

**Pennington Borough Council  
Regular Meeting – December 2, 2013**

Mayor Persichilli called the Regular Meeting of the Borough Council to order at 7:04 pm. Borough Clerk Betty Sterling called the roll; all members were present.

Also present were Borough Administrator, Timothy Matheny, Public Works Superintendent Jeff Wittkop, 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.

**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.

**Approval of Minutes**

Council Member Heinzl made a motion to approve the minutes of the November 4, 2013 Regular Meeting, second by Council Member Dunn with all members present voting in favor with the exception of Council Member Tucker who abstained.

**Committee Reports**

**Planning & Zoning / Environmental Commission / Library** – Mrs. Heinzl reported that the Library Board met and talked about programming. Mrs. Heinzl stated that the Library will have a traveling zoo for the Holiday Walk this year. Mrs. Heinzl stated that the Library will be having an adopt a book tree as well and they are hoping that people will come for the zoo and adopt a book. Mrs. Heinzl stated that January programming will include a new program called Click it for Babies to knit hats for babies. Mrs. Heinzl stated that the Board discussed the facilities renovation which consists of three elements. Mrs. Heinzl stated that the first part is the new chairs that will be near the clock and they are scheduled for delivery in February. Mrs. Heinzl stated that the second feature will be conversion of the conference room to a multi-purpose room. Mrs. Heinzl stated that the third feature will be new shelving in the children's area and at the front of the library where new books are. Mrs. Heinzl stated that there will be a multi-media case and a custom computer and display unit. Mrs. Heinzl stated that a lot of this work has been done under State Contract enabling the Library to save money.

Mrs. Heinzl stated that the Library held a Barnes and Noble book fair sponsored by the Friends of the Public Library and they are planning to have this event again next year.

Mrs. Heinzl stated that there are no vacancies on the Library Board for the coming year.

Mrs. Heinzl stated that the Planning Board continued their hearing on the Pennington School application. Mrs. Heinzl stated that the applicant did address a lot of the concerns expressed by the Historic Preservation Commission as well as those expressed by the Planning Board at the first hearing. Mrs. Heinzl stated that the most significant change is the new location of the Lowellden Building which will be farther back from the road. This change will save some of the trees which was an important issue for many of the board members. Mrs. Heinzl stated that both the Historic Preservation Commission and the Planning Board felt that the new Humanities Building was rather imposing on the original submission and so significant changes have been made to the appearance of the building on the side facing Delaware Avenue. Mrs. Heinzl reviewed some of the other changes that were made to both the Humanities Building and Lowellden Building that will definitely make the buildings more appealing. Mrs. Heinzl stated that the Board did approve the application.

Mrs. Heinzl stated that the Board also heard an application for 403 Burd Street for a rear addition and a front porch. Mrs. Heinzl state that the application was approved by the Board.

Mrs. Heinzl stated that the Board also considered an ordinance amending Chapter 215, which will be discussed later on in the meeting.

Mrs. Heinzl stated that the Environmental Commission met and honored William Reuter who has served many years on the Environmental Commission among other things. Mrs. Heinzl stated that the Environmental Commission had many questions with regard to the Pennington School application but after some discussion they had no exceptions to the plans as presented. Mrs. Heinzl stated that the Green Team will be holding a styrofoam collection in February and she will have more information on that in January. Mrs. Heinzl stated that a report was heard from the Pennington Farmers Market which had their best season to date. Mrs. Heinzl stated that average attendance each Saturday was around 260 people. Mrs. Heinzl stated that finally they heard a presentation from John Jackson regarding Open Space.

**Public Works/Shade Tree** – Mr. Ogren reported that the Shade Tree Commission met with the primary topic being placing an order for new trees to be planted in the spring.

Mr. Ogren stated that the Public Works Committee did not have a formal meeting but members of the committee informally discussed the installation of chains between the bollards on Main Street. Mr. Ogren stated that the consensus of the Public Works Committee is that chains should be installed. Mr. Ogren stated that Council can discuss this further later in the meeting as there is a resolution dealing with the Streetscape.

Mr. Ogren stated that he has been sending e-mails fast and furious to PSE&G to try and get the decorative streetlights installed before the Holiday Walk.

**Personnel/Parks and Recreation /Economic Development** – Mr. Davy stated that the Personnel Committee met and they are getting close to making a recommendation for the Public Works Assistant Superintendent position. Mr. Davy stated that he would like to get a sense from Council of how they would like to proceed from this point. Mr. Davy stated that they are planning to do a second round of interviews and check references on two very strong candidates and possibly a third. Mr. Davy stated that the committee would like to find out if Council would like to interview the top candidates or if they would prefer that the Personnel Committee conduct the interviews and make a recommendation.

Mayor Persichilli stated that he does not think that there is a need for Council to get involved and the people most involved with the position are already involved in the process. Mayor Persichilli asked Council for their input and everyone agreed that the Personnel Committee should proceed with the second round of interviews and make a recommendation to Council.

Mr. Davy stated that he met with the Pennington Day Committee and they are interested in forming a cooperative relationship with the Borough regarding the funds that they collect for Pennington Day. Mr. Davy stated that what the committee would like to do is work with Borough Council to determine a community need that could be funded. Mayor Persichilli stated that he also had a discussion with the committee and the feeling is that they would like to keep the funds in town.

Mr. Davy stated that Council has information on a piece of playground equipment for Sked Street Park and he would like to request use of Open Space Funds for the purchase. Mr. Davy stated that the cost of the unit is \$7293.73 which includes an end of year discount and installation is \$2625.00 bringing the total cost to \$9918.73. Mr. Davy stated that the Parks and Recreation Committee did a lot of research on this purchase and they have looked at many other types of equipment. Mr. Davy asked if Council would be inclined to authorize the purchase tonight so that we don't lose the end of year discount. Mr. Bliss stated that an oral resolution could be done and then ratified at the next meeting. Mayor Persichilli asked if the Open Space Committee has been consulted on the use of funds for this purchase and if not they should at least be made aware of the purchase. Mrs. Heinzl suggested that Council vote on the request with the condition that the Open Space Committee be made aware of the purchase. Mr. Griffiths stated that he would like to see the Parks and Recreation Committee look into upgrading equipment at Kunkel Park.

Mr. Bliss dictated an oral resolution as follows: Be it resolved by Borough Council that the purchase of a new play set for Sked Street Park is hereby authorized from Ultra Play of Spring Lake, NJ under State Contract #A81411 for the price of \$7,293.73 plus installation of \$2,625.00 for a total cost of \$9,918.73 and such additional amounts as required to expedite the purchase. Mr. Davy stated that the equipment is more of a play set and not a slide. Mr. Davy also stated that Ultra Play is not the installer and the company doing the installation should be referenced. Mr. Bliss added the following language: Be it further resolved that the installation at a cost of \$2,625.00 is hereby authorized to be obtained from Currie Grove of Stowe, Pennsylvania. All subject to the notification of the Open Space Committee, the funds in question to come from the Open Space Fund. Council Member Davy made a motion to approve the resolution, second by Council Member Tucker with all members present voting in favor.

**Public Safety/Senior Services** – Mr. Tucker stated that Sgt. Friedman provided the statistics for the month of December. Mr. Tucker stated that moving forward Mr. Matheny has prepared language for an advertisement for a fifth police officer. Mr. Tucker stated that to date no responses have come in. Mr. Tucker stated that the Borough Administrator is working on locating a new police vehicle.

Mr. Tucker stated that Council also has a report from Abigail Waugh with regard to Senior Services. Mr. Tucker stated that Mayor Persichilli has written a letter to Hopewell Township Administrator asking that Pennington Borough be involved in the plans for the proposed Senior Center. Mr. Tucker stated that several tours of the site have been held and representatives from each of the municipalities have had the opportunity to visit and ask questions. Mr. Tucker stated that with the three municipalities working together on the project there is a \$1.5 million Mercer County Grant towards renovations of the building that would become available. Mr. Tucker stated that the Senior Advisory Board is strongly

recommending that the three municipalities work together on this project.

**Finance** – Mr. Griffiths stated that a meeting is scheduled for December 5<sup>th</sup> to look at the Water/Sewer Capital Fund so that we will be in a position to paint the water tower next year. Mr. Griffiths stated that receipts of reimbursements for older grant projects have been received and the committee will review other grants and also General Capital projects. Mr. Griffiths stated that water usage is down again which affects billing amounts. Mr. Griffiths stated that he is concerned about the affect this will have on next year’s budget with regard to surplus. A brief discussion took place with regard to the difference between water pumped and water billed.

**Historic Preservation** – Mrs. Dunn stated that there were no applications so the Historic Preservation Commission did not meet. Mrs. Dunn stated that there are three commission members with terms that are expiring and they have all expressed an interest in continuing on the Board.

**New Business**

**Borough of Pennington  
Resolution #2013 – 12.2**

**AUTHORIZING PAYMENT OF BILLS**

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

**NOW, THEREFORE BE IT RESOLVED**, by the Mayor and Council of the Borough of Pennington that the bills be paid on audit and approval of the Mayor, the Appropriate Council Member and the Treasurer in the amount of \$ 1,241,055.98 from the following accounts:

Current	\$ 1,026,880.96
W/S Operating	\$ 31,189.45
Open Space Trust	\$ 177,440.45
Water/Sewer Capital	\$ 210.00
Developer’s Escrow	\$ 5,135.12
Other Trust	\$ 200.00
<b>TOTAL</b>	<b>\$ 1,241,055.98</b>

**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	S			
Griffiths	M				Tucker	X			

Council Member Griffiths made a motion to approve Resolution 2013-12-2, second by Council Member Ogren with all members present voting in favor.

**Borough of Pennington  
Resolution #2013 – 12.3**

**RESOLUTION AUTHORIZING REFUND OF REDEMPTION  
MONIES TO OUTSIDE LIENHOLDER**

**WHEREAS**, at the Borough Tax Sale held on October 23, 2013, a lien was sold on Block 503.06, Lot 3.04, also known as 12 South Main Street, Unit 1L, Pennington, NJ, for 2012 delinquent water and sewer charges; and,

**WHEREAS**, this lien, known as Tax Sale Certificate #13-00001, was sold to Hussain Burhanpurwala, for 18.00%; and,

**WHEREAS**, Investors Bank c/o Justin & Megan Braun, owners, has effected redemption of Certificate #13-00001 in the amount of \$409.35.

**NOW, THEREFORE, BE IT RESOLVED**, that the Treasurer be authorized to issue a check in the amount of \$409.35, payable to Hussain Burhanpurwala, 553 Marc Drive, North Brunswick, NJ 08902 for the redemption of Tax Sale Certificate #13-00001.

**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 2013-2.3, second by Council Member Tucker with all members present voting in favor.

**Borough of Pennington  
Resolution #2013 – 12.4**

**RESOLUTION AUTHORIZING REFUND OF REDEMPTION  
MONIES TO OUTSIDE LIENHOLDER**

**WHEREAS**, at the Borough Tax Sale held on October 17, 2012, a lien was sold on Block 505, Lot 12, also known as 110 South Main Street, Pennington, NJ, for 2011 delinquent water and sewer charges; and,

**WHEREAS**, this lien, known as Tax Sale Certificate #12-00003, was sold to Farrell Delman, for 0%, redemption fee and a \$300.00 premium: and,

**WHEREAS**, Wells Fargo Home Mortgage c/o Susan Miller, owner, has effected redemption of Certificate #12-00003 in the amount of \$1,295.08.

**NOW, THEREFORE, BE IT RESOLVED**, that the Treasurer be authorized to issue a check in the amount of \$1,295.08, payable to Farrell Delman, 102 Bear Brook Road, Princeton, NJ 08540 for the redemption of Tax Sale Certificate #12-00003.

**BE IT FURTHER RESOLVED**, that the Treasurer be authorized to issue a check in the amount of \$300.00 (Premium) to the aforementioned lienholder.

**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 2013-12.4, second by Council Member Tucker with all members present voting in favor.

**Borough of Pennington  
Resolution #2013-12.5**

**RESOLUTION FOR RENEWAL OF MEMBERSHIP IN THE  
MID JERSEY MUNICIPAL JOINT INSURANCE FUND**

**WHEREAS**, the Borough of Pennington is a member of the Mid Jersey Municipal Joint Insurance Fund; and

**WHEREAS**, said membership terminates as of January 1, 2014\*, unless earlier renewed by agreement between the Municipality and the Fund; and

**WHEREAS**, the Municipality desires to renew said membership;

**NOW THEREFORE, BE IT RESOLVED**, as follows:

1. The Borough of Pennington agrees to renew its membership in the Mid Jersey Municipal Joint Insurance Fund for a period of three (3) years beginning January 1, 2014, and ending January 1, 2017\*, and to be subject to the bylaws, rules and regulations, coverages, and operating procedures thereof as presently existing or as modified from time to time by lawful act of the Fund.
2. The Mayor and the Borough Clerk shall be and hereby are authorized to execute the

agreement to renew membership annexed hereto and made a part hereof and to deliver same to the Mid Jersey Municipal Joint Insurance Fund evidencing the Borough's intention to renew its membership.

\*12.01 a.m.

**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 2013-12.5, second by Council Member Heinzel with all members present voting in favor.

**BOROUGH OF PENNINGTON  
RESOLUTION #2013-12.6**

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

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

**WHEREAS**, the aforesaid lease is now proposed to be renewed for the term of two years beginning January 1, 2014 and ending December 31, 2015 at the rate of \$10,000.00 for 2014 and \$10,500.00 for 2015, payable quarterly;

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

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

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

**NOW, THEREFORE, BE IT RESOLVED**, by Borough Council of the Borough of Pennington, that the Mayor, with the attestation of the Clerk, is hereby authorized to enter into the aforesaid Lease, of which a copy is attached, on behalf of the Borough.

**Record of Council Vote on Passage**

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

Council Member Tucker made a motion to approve Resolution 2013-12.6, second by Council Member Heinzel with all members present voting in favor.

Mayor Persichilli stated that Resolution 2013-12.7 will be considered after the closed session.

**BOROUGH OF PENNINGTON  
RESOLUTION 2013-12.8**

**RESOLUTION AWARDING CONTRACT FOR  
THE 2013 ROAD IMPROVEMENT PROGRAM**

**WHEREAS**, Borough Council of the Borough of Pennington has authorized advertisement for bids for the project known as 2013 Road Improvement Program (REG File No. PEN3705);

**WHEREAS**, a total of seven (7) bidders obtained plans and specifications for the project and four (4) contractors submitted bids, which were opened on November 21, 2013;

**WHEREAS**, the bid of Top Line Construction Corporation of Somerville, NJ was the low bid;

**WHEREAS**, the Borough Engineer has reviewed the bid package submitted by Top Line Construction Corporation and has determined that the bid conforms with specifications, that Top Line Construction Corporation has the ability to perform the work, and that subject to review and approval of the bidder's documents by the Borough Attorney, Top Line Construction Corporation should be awarded the contract as the lowest responsible bidder;

**WHEREAS**, the Borough Attorney has also reviewed the bid package of Top Line Construction Corporation and has determined that required documentation has been provided with the bid subject to submission of contract documents, performance and payment bonds and insurance certificate which are required to be submitted after award in conformance with the bid specifications;

**WHEREAS**, the advertisement for bids included two (2) bid alternates, on which the bidders also submitted bids, and Top Line Construction Corporation remains the low bidder in all cases in which an alternate or any combination of alternates is added to the base bid;

**WHEREAS**, this project has received funding from the New Jersey Department of Transportation Trust Fund program for a total amount of \$249,500., and the total base bid of Top Line Construction Corporation is \$231,239.09, approximately \$18,260.91 below the grant amount;

**WHEREAS**, Borough Council has determined that a contract be awarded to Top Line Construction Corporation for the base bid price of \$231,239.09, plus alternate 1 (additional milling and paving at the intersection of West Curlis Avenue and Burd Street) in the amount of \$2,052.40, alternate 2 (installation of concrete curb stops at the parking stalls on the north side of West Curlis Avenue) in the amount of \$1,176.07, for a total contract price of \$234,467.56;

**WHEREAS**, the Chief Financial Officer of the Borough has certified that funds are available for the project in Account # G-02-44-953-000-250;

**WHEREAS**, award of this contract is subject to the approval of the New Jersey Department of Transportation;

**WHEREAS**, a summary of the bids is available in the office of the Borough Clerk;

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

1. The contract entitled "2013 Road Improvement Program" is hereby awarded to Top Line Construction Corporation of Somerville, New Jersey for the total contract price of \$234,467.56;
2. The Mayor, with the attestation of the Borough Clerk, is hereby authorized to execute and enter into the aforesaid contract on behalf of the Borough upon approval of same 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	S				Ogren	M			
Griffiths	X				Tucker	X			

Council Member Ogren made a motion to approve Resolution 2013-12.8, second by Council Member Dunn with all members present voting in favor.

**BOROUGH OF PENNINGTON  
RESOLUTION NO. 2013- 12.9**

**RESOLUTION AUTHORIZING CHANGE ORDER  
NO. 1 FOR EXTENSION OF TIME UNDER CONTRACT  
WITH DESANTIS CONSTRUCTION FOR THE PENNINGTON EXTENSION TO THE  
LAWRENCE-HOPEWELL TRAIL**

**WHEREAS**, Van Cleef Engineering Associates has recommended a certain Change Order No. 1 with regard to the Contract between the Borough of Pennington and DeSantis Construction for the project known as Lawrence-Hopewell Trail, Pennington Extension (VCEA File No. 7071);

**WHEREAS**, Change Order No. 1 would extend the time specified in the Contract for completion of the project as explained in the attached memorandum and related documents from Herbert J. Seeburger, Jr., PE, CME dated November 25, 2013;

**WHEREAS**, the proposed extension would include a total of 49 additional calendar days, bringing the substantial completion date of the Contract to December 24, 2013 and the final completion date to February 22, 2014;

**WHEREAS**, the proposed Change Order No. 1 does not require the expenditure of additional funds for the project;

**NOW, THEREFORE, BE IT RESOLVED**, by the Borough Council of the Borough of Pennington, that the aforesaid Change Order No. 1 extending the time for DeSantis Construction to complete the Contract, as set forth above, is hereby approved.

**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 12.9, second by Council Member Heinzel with all members present voting in favor.

**BOROUGH OF PENNINGTON  
RESOLUTION NO. 2013- 12.10**

**RESOLUTION AUTHORIZING PURCHASE OF ADDITIONAL ITEMS AND CONTRACTING FOR ADDITIONAL WORK RELATING TO IMPROVEMENTS TO THE DOWNTOWN AREA**

**WHEREAS**, at its regular meeting on November 4, 2013, Borough Council authorized the expenditure of up to \$15,000 for purchase of materials and contracting for work to make additional improvements in the Borough's Downtown Area at Main Street and Delaware Avenue;

**WHEREAS**, the Borough Engineer subsequently prepared and circulated a request for quotes together with specifications relating to the authorized additional purchases and work, a copy of which is attached to this Resolution;

**WHEREAS**, pursuant to the Engineer's request, quotes were to be submitted to the Engineer no later than 3 pm on December 2, 2013;

**WHEREAS**, the quotes received by the Engineer as of that date and time are also attached to this Resolution;

**WHEREAS**, the Borough Engineer recommends acceptance of the attached quotation from Greenleaf Lawn and Landscape, Inc. to a maximum of \$15,000 with deletion of Item 5, Planters if necessary;

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

1. The quote recommended for acceptance by the Borough Engineer as set forth above is hereby accepted.
2. The Mayor, Borough Administrator and Borough Clerk are hereby respectively authorized to take such steps as are necessary, including but not limited to the issuance of purchase orders, to obtain the materials and engage the work pursuant to the accepted quotes and the related specifications prepared by the Borough Engineer.

**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	S			
Griffiths	X				Tucker	X			

Council Member Dunn made a motion to approve Resolution 2013-12.10, second by Council Member Ogren. Mr. Ogren stated that the quotes were due today and only one was received and that quote exceeds the \$15,000 that is cited in the Resolution. Mr. Ogren stated that one of two things has to happen and that is either increase the \$15,000 or drop out one of the items on the quote. Mr. Ogren stated that the cost of the planters includes installation and there really is no installation involved. Mr. Ogren suggested that the Borough could order the planters separately and have the Public Works Department install them. Mrs. Dunn stated that the planters do not need to be bolted down as they will be filled with dirt and boxwoods. Mrs. Dunn stated that the boxwoods were not included in the quote so they will have to be ordered separately.

After some discussion with regard to the additional bollards and the installation of chains between the bollards and the planters, Council decided to ask Carmela Roberts to negotiate with the Contractor to see if they would be willing to do the work for \$15,000 and if not then eliminate the planters from the proposal. Mr. Bliss dictated a change to the Resolution to address the recommendation. Upon a roll call vote, all members present voted in favor of the Resolution as amended.

**Borough of Pennington  
Resolution #2013 – 12.11**

**RESOLUTION AUTHORIZING REFUND OF REDEMPTION  
MONIES TO OUTSIDE LIENHOLDER**

**WHEREAS**, at the Borough Tax Sale held on October 17, 2012, a lien was sold on Block 503.03, Lot 10, also known as 24 Academy Court, Pennington, NJ, for 2011 delinquent taxes; and,

**WHEREAS**, this lien, known as Tax Sale Certificate #12-00002, was sold to Vasyi or Maria Kavatsiuk, for 0%, redemption fee and a \$5,800.00 premium; and,

**WHEREAS**, John D. Rankin, Esq. c/o Wesley Jennings Hunt & Joseph Burle, owners, has effected redemption of Certificate #12-00002 in the amount of \$16,290.14.

**NOW, THEREFORE, BE IT RESOLVED**, that the Treasurer be authorized to issue a check in the amount of \$16,290.14, payable to Vasyi or Maria Kavatsiuk, 449 Mountain Avenue, Berkeley Heights, NY 07922 for the redemption of Tax Sale Certificate #12-00002.

**BE IT FURTHER RESOLVED**, that the Treasurer be authorized to issue a check in the amount of \$5,800.00 (Premium) to the aforementioned lienholder.

**Record of Council Vote on Passage**

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

Council Member Heinzel made a motion to approve Resolution 2013-12.11, second by Council Member Tucker with all members present voting in favor.

**Council Discussion**

**Proposed Amendment to the Zoning Ordinance** – Mr. Ogren stated that the Planning Board is proposing an amendment to the Zoning Ordinance based on recommendations provided last June by Maser Consulting. Mr. Ogren stated that the Planning Board has laid the groundwork for this already by revising the Master Plan to incorporate recommendations made by Maser Consulting. Mr. Ogren stated that the next step is implementation and that requires an ordinance amendment by Borough Council. Mr. Ogren stated that since he will not be on Council next year he wanted to give Council Members the opportunity to voice concerns and questions. Mr. Ogren took a few minutes and highlighted the proposed amendments. Mr. Ogren stated that the landfill site which is currently zoned residential would be changed to Business Highway. Mr. Ogren stated that there is also proposed a Business overlay zone for the entire area excluding the three commercial properties at the southwest corner. Mr. Ogren explained that the Business Overlay Zone has slightly different uses than the Business Highway Zone; it is more expansive allowing office space. Mr. Ogren stated that there prohibited uses which are listed in the ordinance. Mr. Ogren stated that in terms of the bulk standards they have been made more flexible, for example the setback has been shortened from 100 feet to 20 feet under the Business Overlay Zone. Mr. Ogren stated that what they have tried to do is make the property more flexible and encourage development of the site. Mr. Ogren reviewed a few other changes and stated that finally this amendment removes the Affordable Housing Overlay Zone that had been put on the landfill site. Mr. Ogren stated that what they have included as an alternative is that any development that includes residential space, which would be allowed on the second or third floor of a building, would be required to have twenty percent of the units be affordable. Mr. Ogren stated that the current buildings could be developed and reused for another purpose. Mr. Wittkop stated that the old office floods and has flooded on three occasions. Mr. Wittkop stated that the garage has also flooded on three occasions. Mr. Wittkop stated that the only developable pieces of property are the property on Broemel and the landfill. Mr. Wittkop stated that he did not understand, as a member of the community why everyone is disregarding the landfill when several years ago there was a very viable option of developing on top of the landfill and staying out of flood areas. Mayor Persichilli stated that what this ordinance would hopefully do would be to make the property more appealing to a developer and then the developer would have to decide what to do regarding flooding. Mr. Ogren stated that the Maser report refers to the footprint of the building. Mr. Wittkop stated that he understands that, but when the report was being done no one came to him and asked any questions and he would have thought that given his twenty two years' experience that someone would have come to him. Mr.

Wittkop stated that Council should consider taking a second look at the property because there are environmental issues. Mr. Davy stated that this amendment simply changes the zoning and no development is being proposed at this time.

**Comp-Time – Jeff Wittkop** - Council Member Tucker made a motion to approve payment of the comp time request, second by Council Member Dunn with all members present voting in favor.

### **Professional Reports**

Mr. Bliss requested a closed session.

Mr. Matheny stated that he received late today figures on the purchase of a police vehicle. Mr. Matheny stated that Sgt. Friedman and Officer Pinelli did the leg work. Mr. Matheny stated that Winner Ford has the State Contract for police vehicles. Mr. Matheny stated that they have a 2014 Ford Interceptor and the base price for the vehicle is \$24,600. Mr. Matheny stated that they will also outfit the vehicle with lights, etc. which would bring the total to \$30,444.64. Mr. Matheny stated that graphics and radios are not included in the purchase price; however the dealer would install the graphics and radio if we order them. Mr. Matheny stated that a three year lease purchase would amount to \$10,944.21 per year. Mr. Matheny stated that the Borough radios are outdated and eventually we will have to have digital radios. Mr. Matheny stated that if Hopewell Township goes digital at this point we would not have any radios that work. Mr. Matheny stated that the digital radios cost around \$1,800. Mr. Matheny stated that he asked Winner Ford to put a hold on the vehicle that they have in stock until after tonight's meeting. Mr. Matheny recommended that Council go forward with the purchase of this vehicle. Mr. Matheny stated that there have been some major expenses related to the vehicles that we have. Sgt. Friedman stated that presently the Borough has two 2006 vehicles, one 2009 vehicle and one 2012 vehicle. Sgt. Friedman stated that two vehicles required transmission work, two have received transcoolers, brakes are going and we are pumping money into old cars that have between 85,000 and 100,000 miles and a lot of hours. Sgt. Friedman stated that one of the 2006 vehicles is in need of transmission work and is effectively out of service. Sgt. Friedman stated that it hasn't been fixed as the plan was to trade this car in. Sgt. Friedman stated that the hours logged on the vehicles puts a lot of wear and tear on the vehicles. Some discussion took place to whether or not there were funds available in the 2013 budget to proceed.

Mr. Matheny stated that if Council wishes to proceed he would like to request a resolution to purchase the vehicle and any other items that may be required.

Mr. Bliss asked for documentation with the specifications for the vehicle. Mr. Bliss read the following Resolution into the record with the understanding that it will be ratified at the next meeting: Resolved that the following purchase is authorized; the purchase of one 2014 Ford Interceptor for use by the Pennington Borough Police Department as described in a document dated December 2, 2013 consisting of three pages, the front document being a letter from Anne Krevisten, Marketing Coordinator of Ford Credit to Rich Coyle of Haddenfield, Berlin Road, Cherry Hill, representing a Ford Credit municipal finance program quotation for the Borough of Pennington, the second page describing the base vehicle and the base price and the third page describing the additional equipment reaching a foot figure described as total vehicle and equipment of \$30,444.54. The purchase being authorized therefore amounting to \$30,444.54 from a State Contract identified in the documents as NJ Contract #82925 supplemented by NJ Contract #81336, 81300 and 81344. Council Member Tucker made a motion to approve the Resolution, second by Council Member Griffiths with all members present voting in favor.

Mr. Matheny stated that regarding the vehicle which is currently out of service, he would like Council to declare it as excess property and authorize a resolution to auction the vehicle. Mr. Matheny stated that there exists a means for municipalities to auction items on the internet through Municibid. Mr. Matheny stated that it is similar to e-bay where people can go on and bid on the item. Mr. Matheny stated that to go that route requires a resolution of Council authorizing the use of Municibid and also declaring the vehicle to be surplus property.

Mr. Bliss asked if that needed to be done now. Mr. Bliss stated that he would prefer to keep the window for oral resolutions open only slightly.

### **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, 8:40 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:

Contract – Borough Administrator  
Potential Litigation – A & A Curbing  
Potential Litigation – Epstein water issue

**Open Session**

AT, 10:10 PM, Mayor and Council returned to open session.

Mayor Persichilli read the following resolution by title.

**BOROUGH OF PENNINGTON  
RESOLUTION NO. 2013 - 12.7**

**RESOLUTION AUTHORIZING PAYMENT REQUEST NO. 4 TO A&A CURBING, INC. FOR  
WORK COMPLETED ON THE DOWNTOWN STREETSCAPE IMPROVEMENT PROJECT,  
SUBJECT TO WITHHOLDING FOR LIQUIDATED DAMAGES  
AND EXCESS INSPECTION FEES**

**WHEREAS**, A&A Curbing, Inc. (“A&A”) has applied for progress payment no. 4 for completion of certain work through November 22, 2013 pursuant to the contract for the Downtown Streetscape Improvement Project (Roberts Engineering Group, LLC, Project No. PEN3704) (“Contract”);

**WHEREAS**, the payment request by A&A, less two percent retainage, amounts to \$59,199.59;

**WHEREAS**, the Borough Engineer has reviewed this payment request and has conditionally approved payment subject to receipt of certified payrolls and the withholding of amounts for liquidated damages and excess inspection fees incurred by the Borough as the result of delay in completion of construction for which A&A is responsible;

**WHEREAS**, the Contract provides that failure to complete the work within the number of calendar days stated in the Notice to Proceed shall entitle the Borough to liquidated damages as set forth in the Contract Documents;

**WHEREAS**, the Notice to Proceed issued by Roberts Engineering provided for a start date of July 15, 2013 and completion of the project 75 calendar days later, on September 27, 2013, in conformance with the Contract Documents (Technical Specifications, Section 12);

**WHEREAS**, the liquidated damages amount provided for in the Contract Documents (Technical Specifications, Section 13) is \$600 per day for each calendar day A&A is in default to complete the Contract;

**WHEREAS**, as of November 22, 2013, A&A had failed to complete the Contract work as the result of its fault;

**WHEREAS**, the estimated liquidated damages owed to the Borough by A&A as of November 22, 2013 is \$33,600, subject to final determination upon consideration of all relevant factors and completion of the project;

**WHEREAS**, multiple deficiencies in A&A’s performance of the work, which caused the delay, resulted in increased costs to the Borough for inspection fees alone in the amount of \$11,412.50 prior to the scheduled completion date;

**WHEREAS**, the Contract Documents provide that if A&A exceeds the time allowed in the Contract specifications for completion of the Contract, it shall be held liable for inspection fees and associated costs incurred by the Borough for time in excess of that specified, and that all costs that the Borough incurs, above those allowed for in the contract time, will be deducted from monies due to A&A (Supplemental Conditions, SC-9.10);

**WHEREAS**, inspection fees and associated costs incurred by the Borough after the scheduled completion date amount to \$9,060.50 as of November 25, 2013;

**WHEREAS**, the withholding of liquidated damages in the amount of \$33,600.00 and the withholding of excess inspection costs after the scheduled date of completion in the amount of \$9,060.50, exclusive of all other costs and damages which may be due from A&A and without waiving or compromising any such amounts, yield a net payment due on this fourth payment request in the amount of \$16,539.09;

**WHEREAS**, this is a partial payment under the Contract;

**WHEREAS**, funds are available for this payment in Account No. G-022-44-951-000-250;

**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 \$16,539.09 is hereby authorized, subject to receipt of certified payroll forms.

**Record of Council Vote on Passage**

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

Council Member Heinzel made a motion to approve Resolution 2013-12.7, second by Council Member Dunn with all members present voting in favor.

Council Member Tucker made a motion to adjourn the meeting, second by Council Member Dunn.

Respectfully submitted,

Elizabeth Sterling  
Borough Clerk