

**Pennington Borough Council  
Special Meeting – November 24, 2015**

Mayor Persichilli called the Regular Meeting of the Borough Council to order at 6:01 pm. Borough Clerk Betty Sterling called the roll. All members were present with the exception of Mrs. Chandler.

Also present were Borough Administrator Eileen Heinzl 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.

**Closed Session**

**AT, 6:02 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:

- Litigation – COAH
- Open Space Acquisition – Brown Property
- Pending Litigation – Tax Matter

**Open Session**

AT, 7:10 PM, Mayor and Council returned to open session.

**BOROUGH OF PENNINGTON  
RESOLUTION NO. 2015-11.9**

**RESOLUTION AUTHORIZING AMENDMENT TO PROFESSIONAL SERVICES AGREEMENT  
WITH MASON, GRIFFIN & PIERSON FOR LEGAL SERVICES IN CONNECTION WITH  
ACQUISITION OF OPEN SPACE LANDS**

**WHEREAS**, by Resolution No. 2014-4.9, adopted on April 28, 2014, Borough Council authorized a professional services agreement with Mason, Griffin & Pierson, through attorney Edwin Schmierer, for legal services in connection with acquisition of certain open space lands in Hopewell Township, known as the Brown Property;

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

**WHEREAS**, the funds needed to pay for the legal services of Mason, Griffin & Pierson, initially estimated at \$5,000, total \$5,180.98 as of November 16, 2015; and the firm now estimates that total billings of up to \$6,000 will be required through completion;

**WHEREAS**, Green Acres will reimburse the Borough for acquisition expenses in the amount of \$8,750 and the Friends of Hopewell Valley Open Space has committed to reimburse expenses not covered by Green Acres up to \$15,000;

**WHEREAS**, total estimated costs to complete acquisition and conveyance of the Property to Friends of Hopewell Valley Open Space is in the range of \$16,000 to \$18,000, such that there will ultimately be no out-of-pocket expense to the Borough for legal and other related services;

**NOW, THEREFORE, BE IT RESOLVED**, by the Borough Council of the Borough of Pennington, that the Mayor or Business Administrator is hereby authorized to enter into an amendment to the aforesaid professional services agreement, on behalf of the Borough, authorizing expenses for legal services up to but not exceeding \$6,000.

**Record of Council Vote on Passage**

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

Council Member Marciante made a motion to approve Resolution 2015-11.9, second by Council Member Griffiths. Mr. Lawver stated that this resolution states that the additional costs authorized here will be reimbursed by the Friends of Hopewell Valley Open Space. Upon a roll call vote, all members present voted in favor.

**BOROUGH OF PENNINGTON  
RESOLUTION 2015 – 11.10**

**RESOLUTION AUTHORIZING EXPENDITURES FROM THE GENERAL FUND IN CONNECTION WITH  
PENDING LITIGATION TO DETERMINE THE BOROUGH’S AFFORDABLE HOUSING OBLIGATION**

**WHEREAS**, on March 10, 2015, the New Jersey Supreme Court issued a decision entitled In the Matter of the Adoption of N.J.A.C. 5:96 and 97 by the New Jersey Council on Affordable Housing, 221 NJ 1 (2015) at which time the Court outlined a process whereby municipalities such as the Borough could apply to the Court through a Declaratory Judgment process in order to have the Borough’s Fair Share Plan and Housing Element approved;

**WHEREAS**, by Resolution No. 2015.78, adopted by Council on July 6, 2015, the Borough retained the firm of Mason, Griffin & Pierson, P.C., to serve as its special counsel in the prosecution of declaratory judgment suit for that purpose, with the proviso that total expenditures for these legal services were not to exceed fourteen thousand dollars (\$14,000);

**WHEREAS**, Mason, Griffin & Pierson has filed a declaratory judgment action on behalf of the Borough in Mercer County Superior Court, Law Division, titled In the Matter of the Application of the Borough of Pennington in Mercer County, which is now pending before the Hon. Mary C. Jacobson, AJSC; and is being considered by the Court together with the declaratory judgment actions filed by 11 other Mercer County municipalities (with the note that the suit by Hopewell Borough has been withdrawn as of November 10, 2015);

**WHEREAS**, prosecution of the matter has been more complex and time-consuming than anticipated and charges for legal services have been incurred in excess of the \$14,000. cap, totaling an additional \$7,876.88;

**WHEREAS**, in addition to the unanticipated legal fees, the Borough has incurred charges for its share of the fees of Elizabeth McKenzie, P.P., P.A., who was appointed by the Court to serves as Special Master in the pending litigation with her fees to be charged to the plaintiff municipalities on a prorated basis, as reflected in the attached invoices of Ms. McKenzie totaling \$1,250.00;

**WHEREAS**, the estimated costs originally anticipated also assumed that all of the authorized costs would be paid from the Borough’s Affordable Housing Trust Fund and that the total of these anticipated costs, including fees for legal, professional planning and affordable-housing expert would nearly exhaust the percentage of the Affordable Housing Trust Fund expendable for administrative costs;

**WHEREAS**, the additional sums payable to Mason, Griffin & Pierson and to the Special Master will therefore be charged largely to the Borough’s General Fund;

**WHEREAS**, the funds needed to pay these additional charges are available in the General Fund;

**WHEREAS**, Borough Council seeks to cover the additional expenses, which reflect cost factors beyond the attorneys’ control;

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

1. the Mayor or the Business Administrator is hereby authorized to enter into an amendment of the aforesaid professional services agreement with Mason, Griffin & Pierson , on behalf of the Borough, increasing authorized expenses for legal services by \$8,000, to a total amount not to exceed \$22,000.00;
2. the Borough Administrator is further authorized to pay the amounts due the Special Master Elizabeth McKenzie, P.P., P.A. as reflected in the attached invoices, in an amount not to exceed \$1,250.00.

**Record of Council Vote on Passage**

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

Council Member Griffiths made a motion to approve Resolution 2015-11.10, second by Council Member Marciante. Mr. Bliss stated that this resolution covers costs already incurred on this matter. Mr. Griffiths stated that this resolution refers to funds coming out of the general fund for legal services and not the trust fund. Mr. Griffiths asked if the trust fund has been totally exhausted and if not should we exhaust whatever funds we can from the COAH trust before tapping taxpayer dollars. Mrs. Sterling stated that allowed twenty-five percent that can be used from COAH funds has been exhausted because there legal fees up to \$14,000 were spent out of COAH, \$11,000 was authorized for the Borough Planner and \$2,000 was paid for the expert and those three items amounted to the allowed twenty-five percent. Mr. Lawver asked if Mr. Schmierer brought this overage to our attention before he incurred the expenses over what was authorized. Mrs. Heinzl stated that he did not. Mrs. Sterling stated that we received invoices and did not have the means to pay them. Mr. Lawver asked if funds could be pulled back from that balance allocated for the Planner. Mrs. Heinzl stated that Michael Bolan, the Borough Planner is still working and that goes to the question of whether we should continue working on the plan. Mrs. Heinzl stated that after the last meeting she advised Mr. Schmierer to stop working so no more charges have been incurred. Council Members

expressed concern that advance notice that the charges were going to exceed the authorized amount was not given. Mrs. Heinzel stated that when the invoices came in she called Mr. Schmierer and he responded with the memo that Council has explaining how the litigation is spiraling. Mr. Griffiths stated that Council should have been notified a head of time knowing that there is a cap on the fees. Mr. Davy stated that when this originally came up Council expressed their concerns about not using taxpayer dollars and keeping within the not to exceed amount. Mr. Griffiths asked if we are in a position to negotiate these fees and or not pay the invoiced amounts. Mr. Lawver stated that Council did not authorize the work beyond \$14,000 so therefore we are in a position not to pay the overage. Mr. Lawver stated that he would like to do two things; one is not approve this resolution and two is revoke all authorizations from all professionals for any further work related to the Declaratory Judgement lawsuit. Mr. Griffiths clarified that council would not approve payment to Mr. Schmierer until a conversation takes place regarding the invoices. Mr. Griffiths stated that he is prepared to be aggressive with this given that the Borough has had problems with invoices for professional services in the past. Mr. Griffiths stated that when a professional exceeds an authorized amount a request needs to be made ahead of time.

Mr. Davy stated that he would like to recuse himself from further discussions because he recently used this firm for a legal matter. Mr. Bliss stated that is a conflict.

At 7:17 pm, Mayor Persichilli returned to the meeting.

Mr. Lawver stated that what we have then is a sentiment to not approve Resolution 2015-11.10 and to hold a discussion about whether or not we introduce a new resolution that revokes any authorization for any further work on this matter. Mayor Persichilli called for a vote on the resolution and upon a roll call vote all members present voted NO with the exception of Mr. Davy who abstained.

Mr. Lawver asked for a resolution to revoke all further authorizations for work on this matter. Mr. Bliss was asked for language in the form of a resolution. Mr. Bliss stated "that Council hereby revokes authorization for any further professional work in prosecution of the pending Declaratory Judgement Action." Mr. Bliss stated that this does not quite say that the Borough is withdrawing from the litigation because it does not authorize the additional work needed to withdraw. Mrs. Heinzel asked who would prepare the Motion to Dismiss Without Prejudice? Mr. Bliss stated that assumedly it would be the Counsel of record which would be Mr. Schmierer. There was some discussion about how to proceed with filing the motion to withdraw. Mrs. Heinzel stated that she thought that she had already taken care of asking the professionals to stop working because she spoke with both Michael Bolan and Ed Schmierer. Mr. Bliss stated that the Borough will be in default after December 7<sup>th</sup> if the Borough Planner does not submit our plan. Mr. Bliss stated that it would be cleaner if the intent is to get out completely to do it the right way and authorize the attorney to incur the expense needed to withdraw us from the suit without prejudice. Mr. Lawver stated that in connection with asking Mr. Schmierer to file the motion to withdraw there should be a conversation negotiating the overage charges. Mr. Lawver withdrew his motion for a resolution revoking all further authorizations for work on this matter.

Mr. Bliss stated that for the record it has been authorized in the pending litigation by Hopewell Township against the Director, Division of Taxation, that the Borough Attorney file a motion to intervene on the Borough's behalf. Mr. Marciante made a motion, second by Mr. Lawver with all members present voting in favor.

**BOROUGH OF PENNINGTON  
RESOLUTION #2015 – 11.11**

**RESOLUTION AUTHORIZING BUDGET TRANSFERS**

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

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

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

**NOW, THEREFORE, BE IT RESOLVED**, by the Borough Council of the Borough of Pennington that transfers be made between the following year 2015 budget appropriations:

<b>Appropriations:</b>	<b>To:</b>	<b>From:</b>
Legal – Other Expense	\$ 15,000.00	
Police – Salaries	\$ 40,000.00	
Group Insurance	\$ 1,000.00	
Streets – Salaries	\$ 2,000.00	
Streets – Other Expense		\$ 25,000.00

Salary-Wage Adjustment		\$ 10,000.00
Trash – Salaries		\$ 2,000.00
Borough Properties –Other Expense		\$ 5,000.00
Gas, Fuel, Lubricant		\$ 10,000.00
Natural Gas		\$ 2,000.00
Social Security		\$ 4,000.00
<b>Total Current Fund</b>	<b>\$ 58,000.00</b>	<b>\$ 58,000.00</b>

**Record of Council Vote on Passage**

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

Council Member Griffiths made a motion to approve Resolution 2015-11.11, second by Council Member Marciante with all members present voting in favor.

At 7:26pm Council Member Marciante made a motion to adjourn the meeting, second by Council Member Gnatt

Respectfully submitted,

Elizabeth Sterling  
Borough Clerk