

**TOWNSHIP OF UPPER  
2100 TUCKAHOE ROAD  
PETERSBURG, NJ 08270  
CAPE MAY COUNTY  
MINUTES FOR FEBRUARY 26, 2024**

**REGULAR MEETING OF THE TOWNSHIP COMMITTEE – 4:30 P.M.**

**CALL TO ORDER**

**SUNSHINE ANNOUNCEMENT**

Mayor Newman read the following Open Public meeting notice into the record:

“In compliance with the Open Public Meetings Law, I wish to state that on February 23, 2024, the notice of this meeting of the Upper Township Committee was posted on the official Township Bulletin Board, the Upper Township Website, and emailed to the Atlantic City Press, the Ocean City Sentinel-Ledger, the Herald Times and filed with the Township Clerk. Tonight’s meeting is being video 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**

Curtis Corson	Present
Kimberly Hayes	Present
Victor Nappen	Present
Mark Pancoast	Present
Jay Newman	Present

Also present were Municipal Clerk Joanne Herron, Municipal Attorney Anthony Monzo, Chief Financial Officer Barbara Ludy, Township Engineer Ryan MacNeill, and Township Administrator Gary DeMarzo. Registered Municipal Accountant Leon Costello was present for the budget introduction portion of the meeting.

**APPROVAL OF MINUTES** – February 12, 2024 Regular and Closed Session Minutes

Motion by Kimberly Hayes, second by Mark Pancoast, to approve the February 12, 2024 Regular and Closed Session Minutes as submitted. During roll call vote all five Committee members voted in the affirmative.

**REPORT OF GOVERNING BODY MEMBERS**

**Kimberly Hayes, Committeewoman**, congratulated the Upper Township Basketball Association for the successful completion of their season and thanked the members of the Board and coaches for volunteering their time. She next reported that the Township will be holding the annual Easter Egg Hunt on Saturday March 23<sup>rd</sup>. She stated that this year the Township will be working with Jersey Cape Tags for the easter eggs.

**Victor Nappen, Committeeman**, reported that he attended the Upper Township Wrestling Association Beef & Beer, and it was a wonderful event. He next reported that the Township held a free rabies clinic on February 24<sup>th</sup> during which 77 dogs and 11 cats were vaccinated and 55 dog licenses were sold.

**Mark Pancoast, Committeeman**, reported that he recently received correspondence from the County regarding New Bridge Road and the project is scheduled to be completed in either late summer or fall of this year. He next reported on correspondence regarding whether the crossover at East Seaview Avenue will be open for the season. He stated that the Township is waiting to hear from the DEP as to when the access can be opened. He next reported that the sign on Roosevelt Boulevard regarding pending construction is a State project repaving Route 9 from Wrights Lane to Harbor Road. Lastly, he reported that the Township is looking to upgrade the cameras at Amanda's Field as well as the key access system at Town Hall.

**Curtis Corson, Committeeman**, reported that the Township recently received a monetary donation to purchase a new lifeguard boat. A resolution accepting the donation will be placed on a future agenda.

**Jay Newman, Mayor**, spoke about Bob Wriggins, a firefighter for the Tuckahoe Volunteer Fire Co., who last year had a medical emergency while responding to a call. He stated that there is a wonderful video of his story and requested that a copy be posted on the Township's social media site.

### **ADMINISTRATOR OVERVIEW**

**Gary DeMarzo, Township Administrator**, spoke about the upcoming Engineer's report and congratulated Ryan MacNeill for achieving progress with the living shoreline project.

**Ryan MacNeill, Township Engineer**, gave a brief report on several projects including the Township paving project, the Strathmere Stormwater Pump project, the State's Route 9 from Wrights Lane to Harbor Road project, the beach replenishment project, Caldwell Park lights, Open Space applications for the Skate Park and former Seventh Day Adventist Church property, and the Living Shoreline project.

**Barbara Ludy, Chief Financial Officer**, requested approval to send Public Works employee Ed Carter to a backflow certification class at a cost of \$750.00. Motion by Jay Newman, second by Curtis Corson, to approve the request. During roll call vote all five Committee members voted in the affirmative.

### **2024 BUDGET - CAP Ordinance and Budget Introduction**

1. Introduction and first reading of Ordinance No. 002-2024 RE: CALENDAR YEAR 2024 ORDINANCE TO EXCEED THE MUNICIPAL BUDGET APPROPRIATION LIMITS AND TO ESTABLISH A CAP BANK (N.J.S.A. 40A: 4-45.14). **Registered Municipal Accountant Leon Costello stated that this Ordinance is a required formality. The Township is not exceeding the appropriation limits just establishing a CAP bank. Motion by Curtis Corson, second by Kimberly Hayes, to introduce Ordinance No. 002-2024 with the public hearing and final adoption scheduled for March 25, 2024 at 4:30 PM. During roll call vote all five Committee members voted in the affirmative.**

**TOWNSHIP OF UPPER  
CALENDAR YEAR 2024  
ORDINANCE TO EXCEED THE MUNICIPAL BUDGET  
APPROPRIATION LIMITS  
AND TO ESTABLISH A CAP BANK  
(N.J.S.A. 40A: 4-45.14)**

**ORDINANCE NO. 002-2024**

**WHEREAS**, the Local Government Cap Law, N.J.S.A. 40A: 4-45.1 et seq., provides that in the preparation of its annual budget, a municipality shall limit any increase in said budget to **2.5%** unless authorized by ordinance to increase it to **3.5%** over the previous year's final appropriations, subject to certain exceptions; and,

**WHEREAS**, N.J.S.A. 40A: 4-45.15a provides that a municipality may, when authorized by ordinance, appropriate the difference between the amount of its actual final appropriation and the **3.5%** percentage rate as an exception to its final appropriations in either of the next two succeeding years; and,

**WHEREAS**, the Township Committee of the Township of Upper in the County of Cape May finds it advisable and necessary to increase its CY 2024 budget by up to **3.5%** over the previous year's final appropriations, in the interest of promoting the health, safety and welfare of the citizens; and,

**WHEREAS**, the Township Committee of the Township of Upper hereby determines that a **1.0 %** increase in the budget for said year, amounting to **\$129,318.46** in excess of the increase in final appropriations otherwise permitted by the Local Government Cap Law, is advisable and necessary; and,

**WHEREAS** the Township Committee of the Township of Upper hereby determines that any amount authorized hereinabove that is not appropriated, as part of the final budget shall be retained as an exception to final appropriation in either of the next two succeeding years.

**NOW THEREFORE BE IT ORDAINED**, by the Township Committee of the Township of Upper, in the County of Cape May a majority of the full authorized membership of this governing body affirmatively concurring, that, in the CY 2024 budget year, the final appropriations of the Township of Upper shall, in accordance with this ordinance and N.J.S.A. 40A: 4-45.14, be increased by **3.5 %**, amounting to **\$452,614.61** and that the CY 2024 municipal budget for the Township of Upper be approved and adopted in accordance with this ordinance; and,

**BE IT FURTHER ORDAINED**, that any amount authorized hereinabove that is not appropriated as part of the final budget shall be retained as an exception to final appropriation in either of the next two succeeding years; and,

**BE IT FURTHER ORDAINED**, that a certified copy of this ordinance as introduced be filed with the Director of the Division of Local Government Services within 5 days of introduction; and,

**BE IT FURTHER ORDAINED**, that a certified copy of this ordinance upon adoption, with the recorded vote included thereon, be filed with said Director within 5 days after such adoption.

NOTICE IS HEREBY GIVEN THAT THE FOREGOING ORDINANCE WAS INTRODUCED FOR FIRST READING AT A MEETING OF THE TOWNSHIP COMMITTEE OF THE TOWNSHIP OF UPPER HELD ON THE 26<sup>TH</sup> DAY OF FEBRUARY, 2024 AT THE TOWNSHIP HALL 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 25<sup>TH</sup> DAY OF MARCH, 2024 AT 4:30 P.M. AT THE TOWNSHIP HALL, PETERSBURG, NEW JERSEY.

2. Introduction of 2024 Budget.

Township Administrator presented a budget slideshow and stated that the 2024 proposed budget will increase \$300,000 or 1.4 cents. He stated that for the average house assessed at \$300,000 the increase will equal to \$42.00 in municipal taxes. He further stated that for every \$1,000 in total taxes collected, the Township receives \$120.00.

Registered Municipal Accountant Leon Costello then stated that the 2024 Budget is well within the spending and levy caps. The budget can be modified up until the budget adoption scheduled for March 25<sup>th</sup>. He further stated that the Governor will be delivering his budget address in the next week or so and there may be some modifications relative to what the Governor says.

Motion by Curtis Corson, second by Mark Pancoast, to introduce the 2024 Budget with the public hearing and final adoption scheduled for March 25, 2024, at 4:30 PM. During roll call vote all five Committee members voted in the affirmative. The introduced budget is available for public

inspection on the Upper Township website, a copy is available at the Upper Township Branch of the Cape May County Public Library, and copies are available at the Township Clerk's Office.

3. Authorizing the execution of a Group Affidavit Re: Governing Body Certification of Compliance with United States Equal Employment Opportunity Commission's "Enforcement Guidance on the Consideration of Arrest and Conviction Records in Employment Decisions under Title VIII of the Civil Rights Act 1964".

**TOWNSHIP OF UPPER  
CAPE MAY COUNTY  
RESOLUTION**

**RESOLUTION NO. 76-2024**

**AUTHORIZING THE EXECUTION OF A GROUP AFFIDAVIT  
RE: GOVERNING BODY CERTIFICATION OF COMPLIANCE WITH THE  
UNITED STATES EQUAL EMPLOYMENT OPPORTUNITY COMMISSION'S  
"ENFORCEMENT GUIDANCE ON THE CONSIDERATION OF ARREST AND  
CONVICTION RECORDS IN EMPLOYMENT DECISIONS UNDER TITLE VIII  
OF THE CIVIL RIGHTS ACT 1964"**

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**WHEREAS**, N.J.S.A. 40A:4-5 as amended by P.L. 2017, c.183 requires the governing body of each municipality and county to certify that their local unit's hiring practices comply with the United States Equal Employment Opportunity Commission's "Enforcement Guidance on the Consideration of Arrest and Conviction Records in Employment Decisions Under Title VII of the Civil Rights Act of 1964," *as amended*, 42 U.S.C. § 2000e *et seq.*, (April 25, 2012) before submitting its approved annual budget to the Division of Local Government Services in the New Jersey Department of Community Affairs; and

**WHEREAS**, the members of the governing body have familiarized themselves with the contents of the above-referenced enforcement guidance and with their local unit's hiring practices as they pertain to the consideration of an individual's criminal history, as evidenced by the group affidavit form of the governing body attached hereto as exhibit "A"; and

**NOW, THEREFORE BE IT RESOLVED**, that the Township Committee of the Township of Upper, hereby states that it has complied with N.J.S.A. 40A:4-5, as amended by P.L. 2017, c.183, by certifying that the local unit's hiring practices comply with the above-referenced enforcement guidance and hereby directs the Clerk to cause to be maintained and

available for inspection a certified copy of this resolution and the required affidavit to show evidence of said compliance.

**BE IT FURTHER RESOLVED** that this Resolution shall take effect pursuant to law.

Resolution No. 76-2024

Offered By: Hayes

Seconded by: Pancoast

Adopted: February 26, 2024

Roll Call:

NAME	YES	NO	ABSTAIN	ABSENT
Corson	X			
Hayes	X			
Nappen	X			
Pancoast	X			
Newman	X			

**Exhibit "A"**

**TOWNSHIP OF UPPER  
COUNTY OF CAPE MAY  
STATE OF NEW JERSEY**

**GROUP AFFIDAVIT**

**GOVERNING BODY CERTIFICATION PURSUANT TO P.L. 2017, C.183  
OF COMPLIANCE WITH THE UNITED STATES EQUAL EMPLOYMENT OPPORTUNITY  
COMMISSION'S "ENFORCEMENT GUIDANCE ON  
THE CONSIDERATION OF ARREST AND CONVICTION RECORDS  
IN EMPLOYMENT DECISIONS UNDER TITLE VII OF THE  
CIVIL RIGHTS ACT OF 1964"**

We, members of the Township Committee of the Township of Upper, being duly sworn according to law, upon our oath depose and say:

1. We are duly elected members of the Township Committee of the Township of Upper, in the County of Cape May;
2. Pursuant to P.L. 2017, c.183, we have familiarized ourselves with the contents of the United States Equal Employment Opportunity Commission's "Enforcement Guidance on the Consideration of Arrest and Conviction Records in Employment Decisions Under Title VII of the Civil Rights Act of 1964," *as amended*, 42 U.S.C. § 2000e *et seq.*, (April 25, 2012);
3. We are familiar with the local unit's hiring practices as they pertain to the consideration of an individual's criminal history;
4. We certify that the local unit's hiring practices comply with the above-referenced enforcement guidance.

**CONSENT AGENDA**

All Consent Agenda items listed below are routine in nature and will be enacted by one motion. If the Mayor or any Committee member wishes a particular agenda item to be considered separately, it will be removed from the consent agenda and acted on separately.

Motion by Kimberly Hayes, second by Mark Pancoast, to approve consent agenda items. During roll call vote all five Committee members voted in the affirmative.

**FILING OF REPORTS BY CONSENT**

**RESOLUTIONS TO BE APPROVED BY CONSENT**

4. Resolution of the Township of Upper, County of Cape May, opposing Assembly Bill No. 4/Senate Bill No. 50, which proposes to overhaul the Fair Housing Act (“FHA”) in a way that imposes unrealistic obligations with unrealistic deadlines based upon onerous standards.

**TOWNSHIP OF UPPER  
CAPE MAY COUNTY  
RESOLUTION**

**RESOLUTION NO. 77-2024**

**RESOLUTION OF THE TOWNSHIP OF UPPER, COUNTY OF CAPE MAY,  
OPPOSING ASSEMBLY BILL NO. 4/SENATE BILL NO. 50, WHICH  
PROPOSES TO OVERHALL THE FAIR HOUSING ACT (“FHA”) IN A WAY  
THAT IMPOSES UNREALISTIC OBLIGATIONS WITH UNREALISTIC  
DEADLINES BASED UPON ONEROUS STANDARDS**

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**Mount Laurel II**

**WHEREAS**, in 1983, the Supreme Court decided a landmark case, commonly referred to as Mount Laurel II; and

**WHEREAS**, Mount Laurel II and its progeny generated substantial litigation culminating in the enactment of the New Jersey Fair Housing Act in 1985 (“FHA”); and

**The Fair Housing Act of 1985**

**WHEREAS**, the Legislature enacted the FHA to restore home rule, to bring the fair share numbers back to reality and to reduce the burdens of Mount Laurel compliance; and

**WHEREAS**, more specifically, the FHA sought *to restore home rule* by imposing a moratorium on the builder’s remedy and by providing an administrative process that municipalities could voluntarily pursue wherein they would be insulated from developers seeking builder’s remedies to try to compel them to capitulate their zoning demands; and

**WHEREAS**, the FHA sought *to bring the fair share numbers back to reality* by among other things defining the prospective need as the need “based on development and growth which is reasonably likely to occur” and by calling for the fair share to be adjusted to a number lower than the fair share formula generated if the municipality lacked sufficient land to satisfy the obligation generated by the fair share formula; and

**WHEREAS**, the FHA sought *to reduce the burdens on municipalities* by prohibiting any requirement for municipalities to expend their own resources to comply; and

## **The New Jersey Council on Affordable Housing**

**WHEREAS**, the FHA created COAH and conferred “primary jurisdiction” on COAH to administer the FHA and to implement the affordable housing policies of our State; and

**WHEREAS**, all acknowledge -- even Fair Share Housing Center (“FSHC”) -- that COAH functioned just fine in Rounds 1 and 2; and

**WHEREAS**, COAH did not adopt valid regulations for Round 3 despite multiple efforts to do so and made no efforts to cure the bottleneck the third time COAH voted 3-3 on Round 3 regulations; and

### **Mount Laurel IV**

**WHEREAS**, in 2015, the Supreme Court issued a decision, commonly referred to as Mount Laurel IV, in response to a motion to transfer the responsibilities of COAH back to the courts in light of COAH’s failure to adopt valid regulations; and

**WHEREAS**, in Mount Laurel IV, the Supreme Court returned the task of implementing the doctrine back to the Courts because COAH had failed to do its job and made no effort to cure the roadblock when it voted 3-3 on the third iteration of Round 3 regulations; and

**WHEREAS**, notwithstanding the foregoing, the Court emphasized that it preferred the administrative remedy created by the FHA to a judicial one and hoped that COAH would be effective so that towns could comply once again through the administrative process created by the FHA; and

**WHEREAS**, the Court process proved to be far more expensive than the COAH process and was ill-suited for resolving comprehensive planning disputes over affordable housing matters; and

**WHEREAS**, the Round 3 process was a disaster with judges pressing municipalities to comply before even establishing the obligations with which they must comply; and

**WHEREAS**, ultimately, on March 8, 2018, after a 41-day trial in Mercer County, Judge Jacobson issued an opinion in which she set forth a fair share methodology; and

**WHEREAS**, in that trial and in various other instances throughout the state, FSHC took the position that the Statewide obligation should exceed 300,000 to be addressed between 2015 and 2025; and

**WHEREAS**, municipalities, through Dr. Robert Powell, presented evidence that, in a best case scenario, the State could only absorb less than 40,000 affordable units and thus argued that FSHC’s calculations was not grounded in reality whatsoever; and

**WHEREAS**, the Court, having been constrained by the Supreme Court to prescriptively utilize a formula from 1993, ultimately concluded that the Statewide obligation to be constructed between 2015-2025 was roughly 153,000 units; and

### **The 354 Settlements with FSHC**

**WHEREAS**, FSHC reports that it entered 354 settlements in Round 3; and

**WHEREAS**, many municipalities are reeling under the burden of satisfying their obligations under those settlements entered between 2015 and 2023; and

**WHEREAS**, many of those Round 3 settlements will result in development during the Round 4 period; and

**WHEREAS**, Round 4 is set to begin on July 1, 2025 and there is no comprehensive analysis on the impacts of the 354 Round 3 settlements and over-zoning described above; and

**WHEREAS**, indeed, the A4/S50 Bill fails to consider the impact from affordable housing projects that were approved during the Third Round, but are still not yet under construction, as said projects, as well as additional future projects, will impact legitimate public concerns like infrastructure, the environment, schools, traffic, parking and open space; and

**WHEREAS**, the Round 3 process destroyed the balance achieved by the Fair Housing Act in 1985; and

#### **A-4/S-50**

**WHEREAS**, on December 19, 2023, against the above backdrop, the Housing Committee of the Assembly (a) unveiled the Legislation (A-4) – a detailed 69-page bill that the Chairwoman of the Housing Committee announced had been worked on for a long time; and (b) scheduled the bill for a vote at a hearing scheduled less than 24 hours later; and

**WHEREAS**, on December 19, 2023, the Administrative Office of the Courts wrote to the Legislature and made clear that it could not structure the bill in the manner set forth in the proposed legislation; and

**WHEREAS**, notwithstanding the foregoing, on December 20, 2023, the Housing Committee voted the bill out of the Committee and announced that the bill needed to be ready for signing by the Governor before the end of the lame duck session on January 8, 2024; and

**WHEREAS**, the perception that the Legislature designed was to adopt the bill before the public had an opportunity to review it and provide meaningful comment was as real as it was unmistakable; and

**WHEREAS**, consequently, the Legislature did not ram the bill through in the lame duck session; and

**WHEREAS**, instead, on January 29, 2024, the Housing Committee of the Assembly met to consider a new version of A-4 and voted to release it out of the Committee; and

**WHEREAS**, on February 8, 2024, as a result of comments, letters and resolutions challenging this new version of A-4, the Appropriations Committee of the Assembly announced a number of changes to the Bill; and

**WHEREAS**, one witness likened the summary presented to the public at the February 8, 2024 Appropriations meeting to that of an auctioneer; and

**WHEREAS**, the Appropriations Committee voted the bill out of the Committee at its February 8, 2024 meeting before the public had an opportunity to even see the changes, much less process their significance and comment on them; and

**WHEREAS**, the bill has been improved marginally as it has evolved from its initial version in December of 2023 to the current version voted out of the Appropriations Committee of the Assembly on February 8, 2024; and

**WHEREAS**, despite elimination of just some of the gross excesses of the prior version of the bill, the current bill released after the February 8, 2024 Appropriations Committee meeting is still severely flawed; and



**WHEREAS**, the Bill still creates a judicial entity made up of 3-7 retired Mount Laurel judges called “The Program”, which, unlike COAH, is not comprised of an equal number of municipal and housing representatives, and is not made up of an equal number of Republicans and Democrats, thereby depriving the citizens of our State of the carefully crafted COAH Board that included a diversity of interests and that was the centerpiece of the FHA adopted in 1985; and

**WHEREAS**, the Bill still does not require the promulgation of affordable housing obligations, or the adoption of substantive regulations, in a way that utilizes an open and transparent process that COAH used and that gave all interested parties an opportunity to comment and receive COAH’s response to their comments; and

**WHEREAS**, as detailed below, the bill creates a patently unreasonable responsibility on municipalities by imposing an obligation on them to create a realistic opportunity for satisfaction of a fair share that is itself unrealistic; and

**WHEREAS**, the current version still details the methodology to be used for determining the fair share numbers of municipalities in Round 4 and in subsequent rounds; and

**WHEREAS**, the current version still presumes that 40 percent of all new households will qualify as low or moderate; and

**WHEREAS**, the current version still calls for the determination of the prospective need by subtracting the number of households reported in the 2010 Decennial Census from the number of households reported in the 2020 Decennial Census and multiplying that figure by 40 percent; and

**WHEREAS**, we calculate the statewide need number to be 84,690 based upon the formula set forth in the bill; and

**WHEREAS**, the current version of the Bill calls for 84,690 to be adjusted by the number of conversions and demolitions; and

**WHEREAS**, the statewide fair share would be increased from 84,690 to 96,780, if we assume the same number of demolitions and conversions used by Judge Jacobson in her formula for Round 3 that will apply in Round 4; and

**WHEREAS**, we can estimate the obligation of each municipality if we assume that the same percentage of the regional need in Round 3 for each municipality applies in Round 4; and

**WHEREAS**, we have widely distributed our estimates and invited input after acknowledging that we have done the best we can to formulate estimates in very limited time; and

**WHEREAS**, other than an analysis of the allocation factors by an expert for the American Planning Association (Creigh Rahenkamp) who identified problems with the allocation factors, nobody has accepted our invitation to review and comment on our rough estimates; and

**WHEREAS**, to the contrary, the Executive Director of Fair Share Housing Center testified that he did not have a calculation of the fair share numbers; and

**WHEREAS**, more importantly, no committee of the Assembly or Senate has identified the fair share obligations municipalities should expect based upon the formula set forth in the bill; and

**WHEREAS**, the 96,780 fair share number estimated for Round 4 compares to the roughly 211,000 COs issued between 2010 and 2020; and

**WHEREAS**, the 96,780 fair share number divided by 211,000 COs equals roughly 46 percent (45.867 percent to be more precise); and

**WHEREAS**, all municipalities should be able to cure any violations of the prohibition against exclusionary zoning with inclusionary zoning; and

**WHEREAS**, traditional inclusionary zoning ordinances generally require no more than 20 percent of the units to be affordable; and

**WHEREAS**, it is mathematically impossible to satisfy a 46 percent problem with a 20 percent solution and, therefore, the number generated by the statutory formula is patently excessive; and

**WHEREAS**, while this mathematical error conceptually may have existed at COAH, COAH utilized its discretion to reduce the statewide number to roughly 5,000 units per year in Rounds 1-2 (or lower for prospective need in its attempted regulations in 2014); and

**WHEREAS**, in addition, COAH's Round 2 regulations had flexible standards, Regional Contribution Agreements (RCAs), an achievable bonus structure, waivers and other flexible standards to further mitigate the problem; and

**WHEREAS**, had COAH not mitigated the problem, it is likely that the regulations would have been challenged by municipalities; and

**WHEREAS**, as detailed below, the Bill still fails to account for the enormous burdens on municipalities to comply with their Round 3 obligations before imposing very substantial additional burdens on those 354 municipalities for Round 4; and

**WHEREAS**, a representative of FSHC testified that it has entered into 354 settlements and that it would furnish those settlements to the Housing Committee, which it has failed to do; and

**WHEREAS**, we have pressed FSHC to advise how much development will take place in Round 4 as a result of municipalities implementing the 354 settlements reached in Round 3; and

**WHEREAS**, Adam Gordon on behalf of FSHC has indicated he doesn't know the answer to this question and no committee of the Assembly or Senate has even hinted at what the answer might be; and

**WHEREAS**, the Bill requires municipalities to create a realistic opportunity for satisfaction of a fair share without taking into account how many affordable units can realistically be achieved through traditional inclusionary zoning (where generally one out of every five units must be affordable); and

**WHEREAS**, we also sought to ascertain how many affordable units could be realistically achieved through traditional inclusionary zoning by urging the Legislature to do a market study since the strength of the housing market will determine the number of market units that can reasonably be anticipated that are essential to generating one affordable unit for every four market units constructed; and

**WHEREAS**, the Legislature has not furnished a market study in response to our repeated emphasis on the need for one to ascertain how many affordable units could be realistically achieved through traditional inclusionary zoning; and

**WHEREAS**, as explained below, the bill dilutes the protections to which a municipality is currently entitled as it seeks to comply voluntarily and even after it secures approval of its affordable housing plan; and

**WHEREAS**, current laws preserve a municipality’s immunity in the absence of proof that the municipality is “determined to be constitutionally noncompliant”, the proposed bill does not give municipalities seeking to comply voluntarily the same measure of protection the Supreme Court deemed appropriate; and

**WHEREAS** A4/S50 subjects municipalities to litigation not only as they seek approval of their Housing Element and Fair Share Plans, but also even after they secure approval of those plans; and

**WHEREAS**, more specifically, A4/S50 provides municipalities a “compliance certification” if the municipality secures approval of its affordable housing plan; however, that certification does not prevent an interested party from “alleging that, despite the issuance of compliance certification, a municipality’s fair share obligation, fair share plan, housing element, or ordinances implementing the fair share plan or housing element are in violation of the Mount Laurel doctrine”; and

**WHEREAS**, the Bill suffers from a myriad of additional flaws; and

**WHEREAS**, under current laws, a municipality would have a right to rely on the fair share number that COAH provides; however, under the new bill a municipality would only have a presumption of validity that the number the DCA provides to the municipality is appropriate and FSHC, a deep pocketed developer or any other interested party could seek to overcome that presumption through litigation; and

**WHEREAS**, the A4/S50 Bill replaces a straightforward system by which a municipality could secure bonus credits up to a 25 percent cap with a highly complicated system for securing bonuses with many conditions attached to various forms of bonus.; and

**WHEREAS**, the Legislature previously capped the fair share of any municipality down to 1,000 in recognition that any obligation above 1,000 would be “onerous”; A4/S50 applies the 1,000-unit cap only to a component of the municipality’s fair share -- the prospective need – and authorizes the imposition of an obligation that is onerous; and

**WHEREAS**, the A4/S50 Bill creates unfair requirements and ambiguity when it comes to the Vacant Land Adjustment process, which could lead to municipalities that lack sufficient vacant land being required to produce more affordable housing units than is practical; and

**WHEREAS**, the A4/S50 Bill includes many other provisions and changes to the FHA that are impractical and devoid of any consideration of the burdens created by the statute; and

**WHEREAS**, as a result of the facts set forth above, a bill that boasts of its effectiveness in reducing costs and litigation will clearly have the exact opposite effect; and

**WHEREAS**, in addition to all the concerns expressed above, a bill that so radically changes the affordable housing laws of our state still needs considerable work; and

**WHEREAS**, indeed, as the following facts demonstrate, the Legislature has yet to do the most fundamental due diligence before enacting a statute with such broad ramifications;

1. The Legislature has not and cannot inform the public of the fair share obligations the bill, if enacted, would impose on the public;
2. The Legislature has not and cannot inform the public of the obligations that municipalities will satisfy in Round 4 from the 354 settlements achieved in Round 3 before heaping substantial additional burdens on them for Round 4;

3. The Legislature has not and cannot inform the public of the number of affordable units that can realistically be achieved through traditional inclusionary zoning while imposing obligations on municipalities to create a realistic opportunity for a fair share that far exceeds any number a municipality can realistically achieve through inclusionary zoning; and

**WHEREAS**, as a result of the pronounced lack of due diligence, the bill will likely force taxes to increase dramatically and will foster serious overdevelopment creating unreasonable burdens on our schools, public services, roads, sewer and water infrastructure; and

**WHEREAS**, the Legislature clearly can and should upgrade the affordable housing policies of our State; however, the current Version of A4 is not the answer and the most fundamental diligence can and should be exercised before adopting such a bill.

**NOW, THEREFORE, BE IT RESOLVED**, that for all of the above reasons, the Township Committee of the Township of Upper, objects to and opposes Assembly Bill No. 4/Senate Bill No. 50, and requests that the bill be tabled, re-written and re-introduced in way that imposes achievable obligations and facilitates the ability of the municipality to satisfy its obligations.

A certified copy of this resolution shall be sent to the Legislators in the State Assembly and Senate representing our District immediately.

Resolution No. 77-2024

Offered by: Hayes

Seconded by: Pancoast

Adopted: February 26, 2024

Roll Call Vote:

NAME	YES	NO	ABSTAIN	ABSENT
Corson	X			
Hayes	X			
Nappen	X			
Pancoast	X			
Newman	X			

5. Opposing the State of New Jersey’s new proposed shore protection rule.

**TOWNSHIP OF UPPER  
CAPE MAY COUNTY  
RESOLUTION**

**RESOLUTION NO. 78-2024**

**OPPOSING THE STATE OF NEW JERSEY’S NEW PROPOSED SHORE PROTECTION RULE**

**WHEREAS**, the State of New Jersey is proposing a new shore protection rule that would allow for the State Department of Environmental Protection (DEP) to restrict access to tidal waters and adjacent shorelines to protect threatened and endangered species of wildlife and their critical habitats; and

**WHEREAS**, while the Township of Upper recognizes and understands the importance of the Department’s service to protect critical habitat areas and endangered species throughout the State, for reasons including but not limited to public safety and recreational public access, the Township has concern for the DEP’s proposed new rule that would expand seasonal closures of beaches, tidal waterway, and beach entranceways during the high season in our shore town communities; and

**WHEREAS**, according to the State of New Jersey website, the DEP promotes public access and use of tidal waterways and their shores based on the common law of the Public Trust Doctrine, which

provides for that public rights to tidal waterways and their shores and further establishes the right of the public to fully utilize these lands and waters for a variety of public activities; and

**WHEREAS**, in the DEP’s stakeholder presentation on September 19<sup>th</sup>, 2023 that outlined the new proposed rule, there is a reference to a series of pictures to serve as examples of “injurious uses” that would trigger the restriction for access; and

**WHEREAS**, those references to “injurious uses” include pictures of footsteps on the beach, walking along the shoreline, shoreline access by boat, and accessing the beach with an unleashed dog; and

**WHEREAS**, expanding the DEP’s ability to restrict access to the public and municipal public safety departments to our waterways seems to be in conflict with the Public Trust Doctrine that that the state bases all of their public access rules on; and

**WHEREAS**, with the #1 industry in Cape May County being tourism and our beaches being one of the main attractions for visitors to our County, restricting access to our public beaches may result in an adverse impact on the local economy and consequently a decrease in the hundreds of millions of State tourism tax dollars that the County generates for the State annually; and

**WHEREAS**, according to the federal Department of Homeland Security’s Emergency Response Plan, the actions taken in the initial minutes of an emergency are critical; and

**WHEREAS**, while the local shore communities and County do our best to support the needs for emergency water response during the peak summer season, due to the seasonality and coastal geographical location of our area in combination with coastal storms that cause rough water conditions, water rescues and sadly, sometimes fatal drownings are a common occurrence throughout our area; and

**WHEREAS**, if the State is to establish this new rule with no changes, the proposed restriction of access to local and County public safety departments including but not limited to Police, Fire Department, and Beach Patrols for the purposes of emergency response will put life and safety of the general public at risk; and

**WHEREAS**, historically, new rules issued by the NJDEP have been promulgated pursuant to legislation; and

**WHEREAS**, again in this case like the case with the State’s proposed NJPACT rules, there is no legislation that has authorized NJDEP to require more stringent requirements and restrictions on public lands; and

**WHEREAS**, the County’s environmental consultant, Lomax Environmental, has analyzed the proposed rule further and has prepared a detailed report of the impacts that this proposed new rule may have on our County and local communities, which is attached hereto as Exhibit A.

**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 requests that the Legislature be encouraged to exercise its legislative oversight authority to review and approve the new proposed shore protection rule, that may have significant impacts on coastal communities statewide, prior to adoption so as to ensure the fairness and the maximum public acceptance of those new proposed regulations.
3. A copy of this Resolution shall be submitted to the Offices of the State Representatives of Legislative District One, the Governor and DEP Commissioner of the State of New Jersey for their review and consideration in advance of release of the proposed new rule for public comment.

Resolution No. 78-2024

Offered by: Hayes

Seconded by: Pancoast

Adopted: February 26, 2024

Roll Call Vote:

NAME	YES	NO	ABSTAIN	ABSENT
Corson	X			
Hayes	X			
Nappen	X			

Pancoast	X			
Newman	X			

6. Approving the application of the Tuckahoe Volunteer Fire Company for highway coin drops.

**TOWNSHIP OF UPPER  
CAPE MAY COUNTY  
RESOLUTION**

**RESOLUTION NO. 79-2024**

**RE: APPROVING THE APPLICATION OF THE TUCKAHOE VOLUNTEER  
FIRE COMPANY FOR HIGHWAY COIN DROPS**

**WHEREAS**, the Tuckahoe Volunteer Fire Co., a non-profit corporation providing firefighting services, has made application to the Township Committee to hold coin drop solicitations in the Township of Upper; and

**WHEREAS**, approval is required from the Township of Upper, the County of Cape May and the State of New Jersey; 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 application of the Tuckahoe Volunteer Fire Co. to hold a coin drop within the

Township of Upper is hereby approved for the following locations and dates:

Intersection of State Highway 49 & State Highway 50 on  
Friday, July 19, 2024 from 5:00 p.m. to 9:00 p.m.

Saturday, July 20, 2024 from 9:00 a.m. to 3:00 p.m.

AND

Intersection of County Route 617 & State Highway 49 on

Sunday, July 21, 2024 from 3:00 p.m. to 8:00 p.m.

3. Attached to this Resolution is a certified copy of Ordinance No. 7-2001, authorizing coin drops within Upper Township enacted pursuant to N.J.S.A. 39:4-60.

4. A certified copy of this Resolution shall be provided to the State of New Jersey, Department of Transportation, and the Cape May County Board of Commissioners.

Resolution No. 79-2024

Offered by: Hayes                      Seconded by: Pancoast

Adopted: February 26, 2024

Roll Call Vote:

NAME	YES	NO	ABSTAIN	ABSENT
Corson	X			
Hayes	X			
Nappen	X			
Pancoast	X			
Newman	X			

7. Authorizing a building permit fee refund to DR Horton for Block 348.01, Lot 2.

**TOWNSHIP OF UPPER  
CAPE MAY COUNTY  
RESOLUTION**

**RESOLUTION NO. 80-2024**

**RE: AUTHORIZING A BUILDING PERMIT FEE  
REFUND TO DR HORTON FOR BLOCK 348.01, LOT 2**

**WHEREAS**, DR Horton applied for a building permit for 18 Crop Street, Block 348.01, Lot 2 in Upper Township; and

**WHEREAS**, after the permit was issued, it was discovered that the building’s cubic feet measurements were miscalculated resulting in an overpayment; and

**WHEREAS**, the Upper Township Construction Official has recommended granting DR Horton a refund in the amount of \$1,221.00.

**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 to DR Horton, 2040 Briggs Road, Suite A, Mount Laurel, NJ 08054, as indicated below:

<b>PERMIT #</b>	<b>BLOCK / LOT</b>	<b>AMOUNT</b>
2024-0009	348.01 / 2	\$ 1,221.00

Resolution No. 80-2024

Offered by: Hayes                      Seconded by: Pancoast

Adopted: February 26, 2024

Roll Call Vote:

NAME	YES	NO	ABSTAIN	ABSENT
Corson	X			
Hayes	X			
Nappen	X			

Pancoast	X			
Newman	X			

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

**TOWNSHIP OF UPPER  
CAPE MAY COUNTY  
RESOLUTION**

**RESOLUTION NO. 81-2024**

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

**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 Spending Plan:



Triad Associates	
(AA Wait List Rentals)	\$200.00
(AA/MTA Wait List)	200.00
(AA Tech Assistance)	<u>150.00</u>
	\$550.00
Monzo Catanese DeLollis	\$875.00

Resolution No. 81-2024

Offered By: Hayes

Seconded By: Pancoast

Adopted: February 26, 2024

Roll Call Vote:

NAME	YES	NO	ABSTAIN	ABSENT
Corson	X			
Hayes	X			
Nappen	X			
Pancoast	X			
Newman	X			

9. Amending Resolution No. 12-2024 establishing salaries for various officers and employees.

**TOWNSHIP OF UPPER  
CAPE MAY COUNTY  
RESOLUTION**

**RESOLUTION NO. 82-2024**

**RE: AMENDING RESOLUTION NO. 12-2024  
ESTABLISHING SALARIES FOR VARIOUS OFFICERS AND EMPLOYEES**

**WHEREAS**, Resolution No. 12-2024 fixes salaries for various administrative, clerical and other personnel for the year 2024; and

**WHEREAS**, the Township Committee has determined it necessary to amend said Resolution No. 12-2024; 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. Resolution No. 12-2024 is hereby amended to reflect the following persons shall be paid the annual salary or hourly rate opposite their name commencing January 1, 2024:

NAME	POSITION	SALARY
Jay Newman	Emergency Information Officer	No Salary

Gary DeMarzo	Township Administrator	\$28,500.00
	Personnel Officer	\$66,500.00
	Fund Commissioner	No Salary
Joanne Herron	Township Clerk	\$80,000.00
	Registrar of Vital Statistics	No Salary on
	Official to Certify Municipal Improvement Searches	these titles
	General Licensing Official	
	Data Information Coordinator	
	Public Agency Compliance Officer	
Rhonda Sharp	Tax Collector	\$98,200.00
	Tax Search Officer	No Salary on
	Personnel Officer	these titles
	Claims Coordinator	
Joseph Berroddin	Township Tax Assessor P/T	\$65.00/Hr
Michelle Johnson	Deputy Tax Assessor	\$60,000.00
Barbara Ludy	Chief Financial Officer	\$98,200.00
	QPA/Purchasing Agent	No Salary on
	Benefits Coordinator	these titles
James Birchmeier	Judge, Municipal Court	\$57,000.00
Loren Ready	Municipal Court Administrator	\$76,500.00
	Assistant Safety Coordinator	No Salary
Kristen Snyder	Deputy Municipal Court Administrator	55,000.00
Carol Marcolongo	Keyboarding Clerk 1	\$25.00/Hr
Theodore Cooper	Construction Code Official	\$90,000.00
	Building Sub-Code Official	No Salary
James Cotton	Plumbing Sub-Code Official	\$23,000.00
	Temporary Construction Official	\$35.00/Hr.
Jacob Spiegel	Fire Protection Sub-Code Official	15,000.00
Patrick Baker, Jr.	Temporary Electrical Sub-Code Official	\$43.00/Hr
William Marsden	Electrical Sub-Code Official	\$33,444.00
April Johnston	Technical Assistant to Construction Official	\$55,000.00
Rosemary Trout	Keyboarding Clerk 2, Clerk's Office	\$56,750.00
	Alternate Deputy Registrar	No Salary on
	Alternate Fund Commissioner	these titles
	Wellness Coordinator	
Patricia Smyth	Assistant Municipal Tax Collector	\$68,000.00
	Passport Acceptance Agent	No Salary on
	Assistant Personnel Officer	these titles
Janet McBride	Keyboarding Clerk 2, Clerk's Office	\$56,750.00
	Deputy Registrar	No Salary on
	Wellness Coordinator	these titles
Elizabeth Oaks	Technical Assistant to the Construction Official	\$73,000.00
	Zoning Officer	No salary on
	Secretary Planning Board	these titles
	Secretary Zoning Board of Adjustment	
Sarah Steiner	Assistant Municipal Treasurer	\$56,500.00
	Passport Acceptance Agent	No salary

Edward Carter	Deputy Municipal Emergency Management Coordinator	\$ 3,100.00
Bruce Riordan	2 <sup>nd</sup> Assistant Municipal Emergency Management Coordinator	\$ 1,200.00
Bernard Walker	2 <sup>nd</sup> Assistant Municipal Emergency Management Coordinator	\$ 1,200.00
Russell Barham	2 <sup>nd</sup> Assistant Municipal Emergency Management Coordinator	\$ 1,200.00
Jeremiah Williams	Playground Inspector	\$ 1,000.00
Joshua Tozer	Code Enforcement Officer Substitute School Traffic Guard	\$20.00/Hr.
Mellissa Coker	Chief Emergency Medical Technician Safety Coordinator	\$87,000.00 No salary
John Brittin	Deputy Chief Emergency Medical Technician 9-1-1 Coordinator/Right to Know Director	\$77,000.00 No Salary
Johnathan Carter	Supervising Emergency Medical Technician	\$63,000.00
Jennifer Teasenfitz	Supervising Emergency Medical Technician	\$63,000.00
Paula Brooks	Emergency Medical Technician (2-3yr)	\$53,000.00
Kyle Lindholm	Emergency Medical Technician (2-3yr)	\$53,000.00
Carolyn A. Raff	Emergency Medical Technician (1 <sup>st</sup> yr)	\$51,000.00
Ryan Couse	Emergency Medical Technician (1 <sup>st</sup> yr)	\$51,000.00
Ryan Schaefer	Emergency Medical Technician (1 <sup>st</sup> yr)	\$51,000.00
Jessica Wriggins	Emergency Medical Technician (1 <sup>st</sup> yr)	\$51,000.00
Angel Anderson	P/T Emergency Medical Technician (10+)	\$28.00/Hr
Daniel Dubbs	P/T Emergency Medical Technician (10+)	\$28.00/Hr
Patricia Kravitz	P/T Emergency Medical Technician (10+)	\$28.00/Hr
Valerie McKim	P/T Emergency Medical Technician (10+)	\$28.00/Hr
Deborah Dore	P/T Emergency Medical Technician (10+)	\$28.00/Hr
Lauren DiGiovanni	P/T Emergency Medical Technician (10+)	\$28.00/Hr
Amanda Grau	P/T Emergency Medical Technician (10+)	\$28.00/Hr
Mark Newman	P/T Emergency Medical Technician (10+)	\$28.00/Hr
Wally Welliver	P/T Emergency Medical Technician (6-9 yr)	\$26.00/Hr
H. Lawrence Dubs, Jr.	P/T Emergency Medical Technician (4-5 yr)	\$24.00/Hr
Timothy Leeds	P/T Emergency Medical Technician (2-3 yr)	\$23.00/Hr
Joseph Maccarone	P/T Emergency Medical Technician (2-3 yr)	\$23.00/Hr
Tracy Caine	P/T Emergency Medical Technician (2-3 yr)	\$23.00 Hr
Eric Shane	P/T Emergency Medical Technician (2-3 yr)	\$23.00/Hr
Anthony Clerico, III	P/T Emergency Medical Technician (1st yr)	\$22.00/Hr
Timothy Brittin	P/T Emergency Medical Technician (1 <sup>st</sup> yr)	\$22.00/Hr
Matthew Blaker	P/T Emergency Medical Technician (1st yr)	\$22.00/Hr

Markie Alexander	P/T Emergency Medical Technician (1 <sup>st</sup> yr)	\$22.00/Hr
Eric Johnston	P/T Emergency Medical Technician (1 <sup>st</sup> yr)	\$22.00/Hr
William Handley	P/T Emergency Medical Technician (1 <sup>st</sup> yr)	\$22.00/Hr
Craig Reeves	Superintendent of Public Works	\$107,000.00
James M. Jones	Assistant Public Works Superintendent Deputy Municipal Emergency Management Coordinator Deputy Right to Know Director	\$101,500.00 No Salary on these titles
John Adams	Maintenance Supervisor, Grounds	\$80,000.00
Nicholas Mason	Supervising Equipment Operator	\$80,000.00
John Hope	Supervising Mechanic	\$80,000.00
Marshall Kohler	Mechanic	\$64,427.00
Richard Kaczmariski	Supervisor Sanitation Recycling Coordinator Code Enforcement Officer	\$82,500.00 No Salary on these titles
Peter Buganski	Maintenance Repairer (0-9)	\$64,427.00
David Pennello	Senior Carpenter (0-9)	\$66,548.00
Stewart Segin	Equipment Operator (0-9)	\$64,427.00
Richard McCauley	Equipment Operator (0-9)	\$64,427.00
Edward Kline	Truck Driver, Heavy (10+)	\$63,366.00
Brian Keenan	Truck Driver, Heavy (0-9)	\$62,305.00
Ralon Armstrong	Truck Driver, Heavy (10+)	\$63,366.00
John Chisholm	Truck Driver, Heavy (0-9)	\$62,305.00
Andrew Mangam	Truck Driver, Heavy (0-9)	\$62,305.00
Sean Fenton	Truck Driver, Heavy (0-9)	\$62,305.00
Christopher Hohman	Truck Driver, Heavy (0-9)	\$62,305.00
Todd Rammel	Truck Driver, Heavy (0-9)	\$62,305.00
Jeremiah Williams	Maintenance Worker 2, Grounds (10+)	\$65,487.00
Edward Carter	Maintenance Worker 2, Grounds (0-9)	\$64,427.00
Roger Van Order	Maintenance Worker 2, Grounds (0-9)	\$64,427.00
John Kohler	Maintenance Worker 1, Grounds (10+)	\$63,366.00
Sean Ferrier	Maintenance Worker 1, Grounds (0-9)	\$62,305.00
Michael Mayne	Laborer 1 (10+)	\$60,248.00
Josh Adams	Laborer 1 (10+)	\$60,248.00
Matthew Edwards	Laborer 1 (6 <sup>th</sup> - 9 <sup>th</sup> yr)	\$58,511.00
William Evans	Laborer 1 (6 <sup>th</sup> - 9 <sup>th</sup> yr)	\$58,511.00
Joseph Shone	Laborer 1 (2 <sup>nd</sup> yr)	\$49,245.00

Joseph Sharp	Laborer 1 (1 <sup>st</sup> yr)	\$46,785.00
Zachary Burns	Laborer 1, (1 <sup>st</sup> yr)	\$46,785.00
Wesley Yakopic	Laborer 1, Probational	\$33,280.00
Christopher Castagna	Laborer 1, Probational	\$33,280.00
Lawrence Cole	Recreation Supervisor MAC Coordinator	\$60,000.00 \$ 4,450.00 (Fiscal Year)
Barbara Grund	Bldg. Maintenance Worker	\$46,785.00

3. This Resolution shall be effective immediately and is further intended to ratify, confirm and approve any formal action taken by the Township Committee.

Resolution No. 82-2024

Offered by: Hayes

Seconded by: Pancoast

Adopted: February 26, 2024

Roll Call Vote:

NAME	YES	NO	ABSTAIN	ABSENT
Corson	X			
Hayes	X			
Nappen	X			
Pancoast	X			
Newman	X			

10. Appointing J. P. Bainbridge & Associates, Inc. and J. Paul Bainbridge as an appraiser for the Township of Upper.

**TOWNSHIP OF UPPER  
CAPE MAY COUNTY  
RESOLUTION**

**RESOLUTION NO. 83-2024**

**RE: APPOINTING J. P. BAINBRIDGE & ASSOCIATES, INC. AND  
J. PAUL BAINBRIDGE AS AN APPRAISER FOR THE TOWNSHIP OF UPPER**

**WHEREAS**, the Township requires an appraiser to provide services to obtain the market value of real property in the Township with respect to tax appeals and other matters; and

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

**WHEREAS**, J.P. Bainbridge & Associates, Inc. and J. Paul Bainbridge have completed and submitted a Business Entity Disclosure Certification which certifies that J.P. Bainbridge & Associates, Inc. and J. Paul Bainbridge have 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 J.P. Bainbridge

& Associates, Inc. and J. Paul Bainbridge 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. J.P. Bainbridge & Associates, Inc. and J. Paul Bainbridge with offices at 6 Woodland Road, Cape May Court House, New Jersey is hereby appointed appraiser for the Township of Upper to provide services relating to the appraisal of real property for tax appeals and other matters.

3. The 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 J.P. Bainbridge & Associates, Inc. and J. Paul Bainbridge have professional knowledge as to appraisal issues which knowledge is particularly valuable to the Township Committee and this service is acquired as a non-fair and open contract pursuant to N.J.S.A. 19:44A-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 J.P. Bainbridge & Associates, Inc. and J. Paul Bainbridge for appraisal services. This contract and the resolution authorizing same shall be available for public inspection in the office of the municipal clerk of the Township of Upper, State of New Jersey.

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

7. 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.

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

9. A notice of the contract award shall be published in the official newspaper of the Township of Upper within ten (10) days from the date of adoption.

10. This Resolution shall be effective as of adoption.

Resolution No. 83-2024

Offered by: Hayes

Seconded by: Pancoast

Adopted: February 26, 2024

Roll Call Vote:

NAME	YES	NO	ABSTAIN	ABSENT
Corson	X			
Hayes	X			
Nappen	X			
Pancoast	X			
Newman	X			

11. Appointing Keith A. Bonchi, Attorney at Law and the Law Offices of GMS Law as special legal counsel to complete certain in rem foreclosure matters.

**TOWNSHIP OF UPPER  
CAPE MAY COUNTY  
RESOLUTION**

**RESOLUTION NO. 84-2024**

**RE: APPOINTING KEITH A. BONCHI, ATTORNEY AT LAW AND THE  
LAW OFFICES OF GMS LAW AS SPECIAL LEGAL COUNSEL TO COMPLETE CERTAIN  
IN REM FORECLOSURE MATTERS**

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**WHEREAS**, the Township of Upper requires legal counsel to complete certain in rem foreclosure matters; 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 Keith A. Bonchi, Esquire and the Law Offices of GMS Law as a non-fair and open contract pursuant to the provisions of N.J.S.A. 19:44A-20.5; and

**WHEREAS**, Keith A. Bonchi, Esquire and the Law Offices of GMS Law have completed and submitted a Business Entity Disclosure Certification which certifies that Keith A. Bonchi, Esquire and the Law Offices of GMS Law have 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 Keith A. Bonchi, Esquire and the Law Offices of GMS Law from making any reportable contributions through the term of the contract.

**NOW, THEREFORE, BE IT RESOLVED** by the Township Committee in 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. Keith A. Bonchi, Esquire and the Law Offices of GMS Law with offices at 660 New Road, First Floor, Northfield, New Jersey 08225 are hereby appointed as Special Legal Counsel for the Township of Upper for the completion of in rem foreclosure matters.
3. The 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 Keith A. Bonchi, Esquire and the Law Offices of GMS Law have professional knowledge as to in rem foreclosure 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**

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 Keith A. Bonchi, Esquire and the Law Offices of GMS Law as Special Legal Counsel for in rem foreclosure matters. 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. 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.

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

9. A 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.

Resolution No. 84-2024

Offered by: Hayes

Seconded by: Pancoast

Adopted: February 26, 2024

Roll Call Vote:

NAME	YES	NO	ABSTAIN	ABSENT
Corson	X			
Hayes	X			
Nappen	X			
Pancoast	X			
Newman	X			

12. Appointing Frank L. Corrado, Esquire to act as special legal counsel.

**TOWNSHIP OF UPPER  
CAPE MAY COUNTY  
RESOLUTION**

**RESOLUTION NO. 85-2024**

**RE: APPOINTING FRANK L. CORRADO, ESQUIRE TO ACT  
AS SPECIAL LEGAL COUNSEL**

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**WHEREAS**, the Township Committee of Upper Township desires special legal counsel in matters in which the regular legal counsel has a conflict and such other matters as the Township Committee may direct; 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 Frank L. Corrado, Esquire as a non-fair and open contract pursuant to the provisions of N.J.S.A. 19:44A-20.5; and

**WHEREAS**, Frank L. Corrado, Esquire has completed and submitted a Business Entity Disclosure Certification which certifies that Frank L. Corrado, Esquire has not made any reportable contributions to a political or candidate committee in the Township that would bar the award of this contract and that the contract will prohibit Frank L. Corrado 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. Frank L. Corrado, Esquire with offices at 2700 Pacific Avenue, Wildwood, New Jersey is hereby appointed Special Legal Counsel 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 Frank L. Corrado, Esquire has professional knowledge as to legal matters which knowledge is particularly valuable to the Township Committee.

#### **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 Frank L. Corrado, Esquire for legal services. This contract and the resolution authorizing same shall be available for public inspection in the office of the municipal clerk of the Township of Upper, State of New Jersey.

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

6. The contractor has registered with the State of New Jersey pursuant to c.57, Laws of 2004 and has provided proof of that registration to the Township of Upper.

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

8. A 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. 85-2024

Offered by: Hayes

Seconded by: Pancoast

Adopted: February 26, 2024

Roll Call Vote:

NAME	YES	NO	ABSTAIN	ABSENT
Corson	X			
Hayes	X			
Nappen	X			
Pancoast	X			
Newman	X			

13. Appointing Parker McCay P.A. to act as special legal counsel.

**TOWNSHIP OF UPPER  
CAPE MAY COUNTY  
RESOLUTION**

**RESOLUTION NO. 86-2024**

**RE: APPOINTING PARKER MCCAY P.A. TO  
ACT AS SPECIAL LEGAL COUNSEL**

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**WHEREAS**, the Township of Upper requires special legal counsel services with regard to bonding for capital improvement projects and other issues; 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 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**, Parker McCay P.A. has completed and submitted a Business Entity Disclosure Certification which certifies that Parker McCay P.A. has not made any reportable contributions to a political or candidate committee in the Township that would bar the award of this contract and that the contract will prohibit Parker McCay P.A. from making any reportable contributions through the term of the contract; and

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

1. The allegations of the preamble are incorporated herein by this reference.
2. 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 matters regarding capital improvement projects and other issues as directed by the Township Committee.
3. The contract shall have a term of one (1) year from date of full execution.
4. The 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 Parker McCay P.A. 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 Parker McCay P.A. for legal services. The 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 the 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.

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 Parker McCay P.A. in accordance with the terms and provisions of the Local Public Contracts Law, subject to and in accordance with the limitations imposed herein. Upon execution of all parties thereto said contract shall become effective.

8. This contract shall have a term of one (1) year from date of full execution.

9. 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.

10. This Resolution shall be effective as of adoption.

Resolution No. 86-2024

Offered by: Hayes

Seconded by: Pancoast

Adopted: February 26, 2024

Roll Call Vote:

NAME	YES	NO	ABSTAIN	ABSENT
Corson	X			
Hayes	X			
Nappen	X			
Pancoast	X			
Newman	X			

**RESOLUTIONS TO BE ACTED ON SEPARATELY**

14. Authorizing a grant application and agreement with the Federal Emergency Management Agency for an Assistance to Firefighters grant.

**TOWNSHIP OF UPPER  
CAPE MAY COUNTY  
RESOLUTION**

**RESOLUTION NO. 87-2024**

**AUTHORIZING A GRANT APPLICATION AND AGREEMENT WITH  
THE FEDERAL EMERGENCY MANAGEMENT AGENCY FOR  
AN ASSISTANCE TO FIREFIGHTERS GRANT**

---

**WHEREAS**, the Federal Emergency Management Agency is accepting applications for the Assistance to Firefighters Grant (AFG) Program; and

**WHEREAS**, this program is available to municipalities in the State of New Jersey; and

**WHEREAS**, the Township of Upper carefully considers grant programs that assist the Township in achieving projects and programs that are priorities for the community; and

**WHEREAS**, the primary goal of the AFG Program is to meet the firefighting and emergency response needs of fire departments and nonaffiliated emergency medical service organizations; and

**WHEREAS**, all costs associated with this grant application and award will be the responsibility of the Upper Township Chiefs Association, the Strathmere Volunteer Fire Company, the Tuckahoe Volunteer Fire Company, the Marmora Volunteer Fire Company, and the Seaville Volunteer Fire and Rescue Company.

**NOW, THEREFORE, BE IT RESOLVED** that Township Committee of the Township of Upper on behalf of the Upper Township Chiefs Association in support of the Strathmere Volunteer Fire Company, the Tuckahoe Volunteer Fire Company, the Marmora Volunteer Fire Company, and the Seaville Volunteer Fire and Rescue Company, formally approves the grant application for the above stated project.

**BE IT FURTHER RESOLVED** that the Deputy Mayor and Clerk are hereby authorized to submit a grant application to the Federal Emergency Management Agency.

**BE IT FURTHER RESOLVED** that the Deputy Mayor and Clerk are hereby authorized to sign the grant agreement on behalf of the Township of Upper and that their signature constitutes acceptance of the terms and conditions of the grant agreement and approves the execution of the grant agreement.

Resolution No. 87-2024

Offered by: Corson

Seconded by: Nappen

Adopted: February 26, 2024

Roll Call Vote:

NAME	YES	NO	ABSTAIN	ABSENT
Corson	X			
Hayes	X			
Nappen	X			
Pancoast	X			
Newman			X	

## **ORDINANCES**

15. Public hearing and final adoption of Ordinance No. 001-2024 RE: AN ORDINANCE ADDING CHAPTER 4-6 (SHORT TERM RENTALS) TO THE CODE OF UPPER TOWNSHIP. **During the public hearing portion there were the following speakers:**

**Jon Grubb, Rt 50 Tuckahoe, spoke in opposition to the Ordinance, specifically the limitations based on the size of the property.**

**Maria Busz, Gardners Lane, spoke in favor of the Ordinance.**

**There being no more speakers, Mayor Newman then closed the public hearing.**

**Motion by Kimberly Hayes, second by Mark Pancoast, to adopt Ordinance No. 001-2024. During roll call vote four Committee members voted in the affirmative. Committeeman Nappen abstained.**

**TOWNSHIP OF UPPER**

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

**ORDINANCE NO. 001-2024**

**RE: AN ORDINANCE ADDING CHAPTER 4-6 (SHORT TERM RENTALS)  
TO THE CODE OF UPPER TOWNSHIP**

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**WHEREAS**, the Township Committee of the Township of Upper desires to adopt an ordinance amending Chapter 4 of the Revised General Ordinances of the Township of Upper, also known as the Code of Upper Township, by adding a new Section 4-6 with respect to the requirements and regulations regarding rental short term rentals.

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

**SECTION 4-6 SHORT TERM RENTALS**

4-6.1 Declaration.

The Township Committee finds and declares that the short-term rental of certain residential dwelling units within the Township benefits the local community by affording owners of such units the ability to garner additional income from their real property in order to diminish the financial burden of carrying costs and maintenance expenses related to the property, as well as providing travelers with an alternative option for accommodations in the Township. Notwithstanding those benefits, the Township Committee also finds and declares that certain transitory uses of residential property tend to affect the residential character of the community and, if unregulated, can be injurious to the health, safety, and welfare of the community.

4-6.2 Purpose

The intended purposes of this section are to:

- a. balance the rights of the owners of residential dwelling units proposed for short-term rental use and the Township's business community affected by the allowance and existence of short-term rentals within certain sections of the Township;
- b. protect the public health, safety and general welfare of individuals and the community at large;
- c. provide for an organized and reasonable process for the short-term rental of certain defined classifications of residential dwelling units in the Township;
- d. monitor and provide a reasonable means for mitigation of impacts created by such transitory uses of residential properties within the Township;

- e. preserve and protect the long-term housing market stock in the Township;
- f. implement rationally based and reasonably tailored regulations to protect the integrity of the Township's residential neighborhoods; and
- g. ensure that the short-term rental property inventory in the Township satisfies basic property maintenance standards, in order to protect the safety of occupants and the citizens of the Township.

#### 4-6.3. Definitions

As used in this chapter, the following terms shall have the meanings indicated:

**CONSIDERATION** Soliciting, charging, demanding, receiving or accepting any legally recognized form of consideration including a promise or benefit, a quid-pro-quo, rent, fees, other form of payment or thing of value.

**DWELLING UNIT** Any structure, or portion thereof, whether furnished or unfurnished, which is occupied in whole or in part, or intended, arranged, or designed to be occupied, for sleeping, dwelling, cooking, gathering and/or entertaining, as a residential occupancy, by one or more persons. This definition includes an apartment, house, condominium, building, co-operative, converted space, or portions thereof, that is offered to use, made available for use, or is used for accommodations, lodging, cooking, sleeping, gathering and/or entertaining of occupants and/or guests, for consideration, for a period of 30 days or less.

**HOUSEKEEPING UNIT** Constitutes a family-type situation, involving one or more persons, living together that exhibit the kind of stability, permanency and functional lifestyle equivalent to that of a traditional family unit, as further described in the applicable reported and unreported decisions of the New Jersey Superior Court.

**OCCUPANT** Any individual using, inhabiting, living, gathering, entertaining, being entertained as a guest, or sleeping in a dwelling unit, or portion thereof, or having other permission or possessory rights within a dwelling unit.

**OWNER** Any person or entity, association, limited-liability company, corporation, or partnership, or any combination, who legally use, possess, own, lease, sublease or license (including an operator, principal, shareholder, director, agent, or employee, individually or collectively) that has charge, care, control or participates in the expenses and/or profit of a dwelling unit pursuant to a written or unwritten agreement, rental, lease, license, use, occupancy agreement or any other agreement.

**PERSON** An individual, firm, corporation, association, partnership, limited liability company, association, entity or any person and/or entity acting in concert or any combination thereof.

**RESIDENTIAL OCCUPANCY** The use of a dwelling unit by one or more occupants.

**SHORT TERM RENTAL** The rental of dwelling unit for 30 consecutive days or less, but not less than seven consecutive days.

#### 4-6.4 Short Term Rentals

- a. It shall be unlawful for an owner, lessor, sublessor, any other persons or entities acting in concert, or a combination thereof, with person or entity having possessory or use rights in a dwelling unit, to allow or fail to discontinue the use or occupancy of any dwelling unit for a period of not less than



seven consecutive days (for residential properties that are one acre or less) or for not less than three consecutive days (for property that is greater than one acre or with a QFarm assessment) anywhere in the Township outside the geographic bounds of the Waterfront Town Center, Marmora Town Center, Resort Residential and Resort Commercial Zoning Districts.

- b. The short-term rental of dwelling units for more than the minimum number of consecutive days set forth in the preceding section but not more than 30 consecutive days shall be permitted subject to satisfying all of the conditions of this section and specifically the restrictions contained in subsection 4-6.6.
- c. This section shall not apply to units within any motel, hotel, campground or condominium campground, to any owner-occupied dwelling units, or to a short-term use and occupancy agreement between the buyer and seller of real property where the agreement permits the buyer to occupy the real property before closing or permits the seller to occupy the real property after closing.

#### 4-6.5. Registration; Fees

- a. All short-term rental units shall hereafter be registered annually with the Township Clerk on forms which shall be provided for that purpose.
- b. The registration term shall commence April 1 of each year and such registration shall be valid until March 31 of the following year at which time it shall expire and a new registration shall occur.
- c. Application.
  - 1. Initial. The initial registration shall be made in writing and shall be signed by the owner on a form provided by the Township Clerk or designee. Said application shall state: (i) the name and physical address of the owner; (ii) owner's phone number and email address; (iii) the location of the building and a description of the dwelling unit; (iv) the number of dwelling units; (v) the number of bedrooms rooms in each dwelling unit; and (vi) a designated agent name and phone number to be available to respond to complaints in a timely manner.
  - 2. Renewal. Application for a renewal registration shall be made in writing and shall be signed by the owner on a form provided by the Township Clerk or designee. Said application shall state and changes to the previously submitted registration.
- d. Fees. The annual registration fee for each short-term rental unit shall be \$100.00.

#### 4-6.6 Short Term Rental Restrictions.

The occupancy of dwelling units of seven or more consecutive days but not more than 30 consecutive days shall be subject to the following requirements:

- a. No more than two cars shall be permitted to be parked at the premises (including on the street adjacent to same) for homes of up to three bedrooms, with one additional car for each additional bedroom.
- b. Occupancy shall be limited to two individuals per bedroom.
- c. The occupants shall comply with all municipal ordinances and State statutes pertaining to noise, nuisances and health concerns.
- d. No amplified music shall be permitted outdoors past 9:00 PM.

- e. All trash shall be placed in closed containers and placed at the curb for pick-up on the scheduled day.
- f. All advertisements shall include the restrictions set forth in this ordinance as well as the occupancy limit of said rental property.
- g. Such additional regulations as may be promulgated from time to time by a resolution of the Township Committee.

4-6.7. Enforcement authority.

Any of the violations referred to in this chapter may be enforced, as applicable, by the Housing Officer, Code Enforcement Official, Zoning Official, Construction Code Official, Municipal Housing Liaison, Local Department of Health or other such person designated by the Township Committee.

4-6.8. Violations and Penalties

- a. Any person violating or failing to comply with any of the provisions of this section shall, upon conviction thereof, be punishable by a fine in accordance with Section 1-5 of this Code, which includes a maximum penalty not exceeding \$1,250 and/or imprisonment in the County jail for a period not exceeding 90 days, or both, or to a period of community service not exceeding 90 days at the discretion of the Municipal Court Judge, and at least a minimum penalty shall be imposed which shall consist of a fine which may be fixed at an amount not exceeding \$100. Each and every day in which a violation of any provision of this Code or any other ordinance of the Township exists shall constitute a separate violation.
- b. In addition to subsection (a), in the event that there are three or more violations of the restrictions set forth in Section 4-6.6 in any calendar year, the registration of the short-term rental unit shall be revoked for the remainder of that year and the following calendar year.

**SECTION 2: EFFECTIVE DATE:** This Ordinance shall take effect immediately upon the following publication as required by law.

**SECTION 3: REPEALER:** All Ordinances or parts of Ordinances inconsistent herewith are hereby repealed to the extent of such inconsistency only.

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

**SECTION 5: 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 **22<sup>ND</sup> DAY OF JANUARY, 2024** AT THE TOWNSHIP HALL, AND WAS TAKEN UP FOR CONSIDERATION AS TO FINAL ADOPTION AT A PUBLIC HEARING OF THE

TOWNSHIP COMMITTEE OF THE TOWNSHIP OF UPPER HELD ON THE 26<sup>TH</sup> DAY OF FEBRUARY, 2024 AT 4:30 P.M. AT THE TOWNSHIP HALL, PETERSBURG, NEW JERSEY, AT WHICH TIME SAID ORDINANCE WAS ADOPTED.

JOANNE R. HERRON, TOWNSHIP CLERK  
TOWNSHIP OF UPPER

16. Introduction and first reading of Ordinance No. 003-2024 RE: AN ORDINANCE VACATING VALLEY AVENUE, WITHIN THE TOWNSHIP OF UPPER, COUNTY OF CAPE MAY AND STATE OF NEW JERSEY. **Motion by Curtis Corson, second by Kimberly Hayes, to introduce Ordinance 003-2024 with a public hearing and final adoption scheduled for March 25, 2024. 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. 003-2024**

**AN ORDINANCE VACATING VALLEY AVENUE, WITHIN THE TOWNSHIP OF UPPER,  
COUNTY OF CAPE MAY AND STATE OF NEW JERSEY**

---

**WHEREAS**, N.J.S.A. 40:67-1 authorizes the Governing Body of a municipality to adopt an Ordinance, among other things, to vacate any street, highway, lane, alley, square, place or park, or any part thereof, dedicated to public use but not accepted by the municipality, whether or not the same, or any portion, has been actually opened or improved; and

**WHEREAS**, John D. Mayberry, the owner of Block 305, Lot 1 (the “Property”), has requested that the Township vacate Valley Avenue as described in this Ordinance and has agreed to pay the costs incurred by the Township to vacate said street including the costs of the revisions to the tax map; and

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

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

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

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

**Description**

Vacation of Valley Avenue,  
as shown on Current Municipal Tax Map Sheet No. 11.4  
Tuckahoe Section of Township of Upper

Beginning at the point of intersection of the Northeasterly corner of Valley Avenue (33 feet R.O.W.) and the Westerly line of Mackey Avenue (40 feet R.O.W.), and

- Thence #1: Extending in a Westerly direction along the Northerly line of Valley Avenue a distance of 295 feet to a point, and;
- Thence #2: Extending in a Southerly direction across the Westerly line of Valley Avenue a distance of 33 feet to a point, and;
- Thence #3: Extending in an Easterly direction along the Southerly line of Valley Avenue a distance of 295 feet to a point of intersection of Southeasterly corner of Valley Avenue and the Westerly line of Mackey Avenue, and;
- Thence #4: Extending in a Northerly direction across Valley Avenue a distance of 33.0 feet to the point and place of beginning.

**SECTION 2:** This Ordinance vacates no portion of the street except that portion set forth and described in SECTION 1 above.

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

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

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

**SECTION 6:** John D. Mayberry, owner of the Property, shall reimburse the Township of Upper for all expenses related to said vacation, including attorney's fees, costs and any recording fees.

NOTICE IS HEREBY GIVEN THAT THE FOREGOING ORDINANCE WAS INTRODUCED FOR

FIRST READING AT A MEETING OF THE TOWNSHIP COMMITTEE OF THE TOWNSHIP OF UPPER HELD ON THE 26<sup>TH</sup> DAY OF FEBRUARY, 2024 AT THE TOWNSHIP HALL, 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 25<sup>TH</sup> DAY OF MARCH, 2024 AT 4:30 P.M. AT THE TOWNSHIP HALL, PETERSBURG, NEW JERSEY.

JOANNE R. HERRON, TOWNSHIP CLERK  
TOWNSHIP OF UPPER

### CORRESPONDENCE

### NEW BUSINESS

17. Estate of William E. Walker, Jr. request to donate Block 367, Lots 19, 20, and 21 to the Township of Upper. **The Township Administrator stated that he performed a cursory inspection of the property, and it appears to be clear of any vehicles or trash. After a brief discussion there was a motion by Jay Newman, second by Curtis Corson, to proceed with the process of accepting the donation. During roll call vote all five Committee members voted in the affirmative.**
18. New Jersey Department of Agriculture 2024-2026 Spotted Lanternfly Control Treatment Reimbursement Program. **Motion by Kimberly Hayes, second by Victor Nappen, to approve participation in the program. During roll call vote all five Committee members voted in the affirmative.**
19. Ocean City High School Theater Boosters request to hold Raffles RA #574 and RA #576 at the Upper Township Community Center on April 20, 2024. **Motion by Kimberly Hayes, second by Mark Pancoast, to approve the request. During roll call vote all five Committee members voted in the affirmative.**
20. American Legion Post #239 Aaron Wittkamp Colwell request to hold Raffle RA #575 at the Heritage Links Golf Course, 1375 Route 9, on August 17, 2024. **Motion by Curtis Corson, second by Kimberly Hayes, to approve the request. During roll call vote all five Committee members voted in the affirmative.**
21. Ocean City High School Boys Lacrosse Boosters request to hold Raffle RA #577 at Levari's Seafood & American Grill, 1291 Route 50, on April 20, 2024. **Motion by Kimberly Hayes, second by Victor Nappen, to approve the request. During roll call vote all five Committee members voted in the affirmative.**

### UNFINISHED BUSINESS

### PAYMENT OF BILLS

22. "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 Kimberly Hayes, second by Mark Pancoast. During roll call vote all five Committee members voted in the affirmative.**

Bills approved for payment: **\$275,565.44**  
Payroll: **\$204,403.69**

### PUBLIC COMMENT – LIMITED TO FIVE (5) MINUTES PER PERSON

**There was no public comment.**

**CLOSED SESSION**

23. 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. 88-2024  
MOTION GOING INTO CLOSED SESSION  
FEBRUARY 26, 2024**

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. Personnel
2. Potential Litigation - Cape May County Agriculture Development Board
3. Litigation - Hemby v. Township of Upper
4. Contract negotiation - Danziger & Markhoff
5. Contract negotiation - Brian P. Trelease, Hearing Officer
6. Contract negotiation - Trinity Code Inspections, LLC
7. Contract negotiation - Right to Know Inventory Services
8. Contract negotiation - License for use of right of way
9. Attorney/Client Privilege - Cell Tower

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 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.
- C. With respect to litigation matters such discussions will be made public when litigation is complete and the applicable appeal period has expired.
- D. With respect to contract negotiations such matters will be made public when negotiations have ceased and there is no longer a reason for confidentiality.

Moved by: Mark Pancoast

Motion seconded by: Curtis Corson

Roll Call Vote with all five Committee members voting in the affirmative.

**RECONVENE PUBLIC PORTION OF MEETING**

Motion by Kimberly Hayes, second by Jay Newman, to reconvene the public portion of the meeting. During roll call vote all five Committee members voted in the affirmative.

**ADJOURNMENT**

There being no further business this evening the meeting was adjourned at 6:12 P.M., with a motion by Jay Newman, second by Kimberly Hayes, and all five Committee members voting in the affirmative. The next regular Committee meeting is scheduled for March 11, 2024 at 6:30 P.M.

Minutes prepared by,

Joanne R. Herron, RMC  
Township Clerk

Bills

83051 02/26/24 A0018 ACTION SUPPLY INC. 4,290.50 3344  
83052 02/26/24 A0091 ATLANTIC CITY ELECTRIC 8,479.57 3344  
83053 02/26/24 A0191 ACTION UNIFORM CO. LLC 36.00 3344  
83054 02/26/24 A0235 AMAZON CAPITAL SERVICES, INC. 53.39 3344  
83055 02/26/24 B0035 BELMONT & CRYSTAL SPRINGS 61.12 3344  
83056 02/26/24 C0010 CMC MUNICIPAL JUDGES ASSOC 75.00 3344  
83057 02/26/24 C0019 CITY OF OCEAN CITY 8,425.00 3344  
83058 02/26/24 C0068 COMCAST 1,052.18 3344  
83059 02/26/24 C0146 COLLINS IRON WORKS, INC. 6,736.10 3344  
83060 02/26/24 C0223 CASA PAYROLL SERVICE 753.00 3344  
83061 02/26/24 C0279 CASA REPORTING SERVICES LLC 441.00 3344  
83062 02/26/24 D0016 DALEYS PIT 80.00 3344  
83063 02/26/24 D0040 DELTA DENTAL OF N.J. INC. 5,369.56 3344  
83064 02/26/24 D0186 DOCUTREND, INC. 55.62 3344  
83065 02/26/24 D0240 DEVLIN, EDMUND F. 1,048.95 3344  
83066 02/26/24 G0035 GENRON FIRE PROTECTION 1,541.23 3344  
83067 02/26/24 G0048 GIUSEPPE'S GOURMET 300.00 3344  
83068 02/26/24 G0120 PATRICK F. MARTIN 2,291.67 3344  
83069 02/26/24 G0182 GOLDENBERG, MACKLER & SAYEGH 164.85 3344  
83070 02/26/24 H0073 HOME DEPOT CRC/GECF 240.26 3344  
83071 02/26/24 K0100 KEEN COMPRESSED GAS CO. 134.00 3344  
83072 02/26/24 L0146 LAWSON PRODUCTS, INC. 790.35 3344  
83073 02/26/24 L0153 LIFEFORCE USA, INC. 261.86 3344  
83074 02/26/24 M0277 EQUITABLE FINANCIAL LIFE INS. 369.66 3344  
83075 02/26/24 M0290 MADDEN & MADDEN, PC 1,923.20 3344  
83076 02/26/24 M0327 MONZO CATANESE DeLOLLIS, P.C. 9,887.00 3344  
83077 02/26/24 P0032 PEDRONI FUEL CO. 2,185.25 3344  
83078 02/26/24 P0102 PUBLIC WORKS ASSOC OF N.J. 75.00 3344  
83079 02/26/24 P0152 READY, LOREN 25.00 3344  
83080 02/26/24 P0208 Paone, Ed 20.00 3344  
83081 02/26/24 Q0009 QUALITE SPORTS LIGHTING INC. 182,589.41 3344  
83082 02/26/24 R0030 RIGGINS, INC. 2,410.07 3344  
83083 02/26/24 R0136 RUTGERS, THE STATE UNIVERSITY 1,906.00 3344  
83084 02/26/24 S0018 SUBURBAN PROPANE, LP 734.41 3344  
83085 02/26/24 S0057 SERVICE TIRE TRUCK CENTERS 1,614.85 3344  
83086 02/26/24 S0113 SMITH, THOMAS G. 3,785.76 3344  
83087 02/26/24 S0134 SO. JERSEY GAS COMPANY 8,531.89 3344  
83088 02/26/24 S0139 SOUTH JERSEY WATER COND SERV 520.00 3344  
83089 02/26/24 S0161 SPICA STEEL, INC./J.D.L.GARAGE 14,655.88 3344  
83090 02/26/24 S0361 SOUTH JERSEY WATER TEST, LLC 209.00 3344  
83091 02/26/24 S0400 SOUTH JERSEY MOBILE REPAIR LLC 278.60 3344  
83092 02/26/24 V0013 VERIZON WIRELESS 596.74 3344  
83093 02/26/24 W0087 W.B. MASON EGG HARBOR 566.40 3344  
Total: \$275,565.33