

**Pennington Borough Council  
Regular Meeting – July 7, 2014**

Mayor Persichilli called the Regular Meeting of the Borough Council to order at 7:00 pm. Borough Clerk Betty Sterling called the roll with Council Members Davy, Griffiths, Marciante and Tucker in attendance. Mr. Lawver arrived just after the roll call and Mrs. Gnatt arrived at 7:40pm.

Also present were Borough Administrator Eileen Heinzl, Public Works Superintendent Jeff Wittkop, Assistant Superintendent of Public Works Rick Smith, Public Safety Director Bill Meytrott 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 was posted on the bulletin board in Borough Hall and on the Borough web-site according to the regulations of the Open Public Meetings Act.

Mayor Persichilli asked everyone to stand for the Flag Salute.

**Open to the Public – Agenda Items Only**

Mayor Persichilli read the following statement:

Meeting open to the public for comments on items on the agenda for which no public discussion is provided. In an effort to provide everyone interested an opportunity to address his or her comments to the Governing Body, a public comment time limit has been instituted for each speaker. **Please come forward and state your name and address for the record. Please limit comments to the Governing Body to a maximum of 3 minutes.**

Ms. Terry Evanko of 140 Woolsey Court and President of the Pennington Point Condominium Association, asked for an update on the proposed Senior Center on Scotch Road. Mayor Persichilli stated that he has not heard anything further from Hopewell Township.

**Mayor's Business**

Mayor Persichilli stated that there are several presentations on the agenda. Mayor Persichilli invited Mr. Bob Rushnak, Officer Doug Pinelli and Officer Daryl Burroughs to come forward. Mr. Rushnak was in attendance representing the Knights of Columbus. Mr. Rushnak stated that four years ago, the Hopewell Council of the Knights of Columbus decided to honor one police officer, one fire fighter and one EMT from the Hopewell Valley. Mr. Rushnak stated that he met with George Meyer, former Police Chief for Hopewell Township and Matt Martin, the Chief of Emergency Services to discuss whether it could be done. Mr. Rushnak stated that it was decided that the recipients would be selected by members of the Department where individuals served and that the award would be rotated between the district beginning with Pennington Fire and Rescue in the first year, Hopewell Borough in the second year and finally in the third year, Titusville. Mr. Rushnak stated that in each of the first three years, the Police Officer honored came from Hopewell Township. Mr. Rushnak gave an overview of the Knights of Columbus. Mr. Rushnak stated that in New Jersey there are over 350 individual councils with an assigned a district deputy who is a direct link to the Knights of Columbus State Council. Mr. Rushnak stated that their district deputy had the task of selecting which police officer would represent the Hopewell Council and after review of their past history and accomplishments two Pennington Officers were selected. Mr. Rushnak stated that the district deputy represents other areas and he then had to review other councils. Mr. Rushnak stated that after further review, the Pennington Police Officers were again selected. Mr. Rushnak stated that resumes were submitted to the Chairman of the State Knights of Columbus. Mr. Rushnak stated that after this long process, word came back to him that out two hometown heroes has been selected to be recognized by the Knights of Columbus as State Police Officers of the Year for the year 2014. Mr. Rushnak stated that the 2014 Shield Award Banquet will be held on October 28<sup>th</sup> at St. James Church Auditorium. Mr. Rushnak stated that Officer Pinelli and Officer Burroughs were recognized at the 2013 Shield Award Banquet held in October of 2013. Mr. Rushnak stated that Officer Pinelli and Officer Burroughs were recognized for their efforts in saving the life of an elderly man who was choking. Mr. Rushnak stated Sergeant Steve Friedman stated "that the man is alive today due to the training, expertise and professionalism of the two officers". Mr. Rushnak presented plaques on behalf of the members of his council to Officer Pinelli and Officer Burroughs indicating that they are State Police Officer of the year.

Mayor Persichilli read the following proclamation which was then presented to Mr. Murray Peyton for his years of service to the Borough.

**PROCLAMATION OF MAYOR AND COUNCIL  
RECOGNIZING AND HONORING  
MURRAY S. PEYTON**

**WHEREAS**; Murray S. Peyton has organized and overseen the annual Fourth of July Races for Pennington youth from 1988 until 2013 and has each year offered before the races a message about the meaning of Independence Day, and

**WHEREAS**, Mr. Peyton has given throughout the years countless hours of valuable service and encouragement to the youth of Pennington in the areas of track, field and recreation, including organizing The Junior Olympics with the Lion's Club as sponsor in the 1970s, organizing and running the "Run for Fun" races in the 1980s and serving as a judge at several Memorial Day parades in the 1990s; and

**WHEREAS**, Mr. Peyton has offered throughout his years as a Pennington resident, careful and thoughtful questions on issues concerning the Borough, its taxpayers and the Hopewell Valley School District and has served on several task forces and committees relating to such issues; and

**WHEREAS**, Mr. Peyton has worked tirelessly for the betterment of the Pennington community at large; and

**WHEREAS**, the Borough of Pennington highly respects those who never cease in their efforts to make their community a better place to live.

**NOW, THEREFORE, BE IT PROCLAIMED THAT**, the Mayor and Council of the Borough of Pennington hereby express gratitude and appreciation to Mr. Peyton on this 7th day of July, 2014.

Mayor Persichilli invited Mr. Peyton to come forward to accept the Proclamation. Mr. Peyton thanked Mayor and Council for the honor. Mr. Peyton stated that he has lived in Pennington for 46 years. Mr. Peyton stated that he is enjoying the community even more now that his daughter and son-in-law have moved to Pennington with their two daughters. Mr. Peyton stated that his son-in-law, Eric Kollevoll is already giving back to the community as a member of the Economic Development Commission and as a member of the Board of the Penn Brook Swim Club. Mr. Peyton stated that his quality of life here in Pennington has been enhanced by the Community Service Contributions of people like Ezra Bixby, Jim Loper, Dick Pratt, Bill Rockel, Bill Schluter, Bev Thurman, Lou Umshead, Dick Willever and Don Wright to name just a few. Mr. Peyton stated that he recalls, Jim Claire, Houston Landis, Ned Fletcher and Michelle Needham as recreation commission chairs who together with perhaps 100 or more volunteers over the past 25 years including, Bob Billmeier, Pat Brannigan and Ed McManimon who were in attendance. Mr. Peyton stated that these mentioned and many others made it possible for him to run the annual July 4<sup>th</sup> Races for our communities children.

Mr. Peyton stated that as he looks at the Borough Council today he sees Mayor Persichilli who has been serving not for the better part of a decade, Joseph Lawver just back for a second residency after relocating to Canada, Eileen Heinzl with at least a couple of terms under her belt, who is now serving as Borough Administrator and then there is Weed Tucker who was Mayor and is now back thirty years later serving as a Council Member. Mr. Peyton stated that there have been many examples of volunteerism that have inspired others like him to get up and get involved. Mr. Peyton thanked Mayor and Council for honoring him with this award. Mayor Persichilli presented a framed copy of the proclamation and a plaque generated by the Parks and Recreation commission.

Mayor Persichilli stated that the last presentation is to Mr. Jeffrey Wittkop. Mayor Persichilli stated that a proclamation was read at the last meeting. Mayor Persichilli presented a framed copy of the proclamation to Mr. Wittkop.

Mr. Wittkop stated that he would like to take a minute to thank Mayor and Council. Mr. Wittkop stated that he hoped everyone would come to the party in October. Mr. Wittkop stated that he would like to thank Betty and Mary for putting up with him for all these years. Mr. Wittkop stated that he would like to thank the men who have worked with him over the years including Archie Barksdale who took him under this wing when he first started. Mr. Wittkop thanked the guys that are working here today, Morris Fabian, Dave Stout, Jeremy Gutnecht, Chris Webb, Sal DiDonato and of course Ricky Smith. Mr. Wittkop stated that it is most important for him to point out that his success over the last 23 years is because of his wife who listened when he complained, made him meals at 10 or 11 o'clock at night and has stood by his side all this time.

Mayor Persichilli thanked Mr. Wittkop for working with the Borough during this transition period. Mayor Persichilli stated that over the past seven to eight months Mr. Wittkop has been very helpful with discussing issues that might come up. Mayor Persichilli thanked Mr. Wittkop for his years of service and stated that a party will be held in October.

**PROCLAMATION**  
**Recognizing and Honoring William Jeffrey Wittkop**

**Whereas**, William Jeffrey Wittkop joined the Pennington Department of Public Works in 1991 and rapidly rose through the ranks to become Superintendent of the Department and soon was wearing three hats as head of Public Works and the Water and Sewer Departments being certified to juggle all three positions with expertise and efficiency; and

**Whereas**, Jeff Wittkop, as he is known by all, in his early days served as a Special Police Officer and now is a longtime honorary member of the Pennington Fire Company helping to protect the people of Hopewell Valley; and

**Whereas**, Jeff Wittkop supervises a well-trained and dedicated staff as they efficiently and

effectively in a friendly and timely manner contribute to the quality of life we enjoy in Pennington collecting trash, chipping brush, clearing fallen limbs and trees, addressing sewer and water issues, maintaining our two clean and friendly parks enjoyed by many, especially children and maintaining our streets and sidewalks, and:

**Whereas**, under Jeff Wittkop's supervision, our DPW staff prepares for and cleans up after many public events from band concerts, parades, PB&PA Holiday Walk, attended by hundreds of folks, to Pennington Day with thousands of participants and visitors. The town is so clean shortly after these events that one would never realize they had happened that day, and;

**Whereas**, Jeff Wittkop and his DPW crew are at their very best during emergency situations no matter the season or event. There is no better example than when Hurricane Sandy rumbled north along the Eastern Seaboard and then crashed into Pennington on October 29, 2012. The DPW crew worked diligently around the clock constantly clearing debris, opening some streets to passage while closing others to keep folks safe from toppled trees, utility poles, and dangerous fallen electrical wires never missing a trash collection during the storm and the ensuing nor'easter which dropped five inches of snow in our area. Wittkop proclaimed, "I've never missed a trash collection in 21 years and this storm isn't stopping me now", and

**Whereas**, always being responsive to the concerns and interests of our citizens throughout his 22 year tenure from 1991 to 2014 Jeff Wittkop has worked tirelessly for the betterment of Pennington gaining the thanks, appreciation, and respect of a grateful community earning retirement from his long and faithful service to Pennington effective August 1, 2014.

**Now, therefore I, Anthony J. Persichilli, Mayor of the Borough of Pennington**, join Pennington Borough Council members James Davy, Deborah Gnat, Glen Griffiths, Joseph Lawver, Charles Marciante, Edwin Weed Tucker, and former Council Member Eileen Heinzel, now Administrator, in thanking and honoring William Jeffrey Wittkop for his long and faithful service and wish him a long, healthy, happy and productive retirement.

**Appointments (with Council Approval)**

Mayor Persichilli announced the appointment of Richard Sperry to the Shade Tree Commission for an unexpired term ending December 31, 2015. Council Member Lawver made a motion to approve the appointment, second by Council Member Tucker with all members present voting in favor.

**Approval of Minutes**

Council Member Tucker made a motion to approve the minutes of the April 7, 2014 Regular Meeting, second by Council Member Marciante with all members present voting in favor with the exception of Mr. Lawver who abstained.

Council Member Tucker made a motion to approve the minutes of the May 12, 2014 Regular Meeting, second by Council Member Griffiths with all members present voting in favor with the exception of Mr. Lawver who abstained.

Council Member Tucker made a motion to approve the minutes of the May 28, 2014 Special Meeting, second by Council Member Davy with all members present voting in favor with the exception of Mr. Lawver and Mr. Griffiths who both abstained.

Council Member Tucker made a motion to approve the minutes of the June 2, 2014 Regular Meeting, second by Council Member Lawver with all members present voting in favor.

Mrs. Sterling asked that the closed session minutes on the agenda for approval be addressed after the closed session.

**Ordinances for Introduction**

Mayor Persichilli read Ordinance 2014-15 by title.

**BOROUGH OF PENNINGTON  
ORDINANCE NO. 2014-15**

**AN ORDINANCE AMENDING ORDINANCE 2014-11 ESTABLISHING TWO-HOUR PARKING DURING CERTAIN HOURS ON THE EAST SIDE OF BURD STREET FROM WEST DELAWARE AVENUE TO LANING AVENUE**

**WHEREAS**, the Public Safety Committee recommended to Borough Council that parking be restricted during certain hours on parts of the East Side of Burd Street from West Delaware Avenue to Laning Avenue;

**WHEREAS**, the proposed parking restriction applies to the east side of Burd Street from 145 feet south of West Delaware Avenue to 370 feet north of Academy Avenue and from Academy Avenue south to

Laning Avenue, and would limit parking to two hours from 8:00 a.m. to 6:00 p.m., except Sundays and holidays;

**WHEREAS**, Ordinance 2014-11 effected these parking restriction but omitted the word “north” from the description of the location of the restrictions on east Burd Street;

**WHEREAS**, the omitted word “north” is supplied by this ordinance;

**WHEREAS**, the two-hour restriction amends Chapter 200, Section 200-11.2, of the Code of the Borough of Pennington;

**NOW, THEREFORE, BE IT ORDAINED**, by the Borough Council of the Borough of Pennington, that:

- Chapter 200, Section 200-11.2 of the Code of the Borough of Pennington, is hereby amended to read as follows (with new language underlined and deletions denoted by brackets):

**“Sec. 200-11.2. Parking restricted to two hours during certain hours.**

No person shall park a vehicle on any of the following streets or parts thereof for longer than two hours, between the hours of 8:00 a.m. and 6:00 p.m., prevailing time, except Sundays and holidays:

<b>Name of Street</b>	<b>Side</b>	<b>Location</b>
Academy Avenue	South	From Burd Street to Crawley Avenue
Burd Street	East	From 145 feet south of West Delaware Avenue to 370 feet <u>north</u> of Academy Avenue and from Academy Avenue south to Laning Avenue
Green Avenue	East	From Delaware Avenue a distance of 100 feet
West Delaware Avenue	North	From 60 feet west of Main Street west a distance of 24 feet, which shall be reserved as parking for the handicapped, and from 145 feet west of Main Street west a distance of 515 feet”

- This Ordinance shall take effect upon passage and publication in accordance with law.

Council Member Marciante made a motion to introduce Ordinance 2014-15, second by Council Member Griffiths with all members present voting in favor with the exception of Mr. Tucker who abstained due to his wife’s relationship with the Pennington School.

Mayor Persichilli read Ordinance 2014-16 by title.

**BOROUGH OF PENNINGTON  
ORDINANCE 2014-16**

**AN ORDINANCE FURTHER 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 2014.”**

**WHEREAS**, Ordinance 2014-12 amended the Salary Ordinance of the Borough to delete the annual salary rate for Technical Assistant to Construction in the maximum amount of \$10,986.70;

**WHEREAS**, the deletion was made in anticipation of the resignation of the salaried Technical Assistant to Construction effective May 28, 2014;

**WHEREAS**, in fact the salaried Technical Assistant has not resigned as expected and will remain in the position indefinitely;

**WHEREAS**, Borough Council intends to restore authorization for payment of Technical Assistant at the maximum annual salary rate of \$10,986.70;

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

1. Section I.a of Borough of Pennington Ordinance No. 2014-12 (“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 2014,” is hereby amended to provide for the following:

Borough Administrator	\$ 35,000.00
Borough Clerk	\$ 39,329.80
Treasurer	\$ 62,390.67
Tax Collector	\$ 18,268.05
Utility Collector	\$ 18,268.05
Technical Assistant to Construction	\$10,986.70
Technical Assistant Trainee	\$18.00/hr
Tax Assessor	\$ 12,000.00
Zoning Officer	\$ 8,120.71
Land Use Admin/Admin Asst.	\$ 47,330.45
Deputy Registrar	\$ 2,045.15
Supt. of Public Works – to July 31, 2014	\$ 55,588.67
Supt. Of Public Works – Effective August 1, 2014	\$ 75,000.00
Supt. of Water Dept.	\$ 23,654.55
Supt. of Sewer Dept.	\$ 23,654.55
Judge of Municipal Court	\$ 11,409.10
Prosecutor	\$ 3,868.19
Court Administrator	\$ 15,945.07
Public Safety Director	\$ 55,831.85
Construction Official	\$ 25,194.85
Plumbing Sub-Code	\$ 37.27 / hour
Fire Sub-Code	\$ 37.83 / hour
Electric Sub-Code	\$ 10,084.56
Sidewalk Inspector – (Flat Fee per Inspection)	\$ 150.00

d. The rate of compensation of each employee, paid on an hourly basis is as follows:

	Minimum	Maximum
Finance		
Municipal CFO(p/t)	\$ 25.00	\$ 75.95
Police Department:		
Crossing Guards	\$ 15.00	\$ 24.25
Special Police	\$ 16.92 per hour	
Part Time Employees – All Departments:		
Part Time or Temporary	\$ 8.00	\$ 21.00
Part Time/Temporary/Licensed	up to a maximum of	\$ 35.00

2. This ordinance shall take effect upon final adoption and publication according to law [except the ordinance shall be effective on May 5, 2014 for the hourly rate of pay for the new Technical Assistant to Construction, and on May 28, 2014 for the salary of the present Technical Assistant to Construction].

Council Member Lawver made a motion to introduce Ordinance 2014-16, second by Council Member Davy with all members present voting in favor.

**Ordinances for Public Hearing and Adoption**

Mayor Persichilli read Ordinance 2014-5 by title.

**Borough of Pennington  
Ordinance No. 2014- 5**

**AN ORDINANCE AMENDING CHAPTER 215, ZONING, OF THE CODE  
OF THE BOROUGH OF PENNINGTON BY ADDING A NEW SECTION ENTITLED  
ROUTE 31 CORRIDOR BUSINESS OVERLAY ZONE AND REVISING THE ZONING MAP.**

**WHEREAS**, based on the land use recommendations of Maser Consulting in its June, 2013 Route 31 Redevelopment Study, the Borough seeks to create a Route 31 Business Overlay Zone;

**WHEREAS**, the proposed Route 31 Business Overlay Zone will be located on lands known as Block 206, Lots 3, 4 and 12 in the B-H Zone District and lands known as Block 206, Lots 5, 6 and 7 in the R-80 Zone District;

**WHEREAS**, the proposed Route 31 Business Overlay Zone will replace the existing Affordable Housing Overlay Zone located on the lands known as Lot 5 in Block 206 in the R-80 Zone District;

**WHEREAS**, the proposed ordinance is consistent with the Borough Master Plan and Development Regulations Periodic Reexamination Report adopted by the Borough Planning Board on October 19, 2013;

**WHEREAS**, on November 13, 2013, the Planning Board reviewed a version of the proposed ordinance and proposed it for consideration by Borough Council;

**WHEREAS**, Borough Council has amended the ordinance as initially proposed to clarify the relationship between the Overlay Zone and underlying zoning;

**NOW, THEREFORE, BE IT ORDAINED**, by the Borough Council of the Borough of Pennington, that Chapter 215, Zoning, of the Code of the Borough of Pennington, is hereby amended as follows:

1. Section 215-78.2, providing for an Affordable Housing Overlay Zone, is repealed.
2. The following new Section 215-78.2 providing for a Route 31 Corridor Business Overlay Zone is adopted as follows:

**Section 215-78.2. Route 31 Corridor Business Overlay Zone** (as shown on revised zoning map).

- A. Purpose. To create a mixed-use, pedestrian-friendly development that is aesthetically pleasing. The permitted uses are intended to be compatible with and complement each other to create a pedestrian-oriented shopping environment consistent with the character of the surrounding community.

All new development and redevelopment on lands within the Route 31 Corridor Business Overlay Zone shall comply with the provisions of the Overlay Zone.

- B. Permitted primary uses.
  - (1) Retail businesses as listed in Section 215-72 (B-H zone).
  - (2) Personal service establishments as listed in Section 215-72 (B-H zone).
  - (3) Office uses as listed in Sec. 215-73 (O-B zone).
  - (4) Restaurants.
  - (5) Banks and financial institutions.
  - (6) Child care centers.
  - (7) Studios, including art, dance, music, etc.
  - (8) Health clubs/exercise facilities.
  - (9) (10) Passive and/or active recreation areas.
  - (11) Municipal services, including emergency response services.
  - (12) A mixture of one or more of the aforementioned uses within a structure or on a parcel.
- C. Permitted secondary uses.
  - (1) Off-street parking facilities for the use of clients, customers, employees and residents.
  - (2) Sidewalk sales by adjacent retail merchandise stores when authorized by a permit issued by the Borough Clerk.
  - (3) Outdoor dining contiguous to restaurants.
  - (4) Signs.
  - (5) Fences, walls and retaining walls in accordance with the provisions of § **215-24**.
  - (6) Roof-mounted solar panels.
- D. Conditional uses.
  - (1) Retail businesses with drive-through facilities.
    - (a) Drive-through facility shall be located to the rear of the building.

- (b) For queuing purposes, room for at least 2 automobiles per drive-through window shall be provided.
  - (2) Banks and financial institutions with drive-through facilities.
    - (a) Drive-through facility shall be located to the rear of the building.
    - (b) For queuing purposes, room for at least 3 automobiles per drive-through window shall be provided.
- E. Prohibited uses.
  - (1) Retail uses where an individual store/tenant is greater than 10,000 square feet.
  - (2) Auto repair, service, and/or gas stations.
  - (3) Automobile sales.
  - (4) Drive-through facilities related to a restaurant.
- F. Bulk standards.
  - (1) Minimum lot size shall be 10,000 square feet.
  - (2) Minimum lot width shall be 100 feet.
  - (3) Setbacks for structures shall be as follows:
    - (a) Minimum front yard along Broemel Place shall be 10 feet; the minimum setback along Route 31 shall be 20 feet, except where sight triangles are needed at intersections.
    - (b) Maximum front yard shall be 50 feet.
    - (c) Minimum side yard shall be 20 feet.
    - (d) Minimum rear yard shall be 50 feet.
  - (4) Minimum distance between buildings on the same property shall be 20 feet.
  - (5) Maximum lot coverage shall be 65%.
  - (6) Maximum building height shall be 3 stories and 40 feet.
- G. Off-street parking, automobiles.
  - (1) General design standards.
    - (a) All parking spaces within any parking area shall be clearly marked and maintained to show the parking arrangement within said parking area.
    - (b) All parking spaces shall measure no less than 9 feet in width by 18 feet in length.
    - (c) The number, location, size and marking of spaces shall conform to the design requirements required for such spaces by the State of New Jersey [barrier-free design (N.J.S.A. 52:32-12)] and the Americans with Disabilities Act of 1990.
    - (d) Parking lots shall be interconnected with adjacent parking lots to facilitate vehicular and pedestrian circulation.
    - (e) Parking lots shall be located to the side or rear of a building. A single row of parking shall be permitted within the front yard.
  - (2) Schedule of off-street parking requirements.
    - (a) The following non-residential off-street parking requirements shall be followed:
      - 1. Retail businesses – one space for each 300 square feet of building floor area
      - 2. Personal service establishments – one space for every 300 square feet of building floor area
      - 3. Business, professional offices, banks and financial institutions – one space for each 250 square feet of building floor area
      - 4. Child care centers – one space for each 300 square feet of building floor area
      - 5. Studios and health club/exercise facility – one space for every 400 square feet of building floor area
      - 6. Restaurants – one space for each three seats, plus one space for each two employees employed therein
    - (b) Shared parking. Nothing in the above requirements shall be construed to prevent the employment of shared parking, which may be implemented in one of two manners:
      - 1. On-site shared parking. For parcels containing a multiple occupant building or two or more buildings with different permitted uses, on-site shared parking may be implemented.
        - a. A 50% shared parking allowance shall be permitted for combining weekday uses with evening/weekend uses in the same building or in separate buildings on the same parcel. Office and retail uses are considered to be weekday uses, while residential and restaurant uses are considered to be evening/weekend uses.
        - b. 50% of the parking requirement of the evening/weekend use of the building may be met through parking already provided for the weekday use. For example, a building contains office space that requires 20 parking spaces and residential units that require 8 parking spaces. The residential parking is permitted to be reduced by 50% or 4 parking spaces. Therefore, the development would only be required to construct 24 parking spaces instead of 28.
      - 2. Off-site shared parking. For parcels that cannot accommodate all or a

portion of their required parking spaces, the differential parking requirement may be shifted to an adjacent property determined by the Zoning Officer to have parking in excess of zoning requirements or parking that is demonstrated to be unused during normal hours of operation. This would require the submission of a memorandum of agreement between the two property owners, which demonstrates the shifting of parking spaces from one site to an adjacent site.

H. Off-street parking, bicycle.

- (a) For retail uses, one bicycle space shall be provided for every 10 retail employees and at least one bicycle space shall be provided for every 5,000 square feet of retail space for customers.
- (b) For non-residential uses other than retail, one bicycle space shall be provided for every 10 workers and at least one bicycle space shall be provided for every 10,000 square feet of space.
- (c) All bicycle racks shall be within 200 feet of the building entrance.

I. Off-street loading requirements.

(1) General requirements.

- (a) No off-street loading area or berth shall be located in any front or side yard except side yards for buildings on a corner lot. All loading areas/berths shall have unobstructed access that is at least 10 feet wide to and from a street. Such access may be combined with access to a parking lot.
- (b) All required loading areas/berths shall be on the same lot as the uses(s) to which they are accessory.

(2) Schedule of off-street loading requirements.

- (a) For restaurants, the number of berths shall be:
  1. One loading area/berth shall be provided for restaurants with less than 5,000 square feet of gross floor area.
  2. Two loading areas/berths shall be provided for restaurants with more than 5,000 square feet of gross floor area.

J. General Requirements .

(1) Landscaping.

Any front or side yard with a parking area visible from the street shall be screened with a row of shrubs at least 2 ft. high when mature. Street trees shall be planted along any street frontage 30-40 ft. on center and foundation plantings shall be included along the building façade. A landscaped or grass strip at least 5 feet wide shall be provided along the front and side yard property lines.

(2) On-site Circulation.

Driveways with appropriate cross easements providing access between adjacent lots shall be permitted and provided where feasible. On-site circulation systems and parking areas shall be designed to accommodate the interconnection between adjacent lots.

(3) Pedestrian Access.

Adequate and safe pedestrian access between uses or separate buildings in the development or on adjacent lots shall be provided, and the design of the development shall promote non-vehicular, pedestrian-friendly access, inclusive of bicycle racks, benches or other such amenities. Sidewalks shall be provided along street frontages and throughout the development.

(4) Building Design.

(a) All buildings shall have a dual pitched, single ridge roof (such as a true and complete gable, hip or gambrel roof or a mansard roof where the lower slope is steeper and deeper than the upper slope) with a minimum pitch of one foot vertical to eight feet horizontal. No flat roof shall be permitted; provided, however, that where roof-mounted equipment is necessary and/or preferable for the operation of the building, a facade roof treatment exhibiting the appearance of such a dual pitched, single ridge roof on all sides of the building may be permitted if specifically approved by the Planning Board as part of a submitted site plan application for the development.

(b) All portions of all buildings on one lot shall be compatibly designed with a common architectural motif, whether constructed all at one time or in stages over a period of time. The architectural design and material surface and color of all building walls on all sides of all buildings shall be suitably finished for aesthetic purposes and shall be compatible in design and scale with the surface materials existing within the area.

K. The revised Zoning Map prepared by Coppola & Coppola Associates, Princeton Junction, New Jersey, May, 2014, is hereby adopted.

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

Council Member Tucker made a motion to open the Public Hearing on Ordinance 2014-5, second by Council Member Griffiths. Mr. Bliss stated that it should be noted that we have received the requisite report from the Planning Board indicating consistency with the Master Plan. Council Member Tucker made a motion to close the Public Hearing, second by Council Member Lawver with all members present voting in favor. Council Member Tucker made a motion to adopt Ordinance 2014-5, second by Council Member Lawver with all members present voting in favor.

**Committee Reports**

**Planning & Zoning / Environmental Commission / Library** – No report given.

**Parks & Recreation** – Mr. Lawver stated that the July 4<sup>th</sup> races were cancelled due to weather.

**Personnel / Public Works** – Mr. Davy stated that there is a personnel matter for closed session discussion. Mr. Davy stated that the public works committee has been working with the Borough Administrator on the NJEIT Program and that will be discussed later in the meeting.

**Public Safety / Shade Tree** – Mr. Marciante stated that on May 12<sup>th</sup>, the Hopewell Township Committee presented a lifesaving award to Officer Pinelli for assistance with a heart attack victim at the Burger King. Mr. Marciante stated that the Public Safety Committee met on June 18<sup>th</sup> to discuss the hiring of the fifth Police Officer, there will be action taken at the August meeting. Mr. Marciante stated that the committee discussed the ordinance regarding parking on Burd Street and Academy Avenue and an ordinance was introduced tonight make a correction to the ordinance. Mr. Marciante stated that the committee discussed unsafe intersections in the Borough such as Academy and Main, Lanning and Main and they are looking into parking restrictions to see if visibility can be corrected. Mr. Marciante stated that they also discussed the traffic light on Main Street. Mr. Marciante stated that when approaching the intersection of Main and Delaware on Delaware Avenue there are lights allowing one side or the other to go, but Main Street does not have that and traffic is getting jammed up in the morning. Mr. Marciante stated that he believes Mr. Meytrott has sent a letter to the County Road Department to inquire as to the feasibility of making a correction to the traffic light. Mr. Marciante stated that the new radios are in. Mr. Marciante stated that Fire Chief Jim DeForte has requested some restrictions to parking on Pennington Day, Mr. Meytrott will address his concerns for next year.

**Finance** – Mr. Griffiths had no report.

**Historic Preservation / Board of Health / Senior Advisory Board** – Mr. Tucker stated that he had no report from Historic Preservation. Mr. Tucker stated that Council Members have the senior advisory report in their packages. Mr. Tucker stated that there has been no progress made on the proposed senior center. Mayor Persichilli stated that Council has been getting the Senior Coordinators report for several months now and it really does help to show the amount of participation between the three municipalities and it will also be helpful with negotiations as we go forward.

**New Business**

**Borough of Pennington  
Resolution #2014 – 7.1**

**RESOLUTION AUTHORIZING REFUNDS**

**BE IT RESOLVED**, that a refund be issued in the amount of \$305.86 to Keith & Greta McGregor, 402 Bollen Court, Pennington, NJ 08534, for an overpayment of 2014 3<sup>rd</sup> quarter water & sewer charges in the amount of \$305.86 for 210 ½ King George Road, Account number 315-0.

**Record of Council Vote on Passage**

COUNCILMAN	AYE	NAY	N.V.	A.B.	COUNCILMAN	AYE	NAY	N.V.	A.B.
Davy	S				Lawver	X			
Gnatt				absent	Marciante	X			
Griffiths	M				Tucker	X			

Council Member Griffiths made a motion to approve Resolution 2014-7.1, second by Council Member Davy with all members present voting in favor.

**Borough of Pennington  
 Resolution #2014 – 7.2**

**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 \$ 2,450,719.18 from the following accounts:

Current	\$ 2,000,204.86
W/S Operating	\$ 125,325.11
Developers' Escrow	\$ 9,467.70
General Capital	\$ 31,788.50
Grant Fund	\$ 146,537.81
Water/Sewer Capital	\$ 132,251.00
Open Space Trust	\$ 2,625.00
Animal Control Fund	\$ 19.20
<b>TOTAL</b>	<b>\$ 2,448,219.18</b>

**Record of Council Vote on Passage**

COUNCILMAN	AYE	NAY	N.V.	A.B.	COUNCILMAN	AYE	NAY	N.V.	A.B.
Davy	S				Lawver	X			
Gnatt				Absent	Marciante	X			
Griffiths	M				Tucker	X			

Council Member Griffiths made a motion to approve Resolution 2014-7.2, second by Council Member Davy with all members present voting in favor.

**BOROUGH OF PENNINGTON  
 RESOLUTION NO. 2014 – 7.3**

**RESOLUTION AUTHORIZING THE EXECUTION OF A NEW JERSEY DEPARTMENT OF TRANSPORTATION RESOLUTION, APPLICATION AND AGREEMENT FOR STATE AID FOR IMPROVEMENTS TO KING GEORGE ROAD**

**WHEREAS**, the Borough of Pennington received notification of a Municipal Aid Grant for Improvements to King George Road in the amount of \$283,500.00; and

**WHEREAS**, the estimated cost for said project is \$449,626.00; and

**WHEREAS**, the cost of the balance of this project above the grant award would cause financial burden to the Borough; and

**WHEREAS**, the Mayor and Borough Council find that to preserve the safety and welfare of the public it is necessary to apply for Discretionary Aid for the completion of this project;

**NOW, THEREFORE, BE IT RESOLVED**, by the Mayor and Council of the Borough of Pennington that the Mayor with the attestation of the Borough Clerk are hereby authorized to execute the New Jersey Transportation Resolution, Application and Agreement for State Aid, and associated documentation, for Improvement to King George Road.

**Record of Council Vote on Passage**

COUNCILMAN	AYE	NAY	N.V.	A.B.	COUNCILMAN	AYE	NAY	N.V.	A.B.
Davy	M				Lawver	X			
Gnatt				Absent	Marciante	S			
Griffiths	X				Tucker	X			

Council Member Davy made a motion to approve Resolution 2014-7.3, second by Council Member Marciante. Mr. Lawver asked what the engineering fees for this application would be? Mr. Griffiths stated

that Roberts Engineering generally charges around \$2,500 for applications. Mr. Griffiths explained that the award for this project came in significantly lower than the amount requested. Upon a roll call vote, all members present voted in favor.

**BOROUGH OF PENNINGTON  
RESOLUTION 2014 – 7.4**

**RESOLUTION AUTHORIZING LIEN AND TAX AGAINST ABUTTING LAND FOR COSTS OF GRASS CUTTING AT 404 BURD STREET, PURSUANT TO SECTION 136-8 OF THE PENNINGTON BOROUGH CODE**

**WHEREAS**, the Borough Police Department has received a property maintenance complaint regarding high grass at Block 905, Lot 15, 404 Burd Street; and

**WHEREAS**, after investigation by the Police Department it was determined that this high grass condition constituted a nuisance as defined by Section 136-3A (6) of the Borough Code;

**WHEREAS**, pursuant to Section 136-7 of the Code, whenever a nuisance of this kind is declared, a violation shall be given to the owner in writing to remove or abate the same within a specified time not less than five (5) days from the service of the violation notice; and

**WHEREAS**, on May 17, 2014, a notice of violation was posted at 404 Burd Street by the Pennington Police Department notifying the homeowner that if the problem was not taken care of by May 27, 2014, the owner would be subject to fines and penalties as set forth in local and state regulations; and

**WHEREAS**, pursuant to Section 136-8 of the Code, whenever the owner, tenant or occupant notified has not complied with the notice as specified and the nuisance has not been abated or removed under the direction of the enforcing official, any cost or expense incurred by the Borough for abating or removing the nuisance or condition or causing it to be abated or removed may be recovered; and

**WHEREAS**, on May 27, 2014, the owner of 404 Burd Street in the Borough, also known as Block 905, Lot 15 on the Borough Tax Map, had failed to cut the grass as directed in the violation notice; and

**WHEREAS**, on June 3<sup>rd</sup>, 2014, the Department of Public Works cut the grass and incurred costs totaling \$862.50 as set forth in the attached certification by Jeff Wittkop, Superintendent of Public Works;

**WHEREAS**, the computation of charges in the annexed certification is based on the rates set forth in Chapter 98 of the Borough Code, and Mayor and Council find same to be reasonable;

**NOW, THEREFORE, BE IT RESOLVED**, by the Borough Council of the Borough of Pennington, that the aforesaid amount of \$862.50 is hereby certified to the Tax Collector and shall be charged against Block 905, Lot 15 and shall become a lien and tax thereon and be added to and become part of the taxes next to be levied and assessed against such property, pursuant to Section 136-8 of the Pennington Borough Code.

**Record of Council Vote on Passage**

COUNCILMAN	AYE	NAY	N.V.	A.B.	COUNCILMAN	AYE	NAY	N.V.	A.B.
Davy	X				Lawver	X			
Gnatt				absent	Marciante	S			
Griffiths	M				Tucker	X			

Council Member Griffiths made a motion to approve Resolution 2014-7.4, second by Council member Marciante with all members present voting in favor.

**Borough of Pennington  
Resolution 2014 – 7.5**

**RESOLUTION TO AMEND THE 2014 ADOPTED BUDGET (CHAPTER 159)  
SPECIAL ITEMS OF REVENUE AND APPROPRIATION FOR  
2014 MUNICIPAL AID – 2014 ROAD IMPROVEMENT PROGRAM**

**WHEREAS**, NJS A 40A4-87 provides that the Director of the Division of Local Government Services may approve the insertion of any special item of revenue in the budget of any county or municipality when such item shall have been made available by law and the amount thereof was not determined at the time of the adoption of the budget, and

**WHEREAS**, said Director may also approve the insertion of an item of appropriation for an equal amount, and

**WHEREAS**, the Borough of Pennington has received \$ 283,500.00 from the New Jersey Department of Transportation and wishes to amend its 2014 Budget to include this amount as revenue;

**NOW THEREFORE BE IT RESOLVED**, that the Borough Council of the Borough of Pennington hereby requests the Director of the Division of Local Government Services to approve the

insertion of a special item of revenue in the budget of the year 2014 in the sum of \$ 283,500.00, which is now available as revenue from:

NJDOT 2014 – 2014 Road Improvement Program, and

**BE IT FURTHER RESOLVED** that a like sum of \$ 283,500.00 be and the same is hereby appropriated under the caption of:

NJDOT 2014 – 2014 Road Improvement Program

**BE IT FURTHER RESOLVED** that the Borough Clerk forward two copies of this resolution to the Director of Local Government Services.

**Record of Council Vote on Passage**

COUNCILMAN	AYE	NAY	N.V.	A.B.	COUNCILMAN	AYE	NAY	N.V.	A.B.
Davy	X				Lawver	S			
Gnatt				absent	Marciante	X			
Griffiths	X				Tucker	M			

Council Member Tucker made a motion to approve Resolution 2014-7.5, second by Council Member Lawver. Mrs. Sterling corrected a typographical error and upon a roll call vote all members present voted in favor.

**Borough of Pennington  
Resolution 2014 – 7.6**

**RESOLUTION TO AMEND THE 2014 ADOPTED BUDGET (CHAPTER 159)  
SPECIAL ITEMS OF REVENUE AND APPROPRIATION FOR A PENNINGTON DAY GRANT  
FOR THE PURCHASE OF MOVIE EQUIPMENT**

**WHEREAS**, NJSA 40A4-87 provides that the Director of the Division of Local Government Services may approve the insertion of any special item of revenue in the budget of any county or municipality when such item shall have been made available by law and the amount thereof was not determined at the time of the adoption of the budget, and

**WHEREAS**, said Director may also approve the insertion of an item of appropriation for an equal amount, and

**WHEREAS**, the Borough of Pennington has received \$ 750.00 from Pennington Day, Inc. and wishes to amend its 2014 Budget to include this amount as revenue;

**NOW THEREFORE BE IT RESOLVED**, that the Borough Council of the Borough of Pennington hereby requests the Director of the Division of Local Government Services to approve the insertion of a special item of revenue in the budget of the year 2014 in the sum of \$ 750.00, which is now available as revenue from:

Pennington Day Grant – Movie Equipment, and

**BE IT FURTHER RESOLVED** that a like sum of \$ 750.00 be and the same is hereby appropriated under the caption of:

Pennington Day Grant – Movie Equipment; and

**BE IT FURTHER RESOLVED** that the Borough Clerk forward two copies of this resolution to the Director of Local Government Services.

**Record of Council Vote on Passage**

COUNCILMAN	AYE	NAY	N.V.	A.B.	COUNCILMAN	AYE	NAY	N.V.	A.B.
Davy	X				Lawver	M			
Gnatt				absent	Marciante	X			
Griffiths	S				Tucker	X			

Council Member Lawver made a motion to approve Resolution 2014-7.6, second by Council Member Griffiths with all members present voting in favor.

**BOROUGH OF PENNINGTON  
RESOLUTION #2014 – 7.7**

**RESOLUTION AUTHORIZING A PROFESSIONAL  
SERVICES AGREEMENT WITH PARS ENVIRONMENTAL  
INCORPORATED FOR THE COMPLETION OF THE  
2013 RIGHT TO KNOW SURVEY**

**WHEREAS**, the Borough Council of the Borough of Pennington seeks to retain the services of

PARS Environmental, Inc., licensed engineers, to assist the Borough in completion of the 2013 Right To Know Survey; and

**WHEREAS**, the contemplated services include inventory of areas that contain hazardous chemicals and completion of the 2013 Right to Know Survey for each area as follows:

1. Borough Hall/Library/Police Dept.
2. Senior Citizen Center
3. Public Works Garage
4. Well House 4 & 5
5. Well House 6
6. Well House 7
7. Well House 8 & 9

**WHEREAS**, PARS Environmental, Inc. will prepare the appropriate number of surveys and distribute them to all required state and local agencies as well as provide a copy for the Borough files; and

**WHEREAS**, PARS Environmental, Inc. has agreed to perform these functions at a lump sum amount of \$1,800.00;

**NOW THEREFORE BE IT RESOLVED**, by the Borough Council of the Borough of Pennington, that the Mayor and Borough Clerk of the Borough are hereby authorized to enter into an agreement on behalf of the Borough for services as stated above, subject to approval of the form of agreement 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				Lawver	X			
Gnatt				absent	Marciante	M			
Griffiths	S				Tucker	X			

Council Member Marciante made a motion to approve Resolution 2014-7.7, second by Council Member Griffiths with all members present voting in favor.

**BOROUGH OF PENNINGTON  
RESOLUTION 2014-7.8**

**RESOLUTION AUTHORIZING PROJECT AGREEMENT BETWEEN COUNTY OF MERCER AND PENNINGTON BOROUGH PROVIDING GRANT FUNDS FOR ACQUISITION OF THE BROWN PROPERTY (BLOCK 92, LOTS 1.01 AND 1.03, HOPEWELL TOWNSHIP)**

**WHEREAS**, the Borough of Pennington seeks to acquire certain open space lands in Hopewell Township, designated as Block 92, Lots 1.01 and 1.03 on the Hopewell Township Tax Map and commonly known as the Brown Property;

**WHEREAS**, the proposed acquisition is to be funded by grants from Green Acres and the County of Mercer, supplemented by funds from the Friends of Hopewell Valley Open Space;

**WHEREAS**, the grant funds to be supplied by Mercer County shall be provided under the Mercer County Municipal and Non-Profit Assistance Program, which has been created to provide funding for projects consistent with the Mercer County Open Space and Recreation Plan;

**WHEREAS**, the amount of the proposed Mercer County funding, in the form of a Mercer County Assistance Grant, is \$391,250., to be combined with a Green Acres Grant of the same amount;

**WHEREAS**, in order to effectuate the proposed County funding, the County of Mercer and Pennington Borough seek to enter into a Project Agreement in the form attached to this Resolution;

**WHEREAS**, under the proposed Project Agreement, the funding will be dispersed upon full execution of the Agreement and provision of a scheduled closing date for the contemplated property acquisition; the Borough must follow all Green Acres rules and regulations, including those governing land management and diversion as found at N.J.A.C. 7:36-1.1, et seq., as may be amended from time to time; and the Borough shall not further encumber the property without the express written consent of the County;

**WHEREAS**, the Borough may unilaterally rescind the Project Agreement at any time prior to the receipt of County funds; but following the receipt of County funds, the Borough may not terminate, modify or rescind the Agreement without the express written approval of the County, which may be withheld in the County's sole discretion;

**WHEREAS**, the attached Project Agreement, on advice of counsel, has been executed by the Mayor on behalf of the Borough to have the Agreement included on the agenda of the Mercer County Board of Chosen Freeholders for the Board's meeting on July 17, 2014, when the Agreement will be considered for County approval;

**NOW, THEREFORE, BE IT RESOLVED**, by the Borough Council of the Borough of Pennington, that the Mayor, with the attestation of the Borough Clerk, are hereby authorized to execute and enter into the attached Project Agreement on behalf of the Borough; and

**BE IT FURTHER RESOLVED**, that execution of the Project Agreement by the Mayor with attestation by the Clerk on June 5, 2014, after approval by the Borough Attorney, is hereby authorized and ratified nunc pro tunc.

**Record of Council Vote on Passage**

COUNCILMAN	AYE	NAY	N.V.	A.B.	COUNCILMAN	AYE	NAY	N.V.	A.B.
Davy	X				Lawver	X			
Gnatt				absent	Marciante	M			
Griffiths	S				Tucker	X			

Council Member Marciante made a motion to approve Resolution 2014-7.8, second by Council Member Griffiths for the sake of discussion. Mr. Marciante stated that he thought this was already approved. Mr. Bliss stated that this is the project agreement, the overall concept has been approved through various resolutions, but this resolution is designed to authorize the project agreement for the County portion of the funds. Mr. Bliss stated that Mercer County requires the agreement prior to their consideration of the agreement at their meeting. Mr. Griffiths stated that on the third page of the agreement it states that one of the sources of funding is a Pennington Borough Green Acres Grant, but it is really not the Borough's money that we are granting. Mr. Griffiths stated that the concept in the past has been that were a participant, but not a grantor, but this resolution implies that we are. Mr. Griffiths stated that his understanding is that we apply for the grant, we receive it and then we pass it through. Mr. Davy stated that the Friends of Hopewell Valley Open Space will be covering our share of the cost. Mr. Bliss stated that the grant money itself would go towards closing on the property and after the closing there will be an assignment of property. Mr. Marciante asked if the Borough would have any obligation towards maintaining the property. Mr. Davy stated that the Friends of Hopewell Valley are stepping into our shoes. Mrs. Heinzl stated that we are still waiting for the contract to be signed and she does not know why it is taking the owners so long to sign the contract. Mrs. Heinzl stated that once the contract is signed we can go forward with the preliminary assessment which will be done by Boucher and Boucher. Upon a roll call vote, all members present voted in favor.

At 7:40 pm, Mrs. Gnatt arrived at the meeting.

**BOROUGH OF PENNINGTON  
RESOLUTION 2014- 7.9**

**RESOLUTION AUTHORIZING CHANGE ORDER  
NO. 1 FOR AN ADJUSTMENT TO ACTUAL COSTS UNDER THE WATER STORAGE TANK  
REHABILITATION PROJECT**

**WHEREAS**, Van Note Harvey Associates has recommended a certain Change Order No. 1 with regard to the Contract between the Borough of Pennington and Alpine Painting and Sandblasting Contractors, Inc. for the project known as Water Storage Tank Rehabilitation Project (VNHA File No. 41809-210-71);

**WHEREAS**, Change Order No. 1 would adjust the Contract as explained in the attached "Adjustment-to-Actual Cost Summary" and related documents from Brandon M. Fetzer for Norman F. Nelson, P.E. dated July 1, 2014;

**WHEREAS**, the proposed adjustment would decrease the Contract by \$4,000.00;

**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 adjusting the actual costs of the contract with Alpine Painting and Sandblasting Contractors, Inc., 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				Lawver	S			
Gnatt	X				Marciante	M			
Griffiths	X				Tucker	X			

Council Member Marciante made a motion to approve Resolution 2014-7.9, second by Council Member Lawver with all members present voting in favor.

**BOROUGH OF PENNINGTON  
RESOLUTION #2014 – 7.10**

**RESOLUTION AUTHORIZING PAYMENT REQUEST NO. 2 (FINAL) TO  
ALPINE PAINTING AND SANDBLASTING CONTRACTORS, INC. FOR WORK COMPLETED  
ON THE WATER STORAGE TANK REHABILITATION PROJECT**

**WHEREAS**, Alpine Painting and Sandblasting Contractors, Inc. has completed work pursuant to the contract for the Water Storage Tank Rehabilitation Project (Van Note Harvey Engineering, PC Project No. VNHA#41809-210.71); and

**WHEREAS**, Van Note Harvey Associates, PA has reviewed Alpine Painting and Sandblasting Contractors’ application for payment and recommends payment of same pursuant to the Contractor’s Request for Payment No. 2 in the amount of \$2,699.00 representing withheld retainage; and

**WHEREAS**, this is the final payment under the contract; and

**WHEREAS**, funds are available in Account #: W-06-07-009-000-250 (Ord. 2007-9); and

**WHEREAS**, the payment authorized by this resolution is conditioned upon the receipt of the Maintenance Bond as provided for in the contract documents and approval of same by Van Note Harvey Associates, PA and the Borough Attorney;

**NOW, THEREFORE BE IT RESOLVED**, by the Borough Council of the Borough of Pennington, that payment to Alpine Painting and Sandblasting Contractors, Inc. in the amount of \$2,699.00 pursuant to payment request No.2 (final) is hereby authorized, provided, however, that no such payment shall be made until the aforesaid maintenance bond has been received and approved as provided above.

**Record of Council Vote on Passage**

COUNCILMAN	AYE	NAY	N.V.	A.B.	COUNCILMAN	AYE	NAY	N.V.	A.B.
Davy	X				Lawver	X			
Gnatt	X				Marciante	X			
Griffiths	M				Tucker	S			

Council Member Griffiths made a motion to approve Resolution 2014-7.10, second by Council Member Tucker with all members present voting in favor.

**BOROUGH OF PENNINGTON  
RESOLUTION 2014-7.11**

**RESOLUTION AUTHORIZING THE PROMOTION OF RICHARD SMITH TO  
SUPERINTENDENT OF PUBLIC WORKS EFFECTIVE AUGUST 1, 2014**

**WHEREAS**, the Borough of Pennington will have a need for a Superintendent of Public Works following the retirement of W. Jeffrey Wittkop; and

**WHEREAS**, Mr. Richard Smith was hired as Assistant Superintendent of Public Works effective February 4<sup>th</sup>, 2014 as authorized by Resolution 2014-2.11; and

**WHEREAS**, Mr. Smith was hired with the understanding that upon Mr. Wittkop’s retirement he would be promoted to Superintendent of Public Works effective August 1, 2014 at a salary of \$75,000 as provided for under Ordinance 2014-8;

**NOW, THEREFORE, BE IT RESOLVED**, by the Borough Council of the Borough of Pennington, that the promotion of Richard Smith to Superintendent of Public Works is hereby approved effective August 1, 2014.

**Record of Council Vote on Passage**

COUNCILMAN	AYE	NAY	N.V.	A.B.	COUNCILMAN	AYE	NAY	N.V.	A.B.
Davy	M				Lawver	X			
Gnatt	S				Marciante	X			
Griffiths	X				Tucker	X			

Council Member Davy made a motion to approve Resolution 2014-7.11, second by Council Member Gnatt with all members present voting in favor.

**BOROUGH OF PENNINGTON  
RESOLUTION #2014 – 7.12**

**RESOLUTION AMENDING PERSONNEL MANUAL CONCERNING COMP TIME**

**WHEREAS**, Borough Council seeks to amend the Personnel Policies and Procedures Manual to permit a degree of flexibility in use of accrued Comp Time subject to the principle that all comp time shall be used as soon as practicable but without disrupting the work of the Borough;

**NOW, THEREFORE BE IT RESOLVED**, by Borough Council of the Borough of Pennington that Article IV, Section L, Subsection 7, of the Personnel Policies and Procedures Manual of the Borough of Pennington, concerning Policy Relating to Comp Time, is hereby amended as follows:

**7. Policy Relating to Comp Time**

[Except in extraordinary circumstances further addressed below,] [t]The following policy shall not apply to employees hired after May 1, 2008[. Except in such circumstances, c], and [C]comp time [will] shall no longer be available for employees hired after that date, except as specifically provided below.

Comp time is for current full-time employees who are salaried and are not entitled to overtime pay. The following employees of the Borough of Pennington may qualify for Comp Time but are not entitled to any overtime compensation: the Borough Clerk, the Treasurer, the Chief Financial Officer, the Certified Tax Collector, the Land Use Administrator, the Supervisor of Public Works and the Public Safety Director.

There are two types of Comp Time for which these employees may qualify: (1) Directed Comp Time and (2) Emergency Comp Time.

Directed Comp Time is time that one of the above-mentioned employees is required to work beyond their normal work day by the Mayor or Borough Administrator. For example, if an employee is directed by the Mayor or Borough Administrator to attend a meeting beyond the regular work day, this would be a form of Directed Comp Time. Attendance at meetings of Borough Council do not accrue Comp Time because these meetings are part of the regular work assignment. Work that is part of the job description and is expected to be done in the normal work week is not subject to Comp Time. No compensation for time will be made unless approved in advance by the Mayor or Borough Administrator.

Emergency Comp Time is time that may accrue because of an emergency situation for which prior approval may not be possible. However, in order to receive compensation for this time, the Mayor or Borough Administrator must be notified in writing for approval of the Comp Time within 72 hours of the work being done. In the event that the Mayor or Borough Administrator is not so notified, no Comp Time shall accrue.

Extraordinary Circumstances. Employees not entitled to overtime pay who are hired after May 1, 2008 may nonetheless be paid Comp Time if approved by Mayor and Council in extraordinary circumstances. Circumstances warranting award of Comp Time to these employees include work for an extraordinary number of hours beyond the ordinary work week in order to meet emergent or other critical needs of the Borough when in the judgment of Mayor and Council, payment of Comp Time would in the circumstances serve the best interests of the Borough.

Rate of Accrual. The accrual of Comp Time shall be at the rate of one hour for each hour worked, except Comp Time accrued for work performed on a holiday shall be accrued at the rate of one and one-half hours for each hour worked.

Use of Comp Time. All Comp Time shall be used within thirty days of the time that it is accrued. If circumstances in the Borough do not allow for the use of Comp Time within this time period, the employee may[, except as may otherwise be required by court approved settlement,] request approval from the Borough Administrator to [carry] use accrued comp time within a period of time approved by the Administrator which shall ensure use of the accumulated time as soon as practicable without disrupting the work of the Borough [an additional thirty (30) days]. If not used within the approved extension the accrued comp time will be lost.

[Extraordinary Circumstances. Employees not entitled to overtime pay who are hired after May 1, 2008 may nonetheless be paid Comp Time if approved by Mayor and Council in extraordinary circumstances. Circumstances warranting award of Comp Time to these employees include work for an extraordinary number of hours beyond the ordinary work week in order to meet emergent or other critical needs of the Borough when in the judgment of Mayor and Council, payment of Comp Time would in the circumstances serve the best interests of the Borough.]

**Record of Council Vote on Passage**

COUNCILMAN	AYE	NAY	N.V.	A.B.	COUNCILMAN	AYE	NAY	N.V.	A.B.
Davy	M				Lawver	X			
Gnatt	X				Marciante	X			
Griffiths	X				Tucker	S			

Council Member Davy made a motion to approve Resolution 2014-7.12, second by Council Member Tucker. Mr. Davy explained that this is a follow up to a conversation that was held several meetings ago. Mr. Davy stated that when the comp time policy was previously amended a provision should have been included to allow the Borough Administrator to extend the time for using comp time beyond the thirty days based on extraordinary circumstances and so this resolution will grant that responsibility to the Borough Administrator. Upon a roll call vote, all members present voted in favor.

**BOROUGH OF PENNINGTON  
RESOLUTION 2014 - 7.13**

**RESOLUTION ACKNOWLEDGING THE  
MAYOR'S APPOINTMENTS TO PLANNING BOARD**

**WHEREAS**, at the regular meeting of Mayor and Council on June 2, 2014, Mayor Anthony Persichilli announced appointments to the Planning Board which named Eileen Heinzl as the Mayor's designated representative on the Board to serve in his absence, Thomas Ogren as a Class IV representative to replace Josh Levy (term expiring December 31, 2017), and Josh Levy to serve as Alternate 1 (term expiring December 31, 2014);

**WHEREAS**, the appointments of Thomas Ogren and Josh Levy as announced were in error and have now been corrected by the Mayor, who retains Josh Levy in his position as Class IV representative (with term expiring 12/31/17) and appoints Thomas Ogren as Alternate 1 (with term expiring 12/31/14);

**NOW, THEREFORE, BE IT RESOLVED**, by the Borough Council of the Borough of Pennington, that the aforesaid appointments by the Mayor, not requiring the approval of Council, are hereby acknowledged.

**Record of Council Vote on Passage**

COUNCILMAN	AYE	NAY	N.V.	A.B.	COUNCILMAN	AYE	NAY	N.V.	A.B.
Davy	X				Lawver	X			
Gnatt	X				Marciante	M			
Griffiths	X				Tucker	S			

Council Member Marciante made a motion to approve Resolution 2014-7.14, second by Council Member Tucker. Mayor Persichilli stated that he wanted to maintain some of the members that have been serving on the Planning Board. Mayor Persichilli stated that Mrs. Heinzl who is now the Borough Administrator and there was an issue with her serving on the Planning Board if she was no longer on Borough Council. Mayor Persichilli stated that Mrs. Heinzl will become the Mayor's designee on the Board, Mr. Ogren who was the Mayor's designee will become and Alternate and Mrs. Gnatt will take Mrs. Heinzl's place as Council Representative. Upon a roll call vote, all members present voted in favor.

Mayor Persichilli stated that Resolution 2014-7.14 will be addressed after Council Discussion.

**BOROUGH OF PENNINGTON  
RESOLUTION #2014 - 7.15**

**AMENDED RESOLUTION AUTHORIZING PAYMENT REQUEST NO. 1 TO  
TOP LINE CONSTRUCTION CORPORATION FOR WORK COMPLETED ON THE 2013 ROAD  
IMPROVEMENT PROGRAM**

**WHEREAS**, this resolution amends and supersedes Resolution 2014-6.6, in order to correct a typographical error concerning amount of payment;

**WHEREAS**, the amended resolution authorizing payment request no. 1 shall read as follows:

**WHEREAS**, Top Line Construction Corporation has completed work pursuant to the contract for the 2013 Road Improvement Program (Roberts Engineering Group File No: PEN3705); and

**WHEREAS**, Roberts Engineering Group has reviewed Top Line Construction Corporations' application for payment and recommends payment of same pursuant to the Contractor's Request for Payment No. 1 in the amount of \$149,528.38 less 2% retainage in the amount of \$2,990.57; and

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

**WHEREAS**, funds are available in Account #: G-02-44-953-000-250; and

**NOW, THEREFORE BE IT RESOLVED**, by the Borough Council of the Borough of

Pennington, that payment to Top Line Construction Corporation in the amount of \$146,537.81 pursuant to payment request No.1 is hereby authorized.

**Record of Council Vote on Passage**

COUNCILMAN	AYE	NAY	N.V.	A.B.	COUNCILMAN	AYE	NAY	N.V.	A.B.
Davy	M				Lawver	X			
Gnatt	X				Marciante	X			
Griffiths	X				Tucker	S			

Council Member Davy made a motion to approve Resolution 2014-7.15, second by Council Member Tucker with all members present voting in favor.

**BOROUGH OF PENNINGTON  
RESOLUTION #2014 – 7.16**

**RESOLUTION AUTHORIZING PAYMENT REQUEST NO. 2 TO  
TOP LINE CONSTRUCTION CORPORATION FOR WORK COMPLETED ON THE 2013 ROAD  
IMPROVEMENT PROGRAM**

**WHEREAS**, Top Line Construction Corporation has completed work pursuant to the contract for the 2013 Road Improvement Program (Roberts Engineering Group File No: PEN3705); and

**WHEREAS**, Roberts Engineering Group has reviewed Top Line Construction Corporations’ application for payment and recommends payment of same pursuant to the Contractor’s Request for Payment No. 2 in the amount of \$55,999.02 less 2% retainage in the amount of \$1,119.98; and

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

**WHEREAS**, funds are available in Account #: G-02-44-953-000-250; and

**NOW, THEREFORE BE IT RESOLVED**, by the Borough Council of the Borough of Pennington, that payment to Top Line Construction Corporation in the amount of \$55,999.02 pursuant to payment request No.2 is hereby authorized.

**Record of Council Vote on Passage**

COUNCILMAN	AYE	NAY	N.V.	A.B.	COUNCILMAN	AYE	NAY	N.V.	A.B.
Davy	M				Lawver	X			
Gnatt	X				Marciante	X			
Griffiths	S				Tucker	X			

Council Member Davy made a motion to approve Resolution 2014-7.16, second by Council Member Griffiths with all members present voting in favor.

Mayor Persichilli stated that Resolution 2014-7.17 will be discussed in Closed Session.

**Council Discussion**

**Green Acres Funding – Thompson Land (Resolution 2014-7.14)  
Green Acres Funding – Berwind Property – Carter Road.**

Mrs. Heinzl stated that Mayor Sandom of Hopewell Township had requested that the Borough file a Green Acres Grant to contribute to the acquisition of a property on Carter Road. Mrs. Heinzl stated that Council might remember that we applied for a grant from Mercer County to acquire the property, but additional funding is needed. Mrs. Heinzl stated that shortly after having this discussion with Mayor Sandom, she received a notice that the Open Space Committee had a recommendation to apply for Green Acres Funding to acquire the Thompson Land and information on that acquisition was provided in the packets and is addressed by Resolution 2014-7.14. Mrs. Heinzl stated that she sent an e-mail to Mayor Sandom asking for more details and she did not hear back for her. Mayor Persichilli stated that in a previous discussion the subject of using Borough Open Space Funds for acquiring property outside the Borough came up. Mayor Persichilli stated that the property that the Open Space Committee is recommending is right on the outside of town at the point of Lawrenceville-Pennington Road. Mayor Persichilli stated that the question is whether to consider the property on Carter Road or this property. Mr. Marciante stated that the Thompson Property has a main gas line going through it and he does not see why the Borough would want to acquire the property. Mr. Lawver stated that as he looks at the map, the piece on Blackwell Road is primarily occupied by a gas pipe line. Mr. Lawver stated that the Pennington Road piece is primarily occupied by a stream. Mr. Lawver stated that he does not see a significant change in the beltway by acquiring this land. Mr. Lawver stated that there is a property to the north of town which seems to be more important in preserving the green belt than this piece of property. Mr. Lawver stated that another piece of property that has been discussed in the past is the Lovero Property on Route 31. Mr. Davy stated that another piece of property that has been discussed is the land around Curlis Lake. Mr. Davy stated that to Mr. Lawver’s point, if the Borough keeps using funds to purchase these small pieces, we will never have funds set aside to pursue properties that we really want.

Mrs. Heinzl referred to a list of properties provided by the Open Space Committee. Mrs. Heinzl stated that she thinks that the Open Space Committee has walked the properties and ordered them in a list of properties. Mayor Persichilli stated that there is also a property north of town that needs to be cleaned up and could potentially be open space. Mrs. Heinzl stated that the Borough can only apply for one project and the applications are due by July 31<sup>st</sup>. Mrs. Gnatt stated that she thinks that Green Acres Funding is coming to an end and now is the time to apply for funds. Upon further discussion, Council Members felt that it would be a good idea to have a Special Meeting with the Open Space Committee to discuss these projects and to decide how to proceed with applying for Green Acres Funding.

**BOROUGH OF PENNINGTON  
RESOLUTION #2014 – 7.14**

**RESOLUTION AUTHORIZING SUBMISSION OF A REQUEST TO THE GREEN ACRES  
PROGRAM, NEW JERSEY DEPARTMENT OF ENVIRONMENTAL PROTECTION, FOR A  
GRANT TO FUND OPEN SPACE ACQUISITION**

**WHEREAS**, the New Jersey Department of Environmental Protection, Green Acres Program (“State”), provides loans and/or grants to municipal and county governments and grants to nonprofit organizations for assistance in the acquisition and development of lands for outdoor recreation and conservation purposes; and

**WHEREAS**, the Borough of Pennington received approval from the Green Acres Program in 2002 to request Planning Incentive Grants for open space acquisitions; and

**WHEREAS**, the Borough of Pennington desires to acquire additional open space in the Borough’s Green Belt and seeks a Green Acres grant of \$400,000.00 for this acquisition;

**WHEREAS**, Green Acres funding is available for open space acquisitions this year and Pennington Borough is eligible to request a grant for such an acquisition by sending a letter to the Green Acres Program by July 31; and

**WHEREAS**, Pennington Borough is willing to make available Open Space Trust funds for land acquisition and acquisition related expenses which are needed to match Green Acres funding; and

**NOW, THEREFORE, BE IT RESOLVED**, that the Borough Council of the Borough of Pennington resolves that Mayor Anthony J. Persichilli is hereby authorized to:

- (a) Submit a funding request to the Green Acres Program; and
- (b) Provide additional information and furnish such documents as may be required.

**BE IT FURTHER RESOLVED**, that this resolution shall take effect immediately.

**Comp Time Request – Jeff Wittkop** - Mayor Persichilli asked if Council Members had any questions regarding this request. There were none. Council Member Davy made a motion to approve payment of comp time to Jeff Wittkop, second by Council Member Gnatt with all members present voting in favor.

**Council Discussion**

**Sidewalk Ordinance – Overgrowth** – Mrs. Heinzl distributed a handout to Council and stated that a resident has been calling her regarding four properties in town. Mrs. Heinzl stated that Sergeant Friedman has gone and visited each of the properties and has spoken to one of the homeowners who has hedges growing out over the sidewalk. Mrs. Heinzl stated that there is a question with regard to the other properties where flowers are growing over the sidewalk. Mrs. Heinzl stated that we have a Borough ordinance (177-21) that says “the owner of every lot of land abutting on any public street in the Borough sidewalk shall maintain the abutting sidewalks clear of all refuse, waste, debris, plant and shrub overgrowth”. Mrs. Heinzl stated that the question is what constitutes overgrowth to the point where the Borough would like to go in and enforce this ordinance. Mrs. Heinzl stated that 177-23 if the homeowner does not comply with the ordinance, then the Superintendent of Public Works is directed and authorized to go in and take care of it on their own and a lien would be issued for the costs incurred. Mrs. Heinzl stated that she has spoken to the resident and told her that this would be discussed at this meeting. Mrs. Heinzl stated that in speaking with Mr. Meytrott and Sergeant Friedman there are esthetic issues, but there are also safety issues. Mrs. Heinzl stated that the tree and shrub issues are more easily identified, other properties have less intrusive issues but they are still effectively overgrowth. Mr. Bliss asked if any of these plantings are in the public right-of-way that is the grass between the sidewalk and the curb. Mrs. Heinzl stated that no, they are on the homeowners side of the sidewalk. Mrs. Heinzl stated that the issue here is that there are specific properties for which a complaint was made and received. Mrs. Heinzl stated that a survey of the Borough could be done and there might be other properties where there is a similar situation. Mr. Davy asked if anyone looked at the issue to determine if there was a safety problem. Mr. Meytrott stated that there are some egregious areas, but usually they are not. Mr. Meytrott stated that a flower bed that may be drooping over the sidewalk would not be something that a cop would generally address. Mr. Meytrott stated that Mrs. Heinzl is looking for a standard to go by so that all residents are treated the same. Mr. Meytrott stated that the problem with responding to individual complaints is that only certain residents are being singled out. Mr. Wittkop stated that there are a number of hedges that are intruding on the sidewalk where two people cannot walk down the sidewalk side by side. Mr. Lawver stated that there are problem spots in the borough that need to be

addressed. Mr. Griffiths stated that the ordinance is a little bit incomplete because it addresses grass and weeds, but does not specifically address vertical plane issues. Mrs. Heinzl stated that she drove through town with Sergeant Friedman and there are areas that need to be addressed, but the literal reading of the ordinance regarding overgrowth does not provide direction and she has a resident calling every week wondering why nothing has been done. Mr. Lawver stated that if the Borough is not going to enforce an ordinance then why have it in the first place. Mrs. Heinzl stated that the wording of the ordinance needs to be clarified. Mr. Griffiths stated that the ordinance should be clarified to require a vertical plane extending up from the edges of the sidewalk to 7 feet. Mr. Bliss stated that right now the vertical plane exists in the ordinance and overgrowth means growing over the sidewalk and to the extent that residents plant along the sidewalk they should have plants that are controllable. Mayor Persichilli asked how complaints should be handled. Mr. Meytrott stated that if a complaint comes in, Sgt. Friedman will go out and look at the situation and if he deems it is not a safety hazard he will advise whoever has made the complaint that there is no safety issue. Mr. Meytrott stated that the person making the complaint would then have the right to sign a complaint in Municipal Court. Council Members agreed that this would be a good approach to the problem. Council discussed several properties in town that need to be addressed. Mr. Bliss stated that in his mind one factor to consider is that these plants are in the public right of way so it is not just an issue of safety, it is an issue of regulating Borough property. Mr. Bliss stated that as residents plant flowers along the sidewalk to buffer the sidewalk there is already an encroachment into the public right of way to begin with and if that is the case then the Borough should at least have a say in what type of flowers are planted so that they do not hang over the sidewalk. Council Members agreed that the ordinance should stay the way it is and that Mr. Meytrott's recommendation on enforcement be implemented.

### **Professional Reports**

Mr. Bliss requested a closed session.

Mrs. Heinzl stated that the last time the Upper King George Road project was discussed, the NANO loan program under the New Jersey Environmental Infrastructure Trust came up. Mrs. Heinzl stated that she attended a meeting with Mr. Davy on this program. Mr. Davy stated that they have been looking into this program to cover the cost of the upgrade of the water lines in conjunction with road projects and in particular the Upper King George Road and Park Avenue projects. Mr. Davy stated that they met with representatives for this funding program and the size of the Borough and the Water Company qualifies us for this funding. Mr. Davy stated that this loan provides for 50% principle loan forgiveness, 25% DEP Loan with 0% interest that is eventually converted to a grant that does not have to be repaid and finally 25% which is a trust loan at market rate plus 1%. Mr. Davy stated that an application is required and it is mostly engineering driven. Mr. Davy stated that the engineer would be required to complete a lot of documents required by the NJEIT. Mr. Davy stated that if the Borough applies for this program, in effect it would delay our ability to proceed with the Upper King George Road project as the application and construction process is lengthy. Mr. Davy stated that we would have to submit a request to the DOT to defer the grant application for a portion of the funding for the project. Mr. Davy stated that given the debt service scenario that Mr. Griffiths has outlined it might work out better to delay the project. Mr. Davy stated that this funding would be strictly to improve our water utility so projects like King George Road, Park Avenue and even upgrading of meters would be eligible. Mr. Davy stated that even projects to increase capacity would also be eligible. Mr. Davy stated that it was suggested that the Borough apply for projects when we are ready to proceed. Mr. Davy stated that because we are basically ready with King George Road, we should concentrate on that project alone, test the waters with this program and see if we can get the funding for this project. Mr. Davy stated that he got the impression that if we apply under this program and the application is complete that we will be awarded the funds. Mr. Davy stated that they indicated that they really want to fund water utilities like ours and there are not many water utilities out there like ours. Mr. Davy stated that repayment does not begin until project completion. Mr. Davy stated that there is also a separate application for engineering costs. Mr. Davy stated that there is some urgency and we need to authorize the Borough Engineer to do this tonight because given the amount of work and documentation that needs to be done in order to submit the application in time, we need to start immediately.

Mrs. Heinzl stated that she spoke with Chief Financial Officer, Sandy Webb regarding funding. Mrs. Webb cautioned Council to be very careful, but she felt that there would be a way to fund this. Mrs. Heinzl stated that the letter of intent is due October 1<sup>st</sup> and as Mr. Davy indicated, the sooner we get started the better. Mrs. Heinzl stated that the full application is due by March and if the DEP approves the project by January 15<sup>th</sup>, funds will be available January 15, 2015. Mrs. Heinzl stated that the more information we can provide up front the easier and quicker it will be for the DEP to prioritize and review the project and get certification for funding so that a short term loan would be available in January. Mr. Davy stated that the NJEIT would need to make a funding request as part of the State Budget and so the next budget won't be adopted until July of 2015, but they said that does not necessarily preclude the Borough from being awarded the funding and the legislature has never altered any funding allocation that they have requested.

Mr. Davy stated that because this involves the water utility that Van Note Harvey be asked to complete the application. Mr. Davy stated that even though this was brought before Council by the Borough Engineer, to eliminate any confusion it seems prudent to have the Water/Sewer Engineer complete the application. Mr. Davy stated that the Public Works Committee agreed that Van Note Harvey should do the application. Mr. Wittkop stated that no design work has been done on this project as funds were not committed. Mr. Lawver stated that he agrees with not putting all of our projects into one application, but why not include Park Avenue in with the application for King George Road? Mr. Davy stated that he did not think that the design of the Park Avenue road and water line project was as far along as the King George Road project. Mr. Davy stated that Mr. Zimmer of the NJEIT indicated that if the Borough is not shovel-ready then wait to apply for

the funds. Mr. Lawver stated that he is hearing that we are no farther along with King George Road than we are with Park Avenue. After some discussion, Council Members agreed that the application should include King George Road and Park Avenue. Mrs. Heinzl stated that she spoke with Norm Nelson of Van Note Harvey and he provided some ballpark estimates as to charges for construction design and inspection and they could amount to \$75,000 to \$100,000 more in engineering costs. Mrs. Heinzl stated that there is an engineering program which is not reimbursement. Mrs. Heinzl stated that there is a non-profit agency that solicits engineers that they then vet and put on an approved list. Mrs. Heinzl stated that if the Borough selected from that list, then that person would come in and access and manage the project. Mrs. Heinzl stated that she should have more information later this week. Mrs. Heinzl stated that the question becomes do we work with Norm Nelson who is familiar with the water company or do we hire an engineer from the list. Mr. Griffiths asked if the engineering fees need to be absorbed in the budget or can they be part of the loan. Mrs. Heinzl stated that they could be part of the application. Mayor Persichilli asked for a decision. Mr. Davy stated that the application should include both King George Road and Park Avenue. Mr. Lawver asked if Van Note Harvey has submitted an estimate for their work to develop the application. Mrs. Heinzl stated that the estimate to do the letter of intent is between \$10,000 and \$11,000 which is the same as what the Borough Engineer submitted. Mr. Davy made a motion to engage the services of Van Note Harvey Associates in the amount of not to exceed \$11,000 to prepare the letter of intent for the NANO Program for King George Road and Park Avenue, second by Mr. Tucker. Upon a roll call vote, all members present voted in favor.

### **Public Comment**

There were no comments from the public.

### **Closed Session**

**AT, 8:48 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  
 Negotiation/Potential Litigation – CODE RED  
 Personnel – Wayne Blauth  
 John Tredrea

At 9:20 PM, Council returned to Open Session

Mayor Persichilli read Resolution 2014-7.17 by title.

### **BOROUGH OF PENNINGTON RESOLUTION 2014-7.17**

#### **RESOLUTION AUTHORIZING SETTLEMENT OF BOROUGH CLAIMS FOR LIQUIDATED DAMAGES AND INSPECTION FEES AGAINST A&A CURBING, INC. RELATING TO THE DOWNTOWN STREETScape IMPROVEMENT PROJECT**

**WHEREAS**, A&A Curbing, Inc. (“A&A”) has received partial payments for work completed pursuant to its contract with the Borough for the Downtown Streetscape Improvement Project (Roberts Engineering Group, LLC, Project No. PEN3704;

**WHEREAS**, the partial payments have resulted from the withholding of funds by the Borough to compensate it 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**, in particular, pursuant to Borough Council Resolution No. 2013-12.7 and Borough Council Resolution No. 2014-3.11, the Borough withheld from amounts otherwise due to A&A liquidated damages of \$33,600. and excess inspection fees of \$12,010.75, for a total of \$45,610.75 withheld for these purposes;

**WHEREAS**, A&A has objected to the withholding of these funds by the Borough, and attorneys for the Borough and A&A have therefore had discussions concerning grounds for a possible settlement;

**WHEREAS**, the parties have tentatively agreed upon a settlement whereby the Borough would be paid from the funds retained pursuant to Resolutions 2013-12.7 and 2014-3.11 the amount of \$23,423.25 plus attorneys’ fees of \$480, totaling \$23,903.25, and the remaining amount of \$21,707.50 would be released and paid to A&A in exchange for a release;

**WHEREAS**, the proposed settlement is subject to the parties agreeing upon a mutually acceptable form of release;

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

1. The settlement described above, requiring payments in the amount of \$23,903.25 to the Borough of Pennington and \$21,707.50 to A&A Curbing, Inc., all from the funds retained by the Borough pursuant to Resolutions 2013-12.7 and 2014-3.11, exhausting such funds, is hereby authorized and approved, subject only to agreement upon a form of release approved by the Borough Attorney.

2. The Administrator is hereby authorized to take such additional actions, upon the advice of the Borough Attorney, as required to effectuate the above payments and settlement.

**Record of Council Vote on Passage**

COUNCILMAN	AYE	NAY	N.V.	A.B.	COUNCILMAN	AYE	NAY	N.V.	A.B.
Davy	X				Lawver	X			
Gnatt	S				Marciante	M			
Griffiths	X				Tucker	X			

Council Member Marciante made a motion to approve Resolution 2014-7.17, second by Council Member Gnatt with all members present voting in favor.

**Approval of Closed Session Minutes (for content but not for release)**

Council Member Tucker made a motion to approve the minutes of the June 10, 2013, Closed Session, second by Council Member Griffiths. Upon a roll call vote, all members present voted in favor with the exception of Mr. Davy, Mrs. Gnatt, Mr. Lawver and Mr. Marciante who all abstained as they were not on Council on June 10, 2013.

Council Member Marciante made a motion to approve the minutes of the April 7, 2014, Closed Session, second by Council Member Tucker with all members present voting in favor with the exception of Mr. Lawver who abstained.

Council Member Tucker made a motion to approve the minutes of the May 12, 2014, Closed Session, second by Council Member Griffiths with all members present voting in favor with the exception of Mr. Lawver who abstained.

At 9:20 PM, Council Member Tucker made a motion to adjourn the meeting, second by Council Member Marciante.

Respectfully submitted,

Elizabeth Sterling  
Borough Clerk