

**Pennington Borough Council
Regular Meeting – December 3, 2007**

Mayor Persichilli called the Regular Meeting of the Borough Council to order at 7:00 pm. Borough Clerk Betty Sterling called the roll with Council Members Garber, Heinzl, Lawver and Zompa in attendance. Council Member Tucker arrived at 7:05 p.m., after the roll call.

Also present were Superintendent of Public Works, Jeff Wittkop, Public Safety Director, Bill Meytrott, Borough Administrator, Eugene Dunworth, Borough Attorney, Walter Bliss and Borough Clerk, Betty Sterling.

Mayor Persichilli 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.

Approval of Minutes

Council Member Zompa made a motion to approve the minutes of the October 17th, 2007, Special Meeting, second by Council Member Garber with all members present voting in favor with the exception of Ms. Heinzl who abstained.

Council Member Heinzl made a motion to approve the minutes of the November 5, 2007, Regular Meeting, second by Council Member Zompa with all members present voting in favor.

Open to the Public – Agenda Items Only

Mayor Persichilli made the following announcement:

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.**

There were no comments from the public on agenda items.

Mayor's Business

Mayor Persichilli read the following Proclamation:

PROCLAMATION

WHEREAS; it is the policy of the Borough of Pennington to recognize organizations that have contributed to the overall benefit of the community; and

WHEREAS, Womanspace, founded in 1977, has demonstrated a unique ability to provide comfort, support services, crisis intervention and safety to women who are victims of sexual assault and domestic violence; and

WHEREAS, Womenspace, in the belief that "peace begins at home", has asked the Mercer County Community to join them in their struggle against violence toward women by participating in their annual Communities of Light project; and

WHEREAS, Womenspace has provided emergency shelter in secure locations and comprehensive services for victims of domestic violence since 1977 and sexual assault since 2002, for more than 39,169 women, 5,383 children and 1,016 men. Womenspace has assisted more than 204,015 callers over the last 30 years; and

WHEREAS, the Borough of Pennington applauds the efforts of Womenspace to bring an end to the circle of abuse imposed on women; and

WHEREAS, as Mayor of Pennington Borough I urge that each and every household demonstrate their support of the concept that "peace begins at home" by placing luminaries along their driveways and sidewalks on Sunday, December 16, 2007, as a visible symbol of that support; and

WHEREAS, the proceeds from Communities of Light 2007 will be used to fund vital services for victims of domestic violence and sexual assault.

NOW, THEREFORE, BE IT PROCLAIMED THAT, I Anthony Persichilli, Mayor of the Borough of Pennington, County of Mercer, State of New Jersey, do hereby Proclaim December 16, 2007, as

Communities of Light Day

and hereby commend Womanspace on its many accomplishments and wish them continued success with Communities of Light in the years to come.

Mayor Persichilli announced the following resignations:

Terry Evanko, Senior Citizen Representative to the Hopewell Valley Recreation Committee
Maybeth McDonough, Economic Development
Steve Kohke, Economic Development

Mayor Persichilli announced the resignation of Council Member Robert DiFalco effective November 19, 2007. Mr. Persichilli stated that Borough Council is in the process of identifying a replacement for Mr. DiFalco. Mr. Persichilli announced the three names have been submitted and a special meeting will be scheduled to interview the candidates and to allow members of the public to ask questions of the candidates. Mr. Persichilli gave the names of the three candidates; Glen Griffiths of 33 Baldwin Street, Alyce L. Doldy of 202 Burd Street and David Haines of 2 East Franklin Avenue. A brief discussion took place among Council with regard to the timing for scheduling of the special meeting.

Ordinances for Introduction

Mayor Persichilli read Ordinance 2007-15 by title.

BOROUGH OF PENNINGTON Ordinance No. 2007 - 15

AN ORDINANCE INCREASING THE FEES FOR THE PAID DETAIL SERVICES OF BOROUGH POLICE OFFICERS AND 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, Officers who provide Paid Detail Service use Borough vehicles, uniforms and equipment and are covered by Borough insurance;

WHEREAS, the Borough charges a fee for Paid Detail Service which in addition to compensating the Officer or Officers performing these services also helps to defray the Borough's related expenses;

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

1. Chapter 98 of the Code of the Borough of Pennington, Section 98-21, concerning "Fees Required for Paid Detail Police Services," is hereby amended to read as follows:

98-21. The fee paid to the Borough for Paid Detail Service shall be as follows:

- 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.

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

Council Member Lawver made a motion to introduce Ordinance 2007-15, second by Council Member Tucker with all members present voting in favor.

Ordinances for Public Hearing and Adoption

Mayor Persichilli read Ordinance 2007-12 by title.

BOROUGH OF PENNINGTON ORDINANCE NO. 2007 -12

AN ORDINANCE AMENDING AND SUPPLEMENTING CHAPTER 215, "ZONING", OF THE CODE OF THE BOROUGH OF PENNINGTON COUNTY OF MERCER, STATE OF NEW JERSEY

WHEREAS the Borough Council of the Borough of Pennington in the County of Mercer and the State of New Jersey seeks to amend Chapter 215 of the Code of the Borough of Pennington to update definitions in the Code and to enact recommendations from the "Master Plan And Development Regulations Periodic Reexamination Report" adopted by the Borough Planning Board on February 23, 2005; and

NOW, THEREFORE, BE IT ORDAINED by the Borough Council of the Borough of Pennington, in the County of Mercer and the State of New Jersey, that Chapter 215, entitled "Zoning", of the Code of the Borough of Pennington is hereby amended and supplemented as follows:

SECTION 1. Add new definitions to Section 215-8, entitled "Definitions", of Chapter 215 of the Code of the Borough of Pennington in alphabetical order to read as follows:

"ADDITION - An extension or an increase in the floor area, height or coverage of a building or structure

ANIMAL HOSPITAL – A place where animals are given medical care and where the boarding of animals that receive onsite medical care is limited to short-term care incidental to the hospital use. For the purposes of this Ordinance, animal hospitals do not include dog kennels, breeding and boarding facilities or other similar uses.

ATTIC - A space between the ceiling beams of the top habitable story and the roof rafters.

BUFFER - An unoccupied portion of land maintained as a landscaped area and used to visually separate one use from another.

CARPORT – A roofed structure providing space for the parking of no more than two (2) motor vehicles and enclosed on not more than three sides. For the purpose of this Ordinance, a carport shall be permitted only where explicitly stated as a permitted secondary use and shall comply with the requirements for garages in Section 215-12.

COMPLETE APPLICATION - An application for development shall be complete for purposes of commencing the applicable time period for action by the applicable municipal agency or its authorized committee or designee when so certified by the municipal agency or its authorized committee or designee.

- a. In the event the application is not certified to be complete within forty-five (45) days of the date of its submission, the application shall be deemed complete upon the expiration of the forty-five (45) day period for purposes of commencing the applicable time period for action by the municipal agency or its authorized committee or designee unless:
 - 1) The application lacks information indicated on the appropriate checklists adopted by Ordinance and submitted by the applicant; and
 - 2) The municipal agency or its authorized committee or designee has notified the applicant, in writing, of the deficiencies in the application within forty-five (45) days of submission of the application.
- b. The applicant may request that one (1) or more of the submission requirements be waived, in which event the municipal agency shall grant or deny the request within forty-five (45) days.
- c. Nothing herein shall be construed as diminishing the applicant's obligation to prove in the application process that he is entitled to approval of the application.
- d. The municipal agency may subsequently require correction of any information found to be in error and submission of additional information not specified in the Ordinance or any revisions in the accompanying documents, as are reasonably necessary to make an informed decision as to whether the requirements necessary for approval of the application have been met. However, the application shall not be deemed incomplete for lack of any such additional information or any revisions in the accompanying documents so required by the municipal agency.

CONSERVATION EASEMENT - An easement in favor of the Borough of Pennington, an approved Homeowners' Association, or other designated conservation organization acceptable to the Borough for the purpose of preserving open space, aquatic buffers and/or the natural, scenic, agricultural, aesthetic, or historic value of land and precluding any building on the premises.

EASEMENT - A right, created by deed or other legal means, to use the real property of another for one (1) or more specific purposes (e.g. access, drainage, conservation, utility services, etc.) for the benefit of private persons or for the benefit of the public.

FAMILY - The word "Family" shall mean the same as "Housekeeping Unit".

FLOOR AREA RATIO (F.A.R.) - The sum of the area of all floors of buildings or structures compared to the total area of the site.

GRADE - The slope of a road, path, driveway, swale or other surface, or the average finished ground elevation adjoining a building at project completion.

HOUSEKEEPING UNIT OR HOUSEHOLD - One (1) or more persons living together in one (1) dwelling unit on a non-seasonal basis and sharing living, sleeping, cooking and sanitary facilities on a non-profit basis.

SETBACK LINE - A line drawn parallel with a street line or proposed street line or lot line and drawn to the point of a building nearest to the street line or proposed street line or lot line. The term "required setback" means a line that is established a minimum horizontal distance from the street line or proposed street line or lot line and beyond which a building or part of a building is not permitted to extend toward the street line or proposed street line or lot line.

STREET - Any street, avenue, boulevard, road, parkway, viaduct, drive or other way which:

- a. Is an existing State, County or municipal roadway; or
- b. Is shown on a plat heretofore approved pursuant to law; or
- c. Is approved by the Borough of Pennington in accordance with the provisions of this Ordinance; or
- d. Is shown on a plat duly filed and recorded in the office of the County Recording Officer prior to the appointment of a Planning Board and the grant to such Board of the power to review plats.

A "Street" includes the land between the street lines, whether improved or unimproved, and may comprise pavement, shoulders, gutters, curbs, sidewalks, parking areas and other areas within the street line. A street is classified by its function as designated in the currently adopted Traffic Circulation Plan Element portion of the Pennington Borough Master Plan. Moreover, for the purposes of the street design and paving requirements of this Ordinance, all "private roads" shall be considered streets.

STRUCTURE - A combination of materials to form a construction for occupancy, use or ornamentation, whether installed on, above or below the surface of a parcel of land, including such things as buildings, fences, dumpster enclosures, poles, signs, towers, tanks, decks, paved or concrete driveways, parking lots and patios, swimming pools and tennis courts, but specifically excluding on-site wastewater treatment and disposal systems."

SECTION 2. Amend the following definitions in Section 215-8, entitled "Definitions", of Chapter 215 of the Code of the Borough of Pennington to read as follows:

"ASSISTED LIVING FACILITY - A complex of apartment dwelling units which contain living, sleeping and sanitary facility accommodations, with ancillary services and activities for the residents, including meals, housekeeping services, medical services, recreational services and other personal services required for the residents, where residents meet the requirements for "Assisted Living Residences" as defined by the State of New Jersey within N.J.A.C. 8:36 et seq., thereby requiring assistance in normal daily living activities between "independent living" and "nursing care".

BASEMENT - That portion of a building partly below and partly above grade, where the ceiling averages four feet (4') or more above the finished grade where such grade meets the outside walls of the building.

BUILDING - A combination of materials to form a construction adapted to permanent, temporary, or continuous occupancy and having a roof. For the purposes of this Ordinance, a tent which has been erected for a temporary business or social function shall not be considered to be a building, provided that it is not erect for more than one (1) week.

BUILDING HEIGHT - The vertical distance measured to the highest point of the building from the average elevation of the finished grade five feet (5') from the foundation of the building along all side(s) of the building. In all cases where this Ordinance provides for height limitations by reference to a specified height and a specified number of stories, the intent is to limit height to the specified maximum footage and the specified number of stories within said footage

CELLAR - That portion of a building partly below and partly above grade, where the ceiling averages less than four feet (4') above the finished grade where such grade meets the outside walls of the building.

COMMON OPEN SPACE - An open space area within or related to a site designated as a development, and designed and intended for the use or enjoyment of residents and owners of the development. Common open space may contain such complimentary structures and

improvements as are necessary and appropriate for the use or enjoyment of residents and owners of the development.

FLOOR AREA, GROSS (G.F.A.) OR TOTAL - The sum of the gross horizontal area of each full story of a building on a lot, measured from the exterior face of the exterior walls, provided that any under-roof parking area shall not be included in the G.F.A. calculation. For attached dwelling units/buildings, the gross floor area shall be measured from the centerline of a wall separating the two dwelling units/buildings.

LOT COVERAGE - The aggregate square footage or other area measurement by which all sidewalks, driveways and parking areas, whether paved, graveled or unsurfaced, and all buildings and other structures cover a lot, as measured in a horizontal plane to the limits of the structure or improvement.

LOT, CORNER - A lot abutting the intersection of two (2) or more streets, where the interior angle of intersection does not exceed one hundred thirty-five (135) degrees. The "lot width" of a corner lot shall be measured on the narrower of the two (2) sides of the lot abutting a street for purposes of meeting the minimum requirements, regardless of the orientation of the building on the lot. Each corner lot shall have two (2) front yards, one (1) side yard and one (1) rear yard, the side and rear yards to be designated by the proposed orientation of the dwelling or building on the lot at the time of application for subdivision, site plan or variance approval, or if there is no application for subdivision, site plan or variance approval, at the time of building permit application.

LOT WIDTH - The straight line horizontal distance between side lot lines at setback points on each side lot line measured from the street line at the minimum required building setback line.

PARKING SPACE - Any area for the parking of motor vehicles, exclusive of driveways, access drives, fire lanes and public rights-of-way, either within a structure or in the open, in accordance with the following:

- a. Each non-handicapped, off-street parking space shall not be less than nine feet wide by twenty feet in length (9' x 20'), except that the length of a parking space may be reduced to eighteen feet (18') in length in those instances where a two foot (2') overhang area exists beyond a curb and where such overhang does not interfere with any proposed and/or required landscaping, as may be approved by the Board, or as permitted by N.J.A.C. 5:21-4.15 for residential dwelling units;
- b. Each handicapped space shall not be less than eight feet wide by twenty feet in length (8' x 20') and shall have an adjacent pedestrian access aisle at least five feet (5') wide except that at least eight feet (8') is required for a van accessible handicapped space, provided that if a different requirement for a handicapped space has been adopted by the State, the most current requirement shall be met; and
- c. The width and length of each space shall be measured perpendicular to each other regardless of the angle of the parking space to the access aisle or driveway.
- d. For the purposes of this Ordinance, the total number of required parking spaces for any development shall be the sum of the individual parking requirements for each use in the subject development, based upon the gross floor area or part thereof devoted to each use.

SCIENTIFIC AND RESEARCH LABORATORIES – Establishments designed and used for research and engineering activities involving scientific investigations, engineering studies and consumer product development of types other than carried on in "general business offices" and similar activities, with the objective of creating products or research studies, but excluding the manufacturing, sale, processing, warehousing, distribution or fabrication of materials, products, or goods except as incidental to the principal permitted uses.

SITE PLAN - A development plan of one (1) or more lots which shows:

- a. The existing and proposed conditions of the lot including, but not necessarily limited to, topography, vegetation, drainage, flood plains, marshes and waterways;
- b. The location of all existing and proposed buildings, drives, parking spaces, walkways, means of ingress and egress, drainage facilities, utility services, landscaping, structures and signs, lighting and screening devices; and
- c. Any other information that may be reasonably required in order to make an informed determination concerning the adequacy of the plan in accordance with the requirements of this Ordinance.

STREET LINE - The edge of the existing or future street right-of-way, whichever may result in the widest right-of-way in accordance with the currently adopted Traffic Circulation Element portion of the Pennington Borough Master Plan. The "Street Line" is the dividing line between the street and a lot. All required front yard areas and building setbacks shall be measured from the street line.

STORY - That portion of a building included between the upper surface of any floor and the upper surface of the next floor above it or, if there is no floor above it, then the surface between the floor and the ceiling next above it. For the purpose of this Ordinance:

- a. The interior of a roof shall not be considered a ceiling; rather, the underside of the highest horizontal surface separating the area above from the remainder of the structure below shall be considered the ceiling.
- b. Cellars and basements ordinarily shall not be considered stories when considering the height of a building except, however, that:
 - (1) A finished basement and/or cellar in non-residential buildings shall be considered a "story" for the purposes of the height, floor area and parking requirements of this Ordinance unless used and restricted solely for ancillary storage.
 - (2) A basement in a non-residential or residential building, whether finished or not, shall be considered a "story" for the purposes of the height, floor area and parking requirements of this Ordinance when the distance from grade to the finished surface of the floor above the basement is more than six feet (6') for more than fifty percent (50%) of the total perimeter of the building or is more than twelve feet (12') at any point.
- c. A half-story is the area under a pitched roof at the top of a building, the floor of which is at least three feet (3'), but no more than six feet (6'), below the line of intersection of the roof and wall face.
- d. The attic or area under a pitched roof at the top of a building shall be considered a full story for the purposes of this Ordinance when the head room or ceiling at a height of seven feet (7') or more above the attic floor is more than one-third of the total area of the floor directly beneath and has access via walk-up stairs from the floor below.

YARD - An open space that lies between the closest point or projection of a principal or accessory building or buildings and the nearest lot line.

FRONT YARD - The open space extending across the full width of the lot and lying between the street line and the closest point of any building on the lot. The depth of the front yard shall be measured horizontally and at right angles to either a straight street line or parallel to a curved street line.

REAR YARD - The open space extending across the full width of the lot and lying between the rear lot line and the closest point of the principal building on the lot. The depth of the rear yard shall be measured horizontally and at right angles to either a straight rear lot line or parallel to a curved rear lot line.

SIDE YARD - The open space extending from the front yard to the rear yard and lying between each side lot line and the closest point of the principal building on the lot. The width of the side yard shall be measured horizontally and at right angles to either a straight line or the tangent lines of curved lot lines."

SECTION 3. Delete the definition of "Building Line" in Section 215-8 of Chapter 215 of the Code of the Borough of Pennington in its entirety.

SECTION 4. Amend the definition of "Temporary Sign" in Section 215-31 B. of Chapter 215 of the Code of the Borough of Pennington to read in its entirety as follows:

"TEMPORARY SIGN – Any sign or advertising display designed or intended to be displayed for a short period of time and used to draw the attention of the public to any use, building, product, individual or service. For the purposes of this Ordinance, any temporary free-standing portable sign shall be displayed only during the hours of operation of the use or building to which the advertising applies."

SECTION 5. Add a new subsection to Section 215-67 D., entitled "Other provisions and requirements" in the R-80 Residence Zone, of Chapter 215 of the Code of the Borough of Pennington to read in its entirety as follows:

- "(2) The Floor Area Ratio shall not exceed 0.275, and no dwelling unit shall exceed 4,500 square feet of gross floor area."

SECTION 6. Add a new subsection to Section 215-68 D., entitled "Other provisions and requirements" in the R-100 Residence Zone, of Chapter 215 of the Code of the Borough of Pennington to read in its entirety as follows:

- "(2) The Floor Area Ratio shall not exceed 0.25, and no dwelling unit shall exceed 6,500 square feet of gross floor area."

SECTION 7. Add a new subsection to Section 215-71 B., entitled "Permitted primary uses" in the TC Town Center Zone, of Chapter 215 of the Code of the Borough of Pennington to read in its entirety as follows:

- "(5) General business office uses on the second and/or third floors of a building where the Borough Zoning Officer or the Planning Board has determined that the size, access or other physical features of the second and/or third floor preclude the floor from being used as a residential dwelling unit, provided that no office uses shall be permitted above a residential dwelling or floor that could accommodate a residential dwelling."

SECTION 8. Add a new subsection to Section 215-71 E., entitled "Schedule of regulations" in the TC Town Center Zone, of Chapter 215 of the Code of the Borough of Pennington to read in its entirety as follows:

- "(8) All buildings shall have a dual pitched, single ridge roof (such as a gable, hip, gambrel or mansard roof), provided however that where roof mounted equipment is necessary and/or preferable for the operation of the building, a facade roof treatment exhibiting the appearance of such a dual pitched, single ridge roof may be permitted if specifically approved by the Planning Board as part of a submitted site plan application. No flat roofs shall be permitted."

SECTION 9. Amend Section 215-71.1 E., entitled "Schedule of regulations" in the TCB Town Center Buffer Zone, of Chapter 215 of the Code of the Borough of Pennington to read in its entirety as follows:

- "E. Schedule of regulations. The provisions of the "schedule of regulations" specified in Section 215-71 E. for the Town Center Zone also shall apply to the Town Center Buffer Zone."

SECTION 10. Add a new permitted secondary use in the "MU-2" Mixed Use Zone to Section 215-78 C. of Chapter 215 of the Code of the Borough of Pennington to read in its entirety as follows:

- "(3) One (1) carport per lot, not exceeding 450 square feet in size and in accordance with the requirements for garages."

SECTION 11. Amend the title of Section 215-80, entitled "Utility uses", of Chapter 215 of the Code of the Borough of Pennington to read in its entirety as follows:

"§215-80. Public utility uses."

SECTION 12. Amend the title and first line of Section 215-87, entitled "Motor sales establishments", of Chapter 215 of the Code of the Borough of Pennington to read in its entirety as follows:

"§215-87. Motor vehicle sales establishments."

Motor vehicle sales establishments shall be subject to the following:"

SECTION 13. Amend the title of Section 215-92, entitled "Continuing-care treatment facilities", of Chapter 215 of the Code of the Borough of Pennington to read in its entirety as follows:

"§215-92. Continuing-care retirement facilities."

SECTION 14. If any section, paragraph, subsection, clause or provision of this Ordinance shall be adjudged by the Courts to be invalid, such adjudication shall apply only to that subsection, clause or provision so adjudged and the remainder of this Ordinance shall be deemed valid and effective.

SECTION 15. This Ordinance shall take effect immediately upon final adoption, publication and the filing of a copy of said Ordinance with the Mercer County Planning Board, all in accordance with the law.

Council Member Tucker made a motion to open the Public Hearing on Ordinance 2007-15, second by Council Member Heinzl. There were no comments from the public. Council Member Tucker made a motion to close the Public Hearing, second by Council Member Heinzl with all members present voting in favor. Mr. Lawver had some questions with regard to lot coverage. Council Member Tucker made a motion to adopt Ordinance 2007-15, second by Council Member Heinzl with all members present voting in favor.

Mayor Persichilli read Ordinance 2007-13 by title.

**Borough of Pennington
Ordinance #2007-13**

**AN ORDINANCE OF THE BOROUGH OF PENNINGTON, COUNTY OF MERCER, STATE OF
NEW JERSEY AUTHORIZING A COLLECTIVE BARGAINING AGREEMENT WITH
PENNINGTON
BOROUGH POLICE ASSOCIATION**

WHEREAS, the Borough of Pennington and the Pennington Borough Police Association have negotiated the terms of a collective bargaining agreement for the years 2007, 2008 and 2009; and

WHEREAS, the collective bargaining agreement establishes salaries and other conditions of employment; and

WHEREAS, a copy of the collective bargaining agreement is available for inspection at the office of the Clerk in Borough Hall; and

WHEREAS, the Borough desires to adopt this collective bargaining agreement and authorize the salary payments contained therein;

NOW THEREFORE, BE IT ORDAINED by the Borough Council of the Borough of Pennington, County of Mercer, State of New Jersey, as follows:

ARTICLE I – The collective bargaining agreement negotiated with the Pennington Borough Police Association for the years 2007, 2008 and 2009, a copy of which is on file in the Office of the Borough Clerk, is hereby incorporated herein by reference and adopted by the Borough of Pennington.

ARTICLE II – In the event that the terms and conditions of the collective bargaining agreement are at variance with the Borough Employee Personnel Manual, the terms and conditions of the collective bargaining agreement shall be controlling.

ARTICLE III – The Mayor and Clerk are hereby authorized to sign and seal the said agreement on behalf of the Borough.

ARTICLE IV – This Ordinance shall take effect upon final passage and publication according to law, provided however that the salaries set forth in said agreement shall be in effect retroactively to January 1, 2007.

ARTICLE V – All ordinances or portions thereof inconsistent herewith are hereby repealed.

Council Member Tucker made a motion to open the Public Hearing on Ordinance 2007-13, second by Council Member Zompa. There were no comments from the public. Council Member Tucker made a motion to close the Public Hearing on Ordinance 2007-13, second by Council Member Zompa with all members present voting in favor. Council Member Tucker made a motion to adopt Ordinance 2007-13, second by Council Member Lawver. Mr. Tucker gave a brief overview of the new contract. Mr. Lawver gave an overview of the salary increases over the contract term. Upon a roll call vote all members present voted in favor.

Mayor Persichilli read Ordinance 2007-14 by title.

**BOROUGH OF PENNINGTON
ORDINANCE NO. 2007-14**

**AN ORDINANCE PROHIBITING UNDERAGE DRINKING ON PRIVATE PROPERTY AND
SUPPLEMENTING PART II OF THE CODE OF THE BOROUGH OF PENNINGTON**

WHEREAS, the legal drinking age in New Jersey is 21.

WHEREAS, adolescence is a period when young people attempt to mature and become independent. Unfortunately, peer pressure and the need to belong to a group can result in risky and sometimes dangerous behavior. Underage drinking is one of these behaviors, and often results in serious medical, legal, and public health ramifications.

WHEREAS, statistics from the Centers for Disease Control and the National Institutes of Health, as well as medical and public health studies world-wide, note the deleterious consequences of underage drinking. These include, but are not limited to, drinking and driving, suicide, sexual assault, and high-risk sex. Causal links between early alcohol use and alcohol dependence have been demonstrated in longitudinal medical and epidemiological studies.

WHEREAS, by developing a rigorous and congruent set of legal enforcement laws aimed at curbing underage drinking in Hopewell Valley, the community serves notice that it places its concern for the health and safety of its young people at the forefront.

WHEREAS, it is clear that reducing underage drinking will not only require a comprehensive underage drinking ordinance, but a broad array of community-based efforts to monitor the activities of youth and decrease youth access to alcohol. However, while a comprehensive underage drinking ordinance will not solve problems of underage drinking in and of itself, it will – through its very existence – provide a useful adjunct to educational and counseling efforts already in place.

WHEREAS, an ordinance regulating underage drinking is supported by the Hopewell Advisory Board of Health, the Hopewell Township Health Department, the Hopewell Valley Municipal Alliance, the Boards of Health of Pennington Borough, Hopewell Township and Hopewell Borough, the Hopewell Valley Regional School System, the Mercer County Prosecutor’s Office and all Hopewell Valley police and law enforcement agencies.

NOW, THEREFORE, be it ordained by the Borough Council of the Borough of Pennington, that Part II of the Code of the Borough of Pennington, concerning “General Legislation,” be supplemented by adding the following:

Chapter ____ . UNDERAGE DRINKING

1. Alcoholic beverage consumption by minors.

It is hereby unlawful for any person under the legal age ("underage person") to knowingly possess or knowingly consume an alcoholic beverage on private property without legal authority. No person shall be considered to knowingly possess an alcoholic beverage merely because he or she is present where alcoholic beverages are being consumed.

2. Exemptions to prohibition on alcohol possession and consumption by minors.

A person under the legal age shall not be prohibited from (a) possessing or consuming an alcoholic beverage in connection with a religious observance, ceremony, or rite or possessing or consuming an alcoholic beverage in the presence of or with the written permission of such person's parent or guardian or relative who has attained the legal age to purchase or consume alcoholic beverages; or (b) possessing an alcoholic beverage in the preparation of food while enrolled in a culinary arts or hotel management program at a county vocational school or post secondary educational institution.

3. Good Samaritan Exemption

Any person who affirmatively requests assistance from authorities (such as via a 911 call) or from an off-site adult (such as a parent, guardian or neighboring resident) for the purpose of seeking aid for a person who is suffering from the effects of alcohol or otherwise is in need of medical assistance shall not be charged under this ordinance with underage possession or consumption of alcohol on private property, as long as assistance is provided as a result of such request. In an instance where such an affirmative request for assistance is made, and the person to whom assistance is provided is under twenty-one, that person also shall not be charged under the ordinance with underage possession or consumption of alcohol on private property.

4. Call for Aid Exemption

Any person who is a resident of a dwelling on private property and affirmatively requests assistance from authorities (such as via a 911 call) or from an off-site adult (such as a parent, guardian or neighboring resident) for the purpose of controlling or removing non-residents who are on that property shall not be charged under this ordinance with underage possession or consumption of alcohol on private property, as long as assistance is provided as a result of such request.

5. Definitions. As used in this Section:

"Guardian" means a person who has qualified as a guardian of the underage person pursuant to testamentary or court appointment.

“Relative” means the underage person’s grandparent, aunt or uncle, sibling, or any other person related by blood or affinity.

6. Penalties for possession or consumption of alcohol by minors.

A violation by an underage person of this Article shall be punished by a fine of \$250 for a first offense, and \$350 for any subsequent offense. In addition, the Court may, in its discretion, require the performance of community-related service.

7. Driving privilege suspension of minors for violation of Article.

(a) The court may, in addition to the penalty authorized for this offense, suspend or postpone for six months the driving privileges of the defendant underage person. Upon the conviction of any underage person and the suspension or postponement of that person's driver's license, the court shall forward a report to the Division of Motor Vehicles (Division) stating the first and last day of the suspension or postponement period imposed by the court pursuant to this Article. If a person at the time of the imposition of a sentence is less than 17 years of age, the period of license postponement, including a suspension or postponement of the privilege of operating a motorized bicycle, shall commence on the day the sentence is imposed and shall run for a period of six months after the person reached the age of 17 years.

(b) If an underage person at the time of the imposition of a sentence has a valid driver's license issued by this State, the court may immediately collect the license and forward it to the Division along with the report. If for any reason the license cannot be collected, the court shall include in the report the complete name, address, date of birth, eye color, and sex of the person, as well as the first and last date of the license suspension period imposed by the court.

(c) The court shall inform the underage person orally and in writing that if the person is convicted of operating a motor vehicle during the period of license suspension or postponement, the person shall be subject to the penalties set forth in N.J.S.A. 39:3-40. A person shall be required to acknowledge receipt of the written notice in writing. Failure to receive a written notice or failure to acknowledge in writing the receipt of a written notice shall not be a defense to a subsequent charge of a violation of N.J.S.A. 39:3-40.

(d) If the underage person convicted under this Article is not a New Jersey resident, the court shall suspend or postpone, as appropriate, the non-resident driving privilege of the person based on the age of the person and submit to the Division the required report. The court shall not collect the license of a non-resident convicted under this section. Upon receipt of a report by the court, the Division shall notify the appropriate officials in the licensing jurisdiction of the suspension or postponement.

8. Mandatory alcohol counseling for violation of Article.

(a) Any person 18 years of age or younger who is convicted of a violation of this section shall be required to complete a court-approved alcohol counseling program.

(b) Any person 19 years of age or older who is convicted of a second or subsequent violation of this section shall be required to complete a court-approved alcohol counseling program.

9. Annual Review

The Chief of Police and the Health Officer will annually present to the governing body a report on the effectiveness of this ordinance.

10. Repealer

If any section of this ordinance is adjudged invalid, such adjudication shall apply only to the specific section so adjudged and the remainder of the ordinance shall be deemed valid.

11. Effective Date

This ordinance shall take effect upon passage and publication, in accordance with law.

Council Member Heinzl made a motion to open the Public Hearing, on Ordinance 2007-14, second by Council Member Zompa with all members present voting in favor. Mr. Chip Meara of the Mercer Council on Alcoholism and Drug Addiction and a resident of Ewing, NJ came forward and thanked Borough Council for taking up this issue. Mr. Meara stated that he would like to lend his support and the support of his agency for this Ordinance. Mayor Persichilli thanked Mr. Meara for his support. Council Member recognized Mr. Peter McDonough and thanked him for his work on this Ordinance. Council Member Heinzl also read an e-mail from a Pennington resident who had concerns with some of the language of the Ordinance. Mr. McDonough came forward and stated that if the intention of the three municipalities is to have substantively identical ordinances, it would make some sense to reinforce the point that the language differential is not intended to have any substantive differential from Hopewell Township. After some discussion, it was agreed to change the language of the ordinance. Council Member Tucker made a motion to close the Public Hearing, second by Council Member Garber with all members present voting in favor. Council Member Heinzl made a motion to adopt Ordinance 2007-14, second by Council Member Zompa with all members present voting in favor.

Committee Reports

Planning & Zoning/Library – Ms. Heinzl reported that the Library Holiday Book Sale held in conjunction with the Holiday Walk is continuing at the Library with all proceeds going to the Friends of the Pennington Public Library. Ms. Heinzl stated that the Friends of the Pennington Public Library are

holding their annual membership drive. Ms. Heinzel stated that the Library Board met November 15th and budget planning will begin in December.

Ms. Heinzel reported that the Planning Board met on December 7th to review Ordinance 2007-12. Ms. Heinzel reported that the Board also discussed memorialization of a resolution concerning Vito's Pizza.

Ms. Heinzel reported that the Environmental Commission met on November 15th. Ms. Heinzel reported that the commission has purchased 5 kilowatt meters. These meters can be plugged into appliances in your home to measure how much energy is being used. Ms. Heinzel stated that the commission is looking into ways to get the meters out into circulation.

Ms. Heinzel reported that the Traffic Calming Initiative committee met on November 28th and they will begin working our recommendations to Council for the coming year.

Ms. Heinzel stated that the Recreation Commission would be holding their annual Caroling in connection with the Communities of Light on December 16th, 2007.

Public Works – Mr. Garber reported that the Borough held its Grand Opening Ceremony for the new Public Works Facility last Wednesday. The event was well attended by former Mayor's, County Executives, representatives from Hopewell Township and Hopewell Borough and many others.

Mr. Garber gave the following report for Water and Trash for the Month of November 2007.

PENNINGTON BOROUGH PUBLIC WORKS

TO: David Garber, Chairman
Public Works Committee

FROM: Jeff Wittkop, Superintendent

DATE: December 3, 2007

RE: **COUNCIL REPORT FOR THE MONTH OF NOVEMBER 2007**

WATER

Water pumped for the month November 2007-	8,092,000
Daily-	269.7
Water pumped for the month of November 2006 -	7,479,000
Daily-	249.3

For the month of November 2007 we averaged 20,000 gallons more per day than 2006.

TRASH

90.88 tons of household trash for the month of November 2007 vs.
87.17 tons in November 2004

Residents are reminded to rake or blow leaves to the curb, but away from stormwater inlets. Leaves will be picked up until December 31.

Personnel – Ms. Zompa stated that the Personnel Committee did not meet during the month of November.

Community Services- No Report.

Public Safety – Mr. Tucker reported that the labor contract between Pennington Borough and the Fraternal Order of Police has been finalized and approved at tonight's meeting. Mr. Tucker reported that on November 3rd, the Borough held its auction of property no longer needed for public use with Mr. Meytrott serving as auctioneer. Mr. Tucker reported that Mr. Meytrott and Nancy Mollis of the Traffic Calming Initiative met with Carl Peters of Princeton Borough to discuss traffic safety issues and what the Borough of Princeton has done in that regard. Mr. Tucker reported that the Thanksgiving Holiday passed with no incidents reported. Mr. Tucker reported that on November 27th, Mr. Don Rupprecht, representing the Mid-Jersey Joint Insurance Fund inspected the new Public Works Facility and a report will be forthcoming. Mr. Tucker reported that Mr. Rupprecht would also be providing Mr. Dunworth with information on sidewalk repair and replacement. Mr. Tucker reported that the Police Department has completed their semi-annual firearms training.

Mr. Tucker gave the following statistics for the month of November.

4	Thefts
106	Motor Vehicle Stops
35	Motor Vehicle Summonses Issued
18	Parking Summonses Issued
56	Warnings
3	Female Arrests

Finance – Mr. Lawver reported that the Finance Committee did not meet, though the budget process is underway for next year. Mr. Lawver stated that Department Heads have been provided budget sheets to be filled out with a request from Mr. Dunworth that Other Expenses be held at a zero percent growth.

New Business

**Borough of Pennington
Resolution #2007-12.1**

RESOLUTION AUTHORIZING REFUNDS

BE IT RESOLVED, that a refund be issued to Countrywide Tax Services, PO Box 10211, MS:SVW-24, Van Nuys, CA 91410-0211 for a refund of an overpayment of 4th quarter taxes for William B. Alexander & Dorothy A. Borresen, Block 906 Lot 22, in the amount of \$66.62

BE IT RESOLVED, that a refund be issued to Washington Mutual Home Loans, c/o First American Real Estate Tax Service, PO Box 961250, Fort Worth TX 76161-9887 for a refund of an overpayment of 4th quarter taxes for Salvatore N. & Teri L. Ferrara, Block 602 Lot 6, in the amount of \$3,217.47.

BE IT RESOLVED, that a refund be issued to Wells Fargo Real Estate Tax Service, Attn: Financial Support Unit – Region 1, 1 Home Campus, MAC X2302-04D, Des Moines, IA 50328-0001 for a refund of an overpayment of 4th quarter taxes for Christopher P. & Heather Miller, Block 702 Lot 21, in the amount of \$304.93.

Record of Council Vote on Passage

COUNCILMAN	AYE	NAY	N.V.	A.B.	COUNCILMAN	AYE	NAY	N.V.	A.B.
					Lawver	X			
Garber	X				Tucker	M			
Heinzel	S				Zompa	X			

Council Member Tucker made a motion to approve Resolution 2007-12.1, second by Council Member Heinzel with all members present voting in favor.

**Borough of Pennington
Resolution #2007 – 12.2**

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 \$ 689,057.50 from the following accounts:

Current	\$ 616,823.26
W/S Operating	\$ 27,232.56
Developers Escrow	\$ 2,368.20
General Capital	\$ 42,528.48
Animal Control Account	\$ 105.00
TOTAL	\$ 689,057.50

Record of Council Vote on Passage

COUNCILMAN	AYE	NAY	N.V.	A.B.	COUNCILMAN	AYE	NAY	N.V.	A.B.
					Lawver	M			
Garber	X				Tucker	X			
Heinzel	S				Zompa	X			

Council Member Lawver made a motion to approve Resolution 2007-12.2, second by Council Member Heinzel. Council Members had questions on specific bills on the bill list. Upon a roll call vote, all members present voted in favor.

**Borough of Pennington
Resolution #2007-12.3**

RESOLUTION AUTHORIZING BUDGET TRANSFERS

WHEREAS, N.J.S.A. 40A:4-58 provides that during the last two months of the fiscal year, should it become necessary to expend funds for any purposes specified in the budget an amount in excess of the respective sums appropriated therefore and there shall be an excess in any appropriations over and above the amount deemed to be necessary to fulfill the purpose of such appropriations transfers may be made; and

WHEREAS, transfers may not be permitted to appropriations for contingent expenses or deferred charges; and

WHEREAS, transfers may not be permitted from appropriations for contingent expenses, deferred charges, cash deficit of the preceding year, reserve for uncollected taxes, down payments, and capital improvement fund or interest and redemption charges;

NOW, THEREFORE, BE IT RESOLVED, by the Borough Council of the Borough of Pennington that transfers be made between the following year 2007 budget appropriations:

<u>Appropriations:</u>	<u>To:</u>	<u>From:</u>
Other Expense - Municipal Court	\$ 2,244.00	
Other Expense – Streets		\$ 2,244.00
Total Current Fund	\$ 2,244.00	\$ 2,244.00
Other Expense – Group Insurance	\$ 700.00	
Other Expense – Sewer		\$ 700.00
Total Water/Sewer Fund	\$ 700.00	\$ 700.00

Record of Council Vote on Passage

COUNCILMAN	AYE	NAY	N.V.	A.B.	COUNCILMAN	AYE	NAY	N.V.	A.B.
					Lawver	X			
Garber	X				Tucker	M			
Heinzel	S				Zompa	X			

Council Member Tucker made a motion to approve Resolution 2007-12.3, second by Council Member Heinzel with all members present voting in favor.

**Borough of Pennington
Resolution #2007 – 12.4**

**A RESOLUTION AUTHORIZING PAYMENT REQUEST NO. 1
TO GRES PAVING COMPANY, INC., FOR WORK COMPLETED
ON THE BALDWIN STREET RECONSTRUCTION PROJECT**

WHEREAS, Gres Paving Company, Inc. has completed certain work pursuant to the Baldwin Street Reconstruction Project (VNHA #36710-500-52) relating to installation of concrete curbs, concrete sidewalk and aprons, storm drainage and the excavation and installation of stone in the roadway; and

WHEREAS, Van Note Harvey Associates, P.C. has reviewed and inspected the improvements that have been constructed and has approved payment for same pursuant to the Contractor’s Request for Payment No. 1 (\$81,800.68) less two percent (2%) retainage (\$1,636.01), the net due therefore amounting to \$80,164.67; and

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 \$80,164.67 pursuant to payment request No. 1 is hereby authorized.

Record of Council Vote on Passage

COUNCILMAN	AYE	NAY	N.V.	A.B.	COUNCILMAN	AYE	NAY	N.V.	A.B.
					Lawver	X			
Garber	M				Tucker	S			
Heinzel	X				Zompa	X			

Council Member Garber made a motion to approve Resolution 2007-12.4, second by Council Member Tucker with all members present voting in favor.

**Borough of Pennington
Resolution #2007 – 12.5**

**A RESOLUTION AUTHORIZING CHANGE ORDER NO. 2
UNDER THE 2007 PUBLIC WORKS MAINTENANCE AND EMERGENCY
SERVICES CONTRACT WITH PENN-BOWER, INC.**

WHEREAS, the Borough of Pennington has entered into a contract with Penn Bower, Inc. known as the 2007 Public Works Maintenance and Emergency Services Contract (VNHA #37473-500-52); and

WHEREAS, the Borough Engineer has recommended a change order under this contract with respect to Project No.1, known as Replacement of Water Main and Residential Services on Baldwin Street and Maple Avenue, Project No. 2, known as Replacement of Water Main and Residential Services on Brookside Avenue and Green Avenue and Project No. 3, known as Replacement of Residential Water Services on Hale; and

WHEREAS, the proposed change order would increase the contract price by \$9,734.10 to adjust the quantity of existing items to match the as-built quantities, decrease the contract price by \$77,271.02 to adjust for as-built quantities given that the roadways will be reconstructed under separate contracts and to increase the contract price by \$26,739.40 for necessary work not part of the original contract, the net change in contract price being a decrease of \$40,797.52; and

WHEREAS, further detail on this change order is available for inspection in the Office of the Borough Clerk;

NOW, THEREFORE BE IT RESOLVED, by the Borough Council of the Borough of Pennington, that the aforesaid change order decreasing the contract price by a net amount of \$40,797.52 under the 2007 Public Works Maintenance and Emergency Services Contract is hereby approved.

Record of Council Vote on Passage

COUNCILMAN	AYE	NAY	N.V.	A.B.	COUNCILMAN	AYE	NAY	N.V.	A.B.
					Lawver	X			
Garber	S				Tucker	M			
Heinzel	X				Zompa	X			

Council Member Tucker made a motion to approve Resolution 2007-12.5, second by Council Member Garber with all members present voting in favor.

**Borough of Pennington
Resolution #2007 – 12.6**

**A RESOLUTION AUTHORIZING PAYMENT REQUEST NO. 3
TO PENN-BOWER, INC., FOR WORK COMPLETED
ON THE 2007 PUBLIC WORKS MAINTENANCE AND EMERGENCY
SERVICES CONTRACT**

WHEREAS, Penn Bower, Inc. has completed certain work pursuant to the 2007 Public Works Maintenance and Emergency Services Contract (VNHA #37473-500-52) relating to replacement of the water main and residential water services on Brookside Avenue; and

WHEREAS, Van Note Harvey Associates, P.C. has reviewed and inspected the improvements that have been constructed and has approved payment for same pursuant to the Contractor's Request for Payment No. 3 (\$82,628.90) less two percent (2%) retainage (\$1,652.58), the net due therefore amounting to \$80,976.32; and

WHEREAS, this is a partial payment under the contract;

WHEREAS, funds are available in account # W-06-00-553-000-250, Ordinance 98-3 – Improvements to Water supply System;

NOW, THEREFORE BE IT RESOLVED, by the Borough Council of the Borough of Pennington, that payment to Penn Bower, Inc. in the amount of \$80,976.32 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.
					Lawver	X			
Garber	S				Tucker	M			
Heinzel	X				Zompa	X			

Council Member Tucker made a motion to approve Resolution 2007-12.6, second by Council Member Garber with all members present voting in favor.

**Borough of Pennington
Resolution #2007 – 12.7**

**A RESOLUTION AUTHORIZING PAYMENT REQUEST NO. 4
TO PENN-BOWER, INC., FOR WORK COMPLETED
ON THE 2007 PUBLIC WORKS MAINTENANCE AND EMERGENCY
SERVICES CONTRACT**

WHEREAS, Penn Bower, Inc. has completed certain work pursuant to the 2007 Public Works Maintenance and Emergency Services Contract (VNHA #37473-500-52) relating to replacement of the water main and residential water services on Brookside Avenue; and

WHEREAS, Van Note Harvey Associates, P.C. has reviewed and inspected the improvements that have been constructed and has approved payment for same pursuant to the Contractor's Request for Payment No. 4 (\$22,880.62) less two percent (2%) retainage (\$457.61), the net due therefore amounting to \$22,423.01; and

WHEREAS, this is a partial payment under the contract;

WHEREAS, funds are available in account # W-06-00-553-000-250, Ordinance 98-3 – Improvements to Water supply System;

NOW, THEREFORE BE IT RESOLVED, by the Borough Council of the Borough of Pennington, that payment to Penn Bower, Inc. in the amount of \$22,423.01 pursuant to payment request No. 4 is hereby authorized.

Record of Council Vote on Passage

COUNCILMAN	AYE	NAY	N.V.	A.B.	COUNCILMAN	AYE	NAY	N.V.	A.B.
					Lawver	X			
Garber	X				Tucker	M			
Heinzel	X				Zompa	S			

Council Member Tucker made a motion to approve Resolution 2007-12.7, second by Council Member Zompa with all members present voting in favor.

**BOROUGH OF PENNINGTON
Resolution #2007- 12.8**

**RESOLUTION AUTHORIZING RENEWAL OF LEASE OF
PENNINGTON BOROUGH SENIOR CITIZENS' CENTER TO
THE COUNTY OF MERCER**

WHEREAS, the Borough of Pennington has leased the multi-purpose room and kitchen facilities of the Hopewell Valley Senior Citizens' Center to the County of Mercer for use between the hours of 8:00 a.m. and 1:00 p.m., Monday through Friday, by the Mercer County Senior Citizens Nutrition Program;

WHEREAS, the aforesaid lease is now proposed to be renewed for the term of two years beginning January 1, 2008 and ending December 31, 2009 at the rate of \$7,500.00 for 2008 and \$8,000.00 for 2009, payable quarterly;

WHEREAS, the proposed renewal lease provides for termination by either party upon 90 days' notice in writing, with rent to be adjusted on a per diem basis;

WHEREAS, pursuant to the proposed lease, the County agrees to indemnify and hold harmless the Borough from liability relating to the acts or omissions of the County, provided such acts are not attributed in any way to the negligence of the Borough;

WHEREAS, the proposed lease requires the Borough to pay for utilities and to arrange for snow removal as necessary, while requiring the County to be responsible for repairs and replacements relating to its activities on the premises as well as for the costs of a telephone installed specifically for its use;

NOW, THEREFORE, BE IT RESOLVED, by Borough Council of the Borough of Pennington, that the Mayor, with the attestation of the Clerk, is hereby authorized to enter into the aforesaid Lease, of which a copy is attached, 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.
					Lawver	M			
Garber	X				Tucker	X			
Heinzel	S				Zompa	X			

Council Member Lawver made a motion to approve Resolution 2007-12.8, second by Council Member Heinzel. Mr. Dunworth stated that he did some research after the last meeting and this lease agreement has increased by \$500 each year and so he continued that philosophy with this agreement. Upon a roll call vote all members present voted in favor.

**BOROUGH OF PENNINGTON
RESOLUTION #2007 – 12.9**

**A RESOLUTION AUTHORIZING REDUCTION OF
PERFORMANCE GUARANTEE FOR HOWE COMMONS
BASED ON PARTIAL COMPLETION OF PROJECT**

WHEREAS, the Developer of Howe Commons has posted a Performance Guarantee covering certain improvements on the property in the amount of \$227,048.64;

WHEREAS, the Developer has requested reduction in the amount of the Performance Guarantee posted for the project based on the amount of work completed on the project; and

WHEREAS, the Borough Engineer has reviewed a construction cost estimate prepared by Hopewell Valley Engineering, P.C., indicating the items completed and the construction costs for each item, and the Borough Engineer has confirmed that the the construction cost of the completed items, as indicated by Hopewell Valley Engineering, P.C., is \$221,733.84, and that these items in fact have been satisfactorily completed; and

WHEREAS, the completed items and related costs exceed 70 percent of the costs of the improvements to be constructed under the Performance Guarantee;

WHEREAS, the Borough Engineer recommends a reduction in the Performance Guarantee by the amount of \$158,934.05, representing a 70 percent reduction, the maximum amount permitted by Borough policy and the Municipal Land Use Law, N.J.S.A.40:55D-53;

WHEREAS, the Municipal Land Use Law authorizes the Borough to retain 30 percent of the original performance guarantee amount to ensure satisfactory completion of all planned public improvements; and

WHEREAS, the Borough Engineer further recommends that the revised guarantee be posted in the form of at least ten percent (10%) cash with the remainder as a bond or letter of credit; and

WHEREAS, the Borough Council finds that the proposed reduction is reasonable and that it leaves an adequate balance for protection of the public interest; and

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

1. The proposed reduction in the Performance Guarantee for Howe Commons in the amount of \$158,934.05 is hereby approved.
2. The Adjusted Performance Guarantee in the amount of \$68,114.59 shall be posted in the form of at least ten percent (10%) cash with the remainder as a bond or letter of credit.

Record of Council Vote on Passage

COUNCILMAN	AYE	NAY	N.V.	A.B.	COUNCILMAN	AYE	NAY	N.V.	A.B.
					Lawver	X			
Garber	X				Tucker	S			
Heinzel	X				Zompa	M			

Council Member Zompa made a motion to approve Resolution 2007-12.9, second by Council Member Tucker with all members present voting in favor.

**BOROUGH OF PENNINGTON
RESOLUTION #2007-12.10**

**RESOLUTION AUTHORIZING SHARED SERVICES AGREEMENT
WITH MERCER COUNTY FOR THE PARIS GRANT PROGRAM**

WHEREAS, the State of New Jersey has launched its pioneering Public Archives and Records Infrastructure Support (PARIS) grant program to meet the strategic records management, preservation, and storage needs of county and municipal governments; and

WHEREAS, a top priority of the PARIS grants program is to achieve efficiencies of cost and operation through shared services and to create a service structure for municipalities that do not have the resources to create one for themselves; and

WHEREAS, in the 2008-09 grant cycle, priority funding will be given to county projects to perform shared services on preservation projects to include records purging & cleanup, microfilming and staff training in records management policies and procedures; and

WHEREAS, the Borough of Pennington desires to collaborate with the County of Mercer in the performance of the PARIS Grant program; and

WHEREAS, the Borough of Pennington is acknowledging that their eligible funding of \$50,000.00 will be leveraged with Mercer County; and

WHEREAS, the Borough of Pennington is acknowledging that the County of Mercer would be both the lead agency and the applicant for such a proposal; and

NOW, THEREFORE, BE IT RESOLVED by the Mayor and Council of the Borough of Pennington, that the Borough of Pennington does support and commit to cooperation and participation in the PARIS grant for the purposes set forth above, and to execute and deliver all documents required incident thereto.

Record of Council Vote on Passage

COUNCILMAN	AYE	NAY	N.V.	A.B.	COUNCILMAN	AYE	NAY	N.V.	A.B.
					Lawver	X			
Garber	X				Tucker	X			
Heinzel	S				Zompa	M			

Council Member Zompa made a motion to approve Resolution 2007-12.10, second by Council Member Heinzel. Mr. Dunworth gave an overview of the Paris Grant Program. Upon a roll call vote all members present voted in favor.

Council Discussion

Donation of Bucket Truck- Mr. Wittkop stated that a former resident of Pennington Borough, Mr. Burke Sinclair has offered to donate a used bucket truck to the Borough. Mr. Wittkop stated that he has spoken with Mr. Bliss regarding the legal requirements and he would like Council approval to proceed with acceptance of the donation. Mr. Wittkop stated that the Borough has a need for a bucket truck. Mr. Wittkop stated that he has spoken to Hopewell Township Public Works and they would also have a need for a bucket truck, which would open a door for shared services with the Township. Mr. Wittkop stated that the truck will require some work, but he has used the truck in the past and he estimates \$500 to \$1,000. Mr. Wittkop stated that he would place the value of the truck at somewhere between \$10,000 and \$20,000. Mr. Bliss stated that in order to accept the donation he would prepare a resolution for the next meeting. After further discussion, Council was in favor of accepting the donation of the bucket truck providing that Mr. Dunworth address some questions regarding insurance and additional safety training for the Public Works Staff.

Administrators Report

Comp Time – Jeff Wittkop – Mr. Dunworth stated that as per Mr. Wittkop’s agreement with the Borough, Mr. Wittkop has made a request to be paid for his comp time for the second half of the year. Mr. Dunworth stated that during the past six months, Mr. Wittkop has accumulated 65 hours of comp time at his hourly rate of \$42.45, amounting to \$2,759.25. Mr. Dunworth recommended that Mr. Wittkop be paid for this time. Council Member Tucker made a motion to approve payment to Mr. Wittkop, second by Council Member Garber with all members present voting in favor.

Discussion of December 24th – Mr. Dunworth stated that since December 25th falls on a Tuesday he did some comparisons with other municipalities and both Hopewell Township and Hopewell Borough would be closed on Monday, December 24th. Mr. Dunworth stated that he would like Council’s input on closing the Borough offices on December 24th. Mr. Dunworth explained that, as Monday is a scheduled garbage day, Mr. Wittkop has agreed that in lieu of having the 24th off, the Public Works Employees that come in to collect garbage will be granted an alternate day off. After further discussion, Mr. Garber stated that he would be in favor of giving the Borough Employees off on December 24th. Upon a roll call vote, Council Members Garber, Heinzel and Tucker voted in favor and Council Members Lawver and Zompa voted no.

Water/Sewer Rate Increase – Mr. Dunworth stated that he and Mr. Lawver have had some discussions already regarding increasing the Water/Sewer Rates and most likely Council will see an Ordinance at the January meeting. Mr. Dunworth stated that if the ordinance can be introduced in January and adopted in February, the rates could be put in place for the first quarter water usage. Mr. Dunworth stated that discussions have also taken place regarding a tiered approach to water/sewer billings. Mr. Dunworth stated that this approach is geared so that the more water you use the more you pay. Mr. Lawver stated that this tiered approach was discussed last year during discussions relating to water/sewer increases and at the time the Borough was not in a position to make the change. Mr. Lawver stated that the Environmental Commission has advocated this approach recognizing that water is a precious resource and we all need to do our part to conserve. Mr. Lawver explained that this tiered approach would hopefully discourage such uses as automatic sprinklers and other uses that draw a lot of water without generating a benefit to the health and public welfare of the community. Mr. Lawver stated that work has begun on the water/sewer budget and we know what we are facing and that there will be a gap that needs to be closed hopefully by this equitable tiered billing structure while at the same time encouraging conservation. Mr. Lawver stated that one downside to this is that the Pennington Point community will complain, because they are all on one bill and the other will be complaints from businesses in town because they tend to be the bigger users. Mr. Lawver stated that the Borough is not being business unfriendly with this approach, however the goal is to encourage conservation. Mr. Lawver stated that development of new water resources is a very costly

exercise and the Borough needs to encourage conservation wherever we can. Mr. Wittkop explained that the Borough has a very basic tier-billing schedule presently and this new schedule would be more comparable with what Hopewell Borough is doing.

MEL Training Sessions - Mr. Dunworth explained that annually the MEL puts out a training schedule for elected officials. Mr. Dunworth encouraged Council Members to attend one of the training sessions if possible as the Borough receives a premium reduction of \$250.00 for each elected official who attends.

Interlocal Agreements with Hopewell Township – Mr. Dunworth stated that there are two interlocal agreements with Hopewell Township Board of Fire Commissioners, one for fire inspection services and one for basic life support. Mr. Dunworth explained that the interlocal for fire inspections is such that the Board of Fire Commissioners is responsible for performing the inspections and collecting the fees. Mr. Dunworth stated that the Board of Fire Commissioners has submitted this interlocal for renewal as it stands. Mr. Dunworth stated that he and Mr. Meytrott had a meeting with Mr. Chipowsky regarding the interlocal for Basic Life Support. Mr. Dunworth stated that the Board of Fire Commissioners is seeking to institute a charge to the Borough for this interlocal. Mr. Dunworth stated that from what he understands, the Board of Fire Commissioners would respond to an emergency if the First Aid Squad were unable to respond. Mr. Meytrott stated that this program has been ongoing for many years. Mr. Meytrott stated that the Board of Fire Commissioners supplies Basic Life Support Services for any medical call within the Borough and they respond whether or not the First Aid Squad responds. Mr. Meytrott stated that the fee is new for 2008 and presently we do not know what the fee structure is going to be. Mr. Dunworth stated that the number that was mentioned at the previous meeting was between \$3,000 and \$5,000. Some discussion took place as to who responds and the possibility of more than one ambulance responding with bills coming from multiple sources. Mr. Lawver asked if the Borough has any statistics on file for this. Mr. Mark Blackwell of the Pennington Fire Company had some comments with regard to the new hospital coming into the area. Mr. Blackwell stated that “BLS” would only be responding during standard operating hours from 6 to 6. Mr. Blackwell stated that this would actually be a supplemental cost for the Board of Fire Commissioners. Further discussion took place with regard to who provides what services. Mayor Persichilli stated that knowing that this is coming, Council will have to look closely at all the facts before proceeding with the agreement.

Mr. Dunworth stated that there is a need for custodial services at the new Public Works Facility. Mr. Dunworth stated that Mr. Wittkop has suggested as an interim solution that Augustine Owusu-Adade clean the offices for three hours on Saturdays amounting to around \$50.00 per week. Mr. Dunworth stated that eventually he would be looking into a better solution for cleaning services for the Borough.

Mr. Dunworth stated that he distributed the latest memo from Bill Dressel regarding holiday decorations and he would like Council to be aware that the Borough is planning to continue the practice of putting up a holiday tree and menorah banner.

Professional Reports

Mr. Wittkop reported that last meeting Kate Fuger attended to discuss the drainage problem at 6 Baldwin Street. Mr. Wittkop stated that he has visited the site, spoken to Ms. Fuger and obtained prices that have been submitted to Mr. Bliss. Mr. Wittkop stated that there was some question as to whether Penn Bower’s contract with the Borough would allow the Borough to get the work done by a different vendor. Mr. Wittkop explained that it is important for Ms. Fuger to understand that this is not a catchall solution for all the problems that exist, however it is the best solution that the Borough can come up with. Mr. Wittkop stated that the public works department would be coordinating with Mr. DiCocco to get the work done hopefully by the end of the year. Mr. Wittkop explained that a seepage pit will be created, the storm drain will be lowered so that it is more in line with the grade of the yard and whatever water that runs into the grate will then go into the seepage pit.

Public Comment

Mayor Persichilli asked anyone wishing to address Council to come forward and state their name and address for the record and to please limit comments to the Governing Body to a maximum of 5 minutes.

Mr. Mark Blackwell of 74 North Main Street stated that there is a fire hydrant at the new Public Works Facility that is not up high enough. Mr. Wittkop stated that he is aware and that it will be raised up.

Mr. Blackwell commented that he was happy to see the newly elected Council Members in attendance tonight, however he is disturbed that the three candidates for appointment to fill the vacancy are not residents that regularly attend Borough Council Meetings.

Officer Steve Friedman of the Pennington Borough Police Department thanked Borough Council for approving the contract with the FOP. Mr. Friedman recognized and thanked Mayor Persichilli, Mr. Lawver and Mr. Tucker for their work in getting the contract finalized.

Mayor Persichilli read the following Resolution to convene in Closed Session.

AT, 9:00 PM, BE IT RESOLVED, that Mayor and Council shall hereby convene in closed session for the purposes of discussing a subject or subjects permitted to be discussed in closed session by the Open Public Meetings Act, to wit:

- Presbyterian Homes – Tax Appeal
- Land Purchase – Open Space

Mayor Persichilli called a brief recess.

At 9:28 pm, Council reconvened in Open Session.

**BOROUGH OF PENNINGTON
RESOLUTION #2007-12.11**

**RESOLUTION APPOINTING VIRGINIA KERR AS
SPECIAL LEGAL COUNSEL FOR PENDING APPELLATE
LITIGATION INVOLVING PRESBYTERIAN HOME AT PENNINGTON, INC.**

WHEREAS, the Borough of Pennington has a need to appoint Virginia Kerr, Esquire, as special counsel to assist in providing legal services in the pending appeal encaptioned Presbyterian Home at Pennington, Inc. v. Borough of Pennington, Superior Court, Appellate Division, Docket No. A-006061-06T1;

WHEREAS, the anticipated value of this contract for professional services, having a term of one (1) year, will not exceed \$5,000;

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, Ms. Kerr has 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, Virginia Kerr, Esquire, shall perform the subject legal services at the billing rate of \$90 per hour, plus reimbursement for reasonable out-of-pocket expenses, total billings not to exceed \$5,000;

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 Virginia Kerr, Esquire be retained as special counsel to the Borough 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 Virginia Kerr, Esquire 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.
					Lawver	X			
Garber	S				Tucker	X			
Heinzel	X				Zompa	M			

Council Member Zompa made a motion to approve Resolution 2007-12.11, second by Council Member Garber with all members present voting in favor.

Council Member Lawver made a motion to approve the minutes of the November 5, 2007, Closed Session minutes for content but not release, second by Council Member Tucker with all members present voting in favor.

At 9:29 p.m., Council Member Tucker made a motion to adjourn the meeting, second by Council Member Zompa.

Respectfully submitted,

Elizabeth Sterling
Borough Clerk