

**Pennington Borough Council  
Regular Meeting – September 8, 2015**

Mayor Persichilli called the Regular Meeting of the Borough Council to order at 7:00 pm. Borough Clerk Betty Sterling called the roll. All members were present.

Also present were Borough Administrator Eileen Heinzl, Public Safety Director Bill Meytrott, Superintendent of Public Works Rick Smith and Borough Attorney Walter Bliss.

Mayor Persichilli announced that notice of this meeting has been given to the Hopewell Valley News, Trenton Times 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.**

Regina Phillips of 211 Hale Street came forward with questions regarding sidewalk repairs. Mrs. Phillips stated that she has contacted the Borough several times by phone and in person with concerns regarding her sidewalk. Mrs. Phillips stated that if the Borough wants her to repair her sidewalk then someone from the Borough needs to get back to her with information about the two trees that need work. Mrs. Phillips stated that she has been in her home for over twenty years and when the trees were planted she indicated that she did not think they were being planted in a good spot. Mrs. Phillips stated that both trees are growing under her existing trees and they are between the sidewalk and the road and she indicated when they were planted that eventually they would impact the sidewalk. Mrs. Phillips stated that one tree is leaning way into the road and is in distress and the other one is damaging the sidewalk. Mrs. Phillips stated that she was told that someone would get back to her and when she spoke with the Superintendent of Public Works she was told that there was probably no money budgeted to take down the trees. Mrs. Phillips stated that she walks and rides her bike every day and she sees other areas of sidewalk with problems. Mrs. Phillips stated that she has seen some areas where bricks have been used and those areas are just as hazardous as regular sidewalks.

Mayor Persichilli asked if anyone had any history on this issue. Mr. Davy stated that he did not have a history on this specific case, but the Public Works Committee has been considering individual cases on a case by case basis.

Mr. Gabe Rosko, Chairman of the Shade Tree Commission came forward. Mr. Rosko stated that he put together some information that will help Council to better understand the tree issues in the Borough. Mr. Rosko distributed a list of eighty-two trees over twenty-eight inches in diameter that will need to be addressed eventually with some requiring immediate action. Mr. Rosko stated that live trees are on the lowest priority for consideration. Mr. Rosko stated that he has heard of a number of people who have concerns about spending money on trees that they did not ask for or that were improperly planted. Mr. Rosko stated that he agrees with some of the issues, some trees were planted improperly and homeowners were not asked if they wanted the trees. Mr. Rosko stated that the Borough has an agreement with the State to provide a zero net loss canopy in the Borough to get funding for tree care, tree work and tree planting. Mr. Rosko stated that to maintain that after the fact without any kind of funds or tree ordinance in place is difficult. Mr. Rosko stated that to come up with an answer for some of these unique problems there has to be an understanding that there will be a substantial monetary requirement from the Borough. Mr. Rosko stated that this would be over the next few years, but very shortly the Borough is going to have to deal with eighty plus very large pin oak trees. Mr. Marciante asked for an estimate on cost. Mr. Rosko stated that the lowest estimate he received for one of the big trees, in the wires was around \$2,000.00, but each individual tree has specific issues. Mrs. Heinzl stated that a solution for one of the trees was discussed and that was to cut the roots so that the sidewalk could be repaired. Mrs. Phillips stated that one of the trees is completely distressed and she did not feel that cutting the roots would be a good idea. Mrs. Phillips indicated that she knows an arborist who has looked at the trees and said that the one tree has to be taken down because it is trying to grow towards the sunlight and it is dying.

Mr. Rosko stated that for the record he is a Certified Tree Expert and a Certified Arborist and he has been in the business for over twenty years. Mr. Rosko stated that he has seen the trees and something is definitely wrong with the one tree. Mr. Rosko stated that he feels that the recommendation for root pruning is adequate until the Borough can remove the trees. Mrs. Phillips asked if they could remove the trees themselves. Mr. Rosko stated that since the Borough does not have an ordinance, that would be a sticky situation and the Borough cannot have homeowners indiscriminately taking down trees. Mr. Rosko stated that there would have to be a special agreement between the Borough and the homeowner and then another agreement to replace the trees that were Borough property and were removed. Mrs. Phillips stated that the Borough trees are growing under her trees and causing her trees distress. Mr. Rosko stated that there needs to be an

allowance for poorly placed trees, but again the Borough does not have an ordinance. Mr. Rosko stated that prior to his term, there were inappropriate species of trees planted in inappropriate places.

Mr. Davy stated that what was suggested was that the roots be trimmed now, replace the sidewalk and then the Borough would figure out what to do about the tree. Mrs. Phillips stated that the letter she received states that she has to make repairs by December 2015 and she does not want to do the work in the winter but she does not want to be fined. Mr. Lawver stated that once the sidewalk is removed, the Borough would come out and trim the roots. Mr. Rosko stated that the Borough does not prune roots of trees. Mr. Rosko stated that the Borough trims limbs but does not have the capacity to trim roots. Mrs. Phillips asked then who would trim the roots. Mr. Rosko stated that the sidewalk contractor should sub-contract out the job of trimming the roots. Mr. Rosko stated that he has never pruned roots, he has gone out and marked roots for sidewalk repairs but the contractor has taken care of getting the job done.

Mr. Bliss stated that he would like to clarify Mr. Rosko's statement that the Borough does not have a tree ordinance, the tree ordinance in Chapter 13 of the code makes clear that the Shade Tree Commission declares a tree to be dangerous to public safety and can be removed. Mr. Rosko stated that is all it does and these are not public safety issues. Mr. Bliss stated that to the extent that a tree disrupts the sidewalk, and creates a hazard then it is a danger to public safety. Mr. Bliss stated that the ordinance basically says that if a tree is dangerous to public safety then it can be removed; the only issue is who pays for it if it is on public property. Mr. Bliss stated that if a tree is on private property within the public right-of-way it is chargeable to the property owner. Mrs. Phillips stated that since her trees are between the sidewalk and the road then it is the Borough's responsibility. Mr. Bliss stated that is within the right-of-way and that governs who pays for it, the decision to take the tree down belongs to the Borough and the Shade Tree Committee can make a recommendation to Borough Council that the tree be taken down. Mr. Rosko stated that under that wording, the Borough should not pay for any tree work. Mr. Bliss stated that under the Shade Tree Commission statute, that is the way it works. Mr. Bliss stated that the State statute does not distinguish between public and private property it states that if a tree is located in front of a house and is dangerous and has to be removed then the homeowner pays for the removal because it is the equivalent of a special improvement to the house. Mr. Bliss stated that the sidewalk ordinance works the same way in that the ordinance applicates to homeowners the financial responsibility to fix the sidewalk. Mr. Lawver stated that past practice for trees has not been consistent with the ordinance. Mr. Bliss stated that this is an issue that needs to be addressed.

Mr. Lawver stated that the question is what should be done with regard to Mrs. Phillips trees. Mr. Bliss stated that to follow procedure, the Shade Tree Committee has to render an opinion on the trees. Mr. Lawver stated that they essentially rendered that they are not a danger to public safety. Mr. Rosko stated that work can be done to fix the issue with the sidewalk irrespective of the health of the tree and that would be pruning the roots. Mrs. Chandler stated that putting a meandering sidewalk around a tree that is going to be taken down does not make sense unless another tree is going to be planted. Mr. Rosko stated that at this point neither of the trees needs to come down, but to fix the sidewalk the roots need to be trimmed. Mrs. Phillips stated that if the roots on the tree that is leaning are pruned then the tree will eventually cause a major problem. Mr. Rosko stated that the variety of the tree that is there has a fast growing root system so it may or may not cause a problem, but it would have to be monitored. Mrs. Phillips expressed concern as to who would be responsible if the tree fell down and caused harm. Mr. Bliss stated that those questions need to be answered because it is a matter of notice of hazardous condition. Mrs. Phillips stated that her contractor won't repair the sidewalk until the trees are taken down because he does not want to have to do it again. Mrs. Phillips stated that she would arrange to have the tree taken down. Mr. Rosko stated that he does not have a problem with the trees being removed, but he does not want to set a precedent and see other residents remove trees because they don't want them.

Mr. Davy stated that later in the meeting there is a resolution regarding another case in town where the homeowner has agreed to pay to have the trees taken down. Mr. Davy stated that the Borough is going to contract to have the work done and the homeowner is going to reimburse the Borough for the cost of the work and then he will repair the sidewalk. Mr. Davy asked why this case is not the same thing. Mr. Bliss stated that the critical determination of the ordinance is whether the trees in question are dangerous to public safety. Mr. Bliss stated that in the case of the trees in the resolution, those trees substantially disrupt the sidewalk.

Mr. Rosko stated that almost every sidewalk in town needs to be repaired due to tree roots. Mr. Rosko stated that if we set this precedent then it would be a problem. Mr. Rosko stated that the list he prepared of the eighty-two trees is only trees over a certain diameter. Mrs. Chandler stated that the problem is that allowing one person to remove a tree would open the door for anyone who has a slight sidewalk issue to remove a tree that maybe should not be taken down. Mrs. Chandler stated that she does not like the precedent of taking down fine trees because of a sidewalk repair. Mr. Rosko stated that the Borough does not have an ordinance that would protect the trees; we have an ordinance that might protect the homeowner. Mr. Rosko stated that any tree can be pointed out as a danger by lifting up the sidewalk.

Mr. Griffiths stated that Mr. Rosko mentioned trees that were improperly planted. Mr. Rosko stated that he is a volunteer and he has not had time to do that survey yet. Mr. Rosko stated that the other thing is that the Borough has a five-year plan that is due at the end of the year and we are compelled to complete it to remain in compliance as a Tree City USA and with the State of New Jersey. Mr. Rosko stated that after that, he can start doing a survey of Borough trees. Mr. Rosko stated that he did the list of eighty-two trees because there have been a lot of issues that have come up recently. Mr. Rosko stated that to survey each tree in the Borough, he would need right-of-ways marked out, and a lot of manpower and energy and that is out of the realm of possibilities unless he is compelled by the commission to do so. Mr. Rosko stated that the list he

compiled indicates the diameter, location and whatever issue is present.

Mr. Davy stated that it seems to him that in this case with the roots the way they are, it presents a safety problem and by cutting the roots there is potentially a safety problem because it is not clear what might happen with the tree. Mr. Rosko stated that even without pruning the roots, the tree could come down. Mr. Rosko stated that there is a qualification called Tree Risk Assessment Qualified Arborist and he is currently not a TRAQ qualified arborist, but he can be grandfathered in by taking the course which he would like to do. Mrs. Phillips stated that her concern is that she got a letter stating that she has to fix her sidewalk and she does not want to fix it until the issue with the trees is resolved, but she does not want to get fined for not meeting the deadline. Mrs. Chandler asked if there were a way to extend the deadline for Mrs. Phillips so that the tree issue can be resolved. Mayor Persichilli stated that this is something that Borough Council has to figure out. Mrs. Phillips asked if she can trim the tree because her husband does not want to work on the tree because it is not their property. Mr. Rosko stated that another thing that is not addressed in any ordinance is improperly pruning trees or who is responsible for tree maintenance. Mr. Rosko stated that he would prefer that a certified arborist or certified tree expert do the work on Borough trees. Mrs. Phillips stated that there are several dead branches and she would like to know who would be responsible if a tree branch falls and injures someone or something. Mr. Davy stated that the homeowner is responsible for the tree just like the homeowner is responsible for their sidewalk.

Mrs. Chandler stated that Council should grant an extension on this case and then take a look at tree ordinances and determine what protects the homeowner and what protects the trees because coming up with a resolution one way or the other will set a precedent and if council is setting a precedent she wants to know what precedent is being set. Mr. Bliss stated that granting an extension is at the discretion of Council. Mayor Persichilli proposed that an extension be granted on this case until the issue is completely resolved. Mr. Davy stated that if there are dead branches that might cause a problem they should be allowed to trim them. Mr. Lawver suggested a six-month extension so that Council does not let this lie unresolved. Council Members were in agreement. Mrs. Heinzl stated that she would send a letter confirming the extension.

Mr. Bliss stated that he was remiss at the beginning of the meeting to amend the agenda to include an Interim Rights-of-Way Agreement with Fibertech. Mr. Bliss stated that a resolution was distributed to council members prior to the meeting. Mr. Bliss stated that he would further explain the urgency later in the meeting.

Mr. Rosko stated that moving forward he would like there to be specific wording added to the ordinance. Mrs. Chandler asked if Mr. Rosko were aware of any tree ordinances in the area. Mr. Rosko stated that ours is a unique situation because of our small size. Mr. Rosko stated that larger townships use wording that is very all inclusive and save trees to a great extent and he does not know that we need to go that far. Mr. Rosko stated that he does not want to have as comprehensive an ordinance as some other municipalities. Mr. Rosko stated that a couple of well-placed words would probably do the job. Mr. Rosko stated that going forward there needs to be better wording in what Mr. Bliss referred to as the tree ordinance. Mr. Rosko stated that the Shade Tree Commission would discuss this at their meeting, but there is a lot on their plates for this year.

Mrs. Chandler asked if Mr. Rosko would be making his presentation that is listed on the agenda or if this constituted his presentation. Mrs. Chandler stated that she had some questions. Mrs. Chandler stated that the list of eighty-two trees that was distributed is a list of trees that need to come down, but is there a list of trees that will be planted. Mrs. Chandler stated that one of the things that she heard earlier was that one of the trees planted was a non-native invasive tree so that concerns her with regard to how can that be prevented in the future. Mrs. Chandler stated that as members of the commission change is there something that council can do to ensure consistency and to be more intelligent about trees that are planted. Mr. Rosko stated that the Borough could hire a Certified Tree Expert. Mrs. Chandler asked if we buy trees in Mercer County and Mr. Rosko stated that we buy trees in New Jersey, but he has not found a source in Mercer County. Mr. Marciantie asked if there is a recommendation of what type of tree is good for planting near a sidewalk. Mr. Rosko stated that unfortunately the recommendations are for more urban settings and certain trees are perfect for places like Newark because they can survive against all kinds of salt, smog, pollution, animal waste and so forth, but the same tree would not be good for a town like Pennington. Mr. Rosko stated that the Shade Tree Commission can come up with a list of trees that are appropriate, but there are very few spaces in the Borough where trees are appropriate to be planted between the sidewalk and the street. Mr. Lawver stated that most of the right-of-ways are less than two feet between the sidewalk and the street. Mr. Rosko stated that he wanted to start this conversation because if Council starts this ball rolling then we need to be careful what is down the hill. Mr. Rosko stated that the Shade Tree Commission has discussed how to steward trees that are gifted to an individual homeowner that affect the right of way space. Mr. Rosko stated that we cannot compel residents to plant trees, we can only gift them and then once that is done, how does the Borough manage the tree. Mr. Rosko stated that when houses are sold and new owners move in and they don't like having a tree and they cut it down the Borough loses their investment. Mr. Rosko stated therein lies the necessity for wording to protect these trees, whether it is an ordinance or otherwise. Mr. Rosko stated that a lot of towns have ordinances that affect all of the trees in the front of a property because anyone walking in town can see them and enjoy them and be affected by their shade. Mrs. Chandler stated that what is happening is larger trees are coming down and they are not being replaced because in reality there is not enough space. Mr. Rosko stated that in order to maintain the Tree City USA status, there is a percentage for gain or loss that is allowed but we strive for a zero net canopy loss. Mr. Rosko stated that a lot of trees were planted in the ten years prior to when he took over and unfortunately those are the trees that are causing problems.

Mrs. Chandler stated that she lives on Main Street so her tree issues are with Mercer County. Mr. Rosko stated that the County is responsible for Main Street, Delaware Avenue and Ingleside Avenue and they do not consult with the Borough when it comes to tree takedown. Mr. Rosko stated that he is pretty sure that the County did not plant the Pin Oak trees that are on Main Street, but they did plant the Pear trees and there are issues with them. Mr. Rosko stated that he is trying to create a relationship with Bill Voorhees and work out an agreement for an approved tree placement list and then we can try to compel him to plant trees that the Borough approves on those streets.

Mrs. Chandler asked other than coming up with funds for the Shade Tree Commission is there anything else that Council can do for them. Mr. Rosko stated that working on the tree ordinance is important as well as understanding the budgetary concerns. Mr. Rosko stated that there are six or seven immediate tree issues and another twelve or so shortly after that and the rest will become issues eventually. Mr. Rosko stated that each tree on the list would cost around \$1,500 to remove.

Mayor Persichilli thanked Mr. Rosko for coming to the meeting and updating Council.

### **Mayors Business**

Mayor Persichilli thanked the Public Works department for cleaning up in front of Borough Hall and power washing the patio furniture.

Mayor Persichilli stated that Rachel Donington was supposed to attend tonight's meeting to speak about the Hope is the Bag Campaign and though she was unable to attend, Council has a brochure about the event.

### **Approval of Minutes**

Council Member Griffiths made a motion to approve the minutes of the August 3, 2015 Regular Meeting, second by Council Member Marciante with all members present voting in favor with the exception of Mrs. Chandler who abstained.

### **Committee Reports**

**Planning & Zoning / Open Space** – Mrs. Gnat reported that the Open Space Committee met on August 19<sup>th</sup>. Mrs. Gnat reported on a discussion to consider the purchase of a property with frontage on Blackwell and Federal City Roads in Hopewell Township. Mrs. Gnat stated that there is a sign on the property advertising possible development of 22 building lots. Mrs. Gnat stated that the property is adjacent to Mercer Meadows which is County preserved Open Space and the property is approximately one mile from the Borough's border. Mrs. Gnat stated that the Open Space Committee has discussed this property as meeting the goal of preserving a green belt around Pennington Borough. Mrs. Gnat stated that the status of the property is unknown at this time as the sign has now been removed.

Mrs. Gnat stated that there was a discussion of Bristol Myers Squibb's General Development Plan/Developer's Agreement between Hopewell Township and BMS. Mrs. Gnat stated that this is a twenty year plan executed in 2005, now at the midpoint of the agreement. Mrs. Gnat stated that the property shares a border with Pennington Borough and the Agreement provides for phased conveyance of two hundred plus acres of preserved open space and farmland in exchange for approval to build approximately 2.8 million square feet on the property. Mrs. Gnat stated that the plan expires in ten years and it is not assignable. Mrs. Gnat stated that Mr. Ogren who is also a member of the Hopewell Valley Open Space Advisory Committee asked them if they would consider requesting that BMS convey the conservation easement now and the response was that Hopewell Township is not interested at this time.

Mrs. Gnat stated that the Brown Property closing will take place before the end of the year. Mrs. Gnat stated that funds have been received from Mercer County and Green Acres. Mrs. Gnat stated that the acquisition of the property on Carter Road was completed in April 2015. Mrs. Gnat stated that discussions are ongoing between the principal owners as to stewardship and usage. Mrs. Gnat stated that the Open Space Committee is concerned with the location of the Lawrence Hopewell Trail on Old Mill Road and would like to see the trail re-routed. Mrs. Gnat stated that the parties involved have agreed to re-routing a portion of the trail however, DEP permits will be needed in order to proceed.

Mrs. Chandler asked if the Open Space Committee could be invited to the next Council meeting. Mrs. Chandler stated that she would like to see a map showing the parcels that the Borough has previously preserved in one color and the parcels that the Open Space Committee has interest in shown in another color. Mrs. Heinzl stated that she will speak to Mr. Ogren and invite him to the October meeting.

**Public Works / Personnel** – Mr. Davy stated that the State of New Jersey has awarded a grant to the Borough for road work on Park Avenue. Mr. Davy stated that we are waiting for word from NJEIT regarding funding for water main replacement. Mr. Davy stated that the DOT grant only covers the road work and does not include sidewalks. Mr. Davy stated that the estimated cost for sidewalks is \$35,000. Mr. Davy stated that the Borough Engineer is in the process of designing the road project and has asked what the intention of the Borough is with regard to sidewalks. Mr. Davy stated that the Public Works Committee has discussed this and a majority of the committee felt that we can't do the sidewalks as there are no funds budgeted for sidewalks. Mr. Davy stated that there was a consensus among the committee members that this should be presented to Council for guidance regarding sidewalks. There was some

discussion as to funding the \$35,000 for sidewalks. Mr. Griffiths stated that coming back to Mr. Peyton's letter from the last meeting the question is what Council wants to do with regard to repairing infrastructure. Mr. Griffiths stated that Mr. Lawver suggested budgeting funds each year to supplement shortfalls in road projects and to increase the size of each project. Mr. Lawver stated that rather than bonding and paying interest costs, let's plan ahead for these projects. Mr. Griffiths stated that the question is how does \$35,000 for sidewalks fit into that long-term goal knowing that we have significant road work coming up over the next ten to twenty years. Mr. Davy stated that the Park Avenue project is in design now and we are waiting to hear on the NJEIT funds for the infrastructure work. Mr. Davy stated that the Borough Engineer needs to know whether to design sidewalks now so that we don't incur costs later by asking for a change to the design of the project. Mr. Lawver stated that he is the one who is not in consensus with the Public Works Committee because he feels that we have fought this battle on Lower King George Road and it has long been the goal to have a walkable community and there are gaps in sidewalks, as much as they are opposed by the homeowner's that will have to shovel, they close the gaps and they give people the ability to walk with their families throughout the Borough. Mrs. Chandler stated that she agrees with Mr. Lawver that sidewalks are needed in that area as I would create a safe passage to Kunkel park. Mr. Davy stated that there is time to figure out the funding for the sidewalks, but what the committee is looking for is some direction for the Borough Engineer. Mr. Griffiths stated that it is not unaffordable and the finance committee will look at funding for the Park Avenue sidewalks in addition to budgeting supplemental funds for future projects. Mr. Griffiths stated that he would also like to find out why the Borough digs up every street instead of milling. Mayor Persichilli stated that the County does patching and if the Borough pays for the asphalt they will do the work. Mayor Persichilli stated that he will be looking into whether this is something that we could coordinate with the County. Mr. Griffiths stated that he would like to seek another professional opinion for less expensive alternatives for road resurfacing. Mr. Griffiths stated that if there are alternatives, then we could try to accelerate the process so that we don't wait until a road is so badly damaged that it does have to be excavated. Mr. Griffiths stated that we need to get ahead of the curve, put a price tag on the work and put it into a ten year plan. Mr. Davy stated that we need to keep in mind that there are infrastructure repairs that need to be done. Mr. Marciante asked if there were a list or map indicating the age of infrastructure pipes. Mr. Smith stated that he does not know of one. Mr. Lawver stated that the list is structured such as most frequently broken is what gets addressed. Mr. Smith agreed.

**Parks & Recreation / Library / Shade Tree / Senior Advisory** – Mr. Lawver reported that the Senior Advisory Board met and they have a full slate of courses and activities scheduled. Mr. Lawver encouraged everyone to look up the schedule to see what is planned. Mr. Lawver stated that the senior picnic has been postponed to Thursday September 17<sup>th</sup> from 12 to 3pm.

Mr. Lawver reported that Parks and Recreation cancelled the concert planned in August due to weather and the next one is scheduled for September 17<sup>th</sup> at Howe Commons. Mr. Lawver stated that Parks and Recreation has decided against accepting a donation of a gazebo for Kunkel Park. Mr. Lawver stated that Kunkel Park continues to have problems with bees in the sandbox.

Mr. Lawver stated that the Library Board did not meet in August.

**Public Safety** – Mr. Marciante reported that the two new hires in the Police Department are still in training. Mr. Marciante stated that negotiations are slowly moving along. Mr. Marciante stated that there is an ordinance on for introduction regarding parking on Main Street at Academy Avenue. Mr. Marciante stated that on Saturday, September 12<sup>th</sup> at 11:00am the annual 9-11 ceremony will be held at Aliger Park in Hopewell Township. Mr. Marciante encouraged all Council members to attend the ceremony.

**Finance** – Mr. Griffiths stated that the Finance Committee did not meet, however we are coming up on the budget cycle so any needs should be submitted for consideration.

**Historic Preservation / Board of Health / Environmental / Economic Development** – Mrs. Chandler stated that none of her committees met in August.

### **Ordinances for Introduction**

Mayor Persichilli read Ordinance 2015-9 by title.

## **BOROUGH OF PENNINGTON ORDINANCE NO. 2015-9**

### **ORDINANCE AMENDING CERTAIN REQUIREMENTS AFFECTING INSTALLATION OF EXTERIOR GREASE INTERCEPTORS BY RESTAURANTS AND OTHER FOOD ESTABLISHMENTS, AND AMENDING THE CODE OF THE BOROUGH OF PENNINGTON**

**WHEREAS**, Chapter 159 of the Code of the Borough of Pennington requires installation of exterior grease interceptors by restaurants and other establishments which prepare, process or serve food unless the property owner can demonstrate objectively that the property does not discharge concentrations of grease and oil in excess of the maximum concentration permitted by the Code;

**WHEREAS**, the Code now requires that for the restaurant or other food establishment to demonstrate that the property does not discharge grease and oil in prohibited concentrations, the owner must install and maintain a suitable control manhole in the building sewer conveying wastewater from the

property, to permit observation, sampling and testing of wastes;

**WHEREAS**, although construction and maintenance of a control manhole in the building sewer conveying wastewater from the property is less expensive than installation of an exterior grease interceptor, the expense may needlessly burden the owners of restaurants and food establishments if a less expensive option for testing wastewater is feasible;

**WHEREAS**, the additional option contemplated is an interior grease interceptor with a spout, faucet or other means of access to permit sampling and testing of effluent;

**NOW, THEREFORE, BE IT ORDAINED**, by the Borough Council of the Borough of Pennington, that Chapter 159 of the Code of the Borough of Pennington, concerning Sewer Use, is hereby amended to modify the requirements for installation of external grease interceptors by the owners of properties in which any food establishment or facility is located (with new language underlined and deleted language bracketed) as follows:

1. Section 159-13.2 is amended to provide:

Section 159-13.2. When Interceptor Required.

The owner of a property containing a food establishment or facility which opens for business after October 1, 2015 [in operation at the time of the adoption of this amendatory ordinance] may elect to defer installation of one or more exterior grease interceptors otherwise required by this chapter, provided [this election shall expire if the establishment or facility expands, constructs new facilities or makes renovation, repair or alteration of existing facilities in a manner which requires issuance of a permit by the municipal Construction Office, and provided further] that deferring the installation of the exterior grease interceptor may continue only for as long as the owner demonstrates to the reasonable satisfaction of the Borough, based on the testing of wastewater as prescribed herein, that the food establishment or facility does not discharge grease, fat or oil in excess of the maximum concentration permitted by Section 159-8D of the Code. The testing of wastewater shall comply with the following standards and procedures.

- A. The owner, at the owner's sole expense, shall install and maintain a suitable monitoring system [control manhole in the building sewer conveying wastewater from the property to] which shall permit observation, sampling and measurement of wastes being discharged from affected buildings on the property. The monitoring system shall consist of either an exterior control manhole in the sewer conveying wastewater from the building or a recessed grease interceptor inside the building with a spout or faucet or other means of access on its effluent pipe, each configured and equipped as set forth in this ordinance. The elected monitoring system [manhole] shall (1) be installed downstream of all fixtures discharging grease or oil and upstream of the building sewer; (2) include waste piping connected to all sinks, dishwashers, drains and other fixtures as needed to effect the complete segregation of fixtures receiving grease or oil so that only the waste from these fixtures is monitored by the system; (3) be accessible and safely located; and (4) together with all related waste piping and system modifications, be constructed in accordance with plans approved by the Borough Plumbing Subcode Official or the Borough Engineer, as appropriate. [The owner also shall at its expense modify the building sewerage conveyance system by installing waste piping as needed to effect the complete segregation of fixtures receiving grease or oil so that only the waste from these fixtures is monitored through the manhole. Such manhole shall be accessible and safely located and, together with all related system modifications, shall be constructed in accordance with plans approved by the Borough Plumbing Subcode Official or the Borough Engineer, as appropriate.]
- B. The owner shall, at owner's sole expense, contract with a laboratory certified by the New Jersey Department of Environmental Protection to obtain suitable samples from the monitoring system [control manhole] to determine the concentration of grease and oil in the monitored wastewater under representative operating conditions. The laboratory shall test the sampled wastewater in compliance with EPA Method 1664A HEM or such other testing protocol as may hereafter be approved by the Department of Environmental Protection for this purpose. The sampling and testing shall be performed at least quarterly. The owner shall promptly submit full details and results of such sampling and testing to the Borough Department of Health and shall maintain copies on the premises. Sampling and testing information shall include for each sample the date, exact location, method, volume and time of sampling, the name of the person(s) taking the sample, the date or dates of analysis of the sample, the name of the person(s) performing the analysis, the analytical techniques or methods used, and the results of the analysis. When the results of tested samples in three consecutive quarters indicate no more than 20% of the maximum concentration permitted by Section 159-8D of the Code, the owner may petition the Borough in writing to reduce laboratory testing to two tests per calendar year on a schedule approved by the Borough. Any change in ownership of the business or building, a change in the product produced by the business, any indication between tests that the discharge of grease or oil has increased, or a single test with a result in excess of 20% of the maximum amount permitted by the Code shall require the immediate reinstatement of quarterly testing.
- C. The sampling of wastewater shall be performed when the establishment or facility is in full

operation and shall be of sufficient frequency during an ordinary day and week to permit reliable measurement of whether maximum permissible concentrations of grease, fat and oil have been exceeded. It shall be unlawful to add water to the monitored wastewater for the purpose of diluting wastes. The Borough reserves the right to conduct its own sampling and testing at the owner's expense. For this purpose, the owner or the operator of the food establishment or facility, as appropriate, shall afford the Borough and its authorized representatives immediate, full and safe access to the monitoring system [control manhole] upon request, without prior notice.

- D. Upon a determination by the Borough, based on the described sampling and testing, that the owner has failed to demonstrate that the food establishment or facility is not discharging grease, fat or oil in excess of the maximum concentration permitted by Section 159-8D of the Code, the Borough shall notify the property owner that installation of one or more exterior grease interceptors is required. The notice shall provide a deadline for completing the installation as set forth in Section 159-13.3 of the Code.
  - E. All engineering, laboratory and other professional fees incurred by the Borough in connection with approvals required by this chapter or in connection with implementation of the sampling and testing procedures set forth herein shall be promptly reimbursed to the Borough by the owner.
2. Subsection C of Section 159-13.3 is amended to provide the following, leaving all other provisions of Section 159-13.3 unchanged:
    - C. An owner electing to defer installation of an exterior grease interceptor by the installation of a monitoring system [construction of a control manhole] and the testing of wastewater, as provided in Section 159-13.2, shall install such system [manhole] and commence prescribed testing within 60 days of notice by the Borough that installation of one or more grease interceptors is required. If prior to October 1, 2015 [the adoption of this amendatory ordinance], such owner received notice by the Borough that installation of an exterior grease interceptor is required, the Borough shall issue a second notice to the owner, again requiring installation of an exterior grease interceptor. The owner receiving such second notice shall have 60 days thereafter to install a monitoring system [control manhole] if the owner so elects. Otherwise, within 60 days of the second notice or within the time remaining following the earlier notice under Subsection A(2), above, whichever is greater, the owner shall install the exterior grease interceptor. If at any time after installation of a monitoring system [control manhole] the Borough notifies the owner that installation of an exterior grease interceptor is required as provided herein, the installation of the interceptor shall be completed within 120 days of that notice.
  3. This ordinance shall be effective upon passage and publication as provided by law.

Council Member Marciante made a motion to introduce Ordinance 2015-9, second by Council Member Davy with all members present voting in favor.

Ordinance 2015-10 intentionally skipped.

Mayor Persichilli read Ordinance 2015-11 by title.

**BOROUGH OF PENNINGTON  
ORDINANCE 2015-11**

**AN ORDINANCE MODIFYING THE NO-PARKING AREA ON SOUTH MAIN STREET NEAR  
ACADEMY STREET**

**WHEREAS**, upon the recommendation of the Borough Public Safety Committee, Borough Council seeks to amend Chapter 200 of the Borough Code at Section 200-10 to modify the distance parking is prohibited on the west side of South Main Street south from Academy Street, increasing the distance from 35 feet to 74 feet;

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

1. Section 200-10 of the Code of the Borough of Pennington is hereby amended (with new language underlined and deleted language bracketed) as follows:

South Main Street	West	South from Academy Street [35] <u>74</u> feet
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2. This ordinance shall be effective upon passage and publication as provided by law.

Council Member Marciante made a motion to introduce Ordinance 2015-11, second by Council Member Griffiths with all members present voting in favor.

Mayor Persichilli read Ordinance 2015-12 by title.

**BOROUGH OF PENNINGTON  
ORDINANCE NO. 2015-12**

**AN ORDINANCE AUTHORIZING RIGHT OF WAY USE  
AGREEMENT BETWEEN THE BOROUGH OF PENNINGTON  
AND FIBERTECH TECHNOLOGIES NETWORKS, LLC**

**WHEREAS**, Fiber Technologies Networks, L.L.C. (“Fibertech”), a New York limited liability company, with offices located at 300 Meridian Centre, Rochester, New York, is authorized to provide local exchange and interexchange telecommunications services throughout the State of New Jersey pursuant to an Order issued by the New Jersey Board of Public Utilities (“NJBP”) in Docket No. TE05080683 dated September 14, 2005; and

**WHEREAS**, Fibertech has requested the consent of the Borough of Pennington to occupy public rights-of-way within the Borough for an initial term of ten (10) years with automatic renewals for up to three additional terms of ten (10) years unless either party provides written notice of intent not to renew at least twelve (12) months prior to expiration;

**WHEREAS**, it is deemed by Borough Council to be in the interest of the Borough and its residents for the Borough to grant municipal consent to Fibertech to occupy the public rights-of-way within the Borough for this purpose;

**WHEREAS**, the granting of such consent is and shall be conditioned upon Fibertech’s continued compliance with all existing laws, rules, statutes, regulations and ordinances of the Borough, as may be amended from time to time; and

**WHEREAS**, the granting of such consent is and shall be conditioned upon Fibertech entering into a written Rights-of-Way Use Agreement with the Borough substantially in the form annexed to this Ordinance, which, inter alia, requires Fibertech to indemnify, defend and hold harmless the Borough from and against any and all claims, liabilities, litigation and related costs which may arise in connection with Fibertech activities pursuant to the rights granted in the Agreement;

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

1. that non-exclusive consent is hereby granted to Fibertech to occupy the public rights-of-way within the Borough for the purpose of owning, constructing, installing, operating and maintaining a telecommunications system pursuant to the Rights-of-Way Use Agreement annexed hereto;
2. that such consent is conditioned upon Fibertech entering into the attached Agreement and complying with its terms;
3. that the Mayor, with the attestation of the Clerk, is authorized to execute the attached Agreement on behalf of the Borough;
4. that this Ordinance shall be effective upon its passage and publication as provided by law.

Council Member Lawver made a motion to introduce Ordinance 2015-12, second by Council Member Chandler. Mr. Bliss stated that this ordinance is subject to public hearing at the next meeting and Council will also be considering a resolution later in the meeting which would authorize an interim agreement also to Fibertech, almost identical to the permanent agreement that is attached to the ordinance. Mr. Bliss stated that as far as the form of the right-of-way use agreement, language in bold has been added to what was originally proposed and the language is consistent with the agreement between Hopewell Township and Fibertech. Upon a roll call vote all members present voted in favor.

Mayor Persichilli read Ordinance 2015-13 by title.

**BOROUGH OF PENNINGTON  
ORDINANCE NO. 2015-13**

**AN ORDINANCE OF THE BOROUGH OF PENNINGTON, COUNTY OF MERCER, STATE OF  
NEW JERSEY AUTHORIZING A COLLECTIVE BARGAINING AGREEMENT WITH  
INTERNATIONAL BROTHERHOOD OF TEAMSTERS LOCAL NO. 35**

**WHEREAS**, the Borough of Pennington and the International Brotherhood of Teamsters Local No. 35 have negotiated the terms of a collective bargaining agreement effective January 1, 2015 through December 31, 2017 and renewable in accordance with its terms;

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

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

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

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

1. The collective bargaining agreement negotiated with the International Brotherhood of Teamsters Local No. 35 effective January 1, 2015 through December 31, 2017 and renewable in accordance with its terms, a copy of which is on file in the Office of the Borough Clerk, is hereby incorporated herein by reference and adopted by the Borough of Pennington.
2. In the event that the terms and conditions of the collective bargaining agreement are at variance with the Employee Manual of the Borough of Pennington, the terms and conditions of the collective bargaining agreement shall be controlling.
3. The Mayor and Clerk are hereby authorized to sign and seal the said agreement on behalf of the Borough.
4. All ordinances or portions thereof inconsistent herewith are hereby repealed.
5. This Ordinance shall take effect upon final passage and publication according to law.

Council Member Marciante made a motion to introduce Ordinance 2015-13, second by Council Member Gnatt. Mr. Lawver had a couple questions with regard to leave time for grievance procedures and with regard to sick time and short term disability. Council briefly discussed the subject of sick leave and short-term disability. Mr. Lawver asked about the percentage increase. Mr. Davy stated that the increase is two percent across the board. Upon a roll call vote all members present voted in favor.

#### **Ordinance for Public Hearing and Adoption**

Mayor Persichilli read Ordinance 2015-8 by title.

#### **BOROUGH OF PENNINGTON ORDINANCE NO. 2015-8**

#### **ORDINANCE AUTHORIZING THE CONVEYANCE OF CERTAIN REAL PROPERTY KNOWN AS BLOCK 92, LOTS 1.01 AND 1.03 ON THE HOPEWELL TOWNSHIP TAX MAP TO THE FRIENDS OF HOPEWELL VALLEY OPEN SPACE**

**WHEREAS**, the Borough Council of the Borough of Pennington has entered into an agreement pursuant to Ordinance No. 2014-10 adopted May 12, 2014 with Walter and Linda Brown to acquire Block 92, Lots 1.01 and 1.03 on the Hopewell Township Tax Map consisting of approximately 33 acres of vacant land for preservation purposes; and

**WHEREAS**, funding for the acquisition has now been made available by the Green Acres Program of the State of New Jersey and the Mercer County Open Space Fund; and

**WHEREAS**, title to the property is scheduled to close during the latter part August 2015; and

**WHEREAS**, the Borough of Pennington, upon the acquisition of said property wishes to convey title to said property to the Friends of Hopewell Valley Open Space, a non-profit corporation of the State of New Jersey in order to oversee and maintain said property as open space; and

**WHEREAS**, the New Jersey Local Land and Building's Law, N.J.S.A. 40A: 12-1, et seq., requires that an ordinance be adopted authorizing the Borough to convey Block 92, Lots 1.01 and 1.03 to the Friends of Hopewell Valley Open Space after the Borough acquires title to said property.

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

1. Upon final passage, approval and publication of this ordinance, the Mayor, with the attestation of the Borough Clerk, is authorized to execute a Deed of Conveyance and other closing documents in order to convey title to Block 92, Lots 1.01 and 1.03 Hopewell Township Tax Map to the Friends of Hopewell Valley Open Space.

2. Said conveyance shall be the subject to deed restrictions required by the Green Acres Program by the State of New Jersey and the Mercer County Open Space Fund in order to insure the use of said property for open space purposes only.
3. This ordinance shall take effect upon final passage, approval and publication as provided by law.

Council Member Chandler made a motion to open the Public Hearing on Ordinance 2015-8, second by Council Member Lawver. There were no comments from the public. Council Member Lawver made a motion to close the Public Hearing on Ordinance 2015-8, second by Council Member Chandler with all members present voting in favor. Council Member Chandler made a motion to adopt Ordinance 2015-8 second by Council Member Griffiths with all members present voting in favor.

**New Business**

**BOROUGH OF PENNINGTON  
RESOLUTION #2015 – 9.1**

**RESOLUTION AUTHORIZING REFUNDS**

**BE IT RESOLVED**, that a refund be issued to PHH Mortgage c/o CoreLogic Real Estate Tax Services, PO Box 961250, Fort Worth, TX 76161-9858, for refund of 2015,3<sup>rd</sup> quarter taxes, Block 505, Lot 11, also known as 108 South Main Street, in the amount of \$631.44.

**BE IT RESOLVED**, that a refund be issued to Affinity Federal Credit Union c/o CoreLogic Real Estate Tax Services, PO Box 961250, Fort Worth, TX 76161-9858, for refund of 2015,3<sup>rd</sup> quarter taxes, Block 907, Lot 3, also known as 26 Ingleside Avenue, in the amount of \$ 971.50.

**BE IT RESOLVED**, that a refund be issued to Roundpoint Mortgage c/o CoreLogic Real Estate Tax Services, PO Box 961250, Fort Worth, TX 76161-9858, for refund of 2015,3<sup>rd</sup> quarter taxes, Block 903, Lot 10, also known as 408 Hale Street, in the amount of \$527.16.

**BE IT RESOLVED**, that a refund be issued to BayCoast Bank c/o CoreLogic Real Estate Tax Services, PO Box 961250, Fort Worth, TX 76161-9858, for refund of 2015,3<sup>rd</sup> quarter taxes, Block 801, Lot 10, also known as 4 Kings Court, in the amount of \$781.45.

**Record of Council Vote on Passage**

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

Council Member Griffiths made a motion to approve Resolution 2015-9.1, second by Council Member Chandler with all members present voting in favor.

**BOROUGH OF PENNINGTON  
RESOLUTION #2015 – 9.2**

**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 \$ 467,093.18 from the following accounts:

Current	\$ 310,831.42
W/S Operating	\$ 144,537.32
Developers Escrow	\$ 5,575.97
COAH Trust Fund	\$ 4,883.10
Open Space Trust	\$ 1,265.37
TOTAL	\$ 467,093.18

**Record of Council Vote on Passage**

COUNCILMAN	AYE	NAY	N.V.	A.B.	COUNCILMAN	AYE	NAY	N.V.	A.B.
Chandler	X				Griffiths	M			

Davy	X				Lawver	S			
Gnatt	X				Marciante	X			

Council Member Griffiths made a motion to approve Resolution 2015-9.2, second by Council Member Lawver. Mr. Lawver had questions on a several bills on the bill list. Upon a roll call vote all members present voted in favor.

**BOROUGH OF PENNINGTON  
RESOLUTION #2015 – 9.3**

**RESOLUTION AUTHORIZING A TAX REFUND FOR A DISABLED VETERAN’S PROPERTY TAX EXEMPTION**

**WHEREAS**, the Tax Assessor has granted a claim for property tax exemption under the 100% disabled veteran policy for property known as Block 304, Lot 3, located at 3 Eglantine Avenue, with a classification of 15F effective July 1, 2015; and

**WHEREAS**, the property owner(s) of record: Bernard A. & Ilene R. Renshaw of 3 Eglantine Avenue, Pennington, New Jersey, have paid the third quarter taxes for 2015; and

**WHEREAS**, Bernard A. & Ilene R. Renshaw, Sr. are entitled to a refund for a portion of the taxes paid during this period of 2015 due to the property tax exemption granted;

**NOW, THEREFORE, BE IT RESOLVED**, on this 8<sup>th</sup> day of September, 2015, by the Borough Council of the Borough of Pennington, County of Mercer, State of New Jersey, that the following property tax payments be refunded:

<u>YEAR</u>	<u>TAXING DISTRICT</u>	<u>AMOUNT</u>
2015	Municipal and County	\$2,422.47

**BE IT RESOLVED**, that the Tax Collector shall be relieved from the collection of the balance of the 2015 Final taxes in the amount of \$4,949.20 and 2016 Preliminary taxes in the amount of \$4,949.20 due to this property exemption.

**BE IT FURTHER RESOLVED**, that a copy of this adopted Resolution shall be forwarded to the Chief Financial Officer for the processing of a refund in the amount of \$2,422.47 to the property owners, a copy of this Resolution shall be forwarded to the Tax Assessor so that the respective county tax credit can be processed, and a copy of this resolution shall be forwarded to the Tax Collector.

**Record of Council Vote on Passage**

<u>COUNCILMAN</u>	<u>AYE</u>	<u>NAY</u>	<u>N.V.</u>	<u>A.B.</u>	<u>COUNCILMAN</u>	<u>AYE</u>	<u>NAY</u>	<u>N.V.</u>	<u>A.B.</u>
Chandler	M				Griffiths	X			
Davy	X				Lawver	X			
Gnatt	X				Marciante	S			

Council Member Chandler made a motion to approve Resolution 2015-9.3, second by Council Member Marciante with all members present voting in favor.

**BOROUGH OF PENNINGTON  
RESOLUTION 2015-9.4**

**RESOLUTION AUTHORIZING REMOVAL OF TREES IN FRONT OF 330 BURD STREET**

**WHEREAS**, the Borough Shade Tree Committee has recommended to Borough Council that two trees in front of 330 Burd Street, in the public right-of-way between the sidewalk and curb, be removed;

**WHEREAS**, the trees will be removed by a certified arborist retained by the Borough and the owners of 330 Burd Street agree to pay the full cost of the removal;

**WHEREAS**, prior to removal, the trees to be removed shall be marked by the Committee, with the consent of the owners, to ensure accurate identification;

**NOW, THEREFORE, BE IT RESOLVED**, by Borough Council of the Borough of Pennington, that the Borough Administrator, in consultation with the Superintendent of Public Works, is hereby authorized to take such actions as necessary in accordance with law to (a) contract with a certified arborist, on behalf of the Borough, to remove the two trees in question in front of 330 Burd Street and (b) cause the costs of the removal to be paid by the owners of 330 Burd Street as agreed.

**BE IT FURTHER RESOLVED**, that the removal of the two trees is conditioned upon the owner agreeing to reimburse the Borough for the costs of removal.

**Record of Council Vote on Passage**

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

Council Member Lawver made a motion to approve Resolution 2015-9.4, second by Council Member Davy. Mr. Bliss stated that this is a situation in which the homeowner has trees in the public right-of-way between the sidewalk and the curb. Mr. Bliss stated that the homeowner wants to pay to remove the trees and the key distinction here is that the Shade Tree Committee has recommended that these trees be removed. Mr. Bliss stated that the draft of the resolution that Council received refers to the issue of whether the tree was a danger to the public safety in the second recital. Mr. Bliss proposed that the second whereas be removed. Mr. Bliss stated that the challenge here is to find a standard where Council can address problematical trees. Mr. Bliss stated that Council does not want a rule in which every time a homeowner agrees to pay for tree removal Council has to say yes. Mr. Bliss stated that the firewall here is the fact that there has to be a recommendation from the Shade Tree Committee. Mr. Bliss stated that he would propose that the second whereas clause be removed. Mr. Bliss also suggested that “in the public right-of-way” be added after 330 Burd Street in the first whereas clause and after the last paragraph add “Be It Further Resolved, that the removal of the two trees is conditioned upon the owner agreeing to reimburse the Borough for the cost of removal.” Upon a roll call vote all members present voted in favor of the resolution as amended.

**BOROUGH OF PENNINGTON  
RESOLUTION NO. 2015 - 9.5**

**RESOLUTION AMENDING RESOLUTION 2015-8.9 AUTHORIZING NEW BUS STOPS  
IN PENNINGTON BOROUGH**

**WHEREAS**, Resolution 2015-8.9, in Section 2.c, identifies a bus stop between Academy Avenue and Laning Avenue which Borough Council now seeks to amend;

**NOW, THEREFORE BE IT RESOLVED**, by the Borough Council of the Borough of Pennington, County of Mercer and State of New Jersey that Resolution 2015-8.9 is amended at Section 2.c by substituting the following language describing the bus stop location designated in Section 2.c:

“ Along South Main Street, northbound, on the easterly side, between Academy Avenue and Laning Avenue, beginning at the southerly curblineline of Academy Avenue and extending 18 feet southerly therefrom”.

**BE IT FURTHER RESOLVED**, that the Mayor and Council of the Borough of Pennington will enforce the needed traffic regulations governing the aforementioned bus stop location and provide the necessary police security to ensure the safety of the traveling public.

**BE IT FURTHER RESOLVED**, that Resolution 2015-8.9 shall in all other respects remain unchanged and in full effect.

**Record of Council Vote on Passage**

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

Council Member Lawver made a motion to approve Resolution 2015-9.5, second by Council Member Gnatt with all members present voting in favor.

**BOROUGH OF PENNINGTON  
RESOLUTION NO. 2015 – 9.6**

**RESOLUTION AUTHORIZING WATER SERVICE FOR PROPERTY PARTIALLY IN THE  
BOROUGH OF PENNINGTON KNOWN AS BLOCK 908, LOT 8 ON  
THE PENNINGTON TAX MAP**

**WHEREAS**, the firm of Dynamic Engineering Consultants, on behalf of the contract purchasers of the property known as Route 31 and Ingleside Avenue, located partially in the Borough of Pennington, abutting Vannoy Avenue, and partially in the Township of Hopewell (“the Property”), has requested water service from the Pennington Water and Sewer Utility;

**WHEREAS**, the Property is known as Block 908, Lot 8, on the Tax Map of the Borough of Pennington, and is also known as Block 68, Lot 8 on the Tax Map of the Township of Hopewell;

**WHEREAS**, the practice of the Borough has been to extend water service when requested to

properties partially in the Borough, assuming all other conditions for extension of service are satisfied;

**WHEREAS**, the Property is currently developed as a Sunoco gas and service station and is receiving sewer service from the Borough;

**NOW, THEREFORE, BE IT RESOLVED**, by the Borough Council of the Borough of Pennington that extension of water service to the Property described above is hereby authorized, subject to all other terms and conditions applicable to such extension.

**Record of Council Vote on Passage**

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

Council Member Marciante made a motion to approve Resolution 2015-9.6, second by Council Member Griffiths with all members present voting in favor.

**BOROUGH OF PENNINGTON  
RESOLUTION NO. 2015-9.7**

**RESOLUTION AUTHORIZING EXECUTION OF AGREEMENT  
FOR HOME INVESTMENT PARTNERSHIPS PROGRAM CONSORTIUM WITH ADDITIONAL  
AMENDMENT**

**WHEREAS**, by Resolution No. 2015-8.8, Borough Council authorized execution of an amended Agreement for the Borough’s continued participation in the HOME Investment Partnerships Program Consortium with the County of Mercer;

**WHEREAS**, the Borough was subsequently advised by Mercer County Housing and Community Development that the United States Housing and Urban Development requires for re-certification yet additional language in the Agreement;

**WHEREAS**, the additional language required in the Agreement is an additional recital, which reads as follows:

“WHEREAS, Consortium members are prohibited from withdrawing from the consortium during each of the Consortium’s qualifying three year periods.”

**WHEREAS**, the required additional language has been inserted as the fifth recital in the amended Agreement attached to this Resolution, and is acceptable;

**NOW, THEREFORE, BE IT RESOLVED**, by the Borough Council of the Borough of Pennington, that the Mayor, with the attestation of the Borough Clerk, is hereby authorized to execute on behalf of the Borough the attached amended Agreement containing the additional language as set forth above.

**Record of Council Vote on Passage**

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

Council Member Chandler made a motion to approve Resolution 2015-9.7, second by Council Member Lawver. Mr. Marciante asked for clarification on this resolution. Mrs. Heinzl stated that this agreement was approved earlier this year, amended at the September meeting and now Mercer County is asking for another amendment. Mrs. Heinzl stated that participation in this consortium allows Pennington residents benefits under the National Affordable Housing Act of 1990. Mrs. Sterling stated that it does not cost the Borough anything to participate. Upon a roll call vote all members present voted in favor.

**BOROUGH OF PENNINGTON  
RESOLUTION NO. 2015-9.8**

**RESOLUTION AUTHORIZATING ROBERTS ENGINEERING GROUP, LLC. TO PREPARE AND  
SUBMIT LETTER OF INTENT FOR NJEIT GRANT FOR WATER MAIN REPLACEMENT ON  
EAST CURLIS AVENUE AND WEIDEL DRIVE**

**WHEREAS**, Borough Council seeks to authorize Roberts Engineering Group, LLC., to prepare and submit a letter of intent to apply for funding through the NJEIT grant program for water main replacement on East Curlis Avenue and Weidel Drive in the Borough; and

**WHEREAS**, the authorization by Borough Council to engage Roberts Engineering Group, LLC for this purpose is pursuant to a letter dated August 31, 2015 from Borough Engineer, Carmela Roberts; and

**WHEREAS**, the fees for these services are not to exceed \$5,800.00; and

**WHEREAS**, Roberts Engineering Group, LLC will be issued a purchase order for total fees not to exceed \$5,800.00; and

**WHEREAS**, the Chief Financial Officer has certified the funds are available in Account #: 5-05-55-501-000-562;

**NOW, THEREFORE, BE IT RESOLVED**, by the Borough Council of the Borough of Pennington, that Roberts Engineering Group, LLC is authorized to prepare and submit the aforesaid letter of intent on the terms indicated.

**Record of Council Vote on Passage**

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

Council Member Chandler made a motion to approve Resolution 2015-9.8, second by Council Member Gnatt with all members present voting in favor.

**BOROUGH OF PENNINGTON  
RESOLUTION NO. 2015 – 9.9**

**RESOLUTION AUTHORIZING SUBMISSION OF GRANT APPLICATION AND EXECUTION OF GRANT AGREEMENT WITH THE NEW JERSEY DEPARTMENT OF TRANSPORTATION FOR IMPROVEMENTS TO EAST CURLIS AVENUE AND WEIDEL DRIVE**

**WHEREAS**, East Curlis Avenue in the Borough, between South Main Street and the Borough limits and Weidel Drive, between Park Avenue and the Cul-De-Sac, are severely deteriorated and in need of reconstruction;

**WHEREAS**, grant funds for making improvements to East Curlis Avenue and Weidel Drive are available from the New Jersey Department of Transportation;

**WHEREAS**, the improvements contemplated include, excavation and replacement of existing pavement, replacement of concrete curbing and sidewalk on both sides of the street as needed, possible extension of concrete curb and sidewalk where none exist, upgrading of existing inlets to meet NJDOT Bicycle Safe Grate Standards and Stormwater Regulations, and replacement of existing signage, all of which are consistent with the Circulation and Sidewalk Plan in the Borough Master Plan, providing for a continuous sidewalk route throughout the Borough;

**NOW, THEREFORE, BE IT RESOLVED**, by the Borough Council of the Borough of Pennington, that in order to obtain the needed funding, the Borough Engineer is hereby authorized to submit to the New Jersey Department of Transportation, on behalf of the Borough of Pennington, an electronic grant application identified as MA-2016 – Pennington Borough – 00095; and

**BE IT FURTHER RESOLVED**, that Borough Council formally approves the grant application for this project; and

**BE IT FURTHER RESOLVED**, that the Mayor and Clerk are hereby authorized to take all actions necessary to support the Borough Engineer in effecting the above grant application; and

**BE IT FURTHER RESOLVED**, that the Mayor and Clerk are hereby authorized to sign the grant agreement on behalf of the Borough of Pennington, and their signatures shall constitute acceptance of the terms and conditions of the grant agreement and approval of execution of the grant agreement.

**Record of Council Vote on Passage**

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

Council Member Chandler made a motion to approve Resolution 2015-9.9, second by Council Member Lawver with all members present voting in favor.

**BOROUGH OF PENNINGTON  
RESOLUTION 2015 - 9.10**

**RESOLUTION AUTHORIZING EXECUTION OF CONFIDENTIALITY  
AGREEMENT BETWEEN THE BOROUGH OF PENNINGTON  
AND FIBERTECH TECHNOLOGIES NETWORKS, LLC COVERING DISCLOSURE OF JOINT  
USE LICENSE AGREEMENT BETWEEN FIBERTECH AND VERIZON**

**WHEREAS**, Fiber Technologies Networks, L.L.C. (“Fibertech”), a New York limited liability company, with offices located at 300 Meridian Centre, Rochester, New York, is authorized to provide local exchange and interexchange telecommunications services throughout the State of New Jersey pursuant to an Order issued by the New Jersey Board of Public Utilities (“NJBPU”) in Docket No. TE05080683 dated September 14, 2005; and

**WHEREAS**, Fibertech has requested the consent of the Borough of Pennington to occupy public rights-of-way within the Borough for an initial term of ten (10) years with automatic renewals for up to three additional terms of ten (10) years unless either party provides written notice of intent not to renew at least twelve (12) months prior to expiration;

**WHEREAS**, as part of the consent process Fibertech has represented that it has authority under a certain Joint Use License Agreement with Verizon to place its equipment and facilities on utility poles and in conduit owned and controlled by Verizon;

**WHEREAS**, the Borough has requested the opportunity to inspect the Joint Use License Agreement to determine whether there are provisions which would adversely affect the Borough;

**WHEREAS**, Fibertech considers the Joint Use License Agreement to be proprietary and confidential and has conditioned its disclosure on the Borough’s execution of the attached confidentiality agreement and execution of agreements by the particular individuals to whom the Agreement is disclosed substantially in the form also attached;

**WHEREAS**, only the representatives of the Borough approved in writing by Fibertech to receive the License Agreement will be authorized to receive the document;

**WHEREAS**, the License Agreement must be returned to Fibertech and all copies destroyed upon completion of the review process;

**WHEREAS**, the obligations under the Agreement shall have a duration of 5 years;

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

1. that the Mayor, with the attestation of the Borough Clerk, is hereby authorized to execute the attached Confidentiality Agreement on behalf of the Borough;
2. that the Borough’s designation of the person or persons to receive a copy of the confidential Joint Use License Agreement shall be the responsibility of the Borough Attorney.

**Record of Council Vote on Passage**

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

Council Member Davy made a motion to approve Resolution 2015-9.10, second by Council Member Chandler. Mr. Marciante stated that this service will benefit a non-profit entity that pays no taxes. Mr. Bliss stated that Fibertech will utilize the tower at the Pennington School to provide services, not just to the Pennington School. Upon a roll call vote all members present voted in favor.

**BOROUGH OF PENNINGTON  
RESOLUTION 2015 – 9.11**

**RESOLUTION AUTHORIZING ENTERING INTO SUB-GRANT AGREEMENT WITH STATE OF  
NEW JERSEY FOR GRANT FUNDS FOR PURCHASE AND INSTALLATION OF A  
PERMANENT NATURAL GAS GENERATOR TO SUPPLY EMERGENCY BACKUP POWER  
FOR THE PUBLIC WORKS FACILITY**

**WHEREAS**, grant funding has been approved by the Federal Emergency Management Agency (FEMA), through New Jersey’s Office of Emergency Management, for the purchase and installation of one permanent natural gas generator to supply emergency backup power for the Borough’s Public Works Facility during and after severe weather events;

**WHEREAS**, the awarded Federal grant funds are in the amount of \$75,000, out of a projected total project cost of \$83,000;

**WHEREAS**, the proposed form of grant agreement, to be entered into between the State of New Jersey, Office of Emergency Management, and the Borough of Pennington, entitled “Sub-Grant Agreement, Hazard Mitigation Grant Program (CFDA#97.039) FEMA-DR-4086-NJ-0315-F” (Agreement) is attached to this Resolution;

**WHEREAS**, the terms of the grant are contained in the attached Agreement and the FEMA award letter dated May 22, 2015 with Conditions of Approval;

**WHEREAS**, the Borough agrees to complete the funded project by May 19, 2018, the date indicated in the FEMA award letter, unless an extension is approved by the Regional Administrator;

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

1. The Mayor, with the attestation of the Borough Clerk, is hereby authorized to execute the attached Agreement on behalf of the Borough.
2. Copies of the Agreement and related FEMA award letter with Conditions of Approval shall be maintained on file in the Office of the Borough Clerk.

**Record of Council Vote on Passage**

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

Council Member Marciante made a motion to approve Resolution 2015-9.11, second by Council Member Lawver. Mr. Marciante asked if the \$8,000 comes from the Borough. Mr. Bliss stated that his understanding is that the \$8,000 is the part of the project cost not covered by the federal grant but without an obligation on the Borough’s part to spend it. Upon a roll call vote all members present voted in favor.

**BOROUGH OF PENNINGTON  
RESOLUTION 2015-9.12**

**RESOLUTION AMENDING THE BOROUGH PERSONNEL MANUAL  
TO REQUIRE BACKGROUND CHECKS FOR CERTAIN PROSPECTIVE  
EMPLOYEES IN ACCORDANCE WITH LAW**

**WHEREAS**, Pennington Borough Council, on the recommendation of its Public Safety Committee, has determined that it is in the public interest to require that certain prospective employees of the Borough undergo a criminal background check in accordance with law [**independent contractors?**];

**WHEREAS**, the job categories in which criminal background checks will be required of prospective new hires shall be: (a) employees working directly or indirectly with children/youth/minors, such as crossing guards, recreation employees and library staff; (b) employees working inside the homes of residents, such as inspectors, sub-code officials, tax assessors and meter readers; (c) employees who handle money, such as treasurers, tax collectors, utility collectors and registrars and deputy registrars; and (d) employees who have access to confidential information, such as clerks and administrators;

**WHEREAS**, the dissemination of criminal background checks for noncriminal justice purposes is governed in pertinent part by N.J.A.C. 13:59-1.1, et seq.;

**WHEREAS**, Borough Council seeks to effectuate this policy by amendment of the Borough Personnel Policies and Procedures Manual and Employee Handbook to incorporate this policy;

**WHEREAS**, the Borough of Pennington Personnel Policies and Procedures Manual and Employee Handbook was first effective May 1, 2008 and has since been amended by Borough Council Resolutions 2010-5.16, 2010-7.5, 2010-9.8, 2010-16, 2011-11.9, 2012-5.16, 2013-1.22, 2014-4.12 and 4.13, 2014-7.12 and 2014-8.3;

**NOW, THEREFORE, BE IT RESOLVED**, by Borough Council of the Borough of Pennington, that the Borough of Pennington Personnel Policies and Procedures Manual and Employee Handbook is amended as follows:

1. Article VII.A, Employment Procedures, is amended by the inclusion of a new subparagraph entitled **Criminal Background Checks** (to be inserted after **Physical Examinations**):

**Criminal Background Checks. When Required.:** An offer of employment to prospective employees, including volunteers intending to serve without pay, shall be

conditioned upon a satisfactory criminal background check if the prospective employee or volunteer is intended to serve in one of the following job categories: (a) people working directly or indirectly with children/youth/minors, such as crossing guards, library staff and all recreation employees and other persons holding recreational positions, including recreation administrators; (b) people working inside the homes of residents, such as inspectors, sub-code officials, tax assessors and meter readers; (c) people who handle money, such as treasurers, tax collectors, utility collectors and registrars and deputy registrars; and (d) people who have access to confidential information, such as clerks and administrators.

**Procedures Governing Checks.** After such an offer has been made, the prospective employee or volunteer, upon written consent, shall submit to a background check by the State Bureau of Investigation in accordance with N.J.A.C. 13:59-1.1, et seq., and at the sole expense of the Borough. The background check shall include the individual's countrywide criminal history record, including all records of convictions regardless of date and all records of pending arrests and charges, unless such records have been expunged. A conditional offer of employment to an individual who does not consent to a background check shall be withdrawn. A criminal background check must be performed on all prospective employees and volunteers in the designated job categories.

The Borough Administrator will perform or initiate background checks and be the recipient of reports from outside agencies or contractors. The Administrator will discuss disqualifying information received with the employee's or volunteer's department head. Written information received as a result of a "Request for Criminal History Record Information For A Noncriminal Justice Purpose" will be destroyed immediately after it has served its authorized purpose, as required by the State Police. Such information will be kept confidential and will not be published or disclosed in any manner not consistent with the procedures listed herein. Such information will not be deemed a public record under P.L.1963, c.73 (C:47:1A-1, et seq.) as amended and supplemented by P.L. 2001, c.404 (C:47:1A-5, et seq.). All such records shall be maintained in one or more separate confidential files by the Borough Clerk.

The Borough Administrator will inform the candidate, volunteer, or employee, in writing, of any information that would disqualify the person from working. If the Borough contracts with an outside vendor to process the background checks, that contractor may be authorized to inform the person in writing of any information that would disqualify the person from working. The Administrator shall provide the subject of the request with adequate notice and opportunity to confirm or deny the accuracy of any information contained in the criminal history record. The individual shall be afforded a reasonable period of time to correct or complete the record prior to a final determination or decision concerning the individual's eligibility for the position or employment. A person shall be presumed innocent of any pending charges or arrests for which there are no final dispositions indicated on the record.

Affected employees and volunteers, if they have begun working, will be placed on immediate suspension pending the outcome of a hearing or appeal. Employee suspensions may be with or without pay at the discretion of the Administrator.

**Criteria for Disqualification.** A prospective employee or volunteer may be disqualified from employment in a position in one of the designated job categories if (a) that person's criminal history background check reveals a record of conviction of any of the following crimes and disorderly persons offenses as defined by New Jersey law or by analogous laws in other states: Homicide (N.J.S.A. 2C:11); Assault, reckless endangerment, threats, stalking (N.J.S.A. 2C:12); Kidnapping (N.J.S.A. 2C:13); Sexual Offenses (N.J.S.A. 2C:14); Offenses Against the Family, Children and Incompetents (N.J.S.A. 2C:24); Controlled Dangerous Substances (N.J.S.A. 2C:35 except for 2C:35-10(a)(4); Abuse of Official Position (N.J.S.A. \_\_\_\_); Robbery (N.J.S.A. 2C:15); Theft (N.J.S.A. 2C:20); Fraud (N.J.S.A. \_\_\_\_); and (b) the elements of the offense relate directly to the duties and responsibilities of the prospective position.

A disqualification from any position will be based only on a conviction. An acquittal, a dismissal, successful completion of Pre-Trial Intervention (PTI), or an expungement of a criminal offense, including a disqualifying criminal offense, is not a disqualifying conviction.

**Appeal Process.** The Appeals Committee will be comprised of the Borough Administrator, the Director of Public Safety and the Borough Clerk.

Once a prospective employee or volunteer has been notified of a disqualifying conviction, the person has 14 calendar days to file a Notice of Appeal with the Borough. Such Notice of Appeal must be sent in writing to the Borough Administrator. The Notice of Appeal shall include a Notice of Rehabilitation and/or a Notice that the information is inaccurate or incorrect, pursuant to N.J.A.C. 13:59-1.6.

In making a determination on the appeal, the following information will be considered: (a) the nature and responsibility of the position which the convicted individual would hold; (b) the nature and seriousness of the crime or offense; (c) the circumstances in which the crime or offense occurred; (d) the date of the crime or offense; (e) the age of the individual when the crime or offense was committed; (f) whether the crime or offense was an isolated or a repeated incident; (g) any social conditions which may have contributed to the commission of the crime or offense; (h) any evidence of rehabilitation, including good conduct in prison or in the community, counseling or psychiatric treatment received; (i) acquisition of additional academic or vocational schooling, successful participation in correctional work-release programs, or the recommendation of those who have had the individual under their supervision.

The Borough will issue a written determination on the employee's appeal, setting forth the reasons for the determination.

2. These amendments shall be effective immediately.

Council Member Chandler made a motion to approve Resolution 2015-9.12, second by Council Member Davy. Mr. Davy stated that the Personnel Committee has discussed this over several months and if approved this would require criminal background checks for new hires. Mr. Davy stated that by law there has to be a nexus between the requirement for the background check and the reason for the background check. Mr. Davy stated that the committee felt that for employees placed in the presence of children, for employees that enter homes to do inspections and for employees that handle money there should be a criminal background check. Mr. Davy stated that is how this resolution has been crafted but Mr. Bliss has posed some questions in the body of the resolution that still need to be resolved.

Mr. Bliss stated that his initial comment would be that he would like very much to hold this resolution though he would encourage discussion of the resolution. Mr. Bliss stated that Director Meytrott has pointed out an issue that has to do with administration of police background checks. Mr. Davy stated that this resolution is not about police background checks. Mr. Meytrott stated that the resolution should specifically exclude police hires. Mr. Lawver stated that his concern is regarding volunteers as it sounds to him like anyone working in the library going forward will need a background check and anyone who joins parks and recreation going forward with need to a background check. Mr. Lawver stated that technically Council Members would need background checks going forward. Mrs. Chandler stated that this would open up a can of worms because volunteers are requested for the July 4<sup>th</sup> races and for the Easter Egg Hunt and other events. Mr. Bliss stated that volunteers could be clearly defined in the resolution. Mr. Marciante stated that any group that deals with children requires volunteers to have background checks. Mr. Bliss stated that volunteers are an issue that council has some discretion on and can be addressed. Mr. Bliss stated that he would like to have council discuss the subject of existing employees, if the rationale for the background checks is the safety of the public, then why the distinction.

Mr. Bliss stated that some of the language was taken from the Joint Insurance Fund language and that is one of the reasons why this is fairly complicated. Mr. Bliss stated that it is very common for employees who work with children to go through a background check but it gets a little tougher when you get away from that. Mr. Bliss stated that the rationale for handling money could include independent contractors for example the Borough Auditor and the Borough Attorney. Mr. Bliss stated that another thing that needs work is that the resolution refers to a list of statutes. Mr. Bliss stated that the JIF wants us to make this as hard and fast as we can so that it is uniformly applied and this one is not uniformly applied. Mr. Bliss stated that the JIF gave us a list of statutes that are built in under criteria for disqualification but all those statutes assume that the job in question is a person working with children. Mr. Bliss stated that to the extent that we have broader coverage in the proposed policy, we should have a broader set of applicable statutes. Mr. Marciante asked what would be the downside to eliminating volunteers from the resolution. Mr. Bliss stated that if the Borough is going to do anything at all, it has to begin with people who work with children. Mr. Bliss stated that is the most common form of this requirement. Mr. Lawver asked what the motivation for this resolution is. Mr. Bliss stated that this originated with the Personnel Committee. Mr. Griffiths stated that the committee was in agreement to require this for new hires, the monkey wrench came in when the discussion became about casual volunteers and if that is the issue under what auspice does the July 4<sup>th</sup> race or the Easter Egg Hunt fall. Mr. Griffiths asked who appoints the volunteers and can it be defined. Mr. Lawver stated that one way to start drawing the line is to include people who are working with children in an unsupervised fashion and that would exclude the events mentioned. Mr. Davy stated that he has heard the issues and the Personnel Committee with further consider this resolution and come back with a recommendation. No action was taken on the resolution at this time.

**BOROUGH OF PENNINGTON  
RESOLUTION 2015-9.13**

**RESOLUTION AUTHORIZING RIGHTS-OF-WAY INTERIM USE AGREEMENT BETWEEN  
THE BOROUGH OF PENNINGTON AND FIBER TECHNOLOGIES NETWORKS, LLC**

**WHEREAS**, Fiber Technologies Networks, L.L.C. ("Fibertech"), a New York limited liability company with offices located at 300 Meridian Centre, Rochester, New York 14618, has requested the consent of the Borough of Pennington ("Borough") to non-exclusive use of public rights-of-way within the Borough for the purpose of constructing, installing, operating, repairing, maintaining and replacing a

telecommunications system;

**WHEREAS**, Fibertech and the Borough have proposed an agreement governing the terms and conditions of granting such consent which the Borough will introduce and propose for authorization by Ordinance following public hearing (hereafter referred to as “Use Agreement”);

**WHEREAS**, the Ordinance and Use Agreement will be considered for introduction at the meeting of Borough Council on September 8, 2015 and will be subject to public hearing and adoption at the Council meeting on October 5, 2015 or such date or dates as Council may determine;

**WHEREAS**, in the interim, that is, until adoption of the Ordinance and execution of the Use Agreement, Fibertech and the Borough have agreed upon an Interim Agreement substantially in the form annexed to this Resolution;

**WHEREAS**, pursuant to the Interim Agreement, the Borough grants Fibertech its municipal consent to Fibertech placing its telecommunications equipment aerially on existing utility poles on Academy Street and a segment of Burd Street, in the Borough, as indicated on the route map attached to the Interim Agreement as Exhibit A,

**WHEREAS**, the intent is to grant such consent subject to the terms and conditions of the Interim Agreement, only for Academy Street and the part of Burd Street indicated on Exhibit A, and only until such time as the Ordinance and Use Agreement are approved and authorized and the Use Agreement is executed, or the Interim Agreement otherwise expires in one year;

**NOW, THEREFORE, BE IT RESOLVED**, by the Borough Council of the Borough of Pennington, that the Mayor, with the attestation of the Borough Clerk, is hereby authorized to enter into the attached Interim Agreement 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.
Chandler	S				Griffiths	X			
Davy	X				Lawver	M			
Gnatt	X				Marciante	X			

Mr. Bliss stated that this resolution was added to the agenda at the start of the meeting. Mr. Bliss stated that what Council did with the ordinance that was introduced was to introduce a right of way use agreement that with extensions could last forty to fifty years. Mr. Bliss stated that this resolution authorizes a temporary agreement that goes into effect immediately that has all the same terms at the permanent one except for the duration and the duration is until the ordinance adopts a permanent agreement. Mr. Bliss stated that this assumes that an ordinance will be passed at the October meeting and the interim agreement would then fold into the permanent agreement. Council Member Lawver made a motion to approve Resolution 2015-9.13, second by Council Member Chandler. Some discussion took place as to whether the generation of revenue for the Pennington School affects their tax exempt status for a portion of the property. Mr. Lawver stated that the school also leases the turf fields. Mr. Bliss stated that a gift shop in a hospital is taxable for real estate tax. Mr. Lawver stated that for many years the school leased their dorms out in the summer for revenue. Mr. Griffiths asked if holding this resolution would give leverage to a discussion about a payment in lieu of tax. Mr. Bliss stated that he would think not and that granting approval would establish the profit basis for leverage. Mr. Griffiths asked if the Borough could benefit from the revenue generated from this agreement. Mr. Bliss stated that a municipality cannot impose a gross receipts tax on a telecommunications company. Mr. Lawver asked Mr. Marciante if he could find out what amount of revenue the Fire Company received from use of their tower. Upon a roll call vote all members present voted in favor.

**Council Discussion**

**Social Affairs Permit – St. Matthews Church** – Mrs. Sterling stated that the process for these requests is that Borough Council needs to be made aware that the event is taking place and if there is no objections then the Public Safety Director and the Borough Clerk sign off on the application and it will get submitted to Alcoholic Beverage Control for approval. Council Member Chandler made a motion to approve the request, second by Council Member Gnatt with all members present voting in favor with the exception of Mr. Lawver who abstained.

**Proposal/Request for 2<sup>nd</sup> set of banner poles across South Main Street** – Mrs. Heinzl stated that Heide Kahme called and stated that she has gotten some requests from people who would like to put up a banner. Mrs. Heinzl stated that Mrs. Kahme asked if the Borough would ever consider installing banner poles on South Main Street by the school administration building. Council Members felt that the stretch across the street is too big and that moving it closer to town would not work because of the line of site for the school crossing. Mr. Griffiths stated that a banner at the location would be a distraction to drivers. Mr. Meytrott stated that it has been discussed before and the County has indicated that they would not be in favor of it. The general consensus was that a banner at that location would not be a good idea.

**New Crosswalks painted on County Roads** – Mrs. Heinzl stated that this idea came up in one of the committee meetings where there was discussion about asking the County to paint crosswalks at Abey and Delaware, Eglantine and Delaware and Franklin and North Main Street. Mrs. Heinzl stated that there was

some concern about crosswalks at Abey and Eglantine being too close together and since the plan is to contact the County about road repairs it might be a good idea to ask about painting crosswalks at these locations which are all on County roads. Mrs. Heinzl stated that she wanted to get a sense from Council as to whether the locations on Delaware Avenue at Abey and at Eglantine are too close together. Mrs. Chandler stated that she felt that this would discourage people from going to the light and crossing. Mr. Meytrott agreed that painting crosswalks at these locations would encourage people to cross where there is not a natural crossing. Mr. Lawver stated that some residents that walk in the area have made this request. Council briefly discussed the benefits to one or the other of the locations on Delaware Avenue. Mr. Marciante stated that Mercer County would probably have some input but Mr. Meytrott stated that he did not think that the County would take a lot of interest in it, they usually will put a crosswalk in at the request of the Borough. Mr. Davy stated that a crosswalk at Abey Drive would not be natural. Mr. Meytrott agreed and stated that he would agree that a crosswalk at Eglantine is a more natural crossing. Mr. Davy expressed concern about what would compel a vehicle to stop when they are already traveling on Delaware other than maybe a person in the crosswalk. Mr. Meytrott stated that the two locations are very close together. Mr. Griffiths stated that a painted crosswalk raises driver awareness that this is a potential if not actual pedestrian crossing. Mr. Lawver suggested purchasing two more signs that are mounted in the crosswalk. Mr. Meytrott stated that the signs are \$400.00 each. Mr. Davy stated that if there is going to be a crosswalk at Delaware and Abey then there should be a sign. Mr. Meytrott stated that the County will allow the placement of advance crosswalk signs on the side. Mr. Griffiths stated that people are going to cross whether there is a crosswalk or not. Mr. Lawver stated that there was some discussion about Laning and Main. Mr. Meytrott stated that intersection is under the safe routes to school and that a crosswalk at that location would require a crossing guard.

### **Professional Reports**

Mrs. Heinzl stated that a Special Meeting might be needed in order to hold the public hearing on the Grease Interceptor Ordinance and it seems that the week of September 21<sup>st</sup> might work. After a brief discussion it was proposed that six o'clock would work. Mrs. Heinzl stated that she would send an e-mail confirming the meeting once it is set.

Mrs. Heinzl stated that she had one other item and that was which committee to invite to the October meeting and that was already answered. Mrs. Heinzl stated that she would contact the Open Space Committee and invite them to the October meeting.

Mr. Marciante asked if anything could be done about the house on Burd Street that has a blue tarp over the roof. Mr. Marciante stated that it has been like this for a long time. Mr. Bliss stated that it would have to be related to the public health and safety to be covered under the nuisance ordinance. Mr. Bliss stated that there is no aesthetic regulation.

### **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, 9:10 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 – Water Line – 34/36 South Main Street

### **Open Session**

AT, 9:22 PM, Mayor and Council returned to open session.

### **Approval of Closed Session Minutes for Content But Not Release**

Council Member Lawver made a motion to approve the August 3, 2015 Closed Session Minutes for content but not for release, second by Council Member Davy with all members present voting in favor with the exception of Mrs. Chandler who abstained.

At 9:23 PM the meeting was adjourned.

Respectfully submitted,

Elizabeth Sterling  
Borough Clerk