

**Pennington Borough Council
Regular Meeting – October 7, 2013**

Mayor Persichilli called the Regular Meeting of the Borough Council to order at 7:10 pm. Borough Clerk Betty Sterling called the roll; all members were present.

Also present were Borough Administrator, Timothy Matheny, Public Works Superintendent Jeff Wittkop, Chief Financial Officer Sandra Webb and Borough Attorney, Walter Bliss.

Mayor Persichilli announced that notice of this meeting has been given to the Hopewell Valley News, The Times of Trenton and The Trentonian and was posted on the bulletin board in Borough Hall and on the Borough web-site according to the regulations of the Open Public Meetings Act.

Mayor Persichilli asked everyone to stand for the Flag Salute.

Open to the Public – Agenda Items Only

Mayor Persichilli 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 3 minutes.**

There were no comments from the public.

Mayor Persichilli stated that there were a couple of people present who had requested some time to address Borough Council and he would like to recognize them at this time.

Mr. Robert DiFalco of 124 Voorhees Avenue came forward and stated that he appeared before Council at the last meeting to request that Borough Council honor William Reuter for his years of service to the Borough by installing a sign at the entrance to the Borough Parking Lot naming the Borough driveway William Reuter Way. Mayor Persichilli asked council members for comments or questions regarding this request. Mr. Ogren asked if it would have any impact on mail delivery. Mayor Persichilli stated that it would not be registered with the post office it would just be an unofficial sign. Council Members were in favor of the idea.

Mrs. Dunn stated that she does not know William Reuter and in conversations with other residents she discovered that other residents also did not know Mr. Reuter. Mrs. Dunn asked if there was a Borough process or criteria for doing something like this. Mrs. Dunn stated that she is not opposed to the idea, however, this may bring other requests before the Borough and maybe there should be a process in place. Mrs. Dunn stated that there should be criteria to protect the Borough.

Mr. DiFalco stated that he thought of that, and he talked to people who have been around a long time and the people who have been around over the last thirty plus years who know or have heard of Mr. Reuter agree that he deserves the recognition.

Ms. Terry Evanko of 140 Woolsey Court stated that a group has been formed to help with the Senior Programming discussions that have been ongoing. Ms. Evanko stated that this group, "The Concerned Seniors of Hopewell Valley" will be a valley-wide group. Mrs. Evanko stated that they would like to say again that they would like to see a line item in the 2014 budget for Senior Citizens.

Mayor's Business

Mayor Persichilli announced a Proclamation for National Diabetes Month.

**PROCLAMATION OF THE
BOROUGH OF PENNINGTON
RECOGNIZING NOVEMBER AS NATIONAL DIABETES MONTH**

WHEREAS, nearly twenty-six million American children and adults have diabetes, a life-threatening disease that is impacting an increasing number of Americans; and

WHEREAS, the cost of diabetes to the state of New Jersey has been estimated at \$5.9B annually; and

WHEREAS, another 79 million Americans have pre-diabetes, a condition that puts them at the highest risk for developing type 2 diabetes; and

WHEREAS, diabetes is one of the leading causes of death by in the United States; and

WHEREAS, more than one third of the people with diabetes don't know that they have the disease; and

WHEREAS, millions of Americans lack access to the care, treatment, and education needed to manage the disease and prevent its serious and costly complications, including heart disease, stroke, kidney failure, blindness, and lower-limb amputation; and

WHEREAS, an increase in community awareness of risk factors and symptoms related to diabetes can improve the likelihood that people with diabetes will get the attention they need before developing the disease and its devastating complications; and

WHEREAS, November has been declared “National Diabetes Month”; and

WHEREAS, The Greater Mercer Public Health Partnership, working with area hospitals and Local Health Departments, has set Wednesday, November 6 as the Greater Mercer Diabetes Screening Campaign, with screening events at area hospitals and at Quaker Bridge Mall; and

WHEREAS, early screening and diagnosis can help prevent the serious complications associated with diabetes

NOW, THEREFORE, BE IT RESOLVED, that the Borough of Pennington does hereby recognize November as National Diabetes Month, and further encourages all residents of the municipality to help fight this disease and its life-threatening complications by increasing awareness of the risk factors for diabetes, making healthy lifestyle choices, and by being screened by a health care provider.

Mayor Persichilli announced that Kit Chandler was supposed to be attending the meeting to talk about the Library 5K. Mayor Persichilli stated that this event is held each year. Mrs. Heinzel stated that the tradition of the Library 5K is that it has been held on the last weekend of October and we have had rather unusual weather the past couple of years. Mrs. Heinzel stated that the event is the last Sunday in October. Mayor Persichilli stated that he will follow up to make sure the residents are aware of the date of the event.

CFO Presentation

Mayor Persichilli asked Chief Financial Officer Sandra Webb to come forward to present the Best Practices Toolkit. Mrs. Webb stated that this is the second year that the Best Practices has to come before the Governing Body so that Council is aware of the answers that have been provided on the report. Mrs. Webb stated that there are fifty questions in total and some of them are new this year. Mrs. Webb stated that this is the fourth year that municipalities have had to do this Best Practices Inventory. Mrs. Webb stated that the goal is to have each municipality have accountability and transparency in a lot of the questions so that Council is aware of internal practices that are in place at a staff level. Mrs. Webb stated that the bottom line is that points are given for each yes or not applicable answer and at the end of the questionnaire if there are forty-one or more yes or not applicable answers the municipality maintains 100% of the last 5% of State Aid for the year. Mrs. Webb stated for the fourth year in a row, Pennington Borough will not lose any of its State Aid. Mrs. Webb stated that we have complied with almost all of the questions, some we are too small to comply with. Mrs. Webb reviewed for Council the questions that were answered with no or not applicable. Mrs. Webb stated that at the end of the report we end up with 47 out of 50 so we have done extremely well on this and are not in jeopardy of losing any State Aid. Mrs. Webb asked if Council Members had any questions on the toolkit.

Mrs. Webb stated that we recently attempted to go out to the market for a note sale. Mrs. Webb stated that after speaking with Glen Griffiths as Chair of the Finance Committee it was determined that the amount needed was \$75,000. Mrs. Webb stated that in the scheme of the market, that amount would probably not draw any bidders. Mrs. Webb stated that after discussing this with Bond Counsel, it was decided to approach The Bank of Princeton, our local bank but at this time they were not interested. Mrs. Webb stated that Bond Counsel suggested another option. Mrs. Webb stated that there are a couple of towns in New Jersey that can buy other paper from a municipality; East Brunswick is one of them. Mrs. Webb stated that Bond Counsel negotiated a deal with East Brunswick on our behalf. Mrs. Webb stated that because there was a discussion of other projects in the near future, the deal is set up where we can borrow \$75,000 now and up to \$300,000 as other projects come up.

Mr. Griffiths stated that at the last meeting, Mr. Davy suggested having public input on the budget, which he is perfectly open to, however it might be a good idea to begin the process with a document like the toolkit questionnaire to let people know what best practices are and what the Borough is compliant on but also to show the complexity of regulations that the Borough faces as a normal course of business.

Ordinances for Introduction

Mayor Persichilli read Ordinance 2013-10 by title.

BOROUGH OF PENNINGTON ORDINANCE 2013 - 10

AN ORDINANCE REGULATING THE TOWING AND STORAGE OF MOTOR VEHICLES AND AMENDING THE CODE OF THE BOROUGH OF PENNINGTON

1. PURPOSE.

To establish rules and regulations, pursuant to N.J.S.A. 40:48-2.49, N.J.A.C 13:45A-31 and N.J.A.C. 17:33-47 and 48, for the towing and storage of motor vehicles damaged in accidents, utilized in the commission of crimes, recovered after being stolen, or otherwise impounded by the police department, from public roadways by operators engaged in the business of towing and storing motor vehicles.

2. SCOPE.

The provisions of this chapter shall apply to those businesses that engage in the towing and storage of motor vehicles within the borough through the police department.

3. DEFINITIONS.

- a. *"Abandoned vehicle"* shall mean a vehicle which the owner or operator leaves on a public roadway and fails to notify the police and does not attempt to repair and remove the same within a reasonable period of time.
- b. *"Accident vehicle"* shall mean a motor vehicle which has been involved in an accident.
- c. *"Basic tow"* means private property towing and other non-consensual towing as defined in this section and other ancillary services that include the following: arriving at the site from which a motor vehicle will be towed; 15 minutes waiting time; hooking a motor vehicle to, or loading a motor vehicle onto, a tow truck; transporting a motor vehicle to a storage facility; unhooking or unloading a motor vehicle from the tow truck; and situating the motor vehicle in the space in which it will be stored. "Basic tow" also includes issuing documents for the release of a motor vehicle to its owner or other person authorized to take the motor vehicle; issuing an itemized bill; three trips to the motor vehicle in storage, which, if applicable, include making a vehicle available to an insurance appraiser or adjuster; issuing documents for the release of a motor vehicle to its owner or other person authorized to take the motor vehicle; and retrieving a motor vehicle from storage during the hours in which the storage facility is open.
- d. *"Consensual towing"* means towing a motor vehicle when the owner or operator of the motor vehicle has consented to have the towing company tow the motor vehicle.
- e. *"Consumer"* means a natural person.
- f. *"Decoupling"* means releasing a motor vehicle to its owner or operator when the motor vehicle has been, or is about to be, hooked to or lifted by a tow truck, but prior to the motor vehicle actually having been moved or removed from the property.
- g. *"Disabled vehicle"* shall mean any motor vehicle which is unable to operate under its own power.
- h. *"Flat bed tow truck"* means a tow truck designed to transport a motor vehicle by means of raising the motor vehicle from road level up onto a hydraulic bed for transporting purposes.
- i. *"Heavy-duty recovery"* shall mean that recovery of any motor vehicle over 10,000 pounds gross vehicle weight which requires the vehicle to be up righted or recovered from either on or off the traveled portion of a public roadway.
- j. *"Heavy-duty towing"* shall mean the towing of any motor vehicle over 10,000 pounds gross vehicle weight.
- k. *"Impounded vehicle"* shall mean a vehicle which, at the direction of the police department is taken into police custody because the operator of the vehicle was engaged in a violation of the law, including but not limited to the operator being arrested on a DWI charge; operator has been arrested for driving without registration or insurance; the operator has been arrested for stealing the motor vehicle; vehicle involved in a serious accident, e.g.; death by auto.
- l. *"Light-duty towing"* shall mean the towing of any motor vehicle up to 10,000 pounds gross vehicle weight.
- m. *"Motor vehicle"* includes all vehicles propelled other than by muscular power, excepting such vehicles as run only upon rails or tracks and motorized bicycles, motorized scooters, motorized wheelchairs and motorized skateboards.
- n. *"Non-consensual towing"* means the towing of a motor vehicle without the consent of the owner or operator of the vehicle. "Non-consensual towing" includes towing a motor vehicle when law enforcement orders the vehicle to be towed whether or not the owner or operator consents.
- o. *"Person"* means an individual, sole proprietorship, partnership, corporation, Limited Liability Company or any other business entity.
- p. *"Private property towing"* means non-consensual towing from private property or from a storage facility by a motor vehicle of a consumer's motor vehicle that is parked illegally, parked during a time at which such parking is not permitted or otherwise parked without authorization or the

immobilization of or preparation for moving or removing of such motor vehicle, for which a service charge is made, either directly or indirectly. This term shall not include the towing of a motor vehicle that has been abandoned on private property in violation of N.J.S.A. 39:4-56.5, provided that the abandoned vehicle is reported to the appropriate law enforcement agency prior to removal and the vehicle is removed in accordance with N.J.S.A. 39:4-56.6.

- q. *"Private property towing company"* means a person offering or performing private property towing services.
- r. *"Secure storage facility"* means a storage facility that is either completely indoors or is surrounded by a fence, wall or other man-made barrier that is at least six feet high and is lighted from dusk to dawn.
- s. *"Site clean-up"* means the use of absorbents to soak up any liquids from a motor vehicle at the site from which a motor vehicle will be towed.
- t. *"Storage facility"* means a space at which motor vehicles that have been towed are stored.
- u. *"Storage rates"* shall mean fees charged for the storage of motor vehicles.
- v. *"Tarping"* means covering a motor vehicle to prevent weather damage.
- w. *"Tow truck"* means a motor vehicle equipped with a boom or booms, winches, slings, tilt beds or similar equipment designed for the towing or recovery of motor vehicles.
- x. *"Towing"* means the moving or removing from public or private property or from a storage facility by a motor vehicle of a consumer's non-commercial motor vehicle that is damaged as a result of an accident or otherwise disabled, recovered after being stolen or is parked illegally or otherwise without authorization, parked during a time at which such parking is not permitted or otherwise parked without authorization or the immobilization of or preparation for moving or removing of such motor vehicle, for which a service charge is made, either directly or indirectly. Dues or other charges of clubs or associations, which provide towing services to club or association members, shall not be considered a service charge for purposes of this definition.
- y. *"Towing company"* means a person offering or performing towing services.
- z. *"Towing list"* shall mean a rotating list of all towing services registered with the borough kept by the borough public safety director. When the police require the towing and storage of a motor vehicle from public roadways, they shall contact the towing service on the top of the rotating towing list as determined by this chapter.
- aa. *"Towing rates"* shall mean fees charged by a towing service for removal and transportation of the vehicle.
- ab. *"Towing service"* shall mean a business engaged in the towing or storing of motor vehicles which has been approved for the towing list.
- ac. *"Towing vehicle"* shall mean a motor vehicle employed by the towing service for the purpose of towing, transporting, conveying or removing of motor vehicles from public roadways.
- ad. *"Transmission disconnect"* means manipulating a motor vehicle's transmission, so that the motor vehicle may be towed.
- ae. *"Vehicle"* means any device in, upon or by which a person or property is or may be transported upon a highway.
- af. *"Waiting time"* means any time a towing company spends at the site from which a motor vehicle will be towed, during which the towing company is prevented from performing any work by another individual, beyond the time included as part of a basic tow.
- ag. *"Winching"* means the process of moving a motor vehicle by the use of chains, nylon slings or additional lengths of winch cable from a position that is not accessible for direct hook up for towing a motor vehicle. "Winching" includes recovering a motor vehicle that is not on the road and righting a motor vehicle that is on its side or upside down, but does not include pulling a motor vehicle onto a flatbed tow truck.
- ah. *"Window wrap"* means any material used to cover motor vehicle windows that have been damaged.

4. TOWING SERVICE REGISTRATION.

- a. No towing service shall be placed upon the towing list for the towing or storing of motor vehicles within the borough, unless the towing service shall first register with the borough. In order to be placed upon the towing list for light-duty towing, a towing service must be located within five miles of the geographic center of Pennington Borough or within Hopewell Township, Pennington Borough or Hopewell Borough. Registration applications shall be made available by the borough police department. A towing service that

has met all the specifications and requirements of this chapter and has registered with the borough shall be placed on the towing rotation list by the director of public safety. No towing service on the Pennington Borough police department towing rotation list shall exceed the fees set forth in the attached fee schedule, as adjusted annually effective July 1 of each year pursuant to 6.b. below.

b. The towing service owner or its authorized representative shall sign the registration application form indicating that the full requirements of this chapter have been met by the towing service applicant.

c. If any information provided by a towing service in its registration application changes, the towing service is responsible for notifying the police department of the change in the registration information within 30 days of such change. Failure to comply with this provision will be deemed a violation of the chapter.

5. INSURANCE.

a. The minimum amounts of insurance a towing company shall secure and maintain are:

1. Motor vehicle liability for a tow truck capable of towing a motor vehicle that is up to 26,000 pounds, for the death of, or injury to, persons and damage to property for each accident or occurrence in the amount of \$ 750,000, single limit; and
2. Motor vehicle liability for a tow truck capable of towing a motor vehicle that is more than 26,000 pounds, for the death of, or injury to, persons and damage to property for each accident or occurrence in the amount of \$ 1,000,000, single limit.

b. A towing company shall also secure and maintain, for every tow truck, insurance that covers garage keeper legal liability in the amount of \$ 100,000, and "on-hook" coverage, either as an endorsement on the insurance required by (a) above or in the amount of \$ 100,000.

c. The insurance required by (a) and (b) above shall be obtained from an insurance company authorized to do business in New Jersey.

6. RATES AND FEES.

a. Fees and rates for towing and storage of motor vehicles damaged in accidents, utilized in the commission of crimes, recovered after being stolen, or otherwise impounded by the police department, shall not exceed the limits set forth in the attached fee schedule, as adjusted annually effective July 1 each year pursuant to 6.b. below.

b. All fee limits set by this section shall be increased or decreased by an amount equal to the annual percentage rate as determined by the U.S. Department of Labor, Consumer Price Index (CPI) for the Philadelphia Metropolitan Area. The first adjustment shall be made on July 1, 2014 and each year thereafter.

c. Fees and services covered by this ordinance:

1. Basic tow, which shall be a flat fee; and
2. In the case of a motor vehicle involved in an accident the following additional services, if actually performed:
 - i. Waiting time in excess of 15 minutes, which shall be calculated based upon each 15 minutes spent at the site from which a motor vehicle will be towed, with fewer than 15 minutes rounded up to 15;
 - ii. Brush cleaning, including collection of debris that can be picked up by hand, which shall be a flat fee;
 - iii. Site clean-up, which shall be calculated based upon the number of bags of absorbent used;
 - iv. Winching, which shall be based upon each one-half hour spent performing winching;
 - v. The use of window wrap, which shall be a flat fee;
 - vi. Tarping, which shall be a flat fee;
 - vii. Transmission disconnect, a flat fee, which shall be charged only if a motor vehicle is locked and the towing company is unable to obtain the keys for the motor vehicle;
 - viii. Use of a flat bed tow truck, a flat fee, which shall be charged if a motor vehicle can be transported only by a flat bed tow truck;
 - ix. Use of special equipment other than the first tow truck to recover a motor vehicle that cannot be recovered by winching or pieces of a motor vehicle that cannot be moved by hand, which may be both a labor and an equipment charge billed in half-hour increments;
 - x. Decoupling;
 - xi. Storage at a towing company's storage facility;

xii. More than three trips to the motor vehicle in storage, which may be invoiced as an administrative fee, which shall be a flat fee; and

xiii. Releasing a motor vehicle from a towing company's storage facility after normal business hours or on weekends, which shall be a flat fee.

d. A towing company that engages in private property towing or other non-consensual towing shall not charge for the use of a flatbed tow truck if a motor vehicle can safely be towed in an upright position by another type of tow truck, even if the private property towing company chooses to use a flat bed tow truck for the tow.

e. A towing company that engages in private property towing or other non-consensual towing shall calculate storage fees based upon full 24-hour periods a motor vehicle is in the storage facility. For example, if a motor vehicle is towed to a storage facility at 7:00 P.M. on one day and the owner of the motor vehicle picks up the motor vehicle before 7:00 P.M. the next day, the towing company shall charge the owner of the motor vehicle only for one day of storage. If a motor vehicle is stored for more than 24 hours, but less than 48 hours, the towing company may charge for two days of storage.

f. A towing company shall not charge any fee for private property towing or other nonconsensual towing and related storage services not included in (c) above.

g. If a towing company charges a consumer a fee for a private property or other non-consensual towing service that is disputed by the consumer, the parties shall use good faith efforts to resolve the dispute. If the parties are unable to resolve the dispute and the borough administrator determines the fee to be unreasonable under this ordinance or N.J.A.C. 13:45A-31.5, the borough administrator may order the towing company to reimburse the consumer for an amount equal to the difference between the charged fee and a reasonable fee, plus interest, as calculated pursuant to (h) below.

h. The interest rate imposed pursuant to (g) above shall be based on the average rate of return, to the nearest whole or one-half percent, for the corresponding preceding fiscal year terminating on June 30, of the State of New Jersey Cash Management Fund (State accounts) as reported by the Division of Investment of the Department of the Treasury.

i. A towing company performing a private property tow or other non-consensual tow shall take the motor vehicle being towed to the towing company's storage facility having the capacity to receive it that is nearest to the site from which the motor vehicle is towed.

j. A bill for a private property tow or other non-consensual tow shall include the time at which a towed motor vehicle was delivered to a towing company's storage facility.

k. Unreasonable fees

1. A fee for private property towing or other non-consensual towing services, and storage services, shall be presumed unreasonable if it is:

i. More than 25 percent higher than the fee charged by the towing company or storage facility for the same services when provided with the consent of the owner or operator of the motor vehicle; or

ii. More than 50 percent higher than the fee charged for such other non-consensual towing or related storage service by other towing companies or storage facilities operating in the municipality from which the vehicle was towed.

2. Notwithstanding (a) above, a fee will be presumed unreasonable if it exceeds the maximum amount that may be charged for the service according to a schedule of fees set forth in this ordinance adopted pursuant to section 1 of P.L. 1979, c. 101 (N.J.S.A. 40:48-2.49).

7. RULES AND REGULATIONS.

a. All towing services placed on the police department towing list shall be available to respond to a police request for a tow 24-hours a day, seven days a week, including holidays.

b. All towing companies shall respond to a call in any part of the borough within 30 minutes. If a towing company does not respond within 30 minutes of a call, the towing company next on the list shall be called and entitled to provide services as needed, and the first towing company shall lose any claim to compensation.

c. All drivers and operators of towing vehicles shall be properly licensed to operate a motor vehicle within the State of New Jersey and are subject to driver's license checks by the borough police department at the time of registration and at least on an annual basis thereafter. All drivers and operators of towing vehicles shall be Certified Towing Operators by one of the two nationally recognized towing safety organizations – WreckMaster or Towing and Recovery Association of America. All towing vehicles shall be properly registered and inspected in accordance with any applicable law.

d. All applicants and/or agents must submit to a criminal history check in compliance with the New Jersey State Police Criminal Information Unit, State Bureau of Identification (SBI form 212B). The applicant or agent shall not have received a criminal conviction within the last seven years for any indictable offense or

any offense involving stolen or embezzled vehicles, fraud relating to the towing business, stolen property, or any other offense of similar nature.

e. All vehicles must be towed in a safe manner.

f. All towing companies shall be capable of providing reasonable roadside services to disabled vehicles such as, but not limited to, jump-starting, changing of flat tires and providing fuel. Such services will only be performed if they can be done so safely, as determined by the police officer on the scene.

g. All towing companies shall make available a copy of its basic rates and a business card to all owners and operators of motor vehicles which will be towed.

h. Towing companies shall not remove any motor vehicle which has been abandoned or involved in an accident in any public roadway without first notifying the borough police department.

i. The police department shall not call a towing company to remove a vehicle from private property. The police department shall provide the property owner with all available information regarding the ownership of the motor vehicle on their property, and the property owner will then be responsible for making their own arrangements to remove the vehicle.

j. The towing company shall notify the police department of all vehicles found by the towing company to have been abandoned and not claimed within 14 days after being stored. The police department shall, upon notification, expeditiously process the vehicle in accordance with the New Jersey Motor Vehicle Code concerning abandoned and unclaimed motor vehicles.

k. The Director of Public Safety may promulgate an application and minimal requirements for vehicular towing, which requirements shall not be inconsistent with this chapter and which shall be enforced pursuant to the procedures set forth in this chapter.

8. TOWING LIST: ROTATION.

a. A towing list will be kept with the director of public safety. The towing list shall include all towing companies which have registered with the borough. A towing company shall be placed on the bottom of the towing list upon registration with the borough. The towing list shall be a rotating list as provided for in paragraphs b, c and d.

b. When the need arises, the police department will call the towing company on the top of the list. The towing company called, if it shall perform any of the services covered by this chapter, shall be placed on the bottom of the towing list and not called again until all other towing companies on the towing list have been called.

c. If a towing company is unavailable to perform required services when called by the police department, for whatever reason, said towing company shall be charged with a call and placed on the bottom of the towing list, and the next available towing company shall be called. The towing company that responds in its place shall remain at the top of the list.

d. If a towing company, after being dispatched, is recalled and does not perform any duties or services covered by this chapter, the towing company shall remain on the top of the towing list. However, if a towing company arrives at the scene of an incident in which its services are required and cannot perform said services, it shall lose its place on the towing list, and the next towing company on the list shall be called.

9. STORAGE FACILITIES.

a. All storage facilities operated or used by towing companies shall meet requirements of the commission of insurance set forth in N.J.A.C. 11:3-38.1 et seq., as well as all local zoning and code requirements, and must be located within five miles of the geographic center of Pennington Borough or within Pennington Borough, Hopewell Township or Hopewell Borough.

b. All towing companies shall have an indoor storage facility at its disposal for motor vehicles which have been involved in criminal activity and impounded by the police department.

c. All storage facilities shall have a business office open to the public between 8:00 A.M. and 4:00 P.M. at least five days a week, excluding holidays.

d. All towing companies shall have secure storage facilities.

e. A towing company that engages in private property towing or other non-consensual towing shall provide or arrange for after-hours release of stored motor vehicles.

f. A towing company that does not release a stored motor vehicle to its owner, or other person authorized to take the motor vehicle, during normal business hours when requested, as required by c. above, shall not charge a fee for after-hours release of the stored motor vehicle.

10. RECORDKEEPING.

a. All towing companies shall keep accurate records of all motor vehicles towed and stored at the direction of the borough police department. A copy of such records shall be provided to the borough upon

request.

b. A towing company that performs private property or other non-consensual towing shall retain, for three years, the following records:

1. Invoices for both consensual towing and non-consensual towing services;
2. Job orders;
3. Documentation of waiting time;
4. Logs, which shall include the time when a towed motor vehicle was delivered to the towing company's storage facility from a private property or other non-consensual tow and the date and purpose of each trip to the motor vehicle in storage;
5. Documents relating to private property and other non-consensual towing services performed and rates charged for services; and
6. Any contracts under which the private property towing company is authorized to perform private property towing services.

c. A towing company that engages in private property towing or other non-consensual towing shall make records retained pursuant to b. above available for review by the police department upon request.

11. TOWING AND VEHICLE EQUIPMENT SPECIFICATIONS.

a. All towing companies engaged in light-duty towing shall have at least one rollback truck and one wrecker, with necessary brooms and equipment to do the complete removal. Each truck must have a manufacturer's capacity of at least 10,000 pounds, gross vehicle weight and a manufacturer's boom capacity of four tons. Proof of capacity must be supplied to the police department at the time of registration.

b. All towing companies engaged in heavy-duty towing shall have one heavy-duty wrecker with a manufacturer's capacity of not less than 33,000 pounds gross vehicle weight and a boom capacity of not less than 12 tons independently or 24 tons jointly; air brakes so constructed as to lock rear wheels; heavy-duty underreach.

c. All towing companies engaged in heavy-duty recovery shall have two heavy-duty wreckers with manufacturer's capacity of not less than 33,000 pounds gross vehicle weight and boom capacity of not less than 12 tons independently or 24 tons jointly; two power winches with pulling capacity of not less than 12 tons each; at least 200 feet of cable at least nine-sixteenths of an inch diameter on each drum; double boom to permit splitting, or single boom hydraulically elevated and extendible with a 360 degree swivel on the end of the boom; air brakes so constructed as to lock rear wheels; heavy-duty underreach; two snatch blocks with a 12 ton rating and two scotch blocks.

d. All towing vehicles must have radio equipment with a 24-hour dispatch service or a cellular telephone for the purpose of maintaining communications with the police department radio desk.

e. All towing vehicles must be equipped with at least one five pound ABC-type fire extinguisher, safety chains, substances for application to small liquid spills, and stiff push brooms to clean up debris at scene.

f. Proof of towing vehicle and equipment specifications shall be provided to the borough with the registration application.

g. All towing vehicles are to conform with all applicable State and Federal laws and shall be subject to inspection by borough officials during normal business hours at the time of registration and on an annual basis thereafter.

12. RIGHTS OF OWNERS/OPERATORS OF MOTOR VEHICLES REQUIRED TO BE TOWED.

a. If a motor vehicle operator or owner wishes to have his vehicle towed by a particular towing company, their request shall be honored, providing the police officer in charge at the scene has not already dispatched a towing company or the police officer has determined that the motor vehicle in question will not be removed in an expeditious or safe manner and will jeopardize the public safety, in which case the motor vehicle operator or owner shall be required to utilize a compensated dispatched towing company..

b. The owner or operator of any motor vehicle required to be towed or stored shall have the right to remove all personal items and effects from the motor vehicle unless the police department has placed a police hold on any such items.

c. The motor vehicle owner or his representative shall have the right to take photographs of any stored vehicles for insurance purposes.

d. Upon request of the motor vehicle owner or his representative, a towing company shall provide a detailed and itemized bill for all services rendered.

13. COLLECTION OF FEES.

All towing companies shall be responsible for collection of all fees for services rendered.

14. COMPLAINTS; VIOLATIONS; HEARINGS.

a. All violations of this chapter and all complaints by the public or police departments against any towing company shall be forwarded to the borough administrator.

b. The borough administrator shall determine if any complaint or violation against a towing company is of such a serious nature as to warrant a hearing and possible disciplinary measures. If the borough administrator decides that a hearing is required, he shall upon proper notice to all interested parties, conduct a hearing in which all parties may present evidence. If, after a hearing, the borough administrator finds that a towing company has violated any provision of this ordinance, the administrator may, depending on the seriousness of the offense:

1. Fine the violating party not more than one thousand (\$1,000.00) dollars;
2. Suspend the violating party from the towing list for not more than three months for a first offense; not more than six months for a second offense; not more than one year for a third offense.
3. Permanently remove the violating party from the list for any violation after its third offense.

c. The violating party shall have the right to appeal a decision of the borough administrator to the Pennington Borough Council or its designee.

d. In addition to the procedures and penalties set forth in this section, a violation of any of the rules set forth in this ordinance shall be considered an unlawful practice to the extent so provided under P.L. 1960, c. 39 (N.J.S.A. 56:8-1 et seq.).

Fee Schedule

Light Duty Towing

Basic fee	\$120.00
Night/weekend basic fee	\$120.00
Storage outside	\$35.00
Secure storage	\$35.00
Road service day	\$70.00
Road service night	\$70.00
Spill cleanup per 40 bag of absorbent	\$35.00
After hours pick up of vehicle	\$85.00
Rollback – additional fee	\$20.00
Winching fee per hour	\$100.00
Standby fee per hour	\$80.00
Brush cleanup	\$40.00
Tarp/wrap	\$40.00
Transmission disconnect	\$40.00
Extra man	\$70.00
Decoupling	\$60.00
Administrative fee, more than 3 trips, per	\$15.00

Heavy Duty Towing / Heavy Duty Recovery

Basic tow fees

7,000-14,500 lbs.	\$225.00
14,501-29,999 lbs.	\$300.00
30,000-49,999 lbs.	\$400.00
50,000-80,000 lbs.	\$500.00

Additional services

Disconnect drive shaft	\$50.00	
Connect airlines	\$80.00	
Caging brakes, per axle	\$40.00	Additional fee for pins if left \$10 per
Use of brake assist unit	\$90.00	

Winching/recovery	includes all services necessary to clean up scene, and remove damaged unit, such as secure loose parts, load and transport parts or cargo, etc.
70,000-29,999 lbs.	\$300.00 Hour, charged in 1/2 hour increments
30,000-80,000 lbs.	\$600.00 Hour, charged in 1/2 hour increments

Council Member Tucker made a motion to introduce Ordinance 2013-10, second by Council Member Dunn with all members present voting in favor.

Mayor Persichilli read Ordinance 2013-11 by title.

**BOROUGH OF PENNINGTON
ORDINANCE #2013 - 11**

**AN ORDINANCE AMENDING “AN ORDINANCE
TO PROVIDE FOR AND DETERMINE THE RATE OF COMPENSATION OF OFFICERS AND
EMPLOYEES OF THE BOROUGH OF PENNINGTON, COUNTY OF MERCER, STATE OF NEW
JERSEY FOR THE YEAR 2013.”**

WHEREAS, Borough Council has a need to appoint a temporary Acting Public Safety Director;

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

1. Section Ia of Borough of Pennington Ordinance No. 2013-5 (“AN ORDINANCE TO PROVIDE FOR AND DETERMINE THE RATE OF COMPENSATION OF OFFICERS AND EMPLOYEES OF THE BOROUGH OF PENNINGTON, COUNTY OF MERCER, STATE OF NEW JERSEY FOR THE YEAR 2013”) is hereby amended to provide for the following salary for the position of Acting Public Safety Director:

a.

Acting Public Safety Director	\$4,500.00
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2. Section V of the aforesaid Ordinance is further amended by the addition of the following sentence:

“This Ordinance shall remain in effect until superceded.”

3. This amendatory ordinance shall be effective upon passage and publication as provided by law.

Council Member Heinzl made a motion to introduce Ordinance 2013-11, second by Council Member Dunn. Mrs. Sterling stated that the copy given to Council indicates \$4,500/month and that should be changed to just \$4,500. Mayor Persichilli stated that given that Mr. Meytrott has requested a leave of absence, we had to take some action to cover that position. Mayor Persichilli stated that there is some complexity associated with the position. Mayor Persichilli stated that he spoke to Borough Administrator, Mr. Matheny and given his police background he has agreed to temporarily fill the position as Acting Public Safety Director until Mr. Meytrott returns. Mr. Ogren asked for clarification on what period of time the \$4,500 covers. Mr. Matheny stated that it comes out to twenty days over a two month period. Mr. Matheny stated that he would be available on call. Upon a roll call vote, all members present voted in favor of introduction of the ordinance.

Ordinances for Public Hearing and Adoption

Mayor Persichilli read Ordinance 2013-9 by title.

**BOROUGH OF PENNINGTON
ORDINANCE 2013 - 9**

**ORDINANCE APPROPRIATING \$15,000 FROM THE CAPITAL FUND BALANCE FOR
RENOVATIONS TO BOROUGH HALL, IN AND BY THE BOROUGH OF PENNINGTON, IN
THE COUNTY OF MERCER, NEW JERSEY.**

**BE IT ORDAINED BY THE BOROUGH COUNCIL OF THE BOROUGH OF
PENNINGTON, IN THE COUNTY OF MERCER, NEW JERSEY AS FOLLOWS:**

Section 1. \$15,000 is hereby appropriated from the Capital Fund Balance for renovations to Borough Hall, including carpeting, furniture and other improvements, and all work and materials necessary

therefor and incidental thereto and all related costs and expenditures incidental thereto, in and by the Borough of Pennington, in the County of Mercer, New Jersey (the "Borough").

Section 2. The Borough hereby certifies that it has adopted a capital budget or a temporary capital budget, as applicable. The capital or temporary capital budget of the Borough is hereby amended to conform with the provisions of this ordinance to the extent of any inconsistency herewith. To the extent that the purposes authorized herein are inconsistent with the adopted capital or temporary capital budget, a revised capital or temporary capital budget has been filed with the Division of Local Government Services.

Section 3. This ordinance shall take effect after final adoption and publication and otherwise as provided by law.

Council Member Griffiths made a motion to open the public hearing on Ordinance 2013-9, second by Council Member Tucker. There were no comments from the public. Council Member Tucker made a motion to close the public hearing, second by Council Member Griffiths with all members present voting in favor. Council Member Heinzl made a motion to adopt ordinance 2013-9, second by Council Member Tucker. There were no comments from Council Members. Upon a roll call vote, all members present voted in favor of adoption.

Committee Reports

Planning & Zoning / Environmental Commission / Library – Mrs. Heinzl reported the Library Board met on October 3rd and discussed the upcoming renovations to the library. Mrs. Heinzl stated that the Library has purchased lounge chairs to go near the grandfather clock. Mrs. Heinzl stated that all of the furniture that the library will be purchasing is coming off of State Contract and the savings are significant. Mrs. Heinzl stated that the lounge chairs that have been ordered and should be in shortly will cost just under \$5,000 which is a 50% savings. Mrs. Heinzl stated that a decision was made to convert what was once the library director's office to a conference/meeting space. Mrs. Heinzl stated that the library will be purchasing furniture for that space including flip tables, stackable chairs and storage units. Mrs. Heinzl stated that the intention is that the library will be able to share this meeting space with other groups in the community as well as using the room for their own purposes.

Mrs. Heinzl stated that the library has received a grant from The New Jersey Council for Humanities. Mrs. Heinzl stated that Pennington Borough was one of five libraries to receive this award.

Mrs. Heinzl stated that the library also has another new grant coming in from The National Science Foundation which is under development. Mrs. Heinzl stated that this is a \$2,500.00 grant and the Library Board will be discussing how to implement that grant.

Mrs. Heinzl stated that the Fall Events and Programming Brochure went out with the most recent water bills. Mrs. Heinzl stated that several programs have already taken place; attendance has been very diversified and the library will be working hard to get word out to bring more people in to the programs.

Mrs. Heinzl stated that she has extensive data regarding the summer programs which she will not go over but attendance at the summer programs was very good.

Mrs. Heinzl stated that the Planning Board met in September; it was a very short meeting, there were no applications. Mrs. Heinzl stated that the Board discussed a draft master plan and development regulations reexamination report which will be adopted and will incorporate the study done by Maser Consulting. Mrs. Heinzl stated that the Planning Board will meet this Wednesday to consider the reexamination report and also to hear the application of The Pennington School.

Mrs. Heinzl stated that the Environmental Commission met however she was unable to attend the meeting.

Public Works/Shade Tree – Mr. Ogren stated that the Public Works Committee did not meet this past month. Mr. Ogren stated that the Shade Tree Commission met and discussed attendance at the NJ Shade Tree Federation Conference to qualify for continuing education credits so that we can maintain our status with the Community Forestry Program.

Mr. Ogren stated that he attended the last meeting of the Economic Development Committee to provide an update on the Downtown Streetscape project.

Council Members were provided with the following report regarding Water and Trash.

PENNINGTON BOROUGH PUBLIC WORKS

TO: Tom Ogren, Chairman
Public Works Committee

FROM: Jeff Wittkop, Superintendent

DATE: October 3, 2013

RE: COUNCIL REPORT FOR THE MONTH OF SEPTEMBER 2013

WATER

Water pumped for the month of September 2013:	6,432,000
Daily-	214,400
Water pumped for the month of September 2012:	6,971,000
Daily:	232,300

For the month of September 2013 we averaged 18,000 gallons less per day than September 2012.

TRASH

69.20 tons of household trash for the month of September 2013 vs. 72.51 tons in September 2012.

Leaves may now be put out to the curb. Leaves should be blown or raked to the curb and should be placed at least 20 feet from stormwater inlets. Leaves may be raked or blown to the street in long windrows and should be free of any debris such as sticks, branches or other debris.

Mulch is available at the Senior Center for Pennington residents.

Mr. Griffiths stated that with regard to water pumped, we are down about 7% year over year which in terms of revenue is \$6,500 to \$7,000 and that falls on the heels of August which was down about 10%. Mr. Griffiths stated that he wants Council to be aware that the Utility is under financial pressure for income which will in turn put pressure on expenses in 2014.

Mayor Persichilli stated that he met with a representative for Pennington Day and they asked if someone from Council could be assigned as a contact and he volunteered Mr. Davy who agreed to be the contact.

Community Services/Economic Development/Personnel – Mr. Davy reported that the Parks and Recreation Committee has raised a concern about the equipment at Sked Street Park. Mr. Davy stated that there is an old metal slide there that needs to be updated. Mr. Davy stated that he will be working with the Recreation Committee to do an evaluation after which they will come to Council with a recommendation.

Mr. Davy stated that we have received resumes for the two positions in the Public Works Department. Mr. Davy stated the resumes for the Laborer position are being reviewed and interviews will be taking place soon. Mr. Davy stated that the resumes for the Public Works Superintendent position will be reviewed in the near future.

Mr. Griffiths stated that replacement of the playground equipment could be funded from the Open Space Trust Fund. Mr. Griffiths suggested taking a look at all of the playground equipment to see if other improvements could be made.

Public Safety/Senior Services – Mr. Tucker stated that he did not have a report from Mr. Meytrott due to the fact that Mr. Meytrott is on leave of absence. Mr. Tucker stated that this afternoon he received the statistical report from Sergeant Friedman and Council has also been provided with copies of the report.

Mr. Tucker reported that the Public Safety Committee met to discuss the Towing Ordinance. Mr. Tucker thanked everyone involved with getting the ordinance written for tonight's meeting. Mr. Tucker stated that the committee discussed the hiring of a new police officer versus obtaining night shift coverage from an outside source. Mr. Tucker stated that conversations on this have been ongoing for the last four years as to what it would cost to have Hopewell Township cover just the night shift here in Pennington. Mr. Tucker stated that the numbers have come in significantly higher than what it would cost for the Borough to hire a police officer. Mr. Tucker stated that Sergeant Friedman will be reviewing the applications on file. Mr. Tucker stated that Vehicle 401 is unsafe and out of service at this time. Mr. Tucker stated that we are investigating to see if there are any vehicles available but we may have to wait until early next year to make a purchase.

Mr. Tucker stated that Hopewell Township has passed resolutions accepting the Borough's plan to contribute towards senior programs. Mr. Tucker stated that we have a resolution on for later in the meeting to take care of our part of the agreement. Mr. Tucker stated that the Senior Advisory Board met and discussed what their role is supposed to be.

Mr. Tom Dimuzio of 108 Voorhees Avenue and a member of the Senior Advisory Board thanked Council for resolving the \$5,000 payment for this year. Mr. Dimuzio stated that the Senior Advisory Board put together a resolution to provide advice to Council to address the \$5,000 payment for 2013 and also in anticipation of an unresolved solution for 2014, to encourage Council to include a line item for Senior Services in the budget for 2014.

Mr. Griffiths asked if someone could summarize all of the different senior entities because there seem to be a lot of different groups working for the same cause. Mr. Griffiths stated that it would be great to see

everything all in one place. Mayor Persichilli stated that Borough Council is receiving as part of the monthly report a summary of how many residents are attending different events. Mayor Persichilli stated that hopefully this information will help determine how much money will be allocated towards senior services. Mayor Persichilli stated that the salary for the coordinator continues to be an issue because neither Pennington Borough nor Hopewell Borough agreed to that action. Mr. Griffiths stressed the importance of identifying sources of funding for different programs and having all of the information in one place. Ms. Evanko stated that she will be involved in several of the groups and so will Mr. Dimuzio. Mr. Evanko stated that way everyone will be hearing the same things and heading in the same direction. Mr. Davy stated that he had a conversation with the Mayor of Hopewell Township regarding the solution to this problem for this year, but he stressed to her that this does not solve the problem for next year. Mr. Davy stated that he advised Mayor Sandom that we would be providing a list of questions and concerns in writing that need to be addressed for next year's decision making process. Mayor Persichilli stated that Hopewell Borough will be asking the same questions. Mrs. Dunn stated that she can distribute the initial list that was compiled to get the ball rolling and then additional questions and concerns can be added to that list.

Mr. Tucker stated that Larry Mansier who has been very involved in senior activities is recuperating in the hospital and he would like to wish him well.

Mr. Tucker stated that the Board of Health submitted a proclamation which was addressed earlier proclaiming November as National Diabetes Month. Mr. Tucker stated that flu shots will be available here at Borough Hall on October 23rd from 6pm to 8pm.

Mr. Tucker stated that The Greater Mercer County Public Health Partnership is seeking membership and they are asking that all municipalities participate. Mr. Tucker stated that the membership fee is \$1,000. Mayor Persichilli asked if Mr. Tucker could forward the information on this to Council Members.

Finance – Mr. Griffiths stated that no formal meeting was held. Mr. Griffiths stated that as the budget process nears, he is asking that all departments assemble a list of needs and wish list items as soon as possible so that by the time year-end financial data is gathered the finance committee will have an idea as to where the budget stands in terms of income, expenses, reserves and uncontrollable expenses such as insurance and pension costs. Mr. Griffiths stated that the goal is to have the budget ready for introduction in March or April at the latest. Mr. Griffiths stated that it is a very compressed accelerated process and that is part of the problem with the Senior Programming issue. Mr. Griffiths stated that by the time the request came in, the budget had already been adopted, however if we had more notice we could have put something in the budget. Mr. Griffiths stated that capital requests should also be submitted no later than the end of January so that they can be prioritized.

Mr. Davy stated that he has spoken to the finance committee with regard to doing budgeting a little differently this year. Mr. Davy stated that what usually happens is that the budget is finalized and then a public hearing is held so that people can come and express their feelings about the budget. Mr. Davy stated that he would like to suggest that this year we have a citizen's budget process where early in January we engage the entire community to be part of a process of identifying priorities that should frame the municipal budget.

Historic Preservation – Mrs. Dunn stated that the Historic Preservation Commission met in September and there were three major topics of conversation. Mrs. Dunn stated that the first item was the signs indicating the Historic District which will be aluminum signs instead of cast iron as that would have been too costly. Mrs. Dunn stated that the aluminum signs fall within the \$500 budget. Mrs. Dunn stated that they will be mounted on breakaway poles which will be installed by the Public Works Department.

Mrs. Dunn stated that the second topic was notification from the State of New Jersey, Department of Transportation to the Historic Group regarding the Route 31 Bridge over the CSX Railroad. Mrs. Dunn stated that when projects like that one come up notifications go out to Historic Commissions for their input. Mrs. Dunn stated that the Commission decided that the plan was very similar to what is already there and they had no issues, therefore no response was needed.

Mrs. Dunn stated that the final topic discussed was The Pennington School and the plans that have been submitted to the Planning Board for their meeting this Wednesday. Mrs. Dunn stated that the Historic Commission has put together some recommendations to the Planning Board. Mrs. Dunn stated that there are three aspects to the project; the demolition of the lodge, the Lowellden Building and the construction of the new building. Mrs. Dunn stated that the Historic Commission has concurred that the lodge will be demolished and Lowellden Hall will be moved and brought back to life. Mrs. Dunn stated that the Historic Commission originally recommended relocating the lodge, but it did not turn out to be an option for the school. Mrs. Dunn stated that the Commission has requested salvage of the historical details and items from the lodge and they would also like to have the opportunity to photograph and document the building prior to demolition. Mrs. Dunn stated that with regard to relocation of Lowellden Hall, the Commission recommends restoration of the exterior based on historic photographs to include roof materials, scalloped ties at the gables and historic paint scheme based on professional historic paint finish analysis. Mrs. Dunn stated that finally with regard to development of the new academic building that is being proposed, there were some comments though the design is still being developed. Mrs. Dunn stated that some of the comments were to diminish the monumental scale of the street façade and enhance engagement of the building with the streetscape. Mrs. Dunn stated that the side of the building that faces West Delaware Avenue is the back of the academic building and is very vertical and monumental. Mrs.

Dunn stated that although the proposed materials are in keeping with the flavor of the campus, the recommendation was made to soften the look to have it better tie in with Old Main. Mrs. Dunn stated that there were also concerns about location of the mechanical equipment that is adjacent to the new building and it was recommended that they look into a rooftop location for those items. Mrs. Dunn stated that finally there was a recommendation to designate a pedestrian route at the main paved driveway leading on to campus.

New Business

**Borough of Pennington
Resolution #2013 – 10.1**

RESOLUTION AUTHORIZING REFUNDS

BE IT RESOLVED, that a refund in the amount of \$154.22 be issued to Alisandra B. Carnevale, 134 South Main Street, Pennington, NJ 08534, for balance of escrow account for variance application P13-004 for Block 505, Lot 19 – 134 S. Main Street,

BE IT RESOLVED, that a refund in the amount of \$4.26 be issued to Mercer Insurance Company, 10 Route 31 North, Pennington, NJ 08534, for an outstanding balance of an escrow account.

Record of Council Vote on Passage

COUNCILMAN	AYE	NAY	N.V.	A.B.	COUNCILMAN	AYE	NAY	N.V.	A.B.
Davy	X				Heinzel	X			
Dunn	X				Ogren	X			
Griffiths	M				Tucker	S			

Council Member Griffiths made a motion to approve Resolution 2013-10.1, second by Council Member Tucker with all members present voting in favor.

**Borough of Pennington
Resolution #2013 – 10.2**

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 \$ 1,656,029.19 from the following accounts:

Current	\$ 1,286,784.94
W/S Operating	\$ 132,949.05
General Capital	\$ 14,059.25
Grant Fund	\$ 56,154.00
Water/Sewer Capital	\$ 154,260.25
Developer’s Escrow	\$ 202.25
Open Space Trust	\$ 11,600.85
Animal Control	\$ 18.60
TOTAL	\$ 1,656,029.19

Record of Council Vote on Passage

COUNCILMAN	AYE	NAY	N.V.	A.B.	COUNCILMAN	AYE	NAY	N.V.	A.B.
Davy	X				Heinzel	X			
Dunn	X				Ogren	M			
Griffiths	X				Tucker	S			

Council Member Ogren made a motion to approve Resolution 2013-2, second by Council Member Tucker with all members present voting in favor.

**BOROUGH OF PENNINGTON
RESOLUTION 2013 – 10.3**

**RESOLUTION AUTHORIZING AGREEMENT BETWEEN
BOROUGH OF PENNINGTON AND BRIAN AND JULIA MCCABE
PERMITTING FENCE TO BE WITHIN SEWER EASEMENT AT 6 MALLARD DRIVE**

WHEREAS, Brian and Julia McCabe are the owners of the real property known as 6 Mallard Drive, also known as Block 601, Lot 57 on the Borough Tax Map (“Property”);

WHEREAS, a 20-foot wide sanitary sewer easement owned by the Borough of Pennington (“Borough”) runs along the rear and part of the side of the Property toward its southwesterly corner, as shown on the attached plan of survey (“Sanitary Sewer Easement”);

WHEREAS, Mr. and Mrs. McCabe wish to install a black aluminum fence along the boundary of the Property necessitating the crossing of the Sanitary Sewer Easement as sketched on the attached plan of survey;

WHEREAS, Mr. and Mrs. McCabe therefore seek to enter into an agreement with the Borough permitting the fence to cross the Sanitary Sewer Easement as proposed;

WHEREAS, at the meeting of Borough Council on September 9, 2013 Council gave conditional oral approval for the fence to cross the Easement as proposed subject to substantially the same conditions as are set forth below; and

WHEREAS, Borough Council intends by this Resolution to ratify its approval of September 9, 2013 and approve the requested agreement, subject to the terms and conditions set forth herein; and

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

1. The Mayor with the attestation of the Borough Clerk is hereby authorized to enter into an agreement on behalf of the Borough of Pennington granting permission to Brian and Julia McCabe to install and maintain the proposed aluminum fence within the Sanitary Sewer Easement as substantially described in the annexed plan, subject to the conditions which follow:

(a) If for any reason in its judgment the Borough must remove the fence or the Borough otherwise damages the fence, the Borough shall not be responsible for replacing, repairing or rebuilding the fence.

(b) The Borough shall be held harmless by Brian and Julia McCabe from all costs and other liabilities (including reasonable attorney’s fees) arising from the presence of the fence in the Drainage Easement.

(c) This Agreement permitting the fence in the Sanitary Sewer Easement shall be personal to Brian and Julia McCabe, shall not be transferable by them, shall be revocable at will by the Borough, shall not run with the land and shall not be recorded.

2. The action of Borough Council at its meeting of September 9, 2013 granting conditional approval of the proposed fence within the easement, pursuant to the same terms and conditions as stated herein, is ratified and approved and memorialized in the attached Agreement.

Record of Council Vote on Passage

COUNCILMAN	AYE	NAY	N.V.	A.B.	COUNCILMAN	AYE	NAY	N.V.	A.B.
Davy	X				Heinzel	X			
Dunn	S				Ogren	X			
Griffiths	X				Tucker	M			

Council Member Tucker made a motion to approve Resolution 2013-10.3, second by Council Member Dunn with all members present voting in favor.

**BOROUGH OF PENNINGTON
RESOLUTION 2013 - 10.4**

**RESOLUTION AUTHORIZING SHARED SERVICES
AGREEMENT WITH THE TOWNSHIP OF MONTGOMERY
FOR HEALTH SERVICES**

WHEREAS, pursuant to the Uniform Shared Services and Consolidation Act, N.J.S.A. 40A:65-1, et seq.) and Title 8, Chapter 52 of the New Jersey Administrative Code, the Borough of Pennington seeks to enter into a contract with the Township of Montgomery (“Montgomery”) for the provision of Health Services to the Borough;

WHEREAS, the Montgomery Health Department is an experienced health services agency qualified to perform public health services as provided by law, currently serving 23,000 Montgomery

residents in Somerset County;

WHEREAS, the Montgomery Health Department will provide health services to the Borough of a technical and professional nature as required by N.J.S.A. 26:A2-1, et seq., N.J.S.A. 40A:65-1 et seq., and N.J.S.A. 26:1A-15;

WHEREAS, the Montgomery Health Department will be responsible for Public Health Administration, Health Education, Environmental Health and Adult Preventive Health Programs in the Borough;

WHEREAS, all services performed by the Montgomery Health Department on behalf of the Borough shall use either Health Department staff or contracts with outside public health agencies and shall comply with all applicable State laws, regulations and standards, including the standards set forth in Title 8, Chapter 52 of the New Jersey Administrative Code;

WHEREAS, Montgomery represents that it currently has the following staffing:

- * Health Officer
- * Two (2) Registered Environmental Health Specialists;
- * Administrative Assistant;
- * Contract Consulting Health Educator;
- * Contract nursing/immunization audits from the Community Visiting Nurse Association;
- * Women's Health and cancer screenings through Women's Health & Counseling Center of Somerville;
- * Adolescent Health Services from HiTops of Princeton;
- * A Communicable Disease Investigator/REHS, to handle routine communicable disease investigations. More complex outbreaks will require consultation with the regional Epidemiologist at Mercer County Division of Health. Tuberculosis investigations will be transferred to the State-designated regional chest clinic;

WHEREAS, the Montgomery Health Department will provide properly licensed personnel within the jurisdiction of the Borough to carry out the public health activities described on pages 1 through 3 under "Scope of Services";

WHEREAS, Montgomery will not be responsible for providing the services described under "Exclusions";

WHEREAS, Montgomery will also provide coverage for all after-hours emergency responses, with all after-hours calls to be directed to the Montgomery Police Emergency Communications Center (through Somerset County Dispatch), which will contact the appropriate individual for response;

WHEREAS, the Montgomery Health Officer will participate on the Borough's behalf in Mercer County's Governmental Public Health Partnership, which is responsible for regional Community Health Improvement Planning and regional Community Public Health Partnerships;

WHEREAS, the Montgomery Health Department will also partner on the Borough's behalf with local community stakeholders, including Visiting Nurses, local hospitals, school districts and the Municipal Alliance;

WHEREAS, it is understood that the fee for Montgomery's services under the contract will be based on a per capita allocation of direct costs associated with performing the services described above, including employee salary, office expenses, subcontractor agreements, equipment and supplies, and personnel training, with the addition of costs for excess mileage and participation in the Mercer Governmental Public Health Partnership;

WHEREAS, the proposed agreement is for a three year period with renewals annually, meaning that it can be effectively terminated, on prescribed notice, at the end of each year;

WHEREAS, the fees for services reflect a two percent (2%) annual increase, with the understanding that if the actual cost of services exceeds the fee in a given year, or, conversely, there is a decline in costs, Montgomery reserves the right to provide the Borough a revised fee for the following year based upon such actual increase or decrease in costs;

WHEREAS, the annual fees which the Borough agrees to pay to Montgomery for services under the contract are as follows:

January 1, 2014 - December 31, 2014: \$37,450.00

January 1, 2015 - December 31, 2015: \$38,190.00

January 1, 2016 - December 31, 2016: \$38,950.00

NOW, THEREFORE, BE IT RESOLVED, by the Borough Council of the Borough of Pennington, that the Mayor, with the attestation of the Borough Clerk, is hereby authorized to enter into a shared services agreement with Montgomery Township for the provision of health services, such agreement to comply in substance with the above recitals and to conform in substance with the proposed agreement annexed to this resolution, subject to final approval as to form by the Borough Attorney.

Record of Council Vote on Passage

COUNCILMAN	AYE	NAY	N.V.	A.B.	COUNCILMAN	AYE	NAY	N.V.	A.B.
Davy	X				Heinzel	S			
Dunn	X				Ogren	X			
Griffiths	X				Tucker	M			

Council Member Tucker made a motion to approve Resolution 2013-10.4, second by Council Member Heinzel with all members present voting in favor.

**BOROUGH OF PENNINGTON
 RESOLUTION 2013 – 10.5**

**RESOLUTION AUTHORIZING SHARED SERVICES
 AGREEMENT WITH THE TOWNSHIP OF MONTGOMERY
 FOR ANIMAL CONTROL SERVICES**

WHEREAS, pursuant to the Uniform Shared Services and Consolidation Act, N.J.S.A. 40A:65-1, et seq.), the Borough of Pennington seeks to enter into a contract with the Township of Montgomery (“Montgomery”) for the provision of Animal Control Services to the Borough;

WHEREAS, Montgomery provides full-service Animal Control to its 23,000 residents and also provides impound and shelter services to South Brunswick Township and Rocky Hill Borough;

WHEREAS, Montgomery will provide Animal Control Services to the Borough equivalent to the services it provides its own municipality, using Montgomery’s own staff or through contracts with outside agencies;

WHEREAS, without limiting the generality of the foregoing, Montgomery will provide a licensed Animal Control Officer and Animal Cruelty Investigator to perform the following services:

1. respond timely to calls and complaints concerning lost, stray, injured or nuisance domestic animals, as well as suspect rabid wild or domestic animals and vicious dogs;
2. capture stray domestic animals;
3. capture wild animals rabies vectors (eg., raccoons, skunks, groundhogs, foxes and bats) threatening the safety and health of residents;
4. investigate reports of animal bite incidents and vicious dogs, with seizure and impoundment of dogs meeting criteria for being vicious dogs under State law;
5. transport captured animals to impoundment facility;
6. evaluate captured animals being transported as to need for emergency veterinary care and contact veterinarian when necessary;
7. care for, feed and maintain sanitation of animals in the public pound and observe their physical condition and behavior;
8. promote the adoption of animals and support their spaying and neutering;
9. capture, impound and arrange for humane destruction of suspect rabid animals;
10. transport suspect rabies specimens for analysis at the State Public Health Laboratory;
11. investigate animal neglect and cruelty incidents;
12. investigate complaints regarding stray animals and licensed and unlicensed domesticated animals;
13. follow-up of routine dog bites, monitoring and release from home confinement;

14. patrol as appropriate for stray cats and dogs;
15. keep records to document all calls, activities and animals picked up, including the disposition of each animal;
16. issue summons for violations of local or state animal control regulations.

WHEREAS, Montgomery will impound and otherwise house animals from the Borough as needed at Montgomery's municipal kennel facility, and Montgomery shall provide all normal and customary kennel services that it provides to its own impounded animals;

WHEREAS, Borough residents redeeming or surrendering animals must pay applicable Montgomery shelter fees and these fees will be retained by Montgomery as a host community benefit;

WHEREAS, determination of adoptability or need for euthanasia of any animal will be at the discretion of Montgomery subject to applicable state laws;

WHEREAS, Montgomery will provide coverage for after-hours response to animal control emergencies, which shall include but not be limited to:

1. any sick or threatening animal;
2. animal cruelty;
3. bats in house, if there is possible exposure;
4. dogs at large that are being held by resident or police;

WHEREAS, Montgomery will provide veterinary and animal handling support for one annual rabies vaccination clinic for cats and dogs, at a time and location determined by mutual agreement, with the Borough responsible for providing clerical/administrative support for this clinic;

WHEREAS, Montgomery will provide a monthly report documenting its activities and will maintain associated files according to New Jersey Records Retention standards;

WHEREAS, all services performed under the contract will be performed in accordance with applicable State standards, laws and regulations;

WHEREAS, the following services are not to be covered by the contract:

1. issuance of dog licenses (which shall remain the Borough's responsibility);
2. capture of nuisance wildlife not presenting a threat to health and safety;
3. deer carcass removal;
4. dog census (which would require an extra fee);
5. initial "Notice of Bite and Confinement" reports (usually prepared by Police Department and forwarded to Animal Control for follow-up);
5. activities commonly known as "Trap/Neuter/Release" or Managed Feral Cat Colonies (with the understanding that Montgomery animal control policy does not support feral cat colonies);

WHEREAS, it is understood that the services provided by Montgomery shall include manpower, vehicle costs, veterinarian bills, euthanasia costs, adoption costs and, except as otherwise specified, all other costs it incurs related to work under the contract;

WHEREAS, it is further understood that the fee for Montgomery's services under the contract is based on a per capita allocation of direct costs associated with performing the services described above, including employee salary, office expenses, subcontractor agreements, equipment and supplies, and personnel training, with additional costs for excess mileage and overtime;

WHEREAS, the proposed shared services agreement is for a three year period with renewals annually, meaning that it can be effectively terminated, on notice, at the end of each year;

WHEREAS, the fees for services reflect a two percent (2%) annual increase, with the understanding that if the actual cost of services exceeds the fee in a given year, or, conversely, there is a decline in costs, Montgomery reserves the right to provide the Borough a revised fee for the following year based upon such actual increase or decrease in costs;

WHEREAS, the annual fees agreed to be paid to Montgomery for services under the contract are as follows:

January 1, 2014 - December 31, 2014: \$10,380.00

January 1, 2015 - December 31, 2015: \$10,580.00

January 1, 2016 - December 31, 2016: \$10,790.00

WHEREAS, the form of agreement proposed by Montgomery Township is attached;

NOW, THEREFORE, BE IT RESOLVED, by the Borough Council of the Borough of Pennington, that the Mayor, with the attestation of the Borough Clerk, is hereby authorized to enter into a shared services agreement with Montgomery Township complying in substance with the form attached and the related contract proposal, subject to inclusion of a mutual indemnification provision and approval as to form by the Borough Attorney.

Record of Council Vote on Passage

COUNCILMAN	AYE	NAY	N.V.	A.B.	COUNCILMAN	AYE	NAY	N.V.	A.B.
Davy	X				Heinzel	X			
Dunn	M				Ogren	X			
Griffiths	X				Tucker	S			

Council Member Dunn made a motion to approve Resolution 2013-10.5, second by Council Member Tucker with all members present voting in favor.

**BOROUGH OF PENNINGTON
RESOLUTION #2013 – 10-6**

RESOLUTION AUTHORIZING AND APPROVING A SHARED SERVICES AGREEMENT BETWEEN THE BOROUGH OF PENNINGTON AND THE MERCER COUNTY IMPROVEMENT AUTHORITY FOR CURBSIDE COLLECTION OF RECYCLABLES FOR THE TERM OF FIVE (5) YEARS COMMENCING ON JANUARY 1, 2014 THROUGH DECEMBER 31, 2018

WHEREAS, there exists a need in the Borough of Pennington to provide recycling services to the residents of Mercer County; and

WHEREAS, the Mercer County Improvement Authority (“MCIA”) has been designated by the County of Mercer as the implementing agency for the Solid Waste Management Plan within Mercer County under the Solid Waste Management Act N.J.S.A. 13:1E-1 et. seq. for the curbside collection of recyclables; and

WHEREAS, the Borough of Pennington wishes to continue its participation in the Mercer County Solid Waste Management Plan by having MCIA provide for the Curbside Recycling Program throughout the Borough during the term of the agreement; and

WHEREAS, the Uniformed Shared Services and Consolidation Act, N.J.S.A. 40A:65-4 et seq., permits the Borough to enter into an Agreement with the MCIA to provide for said Curbside Recycling Services during the Term of the Agreement; and

WHEREAS, the Agreement between the MCIA and the Borough for the Curbside Recycling Collection Program covers a term of five (5) years commencing on January 1, 2014 through December 31, 2018; and

WHEREAS, the Agreement between the Borough and the MCIA supersedes all prior shared services agreements for Curbside Recycling;

NOW, THEREFORE, BE IT RESOLVED, by the Borough Council of the Borough of Pennington, in the County of Mercer and State of New Jersey, that the Shared Services Agreement by and between the Borough and the MCIA for curbside collection of recyclables for the Term of the Agreement is hereby authorized and accepted by the Borough of Pennington and the Mayor with the attestation of the Borough Clerk is hereby authorized to execute said agreement.

BE IT FURTHER RESOLVED, that the Agreement shall take effect upon the adoption of an appropriate resolution by the MCIA and the execution of the Agreement by and between the Borough of Pennington and the MCIA in accordance with N.J.S.A. 40A:65-4 et seq.

Record of Council Vote on Passage

COUNCILMAN	AYE	NAY	N.V.	A.B.	COUNCILMAN	AYE	NAY	N.V.	A.B.
Davy	X				Heinzel	X			
Dunn	S				Ogren	M			
Griffiths	X				Tucker	X			

Council Member Ogren made a motion to approve Resolution 2013-10.6, second by Council Member Dunn. Mayor Persichilli stated that he found out too late that one of the Windsors has found another vendor who can provide this service at a lower cost than the County. Mayor Persichilli stated that he has spoken with

Mayor Sandom and Mayor Anzano to look into whether or not these services could be obtained for a lower cost. Mayor Persichilli stated that this contract would take the Borough through 2018. Mrs. Heinzl asked if there was a mechanism to withdraw from the contract prior to the end. Mr. Bliss agreed. Upon a roll call vote, all members present voted in favor.

**BOROUGH OF PENNINGTON
RESOLUTION 2013 – 10.7**

RESOLUTION AUTHORIZING SHARED SERVICES AGREEMENT WITH HOPEWELL TOWNSHIP ON THE CONDITION THAT THE TOWNSHIP AGREE TO THE BOROUGH’S PROPOSED METHOD OF PAYMENT

WHEREAS, the Uniform Shared Services and Consolidation Act, N.J.S.A. 40A:65-1, et seq., encourages New Jersey municipalities to work cooperatively to provide services to their citizens;

WHEREAS, the Borough of Pennington, Hopewell Township and Hopewell Borough share use of the Senior Center on Reading Street in Pennington, and the three municipalities are presently parties to a shared services agreement by which they also share responsibilities for maintenance of the Senior Center;

WHEREAS, under the shared services agreement for maintenance of the Senior Center, Hopewell Township provides weekly cleaning services at the Center and also pays Pennington the sum of \$4,501.06 for the year, Hopewell Borough pays Pennington \$1,125.26 for the year, and Pennington provides cleaning supplies for the building and is responsible for all maintenance to the outside of the building, snow and ice removal, HVAC maintenance, plumbing, painting and replacement of light bulbs;

WHEREAS, on September 23, 2013, the Township Committee of Hopewell Township authorized the Township to enter into a shared services agreement with Pennington Borough and Hopewell Borough providing for the Township’s Senior Coordinator to provide services to seniors of the two Boroughs for the year 2013 in exchange for \$5,000 to be paid by Hopewell Borough and \$5,000 to be paid by Pennington Borough toward the cost of these services;

WHEREAS, a copy of this shared services agreement as proposed by Hopewell Township Committee (hereafter “Senior Services Coordinator Agreement”) is attached to this Resolution;

WHEREAS, in order to effectuate payment by Pennington of its \$5,000 obligation under the Senior Services Coordinator Agreement, Pennington and Hopewell Township must agree to apply against that amount the \$4,501.06 that the Township owes to Pennington for maintenance of the Center under the existing shared services agreement, providing for the net amount remaining to be paid by Pennington to the Township in cash;

WHEREAS, also attached to this Resolution is a proposed Agreement Providing for Payment of the Borough Obligation Under the Senior Services Coordinator Agreement (“Agreement Providing for Payment”), which incorporates this payment method;

WHEREAS, approval of the Senior Services Coordinator Agreement by Pennington Borough is necessarily contingent upon Hopewell Township entering into the Agreement Providing for Payment;

NOW, THEREFORE, IT IS HEREBY AGREED, by the Borough of Pennington and the Township of Hopewell, as follows:

1. The Mayor, with the attestation of the Borough Clerk, is hereby authorized to enter into the Agreement Providing for Payment on behalf of the Borough of Pennington.
2. The Mayor, with the attestation of the Borough Clerk, is hereby further authorized to enter into the Senior Services Coordinator Agreement on behalf of the Borough of Pennington, provided Hopewell Township enter into the Agreement Providing for Payment.
3. Signed copies of both agreements shall be delivered to the Township with the representation that the efficacy of the Senior Services Coordinator Agreement is conditioned upon acceptance of both agreements by the Township.

Record of Council Vote on Passage

COUNCILMAN	AYE	NAY	N.V.	A.B.	COUNCILMAN	AYE	NAY	N.V.	A.B.
Davy	S				Heinzl	X			
Dunn	X				Ogren	X			
Griffiths	X				Tucker	M			

Council Member Tucker made a motion to approve Resolution 2013-10.7, second by Council Member Davy with all members present voting in favor.

**BOROUGH OF PENNINGTON
 RESOLUTION #2013 – 10.8**

**RESOLUTION APPROVING RAFFLE LICENSE RA: 4.13 FOR
 SAINT MATTHEWS CHURCH**

WHEREAS, Saint Matthews Church submitted raffle application RA: 4.13 on September 27, 2013 for a raffle to take place on December 7, 2013 and a copy of that application is attached to this resolution; and

WHEREAS, N.J.A.C. 13:47-4.1 et seq., requires seven (7) days to elapse before the Governing Body makes its findings and determinations; and

WHEREAS, the required waiting period was satisfied on October 4, 2013; and

WHEREAS, Saint Matthews Church meets the qualifications for issuance of a license for said raffle based on the findings and determination set forth in the annexed form 5-A, as required by law;

WHEREAS, Saint Matthews Church in accordance with law, has submitted the required fees forthwith;

NOW, THEREFORE, BE IT RESOLVED, by the Borough Council of the Borough of Pennington that raffle license RA: 4.13 for Saint Matthews Church be approved; and

BE IT FURTHER RESOLVED that the Municipal Clerk will forward the annexed Findings and Determinations for RA: 4.13 to the Legalized Games of Chance Control Commission in accordance with N.J.A.C. 13:47-4.1, et seq.

Record of Council Vote on Passage

COUNCILMAN	AYE	NAY	N.V.	A.B.	COUNCILMAN	AYE	NAY	N.V.	A.B.
Davy	X				Heinzel	S			
Dunn	M				Ogren	X			
Griffiths	X				Tucker				abstain

Council Member Dunn made a motion to approve Resolution 2013-10.8, second by Council Member Heinzel with all members present voting in favor with the exception of Mr. Tucker who abstained.

**BOROUGH OF PENNINGTON
 RESOLUTION #2013 – 10.9**

**RESOLUTION ACKNOWLEDGING A SIX MONTH EXTENSION OF THE CURRENT 2013
 MUNICIPAL ALLIANCE GRANT PROGRAM**

WHEREAS, the Governor’s Council on Alcoholism and Drug Abuse (GCADA) has notified the Hopewell Valley Municipal Alliance that it is transitioning from a calendar year cycle to a fiscal year cycle; and

WHEREAS, the GCADA has extended the existing municipal alliance grants for a period of six months as it develops the program’s transition; and

WHEREAS, the Borough of Pennington is a participating member of the Hopewell Valley Municipal Alliance through a shared services agreement with the Township of Hopewell and the Borough of Hopewell;

NOW, THEREFORE, BE IT RESOLVED, by the Borough Council of the Borough of Pennington that it hereby acknowledges the six-month extension of the current 2013 Municipal Alliance Grant Program; and

BE IT FURTHER RESOLVED that the Mayor with the attestation of the Borough Clerk shall be authorized to execute a new calendar year Shared Services Agreement for participation in the Municipal Alliance Program with the Township of Hopewell and the Borough of Hopewell for the period beginning January 1, 2014 and ending December 31, 2014 in a proportionate share amount of \$1,500.00 which is based on population.

Record of Council Vote on Passage

COUNCILMAN	AYE	NAY	N.V.	A.B.	COUNCILMAN	AYE	NAY	N.V.	A.B.
Davy	X				Heinzel	S			
Dunn	M				Ogren	X			
Griffiths	X				Tucker	X			

Council Member Dunn made a motion to approve Resolution 2013-10.9, second by Council Member Heinzel with all members present voting in favor.

**BOROUGH OF PENNINGTON
 RESOLUTION NO. 2013 – 10.10**

**RESOLUTION AUTHORIZING APPROVAL TO SUBMIT A GRANT APPLICATION AND
 EXECUTE A GRANT AGREEMENT WITH THE NEW JERSEY DEPARTMENT OF
 TRANSPORTATION FOR THE 2014 ROAD IMPROVEMENT PLAN PROJECT**

WHEREAS, Borough Council has determined that segments of Upper King George Road require reconstruction;

NOW THEREFORE BE IT RESOLVED, that the Borough Council of the Borough of Pennington, formally approves the grant application for the above stated project;

BE IT FURTHER RESOLVED, that the Borough Engineer is hereby authorized to submit an electronic grant application identified as MA-2014 - Pennington Borough – 00667 to the New Jersey Department of Transportation on behalf of the Borough of Pennington.

BE IT FURTHER RESOLVED, that the Mayor with the attestation of the Borough Clerk are hereby authorized to sign the grant agreement on behalf of the Borough of Pennington and that their signature constitutes acceptance of the terms and conditions of the grant agreement and approves the execution of the grant agreement.

Record of Council Vote on Passage

COUNCILMAN	AYE	NAY	N.V.	A.B.	COUNCILMAN	AYE	NAY	N.V.	A.B.
Davy	X				Heinzel	S			
Dunn	X				Ogren	M			
Griffiths	X				Tucker	X			

Council Member Ogren made a motion to approve Resolution 2013-10.10, second by Council Member Heinzel with all members present voting in favor. Mayor Persichilli stated that somewhere along the line Council needs to find a way to let taxpayers know what is involved in maintaining the roads and the process of applying for grants to make improvements as opposed to using tax dollars. Mayor Persichilli stated that a prioritized list of roads should also be made available.

**Borough of Pennington
 Resolution #2013 – 10.11**

**RESOLUTION AUTHORIZING PAYMENT REQUEST NO. 3 TO A & A CURBING, INC. FOR
 WORK COMPLETED ON THE DOWNTOWN STREETScape IMPROVEMENT PROJECT**

WHEREAS, A & A Curbing, Inc. has completed certain work pursuant to the contract for the Downtown Streetscape Improvement Project (Roberts Engineering Group, LLC. Project No. PEN3704); and

WHEREAS, Roberts Engineering Group, LLC has reviewed the application and recommends payment for completed work pursuant to the Contractor’s Request for Payment No. 3 (\$97,807.00) less two percent (2%) retainage (\$ 1,956.14), the net due therefore amounting to \$95,850.86; and

WHEREAS, this is a partial payment under the contract; and

WHEREAS, funds are available in Account #: G-02-44-951-000-250;

NOW, THEREFORE BE IT RESOLVED, by the Borough Council of the Borough of Pennington, that payment to A & A Curbing, Inc. in the amount of \$95,850.86 pursuant to payment request No.3 is hereby authorized subject to receipt of certified payroll forms.

Record of Council Vote on Passage

COUNCILMAN	AYE	NAY	N.V.	A.B.	COUNCILMAN	AYE	NAY	N.V.	A.B.
Davy	X				Heinzel	S			
Dunn	X				Ogren	M			
Griffiths	X				Tucker	X			

Council Member Ogren made a motion to approve Resolution 2013-10.11, second by Council Member Heinzel with all members present voting in favor.

**BOROUGH OF PENNINGTON
 RESOLUTION 2013 – 10.12**

**RESOLUTION APPOINTING TIMOTHY MATHENY AS ACTING PUBLIC SAFETY DIRECTOR
 DURING THE ABSENCE OF THE DIRECTOR**

WHEREAS, on September 23, 2013, the Public Safety Director of the Borough requested and was granted leave without pay from his position, for an expected duration of 60 days;

WHEREAS, the Borough requires the services of a temporary Acting Public Safety Director to perform the duties and responsibilities of the Director during his absence;

WHEREAS, Borough Council seeks to appoint Timothy Matheny, the Borough Administrator, to serve in this temporary capacity;

WHEREAS, the minimum qualifications for appointment as Public Safety Director, as set forth in Section 46-7.D of the Pennington Borough Code, are a bachelor's degree from an accredited college or university in public safety administration, police science or a related field, and a minimum of 10 years' experience as a member of a Police Department, five years of which shall have been in a supervisory and administrative capacity;

WHEREAS, Mr. Matheny meets and exceeds these qualifications and is well positioned to perform the duties of Acting Director during the Director's absence;

WHEREAS, Mr. Matheny has a bachelor's degree in criminal justice from The College of New Jersey and a master's degree in the same subject from New Jersey City University;

WHEREAS, Mr. Matheny was a member of the Police Department of Plainsboro Township, Middlesex County, New Jersey, for twenty-five years, with all but four of these years served in a supervisory capacity, as Sergeant, Lieutenant and then Captain, retiring from the Department in the rank of Captain in 2004;

WHEREAS, Mr. Matheny is a graduate of the FBI National Academy, a former President of the New Jersey Chapter of the FBI National Academy Associates, a certified police instructor in numerous law enforcement areas, an Advance Law Enforcement Planner as certified by the International Association of Law Enforcement Planners, and has a background as well in fire and EMT services, having been certified as a New Jersey State paramedic before becoming a police officer;

WHEREAS, in the temporary position of Acting Public Safety Director, Mr. Matheny will maintain his present work schedule as Borough Administrator, involving two days per week in the office and full-time availability;

WHEREAS, Mr. Matheny will serve in the temporary position until the Public Safety Director returns to duty, which is presently expected to be between 30 and 60 calendar days;

WHEREAS, as consideration for assuming the extra administrative duties required by this temporary position, for a period of 60 calendar days, Mr. Matheny will be paid \$4,500;

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

1. Timothy Matheny is hereby appointed to serve as Acting Public Safety Director, to perform the duties and responsibilities of the position of Public Safety Director during the absence of the permanent Director and until he returns from leave, subject to the terms set forth above.
2. Payment of additional compensation for this assumption of extra duties and responsibilities shall be subject to adoption of an appropriate amendment to the Borough Salary Ordinance.

Record of Council Vote on Passage

COUNCILMAN	AYE	NAY	N.V.	A.B.	COUNCILMAN	AYE	NAY	N.V.	A.B.
Davy	X				Heinzel	X			
Dunn	X				Ogren	X			
Griffiths	S				Tucker	M			

Council Member Tucker made a motion to approve Resolution 2013-10.12, second by Council Member Griffiths. Mr. Bliss stated that the final whereas clause refers to \$4,500 per month and the "per month" should be removed. Upon a roll call vote, all members present voted in favor. Mayor Persichilli stated that he will coordinate with Mr. Matheny and send a letter to the Prosecutors Office to notify them and also draft a letter to the Police Department.

Council Discussion

Block Party East Welling Avenue – Mayor Persichilli stated that a request was received for a block party on East Welling Avenue which would require closing the road during the event. Mayor Persichilli asked if there were any concerns regarding the request. Council Member Heinzel made a motion to approve the request, second by Council Member Dunn with all members present voting in favor.

Library Request for 2012 Unexpended Funds – Mrs. Heinzel stated that the Library allocation each year is maintained by the Borough and purchase orders and payments are made through the budget. Mrs. Heinzel stated that at the end of the year if there are funds left in the budget, the Library can request that these funds be turned over to the Library for their use. Mrs. Sterling stated that for the last couple of years, the library

has spent all of the funds allocated. Mrs. Sterling stated that the amount in the letter from the library is incorrect as there are some outstanding purchases orders that are in the process of getting resolved. Mrs. Sterling stated that the actual amount available is \$5,487.84. Mrs. Sterling stated that there are outstanding invoices for Ricoh for the library copy machine that will get paid once the purchase orders are received. Mrs. Heinzl asked if Council should hold off on making a decision on this until the amount is finalized. Mr. Griffiths made a motion to grant the library request in the amount of \$5,487.84, second by Council Member Dunn with all members present voting in favor.

Request for Extension of Time from A & A Curbing (Downtown Streetscape Project) – Mr. Bliss stated that he did not have access to the contract at this time, but there is a liquidated damage clause for days over the target date and this company is already over the scheduled completion date. Mr. Bliss stated that the various ups and downs of the project have incurred additional unanticipated engineering fees. Mr. Bliss stated that he is not sure that this proposal actually finishes the project, but rather contemplates yet a new date for finishing the project. Mr. Bliss stated that it may be premature to approve an extension given the expense side. Mr. Bliss stated that there is no guarantee that even this delay will do it. Mrs. Heinzl stated that the contractor is hoping that if the extension is granted that the liquidated damages clause would then be negated.

Mr. Matheny stated that he got a letter from Borough Engineer, Carmela Roberts dated September 11, 2013 and at that point in time before we even went beyond the original date of completion which should have been September 27th, the request for additional inspection fees was \$9,950 and now that figure is well over \$11,000. Mr. Matheny stated that according the Carmela Roberts these cost are directly related to the contractor not doing things correctly and having to repeat work over and over. Mr. Matheny stated that the liquidated damages are about \$650 per day. Mr. Matheny stated that even if Council is magnanimous and grants the extension of time, it's that much more expense that we will have to pay because we are already in the hole.

Mr. Griffiths stated that based on what has been stated he would not be willing to grant the request. Mr. Griffiths stated that he would like to see an assessment of what the liquidated damages are. Mr. Griffiths stated that if the contractor's quality of work or lack thereof has cost the Borough money, that is why that clause is in the contract and it should be a penalty on the contractor.

Some discussion took place with regard to the items that caused delays to the project. Council decided to take no action on the request at this time.

Mr. Bliss clarified that liquidated damages are not penalties and they are not enforceable as penalties. Mr. Bliss stated that these clauses are included in contracts because it is too difficult to have measures of estimating real damages, such as inconvenience to the community.

Water Tower – Mr. Wittkop stated that as Council is aware the bids received for the water tower came in over the estimate for the project. Mr. Wittkop stated that the main reason comes down to containment, which is like a giant shower curtain that would be put up around the water tower. Mr. Wittkop stated that because the engineer put that into the bid specifications it added an additional \$52,000 to the cost of the project. Mr. Wittkop stated that amount was not included in our original estimate for the project. Mr. Wittkop stated that he included an amount of \$23,000 for temporary water storage or hydro tanks, but in the meantime he found an alternative solution of using a well. Mr. Wittkop stated that if you take the \$23,000 off the \$52,000 there is an additional \$30,000 that will be needed for the project. Mr. Wittkop stated that it basically comes down to the question of containment. Mr. Wittkop stated that one of the contractors stated that containment was not needed, but Norm Nelson of Van Note Harvey feels very strongly that it is needed. Mr. Wittkop stated that he has discussed this with Mr. Matheny and with Mr. Bliss. Mr. Bliss stated that he thinks that the Borough would be hard pressed to overrule a professional on an environmental issue. Mr. Bliss stated that if people park in the lot and find residue on their windshields and begin to feel anxious he guarantees that we would want to have the assurance that our professionals have recommended the manner in which the project has been undertaken. Some discussion took place as to what containment would prevent. Mr. Wittkop explained that the tower will be power washed. Mrs. Dunn stated that it also has to do with lead based paint. Mr. Wittkop stated it is most likely not lead based paint. Mr. Wittkop stated that in the packet that he provided to Council there is a letter regarding a test that was done in 1987 but he could not obtain the results of the test. Mr. Wittkop stated that a test for lead based paint could be performed for \$500.00. Mr. Griffiths stated that to save the \$50,000 couldn't the parking lot be closed for a certain amount of time. Mr. Wittkop stated that there was some discussion about that when the water tower was painted before and that would require a 70 foot swath around the water tower as an area to work in. Mr. Ogren asked if Mr. Nelson had the benefit of the contractor's letter and Mr. Wittkop stated that Mr. Nelson requested the letter. Mr. Ogren stated that his thought on this is that there may be some unanswered questions that could be explored with Norm Nelson at a meeting of the Public Works Committee and report back to Council. Mr. Wittkop stated that he would be happy to answer any questions that Mr. Ogren has. Mr. Wittkop stated that when the bids came out and he realized that containment was included he requested from Mr. Nelson an explanation of why given that one of the contractors had stated that it was not needed. Mr. Wittkop stated that Mr. Nelson stated that if the paint was lead based than containment is needed. Mr. Wittkop stated that he indicated that for \$500 the paint could be tested. Mr. Wittkop stated that Mr. Nelson felt that OSHA might have a question about this too. Mr. Wittkop stated that he checked with his son who is an OSHA500 instructor and a construction safety officer and his comment was that if it was not being sandblasted and if it is not lead based paint than containment is not needed. Mr. Wittkop stated that he passed that information on to Mr. Nelson and he still felt that containment was needed. Mrs. Dunn stated that if we could prove that the paint is not

lead based would that change his mind. Mr. Wittkop stated that was only one of his arguments. Mr. Griffiths stated that we can't speculate on Mr. Nelson's views. Further discussion took place with regard to closing the parking lot versus containment. Mrs. Heinzl stated that as she sits and listens to this discussion she would not feel comfortable making any decision on this without the benefit of Mr. Nelson's advice. Mr. Griffiths stated that we need to invite Mr. Nelson in to answer questions for council members. Mrs. Dunn stated that without knowing whether or not the paint is lead based everything else is speculation. Mr. Wittkop stated that he would like to get to the bottom of this rather quickly because one of the problems with the first bid attempt was that we were late getting out to the contractors and they were already booked. Mr. Wittkop stated that the next opportunity is for April of 2014 and if we miss that then it won't get done in the spring. Mr. Wittkop stated that he would like to get this out to bid so that bids could be received in December so time is of the essence. Mrs. Dunn suggested doing the bids with containment as an alternate to the project. Mr. Griffiths stated that rather than paying \$50,000 he would be in favor of closing part of the lot. Mr. Davy stated that if that is the decision that is made, then it needs to be communicated to a lot of people. Mr. Griffiths stated that there would be several months once bids are received to get the word out. Mr. Griffiths stated that a notice could be included with the water bills and notices could be put up. Mr. Griffiths stated that if anyone has an objection they are welcome to come and discuss not being able to park for three weeks versus \$50,000. Mayor Persichilli asked Mr. Wittkop if he would be comfortable with that approach; Mr. Wittkop had no objections.

Straube Center Request – Mayor Persichilli stated that the Straube Center is requesting to install a generator in a location that infringes on an easement. Mr. Wittkop stated that he does not believe that the easement belongs to the Borough. Mr. Wittkop stated that he did not have a chance to check, but he is not aware of nor is there any reason for the Borough to have an easement on that property. Mr. Griffiths stated that more facts are needed. Mr. Davy asked Mr. Matheny to investigate this with Zoning Officer, John Flemming. Mr. Matheny stated that he is not familiar with this request.

Route 31 Bridge - Mrs. Dunn stated that this is the same item that she spoke about under the report for Historic Preservation and no comments are needed from the Borough based on the information and drawing that were provided.

Professional Reports

Mayor Persichilli stated that he has been contacted by a builder regarding the Capital Health Site. Mayor Persichilli stated that he does not know if the property has been sold yet, but a meeting will be taking place with the builder and Borough representatives to discuss their proposal. Mayor Persichilli stated that he will keep Council up to date on the discussions.

Public Comment

Mayor Persichilli read the following statement for anyone interested in speaking before Council:
Please come forward and state your name and address for the record. Please limit comments to the Governing Body to a maximum of three (3) minutes.

There were no comments from the public.

At 9:00 PM, Council Member Tucker made a motion to adjourn the meeting, second by Council Member Dunn.

Respectfully submitted,

Elizabeth Sterling
Borough Clerk