

**Pennington Borough Council
Regular Meeting – June 2, 2008**

Council President Weed Tucker called the Regular Meeting of the Borough Council to order at 7:10 pm. Borough Clerk Betty Sterling called the roll with Council Members Chandler, Griffiths, Heinzl, Lawver, Ogren and Tucker in attendance. Mayor Persichilli was absent.

Also present were Superintendent of Public Works, Jeff Wittkop, Public Safety Director, Bill Meytrott, Borough Administrator, Eugene Dunworth, Borough Engineer, Don Fetzler and Borough Attorney, Walter Bliss.

Mr. Tucker announced that notice of this meeting has been given to the Pennington Post, Hopewell Valley News, The Times of Trenton and The Trentonian and was posted on the bulletin board in Borough Hall according to the regulations of the Open Public Meetings Act.

Presentation

Mr. Tucker invited representatives from the Stonybrook Regional Sewerage Authority to come forward and make their presentation to Borough Council. Mr. Bob Bartolini, Chairman of the Stonybrook Regional Sewerage Authority introduced himself and Mr. John Cantorik, Executive Director of the Sewer Authority. Mr. Cantorik referred to a handout, which outlined a history of the Sewer Authority and the service agreement in effect between the Sewer Authority and six area municipalities. Mr. Cantorik also outlined how the charges are calculated for each participant in the authority. Mr. Cantorik reviewed some upgrades and changes that have been made to the plant and that are planned for the future. Mr. Cantorik also reviewed plans for the plant expansion and what is needed to proceed with the expansion. Mr. Lawver thanked Mr. Eric Wilkinson, Pennington Borough's representative to the Stonybrook Regional Sewerage Authority.

Open to the Public – Agenda Items Only

Mr. Tucker read the following statement:

Meeting open to the public for comments on items on the agenda for which no public discussion is provided. In an effort to provide everyone interested an opportunity to address his or her comments to the Governing Body, a public comment time limit has been instituted for each speaker. **Please come forward and state your name and address for the record. Please limit comments to the Governing Body to a maximum of 5 minutes.**

Mr. Eli Perris of 41 East Welling Ave. asked if the map that is referred to in Ordinance 2008-2 is available or when it will be available. Mr. Perris asked if the map would be available prior to adoption of the Ordinance. Mr. Fetzler stated that presently the map showing the delineations is not available, it will have to be prepared and that will happen within three months after the adoption of the Ordinance. Mr. Perris asked if the map with the delineations would be available prior to the public hearing on the Ordinance. Mr. Lawver stated that he will be asking that Council not take any action of this Ordinance tonight so that the Public Works Committee can discuss it further at their meeting tomorrow.

Mr. George Engenbrandt of 45 East Welling Avenue stated that he was also interested in knowing about Ordinance 2008-2 and he would also like to see a map. Mr. Engenbrandt also asked if there would be restrictions on what residents can or can't do on sections of their property affected by this Ordinance. Mr. Lawver stated that the map is not available and as to restrictions, there is a section in the Ordinance that spells out what is prohibited within the Riparian Buffer Conservation Zone.

Mayor's Business

Mr. Tucker announced the resignations of Harry Compton from the Shade Tree Commission and Beverly Tucker from the Economic Development Commission. Mr. Tucker thanked Mr. Compton and Mrs. Tucker for their service to the Borough.

Mr. Tucker stated that the Mayor has recommended the following appointments:

To the Recreation Commission – Kristen Higgins for an unexpired term ending 12/31/2008
To the Recreation Commission – Francie McManimon for an unexpired term ending 12/31/2008
To the Shade Tree Commission – Carey Compton for an unexpired term ending 12/31/2010.

Council Member Heinzl made a motion to approve the appointments, second by Council Member Ogren with all members present voting in favor.

Presentations

Mr. Tucker introduced Ms. Susan Charkes of the Stonybrook Millstone Watershed who made a presentation to Borough Council on the Municipal Assessment that they performed for the Borough under a grant from the State. Ms. Charkes distributed a report on Taking the Next Step and gave an overview of the report for Council.

Mr. Tucker thanked Ms. Charkes for her time and also thanked everyone who worked on the Municipal Assessment for the Borough.

Ordinances for Introduction

Mr. Tucker read Ordinance 2008-2 by title.

**Borough of Pennington
Ordinance 2008-2**

**AN ORDINANCE CONCERNING RIPARIAN BUFFER
CONSERVATION ZONES AND AMENDING THE CODE
OF THE BOROUGH OF PENNINGTON**

WHEREAS, the Borough Council of the Borough of Pennington seeks to adopt and to incorporate in the Code of the Borough of Pennington, with certain revisions, the Model Ordinance for a Riparian Buffer Conservation Zone prepared by the Passaic River Coalition and the Division of Watershed Management of the New Jersey Department of Environmental Protection;

WHEREAS, the Model Ordinance is consistent with the requirements set forth in New Jersey Stormwater Management Rule N.J.A.C. 7:8;

NOW, THEREFORE, BE IT ORDAINED, by the Borough Council of the Borough of Pennington, that the Code of the Borough of Pennington is hereby amended to incorporate the following:

I. INTENT AND PURPOSE

The governing body of the Borough of Pennington finds that riparian lands adjacent to streams, lakes, or other surface water bodies that are adequately vegetated provide an important environmental protection and water resource management benefit. It is necessary to protect and maintain the beneficial character of riparian areas by implementing specifications for the establishment, protection, and maintenance of vegetation along the surface water bodies within the jurisdiction of the Borough, consistent with the interest of landowners in making reasonable economic use of parcels of land that include such designated areas. The purpose of this Ordinance is to designate Riparian Buffer Conservation Zones, and to provide for land use regulation therein in order to protect the streams, lakes, and other surface water bodies of the Borough; to protect the water quality of watercourses, reservoirs, lakes, and other significant water resources within the Borough; to protect the riparian and aquatic ecosystems of the Borough; to provide for the environmentally sound use of the land resources of the Borough; and to complement existing state, regional, county, and municipal stream corridor protection and management regulations and initiatives. The specific purposes and intent of this Ordinance are to:

A. Restore and maintain the chemical, physical, and biological integrity of the water resources of the Borough;

B. Prevent excessive nutrients, sediment, and organic matter, as well as biocides and other pollutants, from reaching surface waters by optimizing opportunities for filtration, deposition, absorption, adsorption, plant uptake, biodegradation, and denitrification, which occur when stormwater runoff is conveyed through vegetated buffers as stable, distributed sheet flow prior to reaching receiving waters;

C. Provide for shading of the aquatic environment so as to moderate temperatures, retain more dissolved oxygen, and support a healthy assemblage of aquatic flora and fauna;

D. Provide for the availability of natural organic matter (fallen leaves and twigs) and large woody debris (fallen trees and limbs) that provide food and habitat for small bottom dwelling organisms (insects, amphibians, crustaceans, and small fish), which are essential to maintain the food chain;

E. Increase stream bank stability and maintain natural fluvial geomorphology of the stream system, thereby reducing stream bank erosion and sedimentation and protecting habitat for aquatic organisms;

F. Maintain base flows in streams and moisture in wetlands;

G. Control downstream flooding; and

H. Conserve the natural features important to land and water resources, e.g., headwater areas, groundwater recharge zones, floodways, floodplains, springs, streams, wetlands, woodlands, and prime wildlife habitats.

I. STATUTORY AUTHORITY

The Borough of Pennington is empowered to regulate land uses under the provisions of the New Jersey Municipal Land Use Law, N.J.S.A. 40:55D-1 et seq., which authorizes each municipality to plan and regulate land use in order to protect public health, safety and welfare by protecting and maintaining native vegetation in riparian areas. The Borough is also empowered to adopt and implement this Ordinance under provisions provided by the following legislative authorities of the State of New Jersey:

- A. Water Pollution Control Act, N.J.S.A. 58:10A et seq.
- B. Water Quality Planning Act, N.J.S.A. 58:11A-1 et seq.
- C. Spill Compensation and Control Act, N.J.S.A. 58:10-23 et seq.
- D. Soil Erosion and Sediment Control Act, N.J.S.A. 4:24-39 et seq.
- E. Flood Hazard Area Control Act, N.J.S.A. 58:16A-50 et seq.

III. DEFINITIONS

“Administrative Authority” means the Planning Board and Board of Adjustment or Construction Office with all of the powers delegated, assigned, or assumed by them according to statute or ordinance.

“Applicant” means a person applying to the Planning Board and Board of Adjustment or the Construction Office proposing to engage in an activity that is regulated by the provisions of this ordinance, and that would be located in whole or in part within a regulated Riparian Buffer Conservation Zone.

“Category One (C1) Waters” shall have the meaning ascribed to this term by the Surface Water Quality Standards at N.J.A.C. 7:9B-1.15, which have been identified for protection from degradation in water quality characteristics because of their clarity, color, scenic setting, and other characteristics of aesthetic value, exceptional ecological significance, exceptional recreational significance, exceptional water supply significance, or exceptional fisheries resources.

“Category Two Waters” means those waters not designated as Outstanding Natural Resource Waters or Category One in the Surface Water Quality Standards at N.J.A.C. 7:9B-1.15 for purposes of implementing the antidegradation policies set forth at N.J.A.C. 7:9B-1.5(d).

“Floodway” shall have the meaning ascribed to this term by the Flood Hazard Area Control Act (N.J.S.A. 58:16A-50 et seq.) and regulations promulgated there under published at N.J.A.C. 7.13 et seq., and any supplementary or successor legislation and regulations from time to time enacted or promulgated.

“Intermittent Stream” means surface water drainage channels with definite natural bed and banks in which there is not a permanent flow of water. Streams shown as a dashed line on either the USGS topographic quadrangle maps or the USDA County Soil Survey Maps of the most recent edition that includes hydrography are included as intermittent streams.

“Lake, pond, or reservoir” means any impoundment, whether naturally occurring or created in whole or in part by the building of structures for the retention of surface water, excluding sedimentation control and stormwater retention/detention basins and ponds designed for treatment of wastewater.

“Perennial stream” means a stream that flows continuously throughout the year in most years. These streams usually appear as a blue line on USGS topographic quadrangle maps or on USDA County Soil Survey Maps.

“Riparian Buffer Conservation Zone (RBCZ)” means an area of land or water within or adjacent to a Surface Water Body within the municipality and designated on the Riparian Buffer Conservation Zone Map promulgated by [municipality] in accordance with Section IV of this Ordinance.

“Riparian Buffer Conservation Zone Management Plan” means a plan approved by the Engineer of [municipality]. The plan shall be prepared by a landscape architect, professional engineer or other qualified professional, and shall evaluate the effects of any proposed activity/uses on any RBCZ. The plan shall identify existing conditions, all proposed activities, and all proposed management techniques, including any measures necessary to offset disturbances to any affected RBCZ.

“Surface Water Body” means any above ground perennial stream, intermittent stream, lake, pond, or reservoir, as defined herein. In addition, any state open waters identified in a letter of interpretation issued by the New Jersey Department of Environmental Protection Land Use Regulation Program shall also be considered surface water bodies.

“Tributary” means a waterway above ground which flows into a larger stream.

IV. ESTABLISHMENT OF RIPARIAN BUFFER CONSERVATION ZONES

A. Riparian Buffer Conservation Zones (RBCZs) shall be delineated as follows:

1. In the case of Category One (C1) waters, the RBCZ shall equal the Special Water Resource Protection Area, and shall be measured as defined at N.J.A.C. 7:8-5.5(h). Special Water Resource Protection Areas are established along all waters designated as C1 at N.J.A.C. 7:9B and perennial or intermittent streams that drain into or upstream of the C1 waters as shown on the USGS quadrangle map or in the County Soil Surveys within the associated HUC 14 drainage.
2. For areas adjacent to surface water bodies designated Category Two Waters for Trout Production (FW2-TP) the RBCZ shall be measured from the defined edge of the intermittent or perennial stream, or centerline if the bank is not defined, and from the defined edge of a lake, pond or reservoir at bank-full flow or level, and shall extend 75 feet horizontally outward from the perpendicular. Where steep slopes (in excess of 10 percent) are located within the designated widths, the RBCZ shall be extended to include the entire distance of this sloped area.
3. For areas adjacent to other surface water bodies, the RBCZ shall be measured from the top of bank of an intermittent or perennial stream, or centerline if bank is not defined, and from the defined edge of a lake, pond or reservoir at bank-full flow or level, and shall extend 75 feet horizontally outward from the perpendicular. Where steep slopes (in excess of 15 percent) are located within the designated widths, the RBCZ shall be extended to include the entire distance of this sloped area to a maximum of 150feet.
4. For areas adjacent to surface water bodies for which the Floodway has been delineated, the RBCZ shall cover the entire Floodway area, or the area described in Section IV.A.1. or IV.A.2., whichever area has the greatest extent. Floodway delineations shall be based upon the State's adopted floodway delineations. However, requests for alterations to the adopted delineations can be provided to the New Jersey Department of Environmental Protection for consideration if site specific information is available.

B. An RBCZ is an overlay to the existing zoning districts. The provisions of the underlying district shall remain in full force except where the provisions of the RBCZ differ from the provisions of the underlying district, in which case the provision that is more restrictive shall apply. These provisions apply to land disturbances resulting from or related to any activity or use requiring application for any of the following permits or approvals: Building permit; Zoning variance; Special exception; Conditional use; Subdivision/land development approval.

C. A map of the RBCZs of the entire Borough of Pennington, including all land and water areas within its boundaries, which designates Surface Water Bodies, is included as part of this Ordinance, and is appended hereto. Maps of the Borough on which these designations have been overlain shall be on file and maintained by the Borough Clerk. This map conforms to all applicable laws, rules and regulations applicable to the creation, modification and promulgation of zoning maps.

D. The applicant or designated representative shall be responsible for the initial determination of the presence of an RBCZ on a site, and for identifying the area on any plan submitted to the Borough in conjunction with an application for a construction permit, subdivision, land development, or other improvement that requires plan submissions or permits. This initial determination shall be subject to review and approval by the municipal engineer, governing body, or its appointed representative, and, where required, by the New Jersey Department of Environmental Protection.

E. The Borough Master Plan provides the legal basis for zoning and land use regulation at the local level. The technical foundation for local RBCZs in the Borough should be incorporated into the Master Plan. A technical report on the need for Riparian Buffer Conservation Zones in the Borough may be adopted as part of the Master Plan (N.J.S.A 40:55D-28b(11)). The technical report should include the following information: a statement setting forth the rationale and need to protect RBCZs; reference to the methods used to designate and delineate RBCZs.

V. USES PERMITTED IN RIPARIAN BUFFER CONSERVATION ZONES

A. For Category One (C1) RBCZs, permitted uses are governed by N.J.A.C. 7:8-5.5(h), unless otherwise exempt. If exempt from NJAC 7:8-5.5(h), the uses shall be governed by this ordinance as if the RBCZ was not a Category One (C1) RBCZ.

B. Any other RBCZ area shall remain in a natural condition or, if in a disturbed condition, including agricultural activities, at the time of adoption of this ordinance may be restored to a natural condition. There shall be no clearing or cutting of trees and brush, except for removal of dead vegetation and pruning for reasons of public safety or for the replacement of invasive species with indigenous species. There shall be no OK altering of watercourses, dumping of trash, soil, dirt, fill, vegetative or other debris, regrading or construction. The following uses are

permitted either by right or after review and approval by the Planning Board and Board of Adjustment in RBCZs. No new construction, development, use, activity, encroachment, or structure shall take place in an RBCZ, except as specifically authorized in this Section. The following uses shall be permitted within an RBCZ:

1. Open space uses that are primarily passive in character shall be permitted by right to extend into an RBCZ, provided near stream vegetation is preserved. These uses do not require approval by the Zoning Enforcement Officer or compliance with an approved RBCZ Management Plan. Such uses include wildlife sanctuaries, nature preserves, forest preserves, fishing areas, game farms, fish hatcheries and fishing reserves, operated for the protection and propagation of wildlife, but excluding structures. Such uses also include passive recreation areas of public and private parklands, including non-commercial lawns and gardens, unpaved hiking, bicycle and bridle trails, provided that said trail have been stabilized with pervious materials.
2. Fences, for which a permit has been issued by the Construction Code Office, to the extent required by applicable law, rule or regulation.
3. Crossings by farm vehicles and livestock, recreational trails, roads, railroads, storm water lines, sanitary sewer lines, water lines and public utility transmission lines, provided that the land disturbance is the minimum required to accomplish the permitted use, subject to approval by the Zoning Enforcement Officer, provided that any applicable State permits are acquired, and provided that any disturbance is offset by buffer improvements in compliance with an approved RBCZ Management Plan and that the area of the crossing is stabilized against significant erosion due to its use as a crossing.
4. Stream bank stabilization or riparian reforestation, which conform to the guidelines of an approved RBCZ Management Plan, or wetlands mitigation projects that have been approved by the Department of Environmental Protection, subject to approval by the Zoning Enforcement Officer and subject to compliance with an approved RBCZ Management Plan.

VI. **PERFORMANCE STANDARDS FOR RIPARIAN BUFFER CONSERVATION ZONES**

A. All encroachments proposed into Category One (C1) RBCZs shall comply with the requirements at N.J.A.C. 7:8-5.5(h) and shall be subject to review and approval by the New Jersey Department of Environmental Protection, unless exempt. If exempt, the encroachment shall be subject to the provisions of VI.B below.

B. For all other RBCZs, the following conditions shall apply:

1. All new major and minor subdivisions and site plans shall be designed to provide sufficient areas outside of the RBCZ to accommodate primary structures, any normal accessory uses appurtenant thereto, as well as all planned lawn areas.
2. Portions of lots within the RBCZ must be permanently restricted by deed or conservation easement held by the Borough, its agent, or another public or private land conservation organization, which has the ability to provide adequate protection to prevent adverse impacts within the RBCZ. A complete copy of the recorded conservation restriction that clearly identifies the deed book and pages where it has been recorded in the office of the clerk of the applicable county or the registrar of deeds and mortgages of the applicable county must be submitted to the municipality. The applicant shall not commence with the project or activity prior to making this submittal and receiving actual approval of the plan modification and receipt of any applicable permits from the Department of Environmental Protection. The recorded conservation restriction shall be in the form approved by the municipality and shall run with the land and be binding upon the property owner and the successors in interest in the property or in any part thereof. The conservation restriction may include language reserving the right to make de minimus changes to accommodate necessary regulatory approvals upon the written consent of the municipality, provided such changes are otherwise consistent with this chapter. The recorded conservation restriction shall, at a minimum, include:
 - a. A written narrative of the authorized regulated activity, date of issuance, and date of expiration, and the conservation restriction that, in addition, includes all of the prohibitions set forth at N.J.S.A. 13:8B-2b(1) through (7);
 - b. Survey plans for the property as a whole and, where applicable, for any additional properties subject to the conservation restrictions. Such survey plans shall be submitted on the surveyor's letterhead, signed and sealed by the surveyor, and shall include metes and bounds descriptions

of the property, the site, and the areas subject to the conservation restriction in New Jersey State Plane Coordinates, North American Datum 1983, and shall depict the boundaries of the site and all areas subject to the conservation restriction as marked with flags or stakes onsite. All such survey plans shall be submitted on paper and in digital CAD or GIS file on a media and format defined by the Borough. The flags or stakes shall be numbered and identified on the survey plan; and

c. A copy or copies of deeds for the property as a whole that indicate the deed book and pages where it has been recorded in the office of the clerk of the applicable county or the registrar of deeds and mortgages of the applicable county.

3. Any lands proposed for development which include all or a portion of an RBCZ shall as a condition of any major subdivision or major site plan approval, encourage the vegetation or revegetation of any portions of the RBCZ which are not vegetated at the time of the application or which were disturbed by prior land uses, including for agricultural use. Said vegetation plan shall utilize native and non-invasive tree and plant species to the maximum extent practicable in accordance with an approved Riparian Buffer Conservation Zone Management Plan, described in Section X.

4. For building lots which exist as of the date of adoption of this ordinance, but for which a building permit or a preliminary site plan approval has not been obtained or is no longer valid, the required minimum front, side, and rear setbacks may extend into the RBCZ, provided that a deed restriction and/or conservation easement is applied which prohibits clearing or construction in the RBCZ.

5. All stormwater shall be discharged outside of but may flow through an RBCZ and shall comply with the Standard For Off-Site Stability in the "Standards for Soil Erosion and Sediment Control in New Jersey", established under the Soil Erosion and Sediment Control Act, N.J.S.A. 4:24-39 et seq. (See N.J.A.C. 2:90-1.3.)

6. If stormwater discharged outside of and flowing through an RBCZ cannot comply with the Standard For Off-Site Stability cited in Section VI.5, then the stabilization measures in accordance with the requirements of the above standards may be placed within the RBCZ, provided that:

a. Stabilization measures shall not be placed closer than 50 feet from the top of the bank at bank-full flow or level of affected surface water bodies;

b. The encroachment shall only be allowed where the applicant demonstrates that the functional value and overall conditions of the RBCZ will be maintained to the maximum extent practicable;

c. A conceptual project design meeting shall be held with the appropriate Borough staff and Soil Conservation District staff to identify necessary stabilization measures; and

d. All encroachments proposed under this section shall be subject to review and approval by the Administrative Authority.

VII. NONCONFORMING STRUCTURES AND USES IN RIPARIAN BUFFER CONSERVATION ZONES

Nonconforming structures and uses of land within the RBCZ are subject to the following requirements:

A. Legally existing but nonconforming structures or uses may be continued.

B. Any proposed enlargement or expansion of the building footprint within a Category One (C1) RBCZ shall comply with the standards in N.J.A.C. 7:8-5.5(h).

C. For all other RBCZs:

1. Encroachment within the RBCZ shall only be allowed where previous development or disturbance has occurred.

2. Existing impervious cover shall not be increased within the RBCZ as a result of encroachments where previous development or disturbances have occurred.

3. Discontinued nonconforming uses may be resumed any time within three years from such discontinuance but not thereafter when showing clear indications of abandonment. No change or resumption shall be permitted that is

more detrimental to the RBCZ, as measured against the intent and purpose under Section I, than the existing or former nonconforming use. This one-year time frame shall not apply to agricultural uses that are following prescribed Best Management Practices for crop rotation. However, resumption of agricultural uses must be strictly confined to the extent of disturbance existing at the time of adoption of this ordinance.

VIII. USES PROHIBITED IN RIPARIAN BUFFER CONSERVATION ZONES

A. Any use within a Category One (C1) RBCZ shall comply with the standards in N.J.A.C. 7:8- 5.5(h).

B. For other RBCZs, any use or activity not specifically authorized in Section V or Section VII shall be prohibited within the RBCZ. By way of example, the following activities and facilities are prohibited:

1. Removal or clear-cutting of trees and other vegetation or soil disturbance such as grading, except for selective vegetation removal for the purpose of stream or riparian area stabilization or restoration projects that require vegetation removal or grading prior to implementation, or removal of invasive species.
2. Storage of any hazardous or noxious materials.
3. Use of fertilizers, pesticides, herbicides, and/or other chemicals in excess of prescribed industry standards or the recommendations of the Soil Conservation District.
4. Roads or driveways, except where permitted in compliance with Section V.
5. Motor or wheeled vehicle traffic in any area, except as permitted by this Ordinance.
6. Parking lots.
7. Any type of permanent structure, except structures needed for a use permitted by Section V.
8. New subsurface sewage disposal areas. The expansion and replacement of existing subsurface sewage disposal areas for existing uses is permitted.

IX. ACTIVITIES PERMITTED IN STREAM BUFFER CONSERVATION ZONES IN THE CASE OF NO REASONABLE OR PRUDENT ALTERNATIVE OR EXTREME HARDSHIP

A. For Category One (C1) RBCZs, requests for exemptions that fall under the purview of the Stormwater Management Rules must be authorized by the New Jersey Department of Environmental Protection, as per N.J.A.C. 7:8-5.5(h)1.ii.

B. For other RBCZs, hardship variances may be granted by the Zoning Board of Adjustment in cases of a preexisting lot (existing at the time of adoption of this ordinance) when there is insufficient room outside the RBCZ for uses permitted by the underlying zoning and there is no other reasonable or prudent alternative to placement in the RBCZ, including obtaining variances from setback or other requirements that would allow conformance with the RBCZ requirements, and provided the following demonstrations are made:

1. An applicant shall be deemed to have established the existence of an extreme economic hardship, if the subject property is not capable of yielding a reasonable economic return if its present use is continued or if it is developed in accordance with provisions of this ordinance and that this inability to yield a reasonable economic return results from unique circumstances peculiar to the subject property which:
 - a. Do not apply to or affect other property in the immediate vicinity;
 - b. Relate to or arise out of the characteristics of the subject property because of the particular physical surroundings, shape or topographical conditions of the property involved, rather than the personal situations of the applicant; and are not the result of any action or inaction by the applicant or the owner or his predecessors in title.
 - c. The necessity of acquiring additional land to locate development outside the RBCZ shall not be considered an economic hardship unless the applicant can demonstrate that there is no adjacent land that is reasonably available or could be obtained, utilized, expanded or managed in order to fulfill the basic purpose of the proposed activity.
2. An applicant shall be deemed to have established compelling public need if the applicant demonstrates, based on specific facts, that one of the following applies:
 - a. The proposed project will serve an essential public health or safety need;
 - b. The proposed use is required to serve an existing public health or safety need; or

c. There is no alternative available to meet the established public health or safety need.

3. A variance can only be granted if it is shown that the activity is in conformance with all applicable local, state, and federal regulations, and that the exception granted is the minimum relief necessary to relieve the hardship.

C. If the above demonstrations are made, then the encroachment of impervious surfaces (structures or pavement) otherwise permitted by the underlying zoning is permitted to the extent of 1,500 square feet total. Said encroachment is not permitted closer than 50 feet from the top of the bank at bank-full flow or level of Category Two Waters for Trout Production (FW2-TP), or other surface water bodies.

X. RIPARIAN BUFFER CONSERVATION ZONE MANAGEMENT PLAN

A. Within any RBCZ, no construction, development, use, activity, or encroachment in excess of 1,500 square feet shall be permitted unless the effects of such development are accompanied by preparation, approval, and implementation of a Riparian Buffer Conservation Zone Management Plan.

B. The landowner, applicant, or developer shall submit to the Borough Planning Board, or its appointed representative, a Riparian Buffer Conservation Zone Management Plan prepared by an environmental professional, professional engineer or other qualified professional which fully evaluates the effects of any proposed uses on the RBCZ. The Riparian Buffer Conservation Zone Management Plan shall identify the existing conditions including:

1. existing vegetation;
2. field delineated surface water bodies;
3. field delineated wetlands;
4. the 100-year floodplain;
5. flood hazard areas, including floodway and flood fringe areas, as delineated by the New Jersey Department of Environmental Protection;
6. soil classifications as found on soil surveys;
7. existing subdrainage areas of site with HUC-14 (Hydrologic Unit Code) designations;
8. slopes in each subdrainage area segmented into sections of slopes less than or equal to fifteen (15) percent; above fifteen percent but less than twenty (20) percent; and greater than twenty (20) percent.

The proposed plan shall describe all proposed uses/activities, and fully evaluate the effects of all proposed uses/activities in an RBCZ, and all proposed management techniques, including proposed vegetation and any other measures necessary to offset disturbances to the RBCZ. A discussion of activities proposed as well as management techniques proposed to offset disturbances and/or enhance the site to improve the RBCZ's ability to function effectively as an RBCZ shall also be included with the RBCZ Management Plan submittal to the Borough.

C. The Plan shall be reviewed and must be approved by the Engineer of [municipality], in consultation with the Environmental Commission, as part of the subdivision and land development process.

D. The Riparian Buffer Conservation Zone Management Plan must include management provisions in narrative and/or graphic form specifying:

1. The manner in which the area within the RBCZ will be owned and by whom it will be managed and maintained.
2. The conservation and/or land management techniques and practices that will be used to conserve and protect the RBCZ, as applicable.
3. The professional and personnel resources that are expected to be necessary, in order to maintain and manage the RBCZ.
4. A revegetation plan, if applicable, that includes: three (3) layers of vegetation, including herbaceous plants that serve as ground cover, understory shrubs, and trees that when fully mature, will form an overhead canopy. Vegetation selected must be native, non-invasive species, and consistent with the soil, slope and moisture conditions of the site. The revegetation plan shall be prepared by a qualified environmental professional, landscape architect, or professional engineer, and shall be subject to the approval of the Municipal Engineer, in consultation with the Environmental Commission. Dominant vegetation in the Riparian Buffer Conservation Zone Management Plan shall consist of plant species that are suited to the stream buffer environment. The Engineer of [municipality] may require species suitability to be verified

by qualified experts from the Soil Conservation District, Natural Resources Conservation Service, New Jersey Department of Environmental Protection, US Fish and Wildlife Service and/or State or Federal forest agencies.

E. A Riparian Buffer Conservation Zone Management Plan is not required where the RBCZ is not being disturbed and conservation easements/deed restrictions are applied to ensure there will be no future clearing or disturbance of the RBCZ.

F. Performance of the Riparian Buffer Conservation Zone Management Plan shall be guaranteed for two years by a surety, such as a bond, cash or letter of credit, which shall be provided to the Borough prior to the Borough issuing any permits or approving any uses relating to the applicable use or activity.

XI. BOUNDARY INTERPRETATION, APPEALS PROCEDURES, INSPECTIONS, CONFLICTS, SEVERABILITY

A. When a landowner or applicant disputes the boundaries of an RBCZ, or the defined bank-full flow or level, the landowner or applicant shall submit evidence to the Planning Board that describes the RBCZ, presents the landowner or applicant's proposed RBCZ delineation, and presents all justification for the proposed boundary change. For Category One (C1) RBCZs, the landowner or applicant must first obtain approval from the New Jersey Department of Environmental Protection. A decision from the Department must be included with the evidence submitted for municipal review.

B. Within 45 days of a complete submission of Section XI.A above, the Engineer of the Borough, or appointed representative, shall evaluate all material submitted and shall make a written determination, a copy of which shall be submitted to the Board and the landowner or applicant. Failure to act within the 45-day period shall not be interpreted to be an approval of the proposed boundary change.

C. Any party aggrieved by any such determination or other decision or determination under Section XI.B. may appeal to the Planning Board under the provisions of this ordinance. The party contesting the location of the RBCZ boundary shall have the burden of proof in case of any such appeal.

D. Any party aggrieved by any determination or decision of the Planning Board under this Ordinance may appeal to the Borough Council. The party contesting the determination or decision shall have the burden of proof in case of any such appeal.

E. Inspections:

1. Lands within or adjacent to an identified RBCZ shall be inspected by the Borough Engineer when:

- a. A subdivision or land development plan is submitted;
- b. A building permit is requested;
- c. A change or resumption of a nonconforming use is proposed;

d. A discontinued nonconforming use is resumed more than a year later, as described in Section VII.

2. The RBCZ may also be inspected periodically by representatives from the Borough if excessive or potentially problematic erosion is present, other problems are discovered, or at any time when the presence of an unauthorized activity or structure is brought to the attention of municipal officials or when the downstream surface waters are indicating reduction in quality.

F. Conflicts: All other ordinances, parts of ordinances, or other local requirements that are inconsistent or in conflict with this ordinance are hereby superseded to the extent of any inconsistency or conflict, and the provisions of this ordinance apply.

G. Severability:

1. Interpretation: This Ordinance shall be so construed as not to conflict with any provision of New Jersey or Federal law.

2. Notwithstanding that any provision of this Ordinance is held to be invalid or unconstitutional by a court of competent jurisdiction, all remaining provisions of the Ordinance shall continue to be of full force and effect.

3. The provisions of this Ordinance shall be cumulative with, and not in substitution for, all other applicable zoning, planning and land use regulations.

XII. ENFORCEMENT

A prompt investigation shall be made by the appropriate personnel of the Borough of any person or entity believed to be in violation hereof. If, upon inspection, a condition which is in violation of this Ordinance is discovered, a civil action may be brought in the Special Part of the Superior Court, or in the Superior Court, if the primary relief sought is injunctive or if penalties may exceed the jurisdictional limit of the Special Civil Part, by the filing and serving of appropriate process. Nothing in this Ordinance shall be construed to preclude the right of the Borough, pursuant to N.J.S.A. 26:3A2-25, to initiate legal proceedings hereunder in Municipal Court. The violation of any section or subsection of this Ordinance shall constitute a separate and distinct offense independent of the violation of any other section or subsection, or of any order issued pursuant to this Ordinance. Each day a violation continues shall be considered a separate offense.

XIII. EFFECTIVE DATE

This Ordinance shall take effect upon final adoption and publication in accordance with the law on [date].

Mr. Lawver asked that Borough Council not take action on this ordinance tonight as Mr. Fetzer has further comments and recommendations. Mr. Lawver asked that the Ordinance be referred back to the Public Works Committee for further revisions.

Mr. Tucker read Ordinance 2008-4 by title.

**BOROUGH OF PENNINGTON
Ordinance 2008-4**

**AN ORDINANCE PROVIDING FOR OUTDOOR DINING
AREAS AS A PERMITTED ACCESSORY USE FOR ALL
RESTAURANTS IN THE TOWN CENTER ZONING
DISTRICT, AMENDING CHAPTER 215 OF THE CODE OF
THE BOROUGH OF PENNINGTON**

WHEREAS, the Borough of Pennington seeks to promote interest in the downtown area by encouraging a mixture of small-scale businesses which complement and are compatible with each other and together create a pedestrian-oriented shopping environment;

WHEREAS, Borough Council recognizes that there exists in the downtown area a demand for outdoor dining in connection with restaurants of various kinds;

WHEREAS, current zoning for the Town Center Zoning District, as set forth in Section 215-71.C. of the Code of the Borough of Pennington, permits as an accessory use only “[o]utdoor dining contiguous to full-service restaurants;”

WHEREAS, Borough Council determines that, to promote the viability and vitality of the Town Center area, permitting outdoor dining contiguous to all restaurants, subject to proper regulation, is desirable;

NOW, THEREFORE, BE IT ORDAINED, by the Borough Council of the Borough of Pennington, as follows:¹

1. Section 215-71, subsection C, of the Code of the Borough of Pennington (“Code”), delineating permitted accessory uses in the Town Center Zoning District, is amended to delete the requirement that outdoor dining be permitted only when contiguous to a “full-service” restaurant, so that outdoor dining shall be permitted when contiguous to any restaurant in the Town Center, as follows:

C. Permitted accessory uses. The accessory uses permitted in the Town Center Zone are the following:

- (1) Off-street parking facilities for the use of customers and employees;
- (2) Private garage space for the storage of commercial vehicles used in conjunction with a permitted business use;
- (3) Sidewalk sales by adjacent retail merchandise stores when authorized by a permit issued by the Borough Clerk;
- (4) Outdoor dining contiguous to [full-service] restaurants;
- (5) Storage sheds related to the primary use, limited to one in number;
- (6) Garages for residential uses;

¹As used herein, brackets [] denote language to be deleted; underlining indicates language to be added.

- (7) Other accessory uses which the Planning Board acting as a Board of Adjustment finds are clearly incidental and subordinate to the primary use and enhance the character of the town center as depicted in the master plan and in this section.
2. Section 215-94 of the Code, pertaining to the regulation of outdoor dining otherwise permitted by the Code, is amended to read:

Outdoor dining shall be subject to the following:

- A. The outdoor dining area shall be part of a permitted restaurant use as defined in § 215-8.
- B. The outdoor dining area may be located within a required front yard area. Encroachment within a Borough right-of-way may be permitted only with the revocable approval of Borough Council [approval,] or its designated representative, which must be obtained annually.
- C. The outdoor dining area shall meet the side and rear yard setback requirements for the zone in which it is located. When abutting the R-80, R-100, R-A and O-R Zones, the minimum yard requirements for the abutted zones shall be met.
- D. The outdoor seating capacity of the facility shall conform to off-street parking requirements.
- E. Site plan review and approval is required unless there are no permanent physical changes to the site.
- F. The outdoor dining area shall be designed to preserve circulation on the site and any affected Borough right-of-way while also protecting the safety of patrons and pedestrians.
- G. The owner shall police the area to ensure that it is clean and free of litter and complies with applicable noise standards.
- H. The owner of an approved outdoor dining area which is located wholly or in part in the Borough right-of-way shall indemnify and hold harmless the Borough of Pennington and its agents and employees from and against all claims, damages, losses and expenses, including but not limited to attorney fees, arising out of the operation of the outdoor dining area. No such dining area shall be approved, or once approved, permitted to operate, unless the owner has on file with the Borough Clerk a current Certificate of Insurance which certifies that:

(1) the owner's obligation to indemnify and hold harmless the Borough as provided herein is insured by an insurance carrier authorized to do business in the State of New Jersey;

(2) the Borough of Pennington is named as an additional insured under this insurance with respect to claims, damages, losses and expenses arising out of operation of the outdoor dining area;

(3) the insurance in effect provides at least the following types and amounts of incurred liability coverage:

a. General Liability - one million dollars (\$1,000,000.) per occurrence;

b. Premises Liability - one million dollars (\$1,000,000.) per occurrence;

c. Products and Completed Operations Liability - one million dollars (\$1,000,000.);

d. Personal and Advertising Injury - one million dollars (\$1,000,000.) per occurrence;

e. Property Liability - fifty thousand dollars (\$50,000.) per occurrence;

f. Medical Expense - five thousand dollars (\$5,000.) per person;

g. Workers' Compensation - statutory limits;

h. Employers' Liability - five hundred thousand dollars (\$500,000.) per person/ per occurrence.

(4) the Borough shall be provided ten (10) days' written notice of any cancellation of this insurance.

3. This Ordinance shall take effect upon its passage and publication as provided by law.

Council Member Ogren made a motion to introduce Ordinance 2008-4, second by Council Member Heinzl. Council discussed the proposed Ordinance adding a new section G dealing with having property owners responsible for keeping the outdoor dining area clean, free of litter and in compliance with the noise ordinance. Council Member Ogren asked about a clause whereby Council could revoke the outdoor dining approval if the restaurant is not complying with the terms of approval. Mr. Bliss stated that Mr. Ogren's concern could be addressed in the Resolution of approval or in the Ordinance. A change was made to section 2B to add the word "revocable". Mr. Bliss stated that he borrowed some of the language for this ordinance from Princeton Borough and asked that Mr. Dunworth seek the advice of JIF regarding the insurance requirements. Some discussion took place with regard to the process for getting approval. Council was in agreement to keep the process simple and have business owners make their request in writing to Borough Council each year for approval by Resolution. Mr. Bliss encouraged Council to move quickly on the Resolutions for approvals as there are already restaurants in town with outdoor dining tables in place and it is important for the Borough to have insurance certificates on file for the restaurants that already have tables in the public right of way. Mr. Lawver stated that he would take the proposed ordinance to local restaurants prior to the next meeting and Mr. Dunworth stated that he would contact the Mid Jersey Municipal JIF regarding the insurance requirements. Upon a roll call vote all members present voted in favor of introduction of the Ordinance.

Mr. Tucker read Ordinance 2008-5 by title.

**BOROUGH OF PENNINGTON
Ordinance 2008-5**

**AN ORDINANCE WAIVING ADMINISTRATIVE FEES IN CONNECTION
WITH PAID DETAIL SERVICE BY BOROUGH POLICE OFFICERS AT
CERTAIN NON-PROFIT EVENTS PROMOTING PENNINGTON, AMENDING
THE CODE OF THE BOROUGH OF PENNINGTON**

WHEREAS, Borough Police Officers are permitted to engage in off-duty special work known as "Paid Detail Service;"

WHEREAS, Paid Detail Service is defined as services in the nature of special or private police duty which the Borough is not obligated to provide as normal police services;

WHEREAS, Paid Detail Service is provided by Officers in their off-duty hours to individuals, groups, clubs, institutions and others who make payments for such services;

WHEREAS, all requests for Paid Detail Service are made through the Borough's Director of Public Safety and all payments for such services are made to the Borough;

WHEREAS, the Borough charges a fee for Paid Detail Service which in addition to compensating the Officer or Officers performing these services includes an administrative fee payable to the Borough;

WHEREAS, Borough Council now seeks to waive its administrative fee for Paid Detail services at events sponsored by a local school or local non-profit organization which promote and support community programs and civic pride in Pennington;

WHEREAS, Borough Council also seeks to correct a typographical error in Ordinance 2007-15, which was the last amendment to the fees for Paid Detail services;

NOW, THEREFORE, BE IT ORDAINED, by the Borough Council of the Borough of Pennington, as follows:²

1. Ordinance 2007-15, previously adopted by Borough Council and purporting to amend Section 98-21 of the Borough Code, is hereby amended to refer to, amend and supplant rather Section 98-24 of the Code, pertaining to fees for Paid Detail services; and the Code provision designated Section 98-21 prior to adoption of Ordinance 2007-15, pertaining to fees for Municipal Court discovery, shall be restored and remain unaffected by that Ordinance.
2. The aforesaid Section 98-24 of the Code, pertaining to fees for Paid Detail Service, is hereby further amended, superceding all prior versions of that section, as follows:

98-24. The fee paid to the Borough for Paid Detail Service shall be as follows:

² As used herein, brackets [] denote language to be deleted; underlining indicates language to be added.

- a. In calendar year 2007, beginning on the effective date of this ordinance, \$55. for each hour of service by each Borough Officer with a minimum payment of \$220. per officer.
 - b. In calendar year 2008, \$65. for each hour of service by each Borough Officer with a minimum payment of \$260. per officer.
 - c. In calendar year 2009, \$75. for each hour of service by each Borough Officer with a minimum payment of \$300. per officer.
 - d. Of the hourly rates specified, \$10 per hour shall be retained by the Borough as an administrative fee.
3. Article IV of Chapter 98 of the Borough Code is further amended by the addition of the following new section:

The Borough waives its administrative fee in connection with Paid Detail Service for any event which promotes and supports community programs and civic pride in Pennington and is sponsored by a local school or local non-profit organization. As used herein, "local school or local non-profit organization" shall mean a local school or local non-profit organization which confines its activities to the Hopewell Valley.

4. This ordinance shall take effect upon its passage and publication as provided by law.

Council Member Heinzl made a motion to introduce Ordinance 2008-5, second by Council Member Lawver. Discussion took place with regard to include local school organizations. Mr. Griffiths asked how this ordinance came about. Mr. Lawver explained that in the past the PBPA has requested a waiver of the administration fee for the Holiday Walk and the last time the request was made, Council discussed that if the fee was going to be waived there should be a criteria in place to justify waiving the fee. Following further discussion regarding the Ordinance Mr. Griffiths stated that he was not in favor of waiving the administration fee, which goes towards the cost for the use of Borough equipment and other Borough costs. Mr. Griffiths stated that Pennington Day is a money-making event and should not be exempted from the fee. Some minor changes were made to the language of the proposed Ordinance. Upon a roll call vote, all members present voted in favor of introduction of the Ordinance with the exception of Mr. Griffiths who voted no.

Committee Reports

Planning & Zoning and Library – Ms. Heinzl reported that the Library Board met on May 22nd. Ms. Heinzl stated that the Library web-site is up and running thanks to David Haines and Andy Beloff for the work that they donated to the project. Ms. Heinzl stated that the web-site will be used as an outreach to the community. Ms. Heinzl stated that several summer programs are being developed by the all volunteer, Children's Advisory Committee and the summer kickoff will begin with an ice cream contest. Ms. Heinzl stated that Library volunteers were recognized by the Library at a Volunteer party on May 29th.

Ms. Heinzl stated that two applications were considered at the May 14th Planning Board Meeting and they were Benbrooke Realty and Lee and Janet Dickstein of 37-39 South Main Street. Ms. Heinzl stated that Benbrooke Realty's request to leave the red brick as is instead of painting it white will be considered after construction of the second addition is finished and the Dickstein's request for an interpretation and bulk variances were granted.

Ms. Heinzl stated that the Environmental Commission met on May 12th and reviewed the Pennington School approvals. Ms. Heinzl stated that Mr. Reuter compiled a very nice summary of the conditions concerning environmental issues that were approved as part of the Pennington School application. Ms. Heinzl stated that she would leave a copy of the summary in Council Members mailboxes.

Ms. Heinzl stated that the Climate Change Workgroup has gotten some new life and they are organizing with identified goals, one of them being to compile an inventory of the Borough's energy use over the last two decades with an eye towards reducing energy usage and costs.

Ms. Heinzl stated that the Traffic Committee met and will meet this coming Wednesday. The committee is expecting to have a report ready for Council's consideration by the end of the summer.

Public Works/Economic Development – Mr. Lawver reported that the Economic Development Commission met on May 27th with the discussion centered on existing projects.

Mr. Lawver reported that the Public Works Committee will meet tomorrow, June 3rd.

Mr. Lawver gave the following report for Water and Trash:

PENNINGTON BOROUGH PUBLIC WORKS

TO: Joseph Lawver, Chairman
Public Works Committee

FROM: Jeff Wittkop, Superintendent

DATE: June 2, 2008

RE: **COUNCIL REPORT FOR THE MONTH OF MAY 2008**

WATER

Water pumped for the month of May 2008-	8,817,000
Daily-	284,400
Water pumped for the month of May 2007-	8,802,000
Daily-	283,900

For the month of May 2008 we averaged 500 gallons **more** per day than 2007.

TRASH

101.69 tons of household trash for the month of May 2008 vs. 122.39 tons in May 2007

Mulch is available at the Senior Center for residents of Pennington Borough.

Mr. Lawver commended Borough Engineer, Don Fetzer and the Public Works Department on a recent compliance evaluation and systems inspection for a job well done.

Personnel – Mr. Ogren reported that the Personnel Committee did not meet since the last meeting. Mr. Ogren reported that the Shade Tree Commission has decided to undertake a survey of trees in Pennington for Bacterial Leaf Scorch which has been an ongoing problem for some years. Mr. Ogren stated that the survey will deal primarily with Pin Oak Trees and that in a survey done in 2001, there were several trees in Pennington that were identified to have possible leaf scorch. Mr. Ogren stated that in recognition of receiving the designation of Tree City USA for the 20th year, the Borough has received a plaque from the State Forestry Service which the Shade Tree Commission is requesting be mounted on the wall in Borough Hall. Mr. Ogren stated that the National Arbor Day Foundation has provided a banner that will be hung indicating Pennington’s 20th year as a Tree City USA. Mr. Ogren stated that the Borough has also received a growth award for attendees of the commission last year.

Community Services – Ms. Chandler stated that Pennington Parks and Recreation met to make final plans for the Memorial Day Parade and concert, which were both successful. Ms. Chandler stated that next meeting is tomorrow June 3rd.

Finance – Mr. Griffiths reported that the key issue is the ongoing game with the State regarding the budget and State Aid figures which have not been finalized yet. Mr. Griffiths stated that there may be a need for a special meeting to introduce the budget prior to the July 7th meeting. Mr. Griffiths stated that the finance committee will need to convene once the State Aid figures are released to review the “wish list” and adjust the budget accordingly. Mr. Lawver suggested that the Finance Committee meet on June 17th to decide what items to add back and to determine whether to convene a special meeting for introduction of the budget on June 23rd.

Public Safety – Mr. Tucker stated that the Board of Health Nuisance Ordinance has been adopted by the Board of Health. Mr. Tucker thanked Ms. Chandler and Ms. Heinzel for preparing an excellent memorandum summarizing concerns that were brought up by Council Members and residents at the Borough Council Meeting.

Mr. Tucker reported that some time ago when the school district dropped busing services, the Borough asked for a “No Turn on Red” sign at Route 31 and Delaware Avenue and the request was turned down, however the DOT did say that they would be installing sidewalks. Mr. Tucker stated that it appears that the sidewalks are underway and will run from the Golf Course to Broemel Place.

Mr. Tucker reported that an advertisement has been placed in the Trenton Times to fill the upcoming vacancies in the Police Department. Mr. Tucker stated that thirty resumes have been received from trained applicants so far.

Mr. Tucker stated Mr. Meytrott has represented the Borough at numerous meetings during the month of May.

Mr. Tucker stated that the Memorial Day Parade was held on May 26th, there were no reported incidents.

Mr. Tucker reported on various events held during the month of May.

Mr. Tucker reported the following statistics for the Month of May, 2008:

1	Motor Vehicle Theft
169	Motor Vehicle Stops
60	Motor Vehicle Summonses
35	Parking Summonses
70	Warnings
2	Adult Females Arrests

Mr. Tucker reported that Pennington Day was held on May 17th with an estimated attendance of about 4,000. Mr. Tucker reported that unfortunately there was a report of a dog bite in the area of South Main and Academy. Mr. Tucker stated that the victim was treated at the scene by members of the Pennington First Aid Squad and referred to either a hospital or a doctor for further treatment. Mr. Tucker reported that the First Aid Squad has forwarded a letter asking that Pennington Borough consider not allowing dogs at events such as Pennington Day.

New Business

**Borough of Pennington
Resolution #2008-6.1**

RESOLUTION AUTHORIZING REFUNDS

BE IT RESOLVED, that a refund be made to GMAC Mortgage, c/o First American Real Estate Tax Service, PO Box 961250, Fort Worth, TX 76161-9887 in the amount of \$2,916.54 for an overpayment of 2nd quarter taxes for Block 906 Lot 1, Mark & Amy Haftkowycz.

BE IT RESOLVED, that a refund be made to Chase Home Finance LLC, c/o First American Real Estate Tax Service, PO Box 961250, Fort Worth, TX 96161-9887 in the amount of \$29.70 for an overpayment of 2nd quarter taxes for Block 703 Lot 17, Calin Ion Andrei.

BE IT RESOLVED, that a refund be made to Wells Fargo Home Mortgage, Attn: Financial Support Unit – Region 1, 1 Home Campus, MAC X2302-04D, Des Moines, IA 50328-0001 in the amount of \$50.98 for an overpayment of 2nd quarter taxes for Block 602 Lot 1, David A. & Laurie M. Ludgin.

Record of Council Vote on Passage

COUNCILMAN	AYE	NAY	N.V.	A.B.	COUNCILMAN	AYE	NAY	N.V.	A.B.
Chandler	X				Lawver	M			
Griffiths	X				Ogren	S			
Heinzel	X				Tucker	X			

Council Member Lawver made a motion to approve Resolution 2008-6.1, second by Council Member Ogren with all members present voting in favor.

**Borough of Pennington
Resolution #2008 – 6.2**

AUTHORIZING PAYMENT OF BILLS

WHEREAS, certain bills are due and payable as per itemized claims listed on the following schedules, which are made a part of the minutes of this meeting as a supplemental record;

NOW, THEREFORE BE IT RESOLVED, by the Mayor and Council of the Borough of Pennington that the bills be paid on audit and approval of the Mayor, the Appropriate Council Member and the Treasurer in the amount of \$ 750,252.74 from the following accounts:

Current	\$ 722,327.48
W/S Operating	\$ 21,532.21
Developers Escrow	\$ 5,336.58
Grant Fund	\$ 938.57
General Capital	\$ 67.90

WHEREAS, this is a partial payment under the contract;

WHEREAS, funds are available in account #G-02-44-929-000-250-NJDOT 2005;

NOW, THEREFORE, BE IT RESOLVED, by the Borough Council of the Borough of Pennington, that payment to Gres Paving Company, Inc., in the amount of \$50,736.71 pursuant to payment request No. 3 is hereby authorized.

Record of Council Vote on Passage

COUNCILMAN	AYE	NAY	N.V.	A.B.	COUNCILMAN	AYE	NAY	N.V.	A.B.
Chandler	X				Lawver	M			
Griffiths	X				Ogren	X			
Heinzel	S				Tucker	X			

Council Member Lawver made a motion to approve Resolution 2008-6.4, second by Council Member Heinzel with all members present voting in favor.

**BOROUGH OF PENNINGTON
Resolution 2008-6.5**

**RESOLUTION AUTHORIZING BOROUGH ENGINEER
TO MAKE APPLICATION TO NJDOT FOR GRANT FUNDS
FOR RECONSTRUCTION OF LOWER KING GEORGE ROAD**

WHEREAS, Borough Council determines that the segment of King George Road between Park and Delaware requires reconstruction;

WHEREAS, grant funds from the New Jersey Department of Transportation are believed to be available for a project of this kind;

WHEREAS, the State funds estimated to be needed for this project amount to \$500,000;

WHEREAS, Borough Council seeks to authorize the Borough Engineer to prepare and submit on the Borough's behalf an application for these funds;

NOW, THEREFORE, BE IT RESOLVED, by the Borough Council of the Borough of Pennington, that the Borough Engineer, through Van Note-Harvey Associates, is hereby authorized to prepare all required documents and to take all necessary actions to make the aforesaid application for funds to the New Jersey Department of Transportation on behalf of the Borough.

Record of Council Vote on Passage

COUNCILMAN	AYE	NAY	N.V.	A.B.	COUNCILMAN	AYE	NAY	N.V.	A.B.
Chandler	X				Lawver	M			
Griffiths	X				Ogren	S			
Heinzel	X				Tucker	X			

Council Member Lawver made a motion to approve Resolution 2008-6.5, second by Council Member Ogren with all members present voting in favor.

**PENNINGTON BOROUGH
Resolution No. 2008-6.6**

**RESOLUTION APPOINTING SOCKLER REALTY SERVICES GROUP AS APPRAISAL EXPERT IN
PENDING STATE TAX COURT APPEALS INVOLVING 2 NORTH HIGHWAY 31, BLOCK 201, LOT 6 IN
PENNINGTON**

WHEREAS, the Borough of Pennington has a need to appoint Sockler Realty Services Group as an appraiser to provide expert appraisal services and testimony as needed in connection with property tax appeals pending in New Jersey Tax Court, in particular, the appeals for the 2006, 2007 and 2008 tax years brought by First States Investors with respect to the property known as 2 North Highway 31, Block 201, Lot 6, in the Borough;

WHEREAS, the anticipated value of this contract for professional services, having a term of one (1) year, will not exceed \$6,500;

WHEREAS, approval of this contract complies with the Local Pay-To-Play Law, N.J.S.A. 19:44A-20.5, effective January 1, 2006, and the related restrictions imposed by Borough Ordinance;

WHEREAS, members of the Sockler Realty Services Group have made no political contributions to candidates or political parties in Pennington Borough and shall be prohibited from doing so during the term of the contract;

WHEREAS, this contract is being awarded as a professional services contract in compliance with the Local Public Contracts Law, N.J.S.A. 40A:11-1, et seq., without advertising for proposals or competitive bidding because the

services contracted for are of such a qualitative nature as will not reasonably permit the drawing of specifications or the receipt of competitive bids;

WHEREAS, Sockler Realty Services Group shall perform the subject appraisal services at the billing rate of \$100 per hour, plus reimbursement for reasonable out-of-pocket expenses; and the estimated combined fee for preparation of formal appraisals for the 2006, 2007 and 2008 tax years is \$4,000., with time subsequently required for communications, meetings, conferences, pre-trial preparation, trial and the like to be billed in addition, at the hourly rate;

WHEREAS, the Chief Financial Officer of the Borough has certified that funds are available for the purpose of this contract;

WHEREAS, the Local Public Contracts Law requires that a resolution authorizing an award of contract for professional services without competitive bid be publicly advertised following adoption;

NOW, THEREFORE, BE IT RESOLVED, by the Borough Council of the Borough of Pennington that Sockler Realty Services Group be retained as an appraisal expert as aforesaid, pursuant to the attached professional services agreement;

BE IT FURTHER RESOLVED, that the Mayor, with the attestation of the Borough Clerk, is hereby authorized to enter into the said professional services agreement with Sockler Realty Services Group in the form annexed hereto;

BE IT FURTHER RESOLVED, that a copy of this resolution shall be published in the Pennington Post as required by law within ten (10) days of its adoption.

Record of Council Vote on Passage

COUNCILMAN	AYE	NAY	N.V.	A.B.	COUNCILMAN	AYE	NAY	N.V.	A.B.
Chandler	X				Lawver	X			
Griffiths	M				Ogren	X			
Heinzel	S				Tucker	X			

Council Member Griffiths made a motion to approve Resolution 2008-6.6, second by Council Member Heinzel with all members present voting in favor.

Administrator’s Report

ARC of Mercer – Mr. Dunworth stated that the ARC of Mercer County has sent a letter and proposed ordinance to establish an advisory commission for the developmentally disabled. Mr. Dunworth stated that the letter states that the ARC would like to come to a meeting to present this to Council. Mr. Lawver stated that he thought that this issue would be better handled at the County level and Council Members agreed. Mr. Dunworth was directed to convey that message to the ARC.

Comp Time – Jeff Wittkop – Mr. Dunworth stated that Mr. Wittkop has presented his comp time report requesting to be paid for 87 hours of Comp Time for the period of December 2007 to May 2008. Mr. Dunworth stated that at the hourly rate of \$42.45 the amount requested is \$ 3,693.15. Mr. Dunworth stated that excluding the 21 hours for December the balance of 66 hours would be subject to retro pay, once the salary ordinance is adopted. Ms. Chandler asked for an explanation of the comp time request. Council Member Lawver made a motion to approve the request for payment of comp time, second by Council Member Griffiths with all members present voting in favor.

Mr. Dunworth stated that the NJ State League of Municipalities has sent their bill for the League Magazine and presently the Borough is getting 10 copies. Mr. Dunworth asked if each Council Member still wants to receive the magazine. Mr. Ogren and Mr. Tucker both wanted to continue to receive the magazine with Borough Clerk, Betty Sterling also getting one that could be circulated.

Council Discussion

Mr. Ogren stated that the Borough has received a letter from the DOT rejecting the request for funds for Streetscape Improvements.

Mr. Ogren stated that earlier in the year, he presented a proposal to Council regarding the Lawrence Hopewell Trail and a request that the Borough split the cost for preliminary engineering with Hopewell Township. Mr. Ogren stated that Hopewell Township has budgeted sufficient funds to cover all of the preliminary engineering and it will not be necessary for the Borough to contribute any funds at this time.

Mr. Ogren stated that he has now presented to Hopewell Township the idea of a Hopewell Lawrence Bikeway with a connection to Pennington Borough. Mr. Ogren stated that he will be attending a Mercer County Pedestrian and Bicycle Task Force meeting in the next couple weeks to discuss this proposal. Mr. Ogren stated that preliminary indications are that this is a good idea. Mr. Lawver stated that the proposal is for striping and does not include any infrastructure improvements.

Mr. Tucker stated that the Veteran’s held a ceremony the Saturday prior to Memorial Day at the new Veteran’s Park for the new Memorial. There were about 250 people in attendance. Mr. Tucker commended Ken Baker and Bill Meytrott for their involvement in this endeavor.

Mr. Ogren stated that in reference to Memorial Day and the streetscape along the parade route, he suggests that someone contact the Board of Education in reference to the lack of curbing in front of the Tollgate School.

Professional Reports

There were no reports from Professionals.

Public Comment Period

Mr. Tucker opened the meeting for public comment and requested that anyone wishing to speak come forward, state name and address for the record and limit comments to a maximum of five minutes.

Mr. Robert Hage of 413 Burd Street stated that once again he would like to implore Council to take immediate action to protect children by restricting dog attendance at Pennington Day and other Pennington Recreation sponsored events. Council Members responded to Mr. Hage's concerns. Ms. Chandler stated that what she is struggling with is if Council were to adopt an Ordinance, how it would be enforced. Mr. Meytrott responded that it would be difficult to enforce. Ms. Chandler stated that the Recreation Commission is encouraging people attending events to leave their dogs at home and if dogs are in attendance the leash law is being enforced. Ms. Heinzl recommended that this issue be referred to the Public Safety Committee and that they check to see what other municipalities are doing with regard to dogs at public events.

At 10:40 PM, Council Member Lawver made a motion to adjourn the meeting, second by Council Member Heinzl with all members present voting in favor.

Respectfully submitted,

Elizabeth Sterling
Borough Clerk