

**Pennington Borough Council
Regular Meeting – November 4, 2013**

Mayor Persichilli called the Regular Meeting of the Borough Council to order at 7:00 pm. Borough Clerk Betty Sterling called the roll; all members were present with the exception of Council Member Tucker.

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.

Mayor Persichilli announced a change in the agenda to add a closed session to discuss potential litigation and shared services agreements.

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.**

Ms. Terri Evanko of 140 Woolsey Court provided an update in regard to some questions that were circulated. Ms. Evanko stated that she is in the process of obtaining all related documents that have anything to do with the Senior Services program so that they can be assembled in a way that will answer the questions that were raised if the answers are there. Ms. Evanko stated that many of the questions have been discussed before, but there needs to be a format that provides easy access to the answers. Ms. Evanko stated that there are many people that have worked very hard up to this point but the information needs to be all in one place. Ms. Evanko stated that she is working to make that happen, but in light of a recent article in the Hopewell Valley News, some changes may be coming that will affect the questions.

Mrs. Barbara Rockel of 29 Woolsey Court stated that she has lived in Pennington at various locations most of her life. Mrs. Rockel stated that she would like to thank Ms. Evanko for taking this project on and bringing it to Council's attention. Mrs. Rockel stated that the recent articles in the Hopewell Valley News and the Trenton Times have the area seniors very excited and she would like to stress that the senior program is not specific to each municipality it is a Hopewell Valley concern. Mrs. Rockel stressed the importance of looking at this as a valleywide program.

Approval of Minutes

Council Member Griffiths made a motion to approve the minutes of the September 9, 2013 Regular Meeting, second by Council Member Dunn with all members present voting in favor.

Council Member Dunn made a motion to approve the minutes of the October 7, 2013 Regular Meeting, second by Council Member Heinzl. Mr. Ogren asked for a minor correction on page 11 of the minutes. Upon a roll call vote, all members present voted in favor of the minutes as amended.

Mayor's Business

Mayor Persichilli announced the following Proclamation, proclaiming December 9th, 2013 as Communities of Light day.

PROCLAMATION

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

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

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

WHEREAS, Womanspace has provided emergency shelter in secure locations and comprehensive services for victims of domestic violence since 1977 and sexual assault since 2002,

for more than 54,327 women, 9,744 children and 3,102 men. Additionally, Womanspace has assisted more than 245,072 hotline callers over the last 36 years; and

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

WHEREAS, as Mayor of Pennington Borough I urge that each and every household demonstrate their support of the concept that "peace begins at home" by placing luminaries along their driveways and sidewalks on Monday, December 9, 2013, as a visible symbol of that support; and

WHEREAS, the proceeds from Communities of Light 2013 will be used to fund vital services for victims of domestic violence and sexual assault.

NOW, THEREFORE, BE IT PROCLAIMED THAT, I Anthony Persichilli, Mayor of the Borough of Pennington, County of Mercer, State of New Jersey, do hereby Proclaim Monday, December 9, 2013, as

Communities of Light Day

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

Mayor Persichilli invited Mr. Brit West to come forward to address Council. Mr. West stated that he is here tonight on behalf of the Pennington Business and Professional Association to ask for Council's blessing for the Holiday Walk to be held on Friday, December 6th. Mr. West stated that they have contacted the Police Department with regard to closing the streets. Mr. West gave a brief rundown of the events that will be going on. Mr. West asked if Mayor Persichilli would be able to attend to light the tree and say a few words. Mayor Persichilli stated that he would be there.

Ordinances for Public Hearing and Adoption

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 Heinzl made a motion to open the Public Hearing on Ordinance 2013-10, second by Council Member Dunn. There were no comments from the public. Council Member Ogren made a motion to close the Public Hearing on Ordinance 2013-10, second by Council Member Heinzl with all members present voting in favor. Council Member Heinzl made a motion to adopt 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 open the Public Hearing on Ordinance 2013-11, second by Council Member Ogren. There were no comments from the public. Council Member Dunn made a motion to close the Public Hearing on Ordinance 2013-11, second by Council Member Heinzl with all members present voting in favor. Council Member Heinzl made a motion to adopt Ordinance 2013-11, second by Council Member Griffiths with all members present voting in favor.

Committee Reports

Planning & Zoning / Environmental Commission / Library – Mrs. Heinzl stated that the Library held several very nice events in October. Mrs. Heinzl stated that one of the events was a memorial for Peter Aberger who was a wonderful friend of the Library. Mrs. Heinzl stated that on October 25th, the Library hosted a presentation by the Hopewell Valley Historical Society which was well attended. Mrs. Heinzl stated that on October 27th, the Library 5K was held. Mrs. Heinzl stated that the past two years this event has been marked by severe weather events but this year the weather was perfect and there were about 100 runners. Mrs. Heinzl stated that November events for the Library include a clothing drive for the Rescue Mission, the final film in the Crossing Borders Film Series and a book fair to be held at the Barnes and Noble Book Store at Market Fair. Mrs. Heinzl stated that the Library renovation plans are continuing and the Library is planning to have the back office ready for use as a meeting room with new furniture by January or February. Mrs. Heinzl stated that with respect to the budget, the Library does expect to spend down the 2013 budget this year leaving a zero balance.

Mrs. Heinzl stated that the Environmental Commission met on October 21st and discussed at length the Pennington School application, specifically the drainage plan and the stormwater management manual. Mrs. Heinzl stated that members of the Environmental Commission are working on a statement for the Planning Board on those issues. Mrs. Heinzl stated that finally, they discussed the water tower project which will be discussed later in the meeting.

Mrs. Heinzl stated that the Planning Board met on October 9th. Mrs. Heinzl stated that the Pennington School application consumed most of the meeting and essentially most of the application has been carried to the November meeting. Mrs. Heinzl stated that the Board did agree to permit the demolition of the Lodge. Mrs. Heinzl stated that the Board also looked at the Master Plan Reexamination report prepared by Borough Planner Cindy Coppola and that was approved by the Board. Mrs. Heinzl stated that the Board appointed a sub-committee to look at drafting ordinances to enable some of the plans indicated in the Maser Consulting report. Mrs. Heinzl stated that finally there was an application for a gas generator to be installed on Lanning Avenue and that was approved.

Public Works/Shade Tree – Mr. Ogren stated the Boy Scouts recently built a pathway on South Main Street to provide better access to the trail entrance to Curlis Lake Woods.

Mr. Ogren stated that the Shade Tree Commission met and discussed hazardous trees and attendance at the NJ Shade Tree Federation Conference.

Mr. Ogren stated that the Public Works Committee met and discussed painting of the water tower. Mr. Ogren stated that a discussion was held with Norm Nelson, Engineer for the Water Department regarding his concerns about containment of the water tower during the project. Mr. Ogren stated that Mr. Nelson felt that given his experience with similar types of water towers in urban areas and given the height of the tower that he could not approve any work without having a requirement for containment. Mr. Ogren stated that this will be discussed later in the meeting, but he wanted Council to have the benefit of the committees time spent reviewing the subject. Mr. Davy asked what was the committee’s conclusion. Mr. Ogren stated that the committee felt that given the position of the Engineer, we really don’t have a lot of choice but to go with containment. Mr. Ogren stated that if the tower is contained, then the traffic pattern in the parking lot will not have to be disrupted while the work is being done. Mrs. Dunn stated that the tank is currently being tested for lead, but given the opinion of the Engineer, even if there is no lead he still feels that containment is necessary.

Mr. Ogren stated that the Public Works Committee also spent quite a bit of time on the Downtown Streetscape Project. Mr. Ogren stated that this project is nearing completion and there are several issues that have come up in particular the step that was constructed on the west side of North Main Street and also the improvements that were made at the south west corner of Main Street and Delaware Avenue where the Village Salon is located. Mr. Ogren stated that the committee has some recommendations to present to Council and they will be discussed later under Council Discussion.

Community Services/Economic Development/Personnel – Mr. Davy stated that the Personnel Committee had a meeting tonight prior to the Council Meeting and a decision was made to move ahead with interviewing candidates for the Public Works Superintendent position. Mr. Davy stated that two Laborer positions have been filled in the Public Works Department. Mr. Davy asked if a resolution is needed for the hiring of laborers. Mayor Persichilli stated that a resolution was not needed, in the past the Personnel Committee would make a report as to what positions have been filled. Mr. Davy stated that Council has correspondence in their packages explaining the process and the outcome leading to the hiring.

Mr. Davy stated that the Economic Development Commission is meeting tonight and he sat in prior to this meeting to introduce himself. Mr. Davy stated that they asked that he bring to Council’s attention an event sponsored by the Pennington Business and Professional Association on November 6th at the Hopewell Valley Vineyard. Mr. Davy stated that Council is already aware of the Holiday Walk on December 6th. Mr. Davy stated that he would be attending both of those events.

Public Safety/Senior Services – No report due to the absence of Mr. Tucker.

Finance – Mr. Griffiths stated that the Finance Committee did not meet so he did not have a report.

Historic Preservation – Mrs. Dunn stated that the Historic Preservation Committee met for a brief meeting. Mrs. Dunn stated that there were no applications however items that were discussed were further modifications to the new building under design for the Pennington School. Mrs. Dunn stated that several ideas were presented and discussed and minimal changes were agreed upon. Mrs. Dunn stated that final plans are still in the works. Mrs. Dunn stated that the Lodge building is scheduled to be demolished over the holiday break when the students are off campus. Mrs. Dunn stated that she, along with Ned Crislip and Eric Holtermann went to the lodge for a tour of the building in hopes of getting measurements and potentially salvaging anything of historic value. Mrs. Dunn stated that after touring the building they do not have any issues with demolishing the building as it has been totally renovated and there is almost nothing historic about it anymore.

New Business

**Borough of Pennington
Resolution #2013 – 11.2**

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 \$ 784,672.14 from the following accounts:

Current	\$ 729,934.31
W/S Operating	\$ 17,834.66
General Capital	\$ 14,158.83
Grant Fund	\$ 95,850.86
Water/Sewer Capital	\$ (73,645.00)
Developer’s Escrow	\$ 158.48
Recreation Trust	\$ 380.00
TOTAL	\$ 784,692.14

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	M				Tucker				absent

Council Member Griffiths made a motion to approve Resolution 2013-11.2, second by Council Member Dunn with all members present voting in favor.

**Borough of Pennington
Resolution #2013 – 11.3**

**RESOLUTION AUTHORIZING PAYMENT REQUEST NO. 2 TO
DESANTIS CONSTRUCTION, INC. FOR WORK COMPLETED ON THE PENNINGTON
CONNECTION TO LAWRENCE HOPEWELL TRAIL PROJECT**

WHEREAS, DeSantis Construction, Inc. has completed certain work pursuant to the contract for the Pennington Connection to the Lawrence Hopewell Trail Project (Van Cleef Engineering Associates Project No. VCEA File No. 7071); and

WHEREAS, Van Cleef Engineering Associates has reviewed the application and recommends payment under the contract pursuant to the Contractor’s Request for Payment No. 2 (\$73,931.60) less two percent (2%) retainage (\$1,478.63), the net due therefore amounting to \$72,452.97; and

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

WHEREAS, funds are available in Account #: T-03-00-850-850-255;

NOW, THEREFORE BE IT RESOLVED, by the Borough Council of the Borough of Pennington, that payment request No. 2 to DeSantis Construction Inc. in the amount of \$72,452.97 is hereby authorized.

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				absent

Council Member Ogren made a motion to approve Resolution 2013-11.3, second by Council Member Heinzel with all members present voting in favor.

**Borough of Pennington
Resolution #2013 – 11.4**

**RESOLUTION AUTHORIZING PAYMENT REQUEST NO. 3 TO
DESANTIS CONSTRUCTION, INC. FOR WORK COMPLETED ON THE PENNINGTON
CONNECTION TO LAWRENCE HOPEWELL TRAIL PROJECT**

WHEREAS, DeSantis Construction, Inc. has completed certain work pursuant to the contract for the Pennington Connection to the Lawrence Hopewell Trail Project (Van Cleef Engineering Associates Project No. VCEA File No. 7071); and

WHEREAS, Van Cleef Engineering Associates has reviewed the application and recommends payment under the contract pursuant to the Contractor’s Request for Payment No. 3 (\$105,355.60) less two percent (2%) retainage (\$2,107.12), the net due therefore amounting to \$103,248.48; and

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

WHEREAS, funds are available in Account #: T-03-00-850-850-255;

NOW, THEREFORE BE IT RESOLVED, by the Borough Council of the Borough of Pennington, that payment request No. 3 to DeSantis Construction Inc. in the amount of \$103,248.48 is hereby authorized.

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				absent

Council Member Ogren made a motion to approve Resolution 2013-11.4, second by Council Member Heinzel with all members present voting in favor.

**Borough of Pennington
Resolution #2013-11.5**

**RESOLUTION AUTHORIZING RE-ADVERTISEMENT FOR BIDS
FOR THE WATER STORAGE TANK REHABILITATION PROJECT**

WHEREAS, the Borough of Pennington seeks to rehabilitate the water storage tank; and

WHEREAS, the funds for the proposed project are available under Water/Sewer Ordinance #2007-9; and

WHEREAS, this project was previously advertised and a bid opening was held on August 28, 2013; and

WHEREAS, Resolution 2013-9.3 authorized the rejection of all bids received because they all substantially exceeded the estimated cost for the work; and

WHEREAS, the Borough now seeks to re-advertise for bids for this project as required by the Local Public Contracts Law, N.J.S.A. 40A:11-1, et seq.;

NOW, THEREFORE, BE IT RESOLVED, by the Borough Council of the Borough of Pennington, that the Borough Clerk is hereby authorized to take all actions necessary to advertise for and receive, in the manner provided by law, bids for the Water Storage Tank Rehabilitation Project.

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				absent

Council Member Ogren made a motion to approve Resolution 2013-11.5, second by Council Member Dunn with all members present voting in favor.

**BOROUGH OF PENNINGTON
RESOLUTION # 2013 – 11.6**

**RESOLUTION AUTHORIZING THE SALE OF A NEW PLENARY RETAIL CONSUMPTION
LICENSE**

WHEREAS, the Borough of Pennington has the authority to issue a Plenary Retail Consumption License for the sale of alcoholic beverages; and

WHEREAS, the Borough Council hereby determines that it is in the public interest at this time to permit the issuance of a Plenary Retail Consumption License; and

WHEREAS, N.J.S.A. 33:1-19.3 et.seq. permits the issuance of such licenses to the highest qualified bidder, subject to such terms and conditions as the Borough may set.

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

1. The Borough of Pennington hereby determines that it will sell at public sale one (1) plenary retail consumption license for the sale of alcoholic beverages, subject to the terms and conditions stated herein, in accordance with the procedures set forth in N.J.S.A. 33:1-19.3 et. seq.
2. The license shall be issued only for use in a restaurant as defined in N.J.S.A. 33:1-1 which meets the following additional criteria:
 - (a). has a seating capacity of at least 60 people;
 - (b). offers table service by waiter/waitress from a menu to this minimum seating capacity;
 - (c). is an existing restaurant, or is a restaurant proposed for a site or a structure and is expected to receive preliminary and final site plan approval from the Borough Planning Board in time to permit commencement of licensed operations as set forth below;
 - (d). will begin operation under the license within twenty-four (24) months of the resolution granting the license, unless such period is extended by resolution of the Governing Body, by the Director of the Division of Alcoholic Beverage Control or

otherwise as permitted or required by law;

- (e). complies with all applicable ordinances and other laws.
3. The Municipal Clerk shall publish a notice to prospective bidders in accordance with N.J.S.A. 33:1-19.4 in the Times of Trenton and in the Hopewell Valley News on November 21, 2013 and December 5, 2013.
 4. An applicant/bidder must meet the conditions and requirements of this resolution as well as all requirements of the State of New Jersey for an alcoholic beverage control license applicant or licensee. Those requirements include but are not limited to the following:
 - a. All potential bidders must prequalify under the terms of this resolution and under applicable federal, state and local laws, regulations and standards.
 - b. All potential bidders must submit completed State of New Jersey Alcoholic Beverage Control license application forms and all supporting documentation to the Municipal Clerk no later than 4:00 pm on Thursday, February 6, 2014. Copies of forms and lists of supporting documentation are available in the office of the Municipal Clerk. All applicants will be subject to full investigation under this phase, as though making actual application for an alcoholic beverage control license.
 - c. All potential bidders, as part of the prequalification procedure, must submit with their applications, in the form of certified check or money order, a filing fee of \$200.00 payable to the Division of Alcoholic Beverage Control and a plenary consumption fee of \$2,500.00 payable to the Borough of Pennington. The fees of the unsuccessful applicants for qualification will be returned after announcement of the qualified bidders less a charge of \$350.00 to defray the administrative costs of the qualification process.
 5. Applications for the prequalification of bidders will be accepted by the Municipal Clerk no later than 4:00 pm on Thursday, February 6, 2014, after which date no further applications shall be accepted.
 6. On Monday, April 7, 2014 the names of qualified bidders will be determined by resolution of the Borough Council, said date being at least five (5) days prior to the opening of bids. Further conditions and requirements for making a bid are set forth below.
 7. Formal bidding for the license will take place only after the prequalified bidders have been determined by resolution of the Borough Council. Those deemed qualified by the Borough will receive invitations to bid. Bids from those who have not been qualified by the Borough will be rejected and returned.
 8. All bids shall be accompanied by a deposit in the form of cashier's check, certified check or money order payable to the Borough of Pennington in the amount of twenty percent (20%) of the amount of the bid. This deposit shall be held in escrow by the Borough pending formal award of the license or rejection of all bids by Borough Council.
 9. Bids must be submitted in writing with the required deposit and proof of qualification in a sealed envelope, with the name and address of the bidder clearly typed or written on the outside of the envelope.
 10. All sealed bids from qualified bidders shall be submitted to the Borough Clerk at the Pennington Borough Municipal Building, 30 North Main Street, Pennington, NJ no later than Tuesday, April 15, 2014, at 12:00 pm. No bids will be accepted after that time. All bids shall be opened and read in public immediately thereafter.
 11. The minimum required bid shall be \$ 225,000.
 12. The bidder who is determined by the Borough to have made the highest qualified bid shall pay the remainder of that bid in the form of cashier's check, certified check or money order payable to the Borough of Pennington and shall deliver the payment to the Borough Clerk no later than 4:00 PM of the second business day after the opening of bids. This amount together with the deposit provided with the bid shall be held in escrow by the Borough pending formal award of the license or rejection of all bids by Borough Council.
 13. Failure of the highest bidder to make the payment required in the preceding paragraph shall lose the bid and immediately forfeit the full amount of all deposits made with the bid and in conjunction with the qualification process. In such event, the next highest-qualified bidder shall be given the opportunity to pay the balance of its bid no later than twenty-four hours after receiving written notice of this opportunity from the Borough Clerk, which may be delivered by facsimile.

14. The Borough Council reserves the right to reject all bids if the highest qualified bid is not accepted.
15. Award of a license to the highest qualified bidder or rejection of all bids where the highest bid is not accepted shall be by resolution of the Borough Council at their meeting on May 5, 2014 at 7:00 pm.
16. The license must be in use within two years after the award, absent a special exemption granted by the Director of the Division of Alcoholic Beverage Control.
17. The sale may be postponed or cancelled at any time prior to the opening of bids.
18. Any future transfer of the license awarded by this procedure shall be subject to all conditions and requirements provided by law and shall also guarantee continued compliance with the conditions and requirements set forth in paragraph 2 of this Resolution.

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	M				Tucker				absent

Council Member Griffiths made a motion to approve Resolution 2013-11.6, second by Council Member Heinzel. Mayor Persichilli stated that he asked that this be put on the agenda as it has been talked about for quite a while. Mayor Persichilli stated that we have offered the license two times before, one at \$300,000 and there was no interest and the second time at \$275,000 and again there was no interest. Mayor Persichilli stated that a couple of people have approached him expressing interest in the license. Mayor Persichilli stated that the resolution indicates the minimum bid at \$225,000, but Council can change that amount if they choose. Mayor Persichilli stated that this is the same resolution that was presented before with the only changes being to the dates and minimum bid. Mr. Ogren stated that he has a concern with the timing of this because of the lack of sites available in Pennington for a full service restaurant with a liquor license. Mr. Ogren stated that the Planning Board has approved a change to the Master Plan that would allow for the re-zoning along Broemel Place. Mr. Ogren stated that according to the Maser Report the number one retail choice for that site would be a full service restaurant. Mr. Ogren stated that there may be interest down the road for that type of use on the landfill site. Mr. Griffiths asked if there is a restriction on the number of licenses that can be issued. Mayor Persichilli stated that the only other type of license that the Borough could offer would be for a package store. Mr. Bliss stated that the number of licenses is based on population and Pennington is only allowed one of each. Mr. Griffiths asked if the Maser report indicates what size restaurant could go in there and would there be the potential to sell the license for a higher amount. Mr. Ogren stated there is the potential for a larger restaurant than any that exist now. Mrs. Heinzel stated that there is space available for a larger restaurant, but at this point we do not know if there is any interest. Mrs. Heinzel agreed with Mr. Ogren that there might be the potential for a better market for the license down the road. Mr. Griffiths asked what the proposed time frame for a restaurant at the Broemel Place site might be as there are no proposals and there doesn't seem to be anything in the works yet. Mr. Griffiths stated that he would make a conservative guess of two to three years for a potential restaurant and with that in mind he would be inclined to offer the license now. Mayor Persichilli stated that there are no guarantees that we will get an offer on the license. Mayor Persichilli stated that there is a lot that needs to be done before a developer can come in and develop that property so it might be several years. Mrs. Heinzel stated that if there is the potential of a liquor license as part of a development plan at Broemel Place it makes that property more marketable. Upon a roll call vote, Council Members Davy, Dunn and Griffiths voted in favor and Council Members Heinzel and Ogren voted no.

**BOROUGH OF PENNINGTON
RESOLUTION NO. 11.7**

**RESOLUTION AUTHORIZING THE BOROUGH OF PENNINGTON
TO ENTER INTO A MULTI-PARTY FUNDING AGREEMENT FOR
THE PURCHASE OF OPEN SPACE**

WHEREAS, the New Jersey Conservation Foundation has entered into an agreement for the purchase of approximately 240 acres of land along the east and west sides of Carter Road in Hopewell Township for a price of \$7,500,000;

WHEREAS, the land to be purchased on the East Side of Carter Road is a portion of Lot 14 in Block 40 on the Township Tax Map, and the land to be purchased on the West Side of Carter Road consists of Lots 12, 14.02 and 15 in Block 39 on the Township Tax Map;

WHEREAS, the funding for this acquisition will be provided pursuant to a certain Multi-Party

County Funding Agreement (“MPCF Agreement”), under which the Borough of Pennington and other municipalities and certain non-profit entities will be participants;

WHEREAS, pursuant to the MPCF Agreement, part of the funding for this land acquisition, in the amount of \$2,000,000, will be provided by the County of Mercer through its Municipal and Non-Profit Assistance Program on behalf of participating municipalities and non-profit entities;

WHEREAS, the County’s Municipal and Non-Profit Assistance Program will allocate \$300,000 to Hopewell Township, \$212,500 to Pennington and each of three other municipalities (Hopewell Borough, Lawrence Township and Princeton), and \$212,500 to the New Jersey Conservation Foundation and each of three other non-profit conservation organizations;

WHEREAS, another part of the funding, in a matching amount of \$2,000,000, will be provided by Hopewell Township and allocated among the participating municipalities and non-profit entities in the same manner as the County Municipal and Non-Profit Assistance funding, this Hopewell Township funding to be designated for part of the purchase price for the property on the east side of Carter Road;

WHEREAS, Mercer County will provide additional funding to the New Jersey Conservation Foundation in the amount of \$1,500,000 from the County’s Open Space, Recreation, and Farmland and Historic Preservation Trust Fund;

WHEREAS, the remaining \$2,000,000 of purchase price will be provided by the New Jersey Conservation Foundation through it fundraising efforts;

WHEREAS, fee simple title to the property to be acquired shall vest in the New Jersey Conservation Foundation with an undivided minority interest in Hopewell Township in an amount acceptable to Hopewell Township, and the property will be managed by the Foundation;

WHEREAS, the New Jersey Conservation Foundation and Hopewell Township agree that certain terms and restrictions shall apply to ownership and use of the property on the east side of Carter Road and the Foundation agrees to record a conservation easement against the property on the east side of Carter Road;

WHEREAS, a copy of the MPCF Agreement setting forth these and related provisions is attached to this Resolution;

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

1. The Mayor, with the attestation of the Clerk, is hereby authorized to enter into the proposed Multi-Party County Funding Agreement (MPCF Agreement) on behalf of the Borough of Pennington, subject only to approval of the Agreement as to form by the Borough Attorney;
2. A new paragraph is proposed that would provide that the Borough of Pennington shall be indemnified from and against all claims, costs, expenses including attorney’s fees, relating to the project, in a form acceptable to the Borough Attorney to make it consistent with the indemnification clause in paragraph 7 of the Multi-Party Financing Agreement.
3. The Mayor and Clerk are hereby further authorized to execute and deliver such documents as reasonably required to consummate and make effective the MPCF 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				absent

Council Member Ogren made a motion to approve Resolution 2013-11.7, second by Council Member Heinzel. Mr. Ogren stated that the Open Space Committee has reviewed this request and they recommend that Council join with the other entities in proceeding with the financing for this proposed acquisition. Mr. Ogren stated that the financing would be through grants from Mercer County. Mr. Ogren stated that Pennington Borough would be an applicant for a County grant and the funds would ultimately be turned over for acquisition of the property. Mr. Davy asked Mr. Ogren to clarify his comments. Mr. Ogren stated that the funds are available through the Municipal Assistance Program and the funds would come to the Borough and then the funds would go right back out for acquisition of the property. Mayor Persichilli stated that the County looks favorable on these multi-party agreements. Mrs. Dunn asked if we did not participate in this

proposal would the Borough have access to these funds. Mayor Persichilli stated we would not and it would make it difficult for the remaining parties to acquire the property.

Mr. Davy stated that the agreement refers to an amount that Hopewell Township would have to pay and then it also refers to a Pennington allocation. Mr. Davy stated that the agreement is confusing.

Mr. Griffiths stated that on page 5 of the agreement, there are several deed restrictions that pertain only to the east side of the property. Mr. Griffiths asked Mr. Bliss to clarify why the references are for the east side and do not include the west side of the property. Mr. Bliss asked Mr. Ogren to comment. Mr. Ogren stated that there is a practical reason and that is the \$2 million that the Township is contributing is authorized specifically for property on the east side and since our County Funds will be matched with that the County Funds are allocated for the east side, even though the west side is also part of the acquisition. Mr. Bliss stated that the east side is slated to be a park, but what is the proposal for the west side. Mr. Ogren stated that it is the same for both. Further discussion ensued regarding the deed restrictions. Mr. Bliss stated that the agreement does not indicate a dedication to Open Space. Mr. Ogren stated that this agreement does not address that, but there will be another agreement coming. Mr. Ogren stated that this agreement is a funding agreement with the County. Mr. Bliss stated that the Conservation Foundation could only purchase the property within its corporate purposes for use within its program and not for turn over for a profit.

Mr. Davy stated that on page 5, item 7 addresses indemnification. Mr. Davy asked if the idea is that we are using \$212,000 coming to us from the County that would be allocated to this project shouldn't that require that the Borough also be indemnified. Mr. Bliss stated that is a good question other than the fact that only Hopewell Township and MJCF will have title. Mr. Davy asked if that meant that no one could make a claim by virtue of the fact that we have indirectly some skin in the game. Mr. Bliss stated that if he were to draft the agreement from a Pennington Borough perspective or any of the other individual municipalities, he would want that language in the agreement. Mr. Bliss stated that it is harmless from everyone else's standpoint, but it gives the Borough extra assurance. Mr. Bliss stated that in the Resolution he made the agreement subject to approval by the Borough Attorney as to form. Mr. Bliss stated that is difficult to review things thoroughly when they are received a day before the packages have to go out. Mr. Bliss stated that if there is this kind of sentiment among the other municipalities then there is reason to insert a provision. Mr. Davy asked if item 8 addresses his concern. Mr. Bliss stated it does but if Council wants belt and suspenders on this then he would add language to the agreement. Mr. Bliss stated that item 8 mitigates that just because the Borough is helping with the funding, we are not considered a partner in the enterprise.

Mr. Bliss stated that if we had the language that required them to indemnify and defend then for example if a suit comes in that requires a lawyer, they would provide Counsel. Mayor Persichilli asked if we could hold off signing the agreement until these concerns are addressed.

Mr. Griffiths stated that there is still the confusion between the east and west side of the property. Mr. Ogren explained that this agreement is a funding agreement and the funding that will be provided doesn't cover both sides and only covers some lots on the east side. Mr. Ogren stated that the west side will still be acquired and preserved but for funding purposes this agreement refers to the east side. Mr. Ogren stated that the lots and the County funding are for the east side. Mr. Griffiths stated that the agreement is inconsistent and there is an omission of the west side in the deed restrictions. Mr. Davy stated that he was not concerned about that so much as it is their agreement; he just wants to make sure that Pennington Borough is protected and he thinks we are with item 8, but we should ask to be further indemnified. Mr. Bliss stated that the indemnification should go not just to liability, but also to attorney's fees.

Mrs. Heinzl asked if Council could agree to sign the agreement once the indemnification issue is resolved. Mr. Bliss stated that Council could approve the resolution subject to insertion of language that would require indemnification of Pennington Borough and defense of Pennington Borough from and against any and all liabilities.

Mrs. Heinzl asked what diversion means on page 5 where it refers to "diversion if the property is not subject to Green Acres restrictions". Mr. Bliss stated that diversion which would be for use for some other purpose than contemplated by the agreement. Mr. Bliss stated that he would think that it is barred by the conservation easement, but if the owner of the property agrees to a conservation easement there has to be a process that would make sure that the overall inventory of Open Space is not reduced as a result of any diversion. Mr. Ogren stated that Green Acres requires that if Green Acres funded property is diverted to some other use, then there needs to be compensation by preservation of some other property. Mr. Ogren stated that there are no Green Acres funds associated with this acquisition so the County's diversion process would be followed.

Mr. Bliss proposed that a new paragraph be inserted at the discretion of the lead Counsel that would provide that the Borough of Pennington shall be indemnified from and against all claims, costs, expenses including attorney's fees relating to the project with authorization for Mr. Bliss to fill that out in form to make it consistent with the other indemnification clause in paragraph seven. Mr. Bliss stated that the idea being that the agreement will hold the Borough harmless from any exposure in relation to the property including attorney's fees. Upon a roll call vote all members present voted in favor of the resolution and agreement as amended.

**Borough of Pennington
Resolution #2013 - 11.8**

RESOLUTION AUTHORIZING BUDGET TRANSFERS

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

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

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

NOW, THEREFORE, BE IT RESOLVED, by the Borough Council of the Borough of Pennington that transfers be made between the following year 2012 budget appropriations:

<u>Appropriations:</u>	<u>To:</u>	<u>From:</u>
LOSAP	\$ 700.00	
Police – Other Expense		\$ 700.00
Total Current Fund	\$ 700.00	\$ 700.00

Record of Council Vote on Passage

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

Council Member Griffiths made a motion to approve Resolution 2013-11.8, second by Council Member Dunn with all members present voting in favor.

Resolution for Reconsideration as per Borough Attorney

**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			

This is to certify that the foregoing is a true copy of a Resolution adopted by the Borough Council of the Borough of Pennington at a meeting on October 7, 2013.

Mr. Bliss stated that at the conclusion of the last meeting it was observed that notwithstanding the fact that the Borough is entering into a five year agreement that, one of the Council Members asked if the agreement could be terminated at any time. Mr. Bliss stated that at the time he gave a quick response that upon reflection he regrets giving because he feels that Council should understand the implications of entering into a five year agreement. Mr. Bliss stated that he has not prepared a legal position for terminating this agreement mid-term, but as a practical matter there are a number of things that motivate against that, one of which is that it is a five year term that we are promising to abide by. Mr. Bliss stated that the Mercer County Improvement Authority goes out to bid for these services based on certain flow calculations that have to do with the number of participating municipalities and the statute overall favors stable relationships and it is one of the reasons that the Solid Waste Management Act exists. Mr. Bliss stated that with that said, there is an agreement here that says if you fail to abide by the agreement it will be terminated with no further discussion as to the implications of termination. Mr. Bliss stated that as a practical matter, this agreement has to be subject to the realities of the marketplace and the MCIA thinks it has favorable rates based on five year participations by municipalities, nonetheless, if in fact a municipality can do better, the MCIA would be hard pressed to keep the municipality in and there is a mechanism in the MCIA contract that would permit adjustment. Mr. Bliss stated that he just wanted to make sure that when Council voted on the Resolution that the vote was not based on his comments from the last meeting.

Mayor Persichilli stated that the reason that he brought this up was that he has been told by other municipalities that there may be cheaper vendors out there. Mayor Persichilli stated that there was not enough time to look into it for this time, but during the five year agreement period it might be a good idea to consider looking into other options to see if there could be a cost savings for next time.

Mayor Persichilli stated that Borough Council voted on the resolution at the last meeting, but he asked that the agreement not be delivered to the County to provide further discussion. Council agreed to stay with this agreement for the contract period, but in the meantime look into other options.

Council Discussion

Library Request for 2012 Unexpended Funds – Mrs. Sterling stated that at the last meeting Borough Council voted to return the unexpended funds from 2012 to the Library. Mrs. Sterling stated that there was a small amount that was in question that was encumbered but not expended. Mrs. Sterling stated that since the last meeting, we have resolved the items that were encumbered so the amount that is due to the library is actually \$5,538.81 and so rather than cut two checks one for the approved amount and one for the additional amount, she wanted Council to be aware of the final amount due to the library. Mrs. Sterling stated that Council should be aware that the Library has not remitted the \$4,000 allocation for 2013. Mrs. Heinzel stated that she would follow up with Mrs. Sterling in the next couple days to come up with an invoice to submit to the Library for approval.

Letter from Roberts Engineering – Downtown Streetscape Project – Mr. Bliss stated that there are two parts to this discussion, one is a request for additional fees, which would best be discussed in Closed Session and the other is the change order which can be discussed now.

Mr. Ogren stated that several letters have been received from Roberts Engineering. Mr. Ogren stated that two of the letters have to do with the improvements and the Public Works Committee has met to discuss the improvements. Mr. Ogren stated that one of the letters indicated that because of possible tripping hazards with the step that was installed we should consider installing chains between the bollards. Mr. Ogren stated that the committee discussed this and at this point they would like to hold off on that for now and consider the chains at a later date. Mr. Ogren stated that in a handout that he provided to Council he has provided a breakdown of costs for additional items and one of those items is the chains. Mr. Ogren stated that the contractor on the job will not do the work as it was not part of the original project.

Mr. Ogren stated that the other area of concern is the southwest corner of Main and Delaware where the Village Salon is located. Mr. Ogren stated that there are two areas that the Public Works Committee discussed; one is the grass area in front of Village Salon where pavers were not installed. Mr. Ogren stated that if pavers had been installed the slope of the sidewalk would exceed the two percent maximum slope that DOT requires. Mr. Ogren stated that the committee discussed installing pavers in that area, not as part of the

sidewalk, but as a bicycle storage area. Mr. Ogren stated that bollard type bike racks are available and what the committee is proposing is that pavers and three bike rack bollards be installed. Mr. Ogren stated that the second concern at that area is the step in front of Village Salon which could also be a tripping hazard. Mr. Ogren stated that the committee recommends installation of planters with boxwoods along the step.

Mr. Ogren stated that the committee is also proposing the installation of four additional bollards along Main Street so that there won't be long stretches of chains. Mrs. Dunn stated that there will be openings along Main Street where people who park along the street will be able to gain access to the stores without having to walk to either corner. Mrs. Dunn stated that once the bollards and the lampposts are installed it will be much easier to see how the chains will look.

Mr. Ogren stated that there are two things to consider, one is which items Council wants to proceed with and the other is who will be doing the work. Mr. Ogren stated that the contractor is only willing to do the brick pavers and the additional bollards. Mr. Ogren stated that the problem with that is there is a long lead time for delivery once the order is placed which would push close out of the project until the middle of January. Mr. Ogren stated that the alternative is to close out the project with this contractor and either hire another contractor or have public works do the work. Mr. Ogren stated that the items should be ordered given the lead time for delivery.

Mr. Ogren stated that there may be some credit coming because the County has agreed to the striping and they might agree to paint the crosswalks. Mr. Ogren stated that there could also be credit from the contractor for quantities. Mr. Matheny stated that he spoke to someone at the County and the striping should be done by the end of this week if not by next week.

Mrs. Heinzl asked if the lampposts will be installed in time for the Holiday Walk. Mr. Matheny stated that they should be.

Mayor Persichilli asked if a vote is needed to proceed with this. Mr. Bliss stated that a vote is needed, but more importantly a resolution is needed with regard to what items are covered, total cost, and available funds. Mr. Davy suggested moving forward with closing out the project. Mr. Matheny stated that there are a number of things that still need to be completed, a punch list needs to be made up and inspections have to be done. Mrs. Heinzl stated that maybe more information needs to be gathered and this could be resolved at a special meeting once all the facts were gathered. Mr. Ogren stated that his numbers are estimates but they won't be that much different.

Mr. Bliss asked if an agreement was reached as to whether all the items presented are to be done. Mr. Bliss stated that it sounds like the contractor is not going to do the additional work. Mr. Bliss stated that the proposal is that first the contract with the existing contractor will be closed out and two the means will be found to purchase and install the proposed six items totaling \$7,452.00 subject only to availability of funds within the capital ordinance. Mr. Bliss stated that finally the understanding is that there will be a change order that would reduce the contractor's price by up to \$4,500 for the crosswalk/striping and approximately \$4,000 for lower quantities. Mr. Ogren stated that the \$7,452 is not the final number as it does not include shipping or installation.

Mr. Bliss stated that there are a couple of things in play with this, one is the additional inspection fees that are unknown from September 27th going forward and then we have the potential reduction in contract price for quantities. Mr. Bliss stated that he thinks that more homework needs to be done before proceeding and maybe a special meeting would be better. Mr. Ogren asked what else is needed. Mr. Bliss stated that the fees issue needs to be straightened out. Mr. Davy stated that these additional items don't have anything to do with the additional fees. Mr. Davy stated that we can proceed with getting quotations and issuing purchase orders against the ordinance. Mr. Bliss stated that he does not know the answers to questions being raised and he does not feel comfortable pushing forward on this. Discussion took place with regard to why a resolution is needed as opposed to getting quotes and issuing purchase orders. Mr. Bliss stated that what puzzles him is that Mr. Ogren says these are all small amounts, but they are all material costs and we don't have the labor and shipping costs. Mr. Griffiths stated that to be consistent Council has always awarded by resolution and agreed as a body so that there is a proper paper trail. Mr. Ogren stated that his concern is the lead time for the bollards and bike racks and he would not want to wait for the December meeting. Mr. Bliss did not have a problem with gathering information and holding a special meeting if that can be done. Discussion took place as to whether certain items could be ordered to get the ball rolling and deal with the unknown costs at another time. Mr. Matheny suggested a verbal resolution to authorize a not to exceed amount. Mr. Bliss recited the following resolution, "it is hereby resolved that Borough Council authorizes the expenditure of up to \$15,000 for the items listed on the Downtown Streetscape Project Proposed Additional Items totaling an estimated cost of \$7,452.00 before labor and shipping, if the proposed additional items can be acquired shipped and installed within the \$15,000, there need be no further action by Council. All transactions to be conducted in compliance with the Local Public Contracts Law in terms of obtaining alternative quotes and the like". Council Member Ogren made a motion to approve the resolution, second by Council Member Griffiths with all members present voting in favor.

Public Works Laborer - Mr. Matheny stated that council members have a copy of a memo explaining the process undertaken to hire two new public works laborers. Mr. Matheny stated that originally they were looking to fill a vacancy and in the meantime, Clark Sabo resigned resulting in the hiring of two people instead of one. Mr. Matheny stated that we also are aware that Mr. Loveman will be retiring at the end of the year and so the process will be ongoing to fill that position as well.

Professional Reports

Mr. Bliss requested a closed session.

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.

Closed Session

AT, 8:51 PM, BE IT RESOLVED, that Mayor and Council shall hereby convene in closed session for the
purposes of discussing a subject or subjects permitted to be discussed in closed session by the Open Public
Meetings Act, to wit:

Potential Litigation – A & A Curbing
Shared Services – Hopewell Township

Open Session

AT, 9:32 PM, Mayor and Council returned to open session. Council Member Ogren made a motion to
adjourn the meeting, second by Council Member Griffiths.

Respectfully submitted,

Elizabeth Sterling
Borough Clerk