inch per foot, sloping towards the cartway. This slope shall also be applied to the sidewalks.

Replace **Section 19-7.7d Stormwater Control** as follows:

Procedures. In addition to other development review procedures set forth in the Code of Upper Township, major developments shall comply with the stormwater management requirements and specifications set forth in this subsection or as superseded by N.J.A.C. 7:8 et seq. New agricultural development that meets the definition of major development in Subsection e of this subsection shall be submitted to the appropriate Soil Conservation District for review and approval in accordance with the requirements of N.J.A.C. 5.4(b) 7:8.

**SECTION 2.** Chapter 20 of the Revised General Ordinances of the Township of Upper, also known as the Code of Upper Township, shall be amended and supplemented as hereinafter provided:

Revise the following to **Section 20-2.1 Definitions of Township Wide Application:**

*Farm* shall mean:

- a. Principal Uses: A lot of at least five acres in area used for the growing and harvesting of crops and the raising and breeding of certain animals, including truck farms, nurseries and greenhouses, dairies, livestock, produce, and aquaculture.
- b. Accessory Uses: Buildings incidental to farms, such as: tenant houses (outside the Pinelands area), greenhouses, buildings for housing seasonal workers for the farm's own use; barns, packing, grading and storage buildings for produce raised on the premises, except that no processing of produce shall be permitted; buildings for keeping poultry and permitted livestock; boarding and training of permitted livestock; and garages for the keeping of equipment and trucks used in farm operations.

*Residential Agriculture* shall mean the growing and harvesting of plant life and the keeping of farm animals for the enjoyment of the residents on the properties and not primarily for commercial purposes. Agricultural commercial structures and uses are permitted under this definition provided such structures and uses meet all applicable accessory building setback (side and rear) and coverage requirements and are set back from the front street line at least 20 feet and be located on a lot with a minimum lot area of two acres or the minimum lot area required for the zone district, whichever is greater, except up to six (6) egg laying chickens may be permitted as long as they are contained upon the property and no roosters are permitted. Agricultural commercial structures and uses may not extend 10 feet in height. (For permitted signs, see Subsection 20-5.10.)

Revise **Section 20-3.2** as follows:

20-3.2 Zoning Map.

The map is amended to reflect the zoning boundary changes as set forth on the revised Zoning Map of the Township of Upper prepared by Paul E. Dietrich, Sr., Upper Township Engineer, dated

**SECTION 3: EFFECTIVE DATE:** This ordinance shall take effect immediately upon the following publication as required by law.

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

**SECTION 5: 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 6: CODIFICATION:** This Ordinance shall be codified in the Upper Township Code at the sections referred to above.

NOTICE IS HEREBY GIVEN THAT THE FOREGOING ORDINANCE WAS INTRODUCED FOR FIRST READING AT A MEETING OF THE TOWNSHIP COMMITTEE OF THE TOWNSHIP OF UPPER HELD ON THE **12<sup>TH</sup> DAY OF JULY, 2021** 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 **9<sup>TH</sup> DAY OF AUGUST, 2021** AT 7:30 P.M. AT THE TOWNSHIP HALL, TUCKAHOE, NEW JERSEY.

BY ORDER OF THE TOWNSHIP COMMITTEE OF THE TOWNSHIP OF UPPER.  
BARBARA L. YOUNG, TOWNSHIP CLERK  
TOWNSHIP OF UPPER

### **CORRESPONDENCE**

### **NEW BUSINESS**

10. **Ron O'Hara request to place temporary trailer at 6 Sheila Avenue Seaville during the re-construction of his home.** Motion by Curtis Corson, second by Edward Barr, to proceed with this request pursuant to Township Code and the recommendation of the Zoning Board. During roll call vote all five Committee members voted in the affirmative. A resolution for formal action will be listed on a future agenda.
11. **Request for a streetlight on Redwood Avenue.** The Township Engineer reported that there are no streetlights in the vicinity of the homes on Redwood, and he would recommend the installation of a streetlight on the existing utility pole located at the intersection of Redwood and Lilac. Motion by Edward Barr, second by Kimberly Hayes 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 by John Coggins, second by Edward Barr. During roll call vote all five Committee members voted in the affirmative.**

**Bills approved for payment: \$772,906.62**

**Payroll: \$234,535.40**

### **REPORT OF MUNICIPAL DEPARTMENTS**

- 13. Animal Control**
- 14. Clerk's Office**
- 15. Construction Code**
- 16. Finance Office**
- 17. Municipal Court**
- 18. MUA Report**
- 19. Public Works**
- 20. Tax Collector**

Motion by Richard Palombo, second by Edward Barr, to accept the reports as submitted. During roll call vote all five Committee members voted in the affirmative.

### **PUBLIC COMMENT**

**David Rossow, Deerfield Trail**, inquired into the regulations for discharging firearms for target practice on private property. The Municipal Attorney reported that there are no local regulations for the discharge of firearms on private property, they are regulated by state statute. It was further recommended that a noise ordinance complaint can be filed with the Municipal Court. The Committee also directed the Township Administrator to check with the NJSP to investigate the matter.

**Cindy Glovesky, Evergreen Drive**, spoke about an invasive species of tree on her neighbor's property and which are now invading her property. The Township Engineer stated that the neighbor has a removal plan in place and is currently working with code enforcement. The Committee directed that information on the invasive tree be placed on the Township's website to inform residents.

**Ron O' Hara, Sheila Avenue**, thanked the Committee for their assistance during a very trying time.

Mayor Palombo then closed the public comment portion of the meeting. The Municipal Attorney stated that there is a personnel matter listed for discussion under closed session. The employee that is the subject of that discussion has requested that the matter be discussed in open session. Brian Bushong was then asked to state on the record that he wished to discuss his personnel item in open session, which he did. There was then a motion by Kimberly Hayes, second by Richard Palombo, and all Committee members voting in the affirmative, to recess for a five-minute break to allow Mr. Bushong's Union representation to arrive.

Motion Richard Palombo, second by Kimberly Hayes, to resume the open session.

**Personnel Matter Re: Brian Bushong**, Special Legal Counsel Mark Ruderman was in attendance via phone conference. Township employee Brian Bushong, and shop steward Brian Keenan were also in attendance.

Dan young opened the personnel matter by stating that Mr. Bushong requested that this personnel matter be discussed in public.



Mr. Ruderman gave a rundown of the incident involving Mr. Bushong. He stated that as a result of Mr. Bushong's actions, the Township had reasonable suspicion to send Mr. Bushong for drug testing, after which Mr. Bushong was placed on administrative leave pending the results of the drug test. Mr. Ruderman stated that the results which were received today and are positive for methamphetamines. He also stated that it was also noted in the report that there was no medical excuse to explain the results of the test and that a split specimen test was offered to Mr. Bushong but Mr. Bushong did not accept the offer for split specimen testing. Mr. Ruderman stated that as a result of the positive test it is his recommendation that the township proceed with disciplinary charges for the termination of Mr. Bushong and that he be placed on administrative leave without pay. He then recommended that before the committee votes on the matter that Mr. Bushong or his representative be given the opportunity to speak. Mr. Bushong had no comment. Mr. Bushong's union representative, AFSCME Shop Steward Brian Keenan spoke on his behalf. Mr. Keenan stated that he was not aware of any charges until this evening. He was only made aware that Mr. Bushong was drug tested. Mr. Keenan asked Mr. Ruderman if the union was made aware of the charges. Mr. Ruderman stated that he just received the test results today and that he intended to call the Union Representative Yolanda Lawson tomorrow morning and provide her with a copy the test result.

Mr. Keenan next discussed a grievance filed on behalf of Brian Bushong which alleges that Mr. Bushong was denied union representation when he was transported to the drug testing facility. Mr. Ruderman stated that he is aware of the grievance that was filed and that the grievance has now been moved up to Committeeman Barr. Mr. Ruderman stated that Mr. Bushong was transported immediately and without a union representative present, but he was not denied the right to have a union representative present with him at the testing facility. Mr. Keenan stated that he personally spoke to Mike Jones and Craig Reeves to request permission to attend the drug testing and he was denied the right to be present during the testing. Mr. Keenan then asked if the union was sent a copy of the grievance Mr. Ruderman responded that he thought the grievance was from the union, it was filed on a union form. Mr. Ruderman stated that he would provide a copy of the grievance to the union representative tomorrow morning. Mr. Keenan had no further comments this evening. Municipal Attorney Dan Young stated that the recommendation from the labor attorney is to file a preliminary notice of major discipline encompassing termination. Mr. Bushong will have the right to a hearing after that. Mayor Palombo then gave Brian Bushong the opportunity to comment before the committee vote. Mr. Bushong had no comment.

Motion by Edward Barr, second by John Coggins to proceed with a formal notice of major discipline encompassing the termination of employment for Brian Bushong. During roll call vote all five Committee members voted in the affirmative.

### **CLOSED SESSION**

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

### **TOWNSHIP OF UPPER RESOLUTION NO. 195-2021 MOTION GOING INTO CLOSED SESSION JULY 12, 2021**

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**

- Litigation - Township of Upper v. Whippoorwill Campground, LLC
- Contract negotiation - Project Development Agreement/Redevelopment
- Contract negotiation - Emergency Medical Billing.
- 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 this litigation matter such discussions will be made public when litigation is complete and the applicable appeal period has expired.
- D. 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.

Moved by: John Coggins

Motion seconded by: Edward Barr

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

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

Motion by John Coggins, second by Edward Barr, to reconvene the public portion of the meeting.

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

Motion by Edward Barr, second by John Coggins to assign Township Committee members John Coggins and Curtis Corson to handle matters regarding Orsted. During roll call vote four Committee members voted in the affirmative. Committee member Hayes voted no.

### **ADJOURNMENT**

There being no further business this evening the meeting was adjourned at 10:13 P.M., with a motion by Richard Palombo, second by Curtis Corson, and all five Committee members voting in the affirmative. The next regular meeting is scheduled for July 26, 2021 at 7:30 P.M.

Minutes prepared by,

Barbara L. Young, RMC  
Municipal Clerk

#### Bill List

77841 07/12/21 A0025 ADVANTAGE RENTAL & SALES 937.06 3195  
 77842 07/12/21 A0075 ADAMS, JOSHUA 57.73 3195  
 77843 07/12/21 A0081 ARMSTRONG, RALON I. 64.36 3195  
 77844 07/12/21 A0091 ATLANTIC CITY ELECTRIC 20,207.97 3195  
 77845 07/12/21 A0193 ATLANTIC INVESTIGATIONS, LLC 279.00 3195  
 77846 07/12/21 A0212 ANCERO, LLC 8,145.50 3195  
 77847 07/12/21 A0235 AMAZON CAPITAL SERVICES, INC. 86.00 3195  
 77848 07/12/21 A0236 ALENCO FENCE & LUMBER CORP. 1,250.00 3195  
 77849 07/12/21 B0035 BELMONT & CRYSTAL SPRINGS 74.50 3195  
 77850 07/12/21 B0039 BEESLEY'S PT. SEA DOO, INC. 13.99 3195  
 77851 07/12/21 B0218 BCI BURKE COMPANY, LLC 1,496.61 3195  
 77852 07/12/21 B0239 BAILEY, WILLIAM MICHAEL 791.66 3195  
 77853 07/12/21 B0248 BARNES LAW GROUP LLC 750.00 3195  
 77854 07/12/21 B0278 BUSINESS INFORMATION SYSTEMS 1,423.00 3195  
 77855 07/12/21 C0021 CIVIL SOLUTION A DIVISION 336.00 3195  
 77856 07/12/21 C0031 CAPE ASSIST 900.00 3195  
 77857 07/12/21 C0042 CAMPBELL SUPPLY COMPANY 926.06 3195  
 77858 07/12/21 C0046 CAPE MAY COUNTY CLERK 4,157.47 3195  
 77859 07/12/21 C0068 COMCAST 675.81 3195  
 77860 07/12/21 C0081 CAPE MAY COUNTY TECHNICAL HIGH 150.00 3195  
 77861 07/12/21 C0143 CODY'S POWER EQUIPMENT 8,014.68 3195

77862 07/12/21 C0223 CASA PAYROLL SERVICE 293.75 3195  
77863 07/12/21 C0246 CRAFT OIL CORPORATION 1,170.40 3195  
77864 07/12/21 C0279 CASA REPORTING SERVICES LLC 134.40 3195  
77865 07/12/21 C0307 CNS ACQUISITION CORPORATION 835.00 3195  
77866 07/12/21 D0171 DEPARTMENT OF THE TREASURY 162.26 3195  
77867 07/12/21 D0235 DICKINSON, MICHAEL 42.00 3195  
77868 07/12/21 E0003 EASTERN SIGN CO. 150.00 3195  
77869 07/12/21 F0219 FORTUNE TITLE AGENCY, INC. 2,480.00 3195  
77870 07/12/21 G0016 GARDNER HARDWARE INC. 170.13 3195  
77871 07/12/21 G0086 W.W. GRAINGER, INC. 462.72 3195  
77872 07/12/21 G0092 GRUND, BARBARA J. 300.00 3195  
77873 07/12/21 G0157 GRANTURK EQUIPMENT CO., INC. 2,802.65 3195  
77874 07/12/21 G0182 GOLDENBERG, MACKLER & SAYEGH 218.40 3195  
77875 07/12/21 H0073 HOME DEPOT CRC/GECE 51.57 3195  
77876 07/12/21 H0095 HORIZON BCBSNJ 223,012.01 3195  
77877 07/12/21 H0098 HERITAGE TOWERS, INC. 9,170.00 3195  
77878 07/12/21 J0023 JED'S SHEDS, INC. 4,300.00 3195  
77879 07/12/21 K0086 K D NATIONAL FORCE SECURITY 4,700.50 3195  
77880 07/12/21 K0100 KEEN COMPRESSED GAS CO. 277.56 3195  
77881 07/12/21 K0103 KYOCERA DOCUMENT SOLUTIONS 144.67 3195  
77882 07/12/21 K0111 KELLY INDUSTRIAL SUPPLY, INC. 269.28 3195  
77883 07/12/21 L0027 LASHLEY HEATING & COOLING INC. 250.00 3195  
77884 07/12/21 M0012 McCAULEY, RICHARD 209.99 3195  
77885 07/12/21 M0247 MORGAN, SCOTT 246.97 3195  
77886 07/12/21 M0281 Martenz Christine 24.05 3195  
77887 07/12/21 M0313 MAVIS TIRE SUPPLY, LLC 438.00 3195  
77888 07/12/21 N0004 NJ-AMERICAN WATER CO. 187.54 3195  
77889 07/12/21 N0043 NAPA AUTO PARTS 156.60 3195  
77890 07/12/21 N0143 NATIONAL TIME SYSTEMS 539.60 3195  
77891 07/12/21 N0154 NEW HORIZON COMMUNICATIONS 847.80 3195  
77892 07/12/21 O0006 SJSHORE MARKETING, LLC 452.50 3195  
77893 07/12/21 O0028 OAR HOUSE LLC 1,750.00 3195  
77894 07/12/21 P0036 PENNELLO, DAVID 79.99 3195  
77895 07/12/21 P0056 TURF EQUIPMENT AND SUPPLY CO 100,003.72 3195  
77896 07/12/21 P0136 POSTNET 42.00 3195  
77897 07/12/21 P0165 PETROSH'S BIG TOP, LLC 1,255.00 3195  
77898 07/12/21 P0175 PRIEST JR., ANTHONY 125.00 3195  
77899 07/12/21 R106 RUMER, LISA 790.00 3195  
77900 07/12/21 S0001 SAM'S CLUB 194.58 3195  
77901 07/12/21 S0097 SMH CPR TRAINING CENTER 364.00 3195  
77902 07/12/21 S0130 SOUTH JERSEY CHIEFS ASSOC. 187.00 3195  
77903 07/12/21 S0134 SO. JERSEY GAS COMPANY 387.80 3195  
77904 07/12/21 S0239 SHORE VET. ANIMAL CONTROL LLC 2,350.00 3195  
77905 07/12/21 S0254 SHOPRITE 175.64 3195  
77906 07/12/21 S0292 SURENIAN EDWARDS & NOLAN LLC 491.50 3195  
77907 07/12/21 S0362 FRED M. SCHIAVONE CONSTRUCTION 320,132.15 3195  
77908 07/12/21 T0032 THE PRESS OF ATLANTIC CITY 138.40 3195  
77909 07/12/21 T0080 TREASURER STATE OF N.J. 758.00 3195  
77910 07/12/21 T0148 THE TITLE COMPANY OF JERSEY 1,097.00 3195  
77911 07/12/21 T0168 TOWNSHIP OF UPPER 308.03 3195  
77912 07/12/21 T0194 TAG CONSULTING GROUP CORP. 1,850.00 3195  
77913 07/12/21 T0211 TRELEASE, BRIAN P., ESQUIRE 478.00 3195  
77914 07/12/21 T0212 TAYLOR COMMUNICATIONS, INC. 385.00 3195  
77915 07/12/21 U0043 ULINE, INC. 261.60 3195  
77916 07/12/21 U0067 UT HEALTH REIMB. ACCOUNT 2,008.33 3195  
77917 07/12/21 V0013 VERIZON WIRELESS 1,150.05 3195  
77918 07/12/21 V0025 V.E. RALPH & SON, INC. 1,725.17 3195  
77919 07/12/21 V0027 VANORDER, ROGER 111.96 3195  
77920 07/12/21 W0030 WEST PUBLISHING CO. 711.40 3195  
77921 07/12/21 W0087 W.B. MASON EGG HARBOR 285.64 3195  
77922 07/12/21 W0092 WTH TECHNOLOGY, INC 4,687.50 3195  
77923 07/12/21 W0123 WIRELESS ELECTRONICS, INC. 163.59 3195  
77924 07/12/21 X0008 XEROX FINANCIAL SERVICES 273.07 3195  
77925 07/12/21 Y0007 YEP COMPANY 481.50 3195  
77926 07/12/21 Y0008 YOUNG, DANIEL J. ESQUIRE PC 22,466.25 3195  
Total: 772,906.62