

**Pennington Borough Council
Regular Meeting – December 14, 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 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.**

There were no comments from the public.

Mayor's Business

Presentations

Mayor Persichilli invited Mr. Eric Kollevoll of the Economic Development Commission to come forward. Mr. Kollevoll distributed some handouts to Mayor and Council. Mr. Kollevoll reported that members of the commission with terms that are expiring have expressed an interest in being reappointed. Mr. Kollevoll stated that they do have one vacancy and Mr. Guy McPhail has decided to step down as his business is growing. Mr. Kollevoll reported that the commission has been busy trying to support community events and working on community outreach. Mr. Kollevoll stated that their main event is the Business Award event which is held in January and attendance at the event has grown over the past couple of years. Mr. Kollevoll stated that this past year they added an Individual Award given to someone in the community who has given of themselves to the community. Mr. Kollevoll stated that last year's recipient was Weed Tucker. Mr. Kollevoll stated that the year before the award was given to Tom Ogren for his contributions to the community. Mr. Kollevoll reported that the Economic Development Commission worked with the Recreation Committee to host the summer concert series. Mr. Kollevoll stated that some were well attended and some were not. Mr. Kollevoll stated that he thinks that they will try again this year with the concert series as the events did help some of the businesses in town, but mostly it helps bring people together. Mr. Kollevoll commended Michelle Needham for her work organizing the concert series. Mr. Kollevoll stated that one of the other things that they have done in prior years but not the last two years was to get business owners together and make a presentation to the fifth graders on what it is like to own your own business. Mr. Kollevoll stated that they are looking to do that event again in 2016. Mr. Kollevoll stated that they have also tried to work with business owners who are struggling. Mr. Kollevoll stated that when the shopping center on Delaware had to close in 2012, they held a photo op and promoted the reopening of the center. Mr. Kollevoll stated that the Sourland Coffee Shop owner has reached out to him to with some questions. Mr. Kollevoll stated that the coffee shop is ready to go and should be open soon. Mr. Kollevoll stated that Pennington is a wonderful small community and he perceives the commission as a group that will not achieve great feats, but they will be able to help local business owners where needed. Mr. Kollevoll stated that he would like to be able to communicate information through the existing Borough resources to promote business in the Borough and to let people outside the Borough know that Pennington is a great place to do business. Mr. Kollevoll stated that they would like to put out a brochure to promote and attract businesses to the Borough and, of course, there is some cost involved with that. Mr. Kollevoll stated that the coffee shop will be a great addition to the community as Pennington has not had one for several years. Mr. Kollevoll stated that the biggest thing for 2016 that the commission has a real interest in is the redevelopment of the Route 31 property. Mr. Kollevoll stated that there is a large group of businesses along Route 31 that enjoy peoples business but the landfill site could bring together more residents with the Route 31 stores along with bringing in tax revenue. Mr. Kollevoll stated that the commission would like Borough Council to work towards redevelopment of the site for 2016. Mr. Kollevoll stated that Mr. Ogren worked up a brochure on Route 31 that can be packaged and sent to developers. Mr. Kollevoll stated that like any other property sale, you don't want to invest a lot of money, but you want to be able to market the property. Mr. Kollevoll stated that the idea is to market the property so that someone will come in and take the ball and run with it and make our community better. Mr. Kollevoll stated that he handed out a sample of the brochure that they are considering. Mr. Kollevoll stated that cost to produce the brochure is not a lot and the brochure would help the Borough market the property. Some discussion took place as to what parts of the site are developable and what parts are not. Mr. Kollevoll stated that a feasibility study has been done and that study takes into account those areas that cannot be developed. Mr. Kollevoll stated that leaves about four acres that can be developed. Mr. Kollevoll stated that whoever would want to develop the area would have to work with the

Borough regarding the parts that cannot be developed. Further discussion took place with regard to the property and what can be developed and what cannot. Mrs. Heinzel stated that the study was done by Maser Consulting and that report is available in the Borough office. Mr. Lawver asked what would be done with the brochure once it is printed. Mr. Kollevoll stated that they would share the brochure with developers as a commission to help economically develop that site. Mr. Griffiths asked what the property would be worth and Mr. Kollevoll stated that would depend on what could be put up on it, but it would be substantial. Mr. Kollevoll stated that he could get someone to do a market analysis. Mr. Lawver asked about the present center along Route 31. Mr. Kollevoll stated that the commission is looking to work with the owner of that site to develop his center in a style that would allow for interplay between his center and the new area. Mr. Griffiths stated that another issue is the COAH component. Mr. Griffiths asked Mr. Kollevoll if he were advocating for a purely retail or commercial development. Mr. Kollevoll stated that he believes it is zoned for retail. Mr. Kollevoll stated that the undevelopable parcels would be perfect for recreational use and the goal is to have a walking community. Mr. Kollevoll stated that the commission understands that solar panels would be income for the Borough, but they think that a recreational use would be better. Mr. Kollevoll stated that the first step is to find an interested developer and then work from there. Mr. Lawver asked what needs to be done to close out the landfill and would the fact that the landfill is not officially closed out affect subdividing the property? Mr. Kollevoll stated that would be something that would have to be addressed, but if there was an interested developer that would be willing to work with the Borough; those issues could be addressed together. Mr. Kollevoll stated that the first step is to develop and print the brochure for distribution. Mr. Lawver asked if Mr. Kollevoll has contacted a Commercial Realtor and Mr. Kollevoll stated that there is someone in town that he could contact. Mr. Lawver asked if the liquor license could be tied into this proposal. Mr. Kollevoll stated that he has heard talk that a restaurant or breakfast place is needed here in Pennington. Mr. Kollevoll stated that the liquor license could enhance the value of the property. Mr. Marciante suggested a booklet listing all businesses similar to what they have in Lambertville. Mr. Kollevoll stated that the Pennington Business and Professional Association is working on that and it is close to going to print. Mr. Kollevoll stated that they have also considered a calendar of events. Mrs. Chandler stated that there is a demand for a calendar that would communicate events and information about committees in Pennington. Mr. Kollevoll stated that the brochure to market the property can be done very economically. Mr. Kollevoll stated that he will speak with a commercial realtor to see if there is anything else that needs to go into the brochure. Mr. Kollevoll stated that there are things that the commission would like to do, but they realize that we work on a tight budget. Mr. Griffiths asked Mr. Kollevoll to put his budget requests in writing in the context of making an investment in generating future revenue. Mr. Kollevoll thanked Mayor and Council.

Approval of Minutes

Council Member Chandler made a motion to approve the minutes of the November 2, 2015, Regular Meeting, second by Council Member Griffiths with all members present voting in favor with the exception of Mrs. Gnatt who abstained.

Committee Reports

Planning & Zoning / Open Space – Mrs. Gnatt stated that the Planning Board met to hear an application from American Properties and that application will continue at the December meeting. Mrs. Gnatt stated that an active and lively discussion took place with many residents in attendance.

Mrs. Gnatt stated that Mr. Ogren updated Council on Open Space at the last meeting.

Public Works / Personnel – Mr. Davy had no reports.

Parks & Recreation / Library / Shade Tree / Senior Advisory – Mr. Lawver stated that the Shade Tree Commission completed its review of the Shade Tree Ordinance and the proposed changes will be before Council early next year. Mr. Lawver stated that they are finalizing budget requests for 2016 in light of the large inventory of trees in need of work or removal. Mr. Lawver stated that they are also in the process of putting together the five year Forestry Management Plan and looking at locations for the next round of shade trees.

Mr. Lawver stated that the Senior Advisory Board met and voted to ask Hopewell Township to explore the possibility of a Senior Center at the Hopewell Valley Golf Club. Mr. Lawver stated that there are some issues relating to the operation of the golf club and this appears to be a rather complicated reach at a new Senior Center. Mr. Lawver stated that his comment to the Board was that sounds awfully complicated and Pennington will support that but as a reminder if the Board decided today to stay with the center on Reading Avenue they could have a new center at that location in eighteen months. Mr. Lawver stated that the clock is ticking on the present site on Reading Avenue with all of the deferred maintenance issues. Mayor Persichilli stated that this discussion has been going on for nine years and trying to get three different parties to talk about the same thing together never happens. Mr. Griffiths stated that there is a lack of leadership and the senior community is not in agreement among themselves.

Public Safety – Mr. Marciante reported that on December 18th the Police Department will be at full force for the first time in over a year. Mr. Marciante stated that an ordinance to accept the contract is on the agenda for later in the meeting. Mr. Marciante stated that the next Public Safety Committee meeting will take place the week after Christmas.

Finance – Mr. Griffiths stated that the Finance Committee did not meet but we are gearing up to begin the budget process for 2016.

Historic Preservation / Board of Health / Environmental / Economic Development – Mrs. Chandler stated that the Business Awards event will be held on Wednesday, January 27th, 2016 at 6:00pm at the Sun Bank. Mrs. Chandler stated that once again the Economic Development Commission is joining with the Historic Preservation Commission to present awards at this event.

Mrs. Chandler stated that the Historic Preservation Commission met, a number of things were discussed including membership as the commission is in need of new members. Mrs. Chandler stated that a discussion took place regarding a welcome package for new homeowners in the Historic District to provide information on the Historic Preservation. Mrs. Chandler stated that the Commission is moving forward on a survey of the district in order to qualify for Certified Local Government status. Mrs. Chandler stated that once the CLG certification is obtained it would open up grant opportunities for businesses and non-profits in the Historic District.

Ordinances for Public Hearing and Adoption

Mayor Persichilli read Ordinance 2015-15 by title.

Borough of Pennington Ordinance #2015-15

AN ORDINANCE OF THE BOROUGH OF PENNINGTON, COUNTY OF MERCER, STATE OF NEW JERSEY AUTHORIZING A COLLECTIVE BARGAINING AGREEMENT WITH PENNINGTON BOROUGH POLICE ASSOCIATION

WHEREAS, the Borough of Pennington and the Pennington Borough Police Association have negotiated the terms of a collective bargaining agreement for the years 2015, 2016, 2017, 2018, 2019 and 2020 (“Collective Bargaining Agreement Between the Borough of Pennington and the Pennington Borough Police Association, January 1, 2015 – December 31, 2020,” or “Collective Bargaining Agreement”); and

WHEREAS, the Collective Bargaining Agreement establishes salaries and other conditions of employment; and

WHEREAS, a copy of the Collective Bargaining Agreement is available for inspection at the office of the Clerk in Borough Hall; and

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, County of Mercer, State of New Jersey, as follows:

ARTICLE I – The Collective Bargaining Agreement negotiated with the Pennington Borough Police Association for the years 2015, 2016, 2017, 2018, 2019 and 2020, 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.

ARTICLE II – In the event that the terms and conditions of the Collective Bargaining Agreement are at variance with the Borough Employee Personnel Manual, the terms and conditions of the Collective Bargaining Agreement shall be controlling.

ARTICLE III – The Mayor and Clerk are hereby authorized to sign and seal the said Agreement on behalf of the Borough.

ARTICLE IV – This Ordinance shall take effect upon final passage and publication according to law, provided however that the terms set forth in said Agreement shall be in effect retroactively to January 1, 2015.

ARTICLE V – All ordinances or portions thereof inconsistent herewith are hereby repealed.

Council Member Marciante made a motion to Open the Public Hearing on Ordinance 2015-15, second by Council Member Chandler. There were no comments from the public. Council Member Chandler made a motion to Close the Public Hearing, second by Council Member Griffiths with all members present voting in favor. Council Member Lawver made a motion to adopt Ordinance 2015-15, second by Council Member Marciante with all members present voting in favor. Mayor Persichilli thanked everyone who worked on this contract on both sides. Officer Doug Pinelli thanked Mayor and Council for the cooperation that was given in negotiating this contract.

Finance		
Municipal CFO(p/t)	\$ 25.00	\$ 77.47
Police Department:		
Crossing Guards	\$ 15.00	\$ 24.74
Special Police	\$ 16.92 per hour	
Part Time Employees – All Departments:		
Part Time or Temporary	\$ 8.00	\$ 21.00
Part Time/Temporary/Licensed	up to a maximum of	\$ 35.00

SECTION II: Employee/Personnel Manual.

The terms and conditions of employment as set forth in the Borough Employee or Personnel Manual, as the same may exist and change from time to time, are hereby incorporated herein by reference. The Personnel Manual does not create a contract of employment and except for employees who are tenured; no contract of employment other than “at will” has been expressed or implied. The policies, rules and benefits described in the Manual are subject to change at the sole discretion of the Borough Council at any time.

SECTION III:

All ordinances or parts of ordinances inconsistent with this ordinance are hereby repealed.

SECTION IV:

Terms and Conditions of employment for Police and Public Works employees are specified in the respective labor agreements.

SECTION V:

This amended ordinance shall take effect upon final adoption and publication according to law.

Council Member Chandler made a motion to Open the Public Hearing on Ordinance 2015-16, second by Council Member Marciante. There were no comments from the public. Council Member Chandler made a motion to Close the Public Hearing, second by Council Member Griffiths with all members present voting in favor. Council Member Lawver made a motion to adopt Ordinance 2015-16, second by Council Member Gnatt with all members present voting in favor.

Mayor Persichilli read Ordinance 2015-17 by title.

**BOROUGH OF PENNINGTON
ORDINANCE # - 2015-17**

AN ORDINANCE GRANTING RENEWAL OF MUNICIPAL CONSENT TO COMCAST OF HOPEWELL VALLEY, INC TO CONSTRUCT, CONNECT, OPERATE AND MAINTAIN A CABLE TELEVISION AND COMMUNICATIONS SYSTEM IN PENNINGTON BOROUGH, NEW JERSEY.

BE IT ORDAINED BY THE BOROUGH COUNCIL OF PENNINGTON BOROUGH, MERCER COUNTY, NEW JERSEY, AS FOLLOWS:

SECTION 1. PURPOSE OF THE ORDINANCE

The municipality hereby grants to Comcast renewal of its non-exclusive Municipal Consent to place in, upon, across, above, over and under highways, streets, alleys, sidewalks, easements, public ways and public places in the municipality, poles, wires, cables, underground conduits, manholes and other television conductors, fixtures, apparatus and equipment as may be necessary for the construction, operation and maintenance in the Municipality of a cable television and communications system.

SECTION 2. DEFINITIONS

For the purpose of this Ordinance, the following terms, phrases, words and their derivations shall have the meaning given herein. Such meaning or definition of terms is supplemental to those definitions of the Federal Communications Commission ("FCC") rules and regulations, 47 C.F.R. Subsection 76.1 *et seq.*, and the Cable Communications Policy Act, 47 U.S.C. Section 521 *et seq.*, as amended, and the Cable Television Act, N.J.S.A. 48:5A-1 *et seq.*, and shall in no way be construed to broaden, alter or conflict with the federal and state definitions:

- a. "Borough" or "Municipality" is the Borough of Pennington, County of Mercer, State of New Jersey.

- b. "Company" is the grantee of rights under this Ordinance and is known as Comcast of Hopewell Valley, Inc.
- c. "Act" or "Cable Television Act" is Chapter 186 of the General Laws of New Jersey, and subsequent amendments thereto, N.J.S.A. 48:5A-1, et seq.
- d. "FCC" is the Federal Communications Commission.
- e. "Board" or "BPU" is the Board of Public Utilities, State of New Jersey.
- f. "Office" or "OCTV" is the Office of Cable Television of the Board.
- g. "Basic Cable Service" means any service tier, which includes the retransmission of local television broadcast signals as defined by the FCC.
- h. "Application" is the Company's Application for Renewal of Municipal Consent.
- i. "Primary Service Area" or "PSA" consists of the area of the Municipality currently served with existing plant as set forth in the map annexed to the Company's Application for Municipal Consent.
- j. "Expanded Basic Cable Service" means the tier of cable service which includes two (2) tiers (Limited Basic and Expanded Basic) or its equivalent.
- k. "Qualified School" is a public or private elementary or secondary school covering grades ranging from K-12 in whole or in part, not a home school, community college or university.

SECTION 3. STATEMENT OF FINDINGS

Public hearings conducted by the municipality, concerning the renewal of Municipal Consent herein granted to the Company were held after proper public notice pursuant to the terms and conditions of the Act and the regulations of the Board adopted pursuant thereto. Said hearings, having been fully open to the public, and the municipality, having received at said public hearings all comments regarding the qualifications of the Company to receive this renewal of Municipal Consent, it appears to the Municipality that the Company possesses the necessary legal, technical, character, financial and other qualifications and that the Company's operating and construction arrangements are adequate and feasible.

SECTION 4. DURATION OF FRANCHISE

The non-exclusive Municipal Consent granted herein shall expire 15 years from the date of expiration of the previous Certificate of Approval issued by the Board with a 10-year automatic renewal as provided by N.J.S.A. 48:5A-19 and 25, and N.J.A.C. 14:18-13.6.

In the event that the Municipality shall find that the Company has not substantially complied with the material terms and conditions of this Ordinance, the Municipality shall have the right to petition the OCTV, pursuant to N.J.S.A. 48:5A-47, for appropriate action, including modification and/or termination of the Certificate of Approval; provided however, that the Municipality shall first have given the Company written notice of all alleged instances of non-compliance and an opportunity to cure same within ninety (90) days of that notification.

SECTION 5. FRANCHISE FEE

Pursuant to the terms and conditions of the Act, N.J.S.A. 48:5A-30, the Company shall, during each year of operation under the consent granted herein, pay to the Municipality two percent (2%) of the gross revenues from all recurring charges in the nature of subscription fees paid by subscribers for cable television reception service in the Municipality or any higher amount permitted by the Act or otherwise allowable by law. The fee is currently three and one-half percent (3.5%) of the Company's gross revenues, as defined under N.J.S.A. 48-5A-3(x), pursuant to N.J.S.A. 48:5A-30(d).

SECTION 6. FRANCHISE TERRITORY

The consent granted under this Ordinance to the renewal of the franchise shall apply to the entirety of the Municipality and any property subsequently annexed hereto.

SECTION 7. EXTENSION OF SERVICE

The Company shall be required to proffer service to any residence or business along any public right-of-way in the Primary Service Area, as set forth in the Company's Application. Any extension of plant beyond the Primary Service Area shall be governed by the Company's Line Extension Policy, as set forth in the Company's Application.

SECTION 8. CONSTRUCTION REQUIREMENTS

Restoration: In the event that the Company or its agents shall disturb any pavement, street surfaces, sidewalks, driveways, or other surface in the natural topography, the Company shall, at its sole expense,

restore and replace such places or things so disturbed in as good a condition as existed prior to the commencement of said work.

Relocation: If at any time during the period of this consent, the Municipality shall alter or change the grade of any street, alley or other way or place the Company, upon reasonable notice by the Municipality, shall remove, re-lay or relocate its equipment, at the expense of the Company.

Temporary Removal of Cables: The Company shall, upon request of the Municipality at the Company's expense, temporarily raise, lower or remove its lines in order to facilitate the moving of buildings or machinery or in other like circumstances. Whenever the request for removal is made by, for or on behalf of private parties, the cost will be borne by those same parties.

Removal or Trimming of Trees: During the exercise of its rights and privileges under this franchise, the Company shall have the authority to trim trees upon and overhanging highways, streets, alleys, sidewalks, easements, public ways or other public places of the municipality so as to prevent the branches of such trees from coming in contact with the wires and cable of the Company.

With respect to all applicable construction activities under this Section, the Company shall obtain all required permits and otherwise comply will all related provisions of the New Jersey Administrative Code, Pennington Borough Code, and all other applicable laws and ordinances, provided nothing herein shall be construed to require Company to pay fees for required permits to the extent Company is exempt from such fees under State or Federal law.

SECTION 9. CUSTOMER SERVICE

In providing services to its customers, the Company shall comply with N.J.A.C. 14:18-1, et seq. and all applicable state and federal statutes and regulations. The Company shall strive to meet or exceed all voluntary company and industry standards in the delivery of customer service and shall be prepared to report on it to the municipality upon written request of the Borough Manager or Clerk.

- a. The Company shall continue to comply fully with all applicable state and federal statutes and regulations regarding credit for outages, the reporting of same to regulatory agencies and notification of same to customers.
- b. The Company shall continue to fully comply with all applicable state and federal statutes and regulations regarding the availability of devices for the hearing impaired and the notification of same to customers.
- c. The Company shall use every reasonable effort to meet or exceed voluntary standards for telephone accessibility developed by the National Cable Television Association (NCTA).
- d. Nothing herein shall impair the right of any subscriber or the Municipality to express any comment with respect to telephone accessibility to the Complaint Officer, or impair the right of the Complaint Officer to take any action that is permitted under law.

SECTION 10. MUNICIPAL COMPLAINT OFFICER

The Office of Cable Television is hereby designated as the Complaint Officer for the Municipality pursuant to N.J.S.A. 48:5A-26(b). All complaints shall be received and processed in accordance with N.J.A.C. 14:17-6.5. The Municipality shall have the right to request copies of records and reports pertaining to complaints by Municipality customers from the OCTV.

SECTION 11. LOCAL OFFICE

During the term of this franchise, and any renewal thereof, the Company shall maintain a business office or agent in accordance with N.J.A.C. 14:18-5.1 for the purpose of receiving, investigating and resolving all local complaints regarding the quality of service, equipment malfunctions, and similar matters.

SECTION 12. PERFORMANCE BONDS

During the life of the franchise the Company shall give to the municipality a bond in the amount of twenty-five thousand (\$25,000.00) dollars. Such bond shall be to insure the faithful performance of all undertakings of the Company as represented in its application for municipal consent incorporated herein.

SECTION 13. SUBSCRIBER RATES

The rates of the Company shall be subject to regulation as permitted by federal and state law.

SECTION 14. COMMITMENTS BY THE COMPANY

- a. The Company shall provide Expanded Basic or a similar tier of cable television service on one (1) outlet at no cost to each qualified existing and future school in the Municipality, public and private, elementary, intermediate and secondary, provided the school is within 175 feet of active cable distribution wires. Each additional outlet installed, if any, shall be paid for on a

materials plus labor basis by the school requesting service. Monthly service charges shall be waived on all additional outlets.

- b. The Company shall provide Expanded Basic or a similar tier of cable television service at no cost on one (1) outlet to each qualified existing and future police, public works, fire, rescue, Town Hall and public library in the Municipality, provided the facility is located within 175 feet of active cable distribution wires. Each additional outlet installed, if any, shall be paid for on a materials plus labor basis by the Municipality. Monthly service charges shall be waived on all additional outlets.
- c. Within six months of the issuance of a Renewal Certificate of Approval by the BPU, the Company shall provide to the Municipality a one-time Technology Grant in the amount of ten-thousand dollars (\$10,000) to meet the general technology and/or cable related needs of the community.
- d. The Communications Act of 1934, as amended [47 U.S.C. §543 (b)], allows the Company to itemize and/or identify: (1.) the amount on the subscriber bill assessed as a franchise fee and the identity of the governmental authority to which the fee is paid; (2.) the amount on the bill assessed to satisfy any requirements imposed on the Company by the cable franchise to support public, educational, and/or governmental access channels or the use of such channels; and (3.) any grants or other fees on the bill or any tax, assessment, or charge of any kind imposed by any governmental authority on the transaction between the operator and the subscriber. The Company reserves these external cost, pass-through rights to the extent permitted by law.

SECTION 15. EDUCATIONAL ACCESS

- a. The Company shall continue to provide a dedicated educational access channel that will be available to the Hopewell Valley Regional High School.
- b. The Company will maintain the cable, modulators, and equipment necessary for the Hopewell Valley High School channel to send a signal to the Company, and to receive the return feed signal. The Company will not be responsible for the maintenance of any studio equipment used for the access channel, including but not limited to cameras, editing decks, monitors and character generators.
- c. Within six months of the issuance of a Renewal Certificate of Approval by the BPU, the Company shall provide to the Municipality a one-time grant in the amount of ten-thousand dollars (\$10,000) to enhance the Borough's website. Such enhancements may include, but are not limited to, hosting and/or embedding educational and government access video on the Borough's website.
- d. Shared use of the educational access channel shall be governed by mutual agreement among the municipalities of Pennington Borough, Hopewell Borough and Hopewell Township (collectively, "Municipalities").
- e. The Company does not relinquish its ownership of or ultimate right of control over a channel by designating it for educational access use. An access user - whether an educational or governmental user - acquires no property or other interest by virtue of the use of a channel so designated, and may not rely on the continued use of a particular channel number, no matter how long the same channel may have been designated for such use.
- f. The Company shall not exercise editorial control over any educational or governmental use of channel capacity, except Company may refuse to transmit any educational or governmental access program or portion of an educational or governmental access program that contains obscenity, indecency, or nudity.
- g. Educational Access. "Educational Access" shall mean noncommercial use for educational purposes that is managed, scheduled, and programmed by Hopewell Valley Regional High School or other educational access channel administrator designated by the Municipalities.
- h. Company Use of Fallow Time. Because blank or underutilized access channels are not in the public interest, in the event the Hopewell Valley Regional HS or other designated access users elect not to fully program the access channel, Company may program unused time on those channels (at its discretion and for any purpose), subject to reclamation by the Municipality upon no less than 60 days written notice.

SECTION 16. EMERGENCY USES

The Company will comply with the Emergency Alert System ("EAS") rules in accordance with applicable state and federal statutes and regulations.

The Company shall in no way be held liable for any injury suffered by the municipality or any other person, during an emergency, if for any reason the municipality is unable to make full use of the cable television system as contemplated herein.

SECTION 17. LIABILITY INSURANCE

The Company shall at all times maintain a comprehensive general liability insurance policy with a single limit amount of \$1,000,000 covering liability for any death, personal injury, property damages or other

liability arising out of its construction and operation of the cable television system, and an excess liability (or "umbrella") policy in the amount of \$5,000,000. The Borough shall be named as an additional insured under said policies.

SECTION 18. INCORPORATION OF THE APPLICATION

All of the statements and commitments contained in the Application or annexed thereto and incorporated therein, and any amendment thereto, except as modified herein, is binding upon the Company as terms and conditions of this consent. The Application and other relevant writings submitted by the Company shall be annexed hereto and made a part hereof by reference provided same do not conflict with applicable State or Federal law.

SECTION 19. SEPARABILITY

If any section, subsection, sentence, clause, phrase or portion of this Ordinance is for any reason held invalid or unconstitutional by any court or federal or state agency of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision, and its validity or unconstitutionality shall not affect the validity of the remaining portions of the Ordinance.

SECTION 21. THIRD PARTY BENEFICIARIES

Nothing in this Franchise or in any prior agreement is or was intended to confer third-party beneficiary status on any member of the public to enforce the terms of such agreements or Franchise.

SECTION 22. EFFECTIVE DATE

This Ordinance shall take effect immediately upon issuance of a Renewal Certificate of Approval from the BPU.

Council Member Chandler made a motion to Open the Public Hearing on Ordinance 2016-17, second by Council Member Lawver. Mrs. Chandler asked if this is the agreement where the Borough will receive money to upgrade the website. Mr. Bliss stated that this agreement provides for \$10,000 for a General Technology Grant and \$10,000 for the website. Mr. Bliss stated that the Borough would receive the funds within six months to one year. Council Member Lawver made a motion to Close the Public Hearing, second by Council Member Gnatt with all members present voting in favor. Council Member Lawver made a motion to adopt Ordinance 2015-17, second by Council Member Marciante with all members present voting in favor.

New Business

**Borough of Pennington
Resolution #2015 – 12.1**

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 2015,4th quarter taxes, Block 904, Lot 19, also known as 468 Sked Street, in the amount of \$1,576.19.

BE IT RESOLVED, that a refund be issued to Cumanet (Affinity) c/o CoreLogic Real Estate Tax Services, PO Box 961250, Fort Worth, TX 76161-9858, for refund of 2015,4th 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 Baycoast Bank c/o CoreLogic Real Estate Tax Services, PO Box 961250, Fort Worth, TX 76161-9858, for refund of 2015,4th quarter taxes, Block 801, Lot 10, also known as 4 Kings Court, in the amount of \$781.45.

BE IT RESOLVED, that a refund be issued to David & Diana Butcavage, 10 East Welling Avenue, Pennington, NJ 08534, for balance of Planning Board escrow account, Block 1002, Lot 19, also known as 10 East Welling Avenue, in the amount of \$381.30.

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 2015-12.1, second by Council Member Griffiths with all members present voting in favor.

**Borough of Pennington
 Resolution #2015 – 12.2**

AUTHORIZING PAYMENT OF BILLS

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

NOW, THEREFORE BE IT RESOLVED, by the Mayor and Council of the Borough of Pennington that the bills be paid on audit and approval of the Mayor, the Appropriate Council Member and the Treasurer in the amount of \$ 1,296,718.93 from the following accounts:

Current	\$ 1,091,092.87
W/S Operating	\$ 52,244.14
Developers Escrow	\$ 16,378.07
General Capital	\$ 135,314.60
Animal Control	\$ 415.00
Trust Other	\$ 278.00
COAH Trust Fund	\$ 198.00
Open Space Trust	\$ 798.25
TOTAL	\$ 1,296,718.93

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 2015-12.2, second by Council Member Chandler with all members present voting in favor.

**Borough of Pennington
 Resolution #2015 – 12.3**

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:

<u>Appropriations:</u>	<u>To:</u>	<u>From:</u>
LOSAP	\$ 1,700.00	
Finance – Salaries	\$ 500.00	
Police – Other Expense	\$ 5,000.00	
Streets – Salaries	\$ 5,000.00	
Trash – Salaries	\$ 1,500.00	
Streets – Other Expense		\$ 4,500.00
Trash – Tipping Fees		\$ 9,200.00
Total Current Fund	\$ 13,700.00	\$ 13,700.00

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 2015-12.3, second by Council Member Chandler with all members present voting in favor.

**BOROUGH OF PENNINGTON
RESOLUTION NO. 2015 – 12.4**

**RESOLUTION AUTHORIZING NEW BUS STOP
IN PENNINGTON BOROUGH**

BE IT RESOLVED by the Mayor and Council of the Borough of Pennington, County of Mercer, and State of New Jersey that pursuant to N.J.S.A. 39-4-8(e) the following described location is **designated** as a bus stop:

MUNICIPAL ROAD(S)

ADDED:

Along West Delaware Avenue, eastbound, on the southerly side thereof, a distance of 105 feet westerly from the westerly curblin of South Main Street.

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 locations and provide the necessary police security to ensure the safety of the traveling public.

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			

Council Member Lawver made a motion to approve Resolution 2015-12.4, second by Council Member Chandler with all members present voting in favor.

**BOROUGH OF PENNINGTON
RESOLUTION 2015-12.5**

**RESOLUTION AUTHORIZING VOLUNTARY DISMISSAL WITHOUT PREJUDICE OF
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, in compliance with the prescribed process, the Borough filed a declaratory judgment action in Mercer County Superior Court, Law Division, titled In the Matter of the Application of the Borough of Pennington in Mercer County, which has been pending before the Hon. Mary C. Jacobson, AJSC, together with declaratory judgment actions filed by certain other Mercer County municipalities;

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. initially allotted for this purpose, depleting the Borough’s Affordable Housing Trust Fund;

WHEREAS, Borough Council has determined that it cannot afford escalating expenditures for professional services and the costs of court-appointed special masters required to properly pursue the declaratory judgment action, and it therefore orally authorized Mason, Griffin & Pierson, its counsel in the proceedings, to obtain voluntary dismissal of the action without prejudice to renew the action in the future if circumstances warrant;

WHEREAS, on or about December 5, 2015, counsel in fact filed with the Court a Notice of Voluntary Dismissal Without Prejudice and thereby timely excused the Borough from further participation in the litigation;

WHEREAS, the Borough remains committed to addressing its fair share obligation and will continue to pursue its planning efforts outside the litigation;

NOW, THEREFORE, BE IT RESOLVED, by Borough Council of the Borough of Pennington, that the aforesaid filing of Notice of Voluntary Dismissal Without Prejudice is hereby formally ratified and approved.

Record of Council Vote on Passage

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

Council Member Chandler made a motion to approve Resolution 2015-12.5, second by Council Member Griffiths with all members present voting in favor.

**BOROUGH OF PENNINGTON
RESOLUTION 2015- 12.6**

**RESOLUTION EXPRESSING NO OBJECTION TO THE PENNINGTON FIRE COMPANY
PAVING A PORTION OF BOROUGH LOT 15, BLOCK 4 ADJACENT TO FIRE COMPANY
PURSUANT TO LICENSE AGREEMENT BETWEEN BOROUGH AND FIRE COMPANY DATED
FEBRUARY 6, 1992**

WHEREAS, the Pennington Fire Company is the owner of Lot 24, Block 4, on which it has constructed a fire building and asphalt parking lot (“Fire Company Property”);

WHEREAS, the Borough of Pennington is the owner of Lot 15, Block 4 (“Borough Lot”), immediately adjacent to the Fire Company Property;

WHEREAS, on February 6, 1992, the Borough and the Fire Company entered into an agreement (“License Agreement”) granting to the Fire Company a revocable easement or license to use a portion of the Borough Lot as delineated by the metes and bounds description shown on Schedule A attached to the License Agreement;

WHEREAS, pursuant to the License Agreement the Fire Company has the right to use the delineated portion of the Borough Lot as if it were owned by the Fire Company provided that it comply with applicable zoning, building, environmental and other government regulations, that it maintain adequate insurance in amounts satisfactory to the Borough, and that upon termination of the License Agreement it remove any improvements which it may have placed upon the property and restore the property to the same condition it was in prior to the entry upon and use of the property by the Fire Company;

WHEREAS, the Fire Company has used the licensed portion of the Borough Lot as a partially paved parking lot, and it now seeks to pave the licensed portion of the Lot, in its entirety, at its expense;

WHEREAS, Borough Council has no objection to the Fire Company paving the licensed portion of the Borough Lot, subject to continued compliance with the License Agreement;

NOW, THEREFORE, BE IT RESOLVED, by Borough Council of the Borough of Pennington, that the Mayor or Business Administrator communicate to the Fire Company that Council has no objection to the aforesaid paving of the licensed portion of the Borough Lot, subject to continued compliance with the License Agreement.

Record of Council Vote on Passage

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

Council Member Chandler made a motion to approve Resolution 2015-12.6, second by Council Member Griffiths with all members present voting in favor.

**BOROUGH OF PENNINGTON
RESOLUTION 2015- 12.7**

**RESOLUTION AUTHORIZING CONTRACT WITH S. BATATA
CONSTRUCTION, INC. FOR RESETTING THE BOLLARDS INSTALLED UNDER THE
STREETScape IMPROVEMENT PLAN**

WHEREAS, pursuant to a certain Streetscape Improvement Plan for Pennington’s central business district, bollards connected by chains were installed along the westerly side of North Main Street beginning just north of West Delaware Avenue and extending to the Borough Hall driveway;

WHEREAS, certain of the bollards have become loose over time and need to be re-installed in fresh concrete using different bolts;

WHEREAS, the Borough has solicited quotes for the work and upon the recommendation of the Borough Engineer has identified S. Batata Construction, Inc. of Parlin, New Jersey (“Batata”) as a qualified contractor to perform the work;

WHEREAS, Batata has proposed removing and re-setting all of the bollards north of West Delaware Avenue, totaling 30 bollards, for the price of \$12,500;

WHEREAS, the work will be performed in conformance with the attached sketch prepared by the Borough Engineer indicating how the Borough wants each bollard to be removed, a section of concrete sidewalk cored out, new 12” J-bolts installed, fresh concrete poured and the bollards re-installed;

WHEREAS, the affected bollards are shown on the attached sketch;

WHEREAS, Batata will supply to the Borough before commencement of work a certificate of insurance showing coverage for general liability, automobile liability, workers compensation and employer’s liability satisfactory to the Borough Attorney;

WHEREAS, the Chief Finance Officer of the Borough has certified that sufficient funds are available for the contemplated contract in Account #: C-04-03-009-000-252 (Ordinance 2003-9);

NOW, THEREFORE, BE IT RESOLVED, by Borough Council of the Borough of Pennington, that the Business Administrator is hereby authorized to issue a purchase order for the work to S. Batata Construction, Inc. in an amount not to exceed \$12,500.00, subject to the above terms and such additional terms as are required by the Borough Attorney.

Record of Council Vote on Passage

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

Council Member Chandler made a motion to approve Resolution 2015-12.7, second by Council Member Griffiths. Mr. Marciante requested clarification that the bollards were being reinstalled according to the specifications. Mr. Bliss stated that the specifications are fairly reflected in the prose that states each bollard section will be cored out and installed with new twelve inch bolts. Some discussion took place with regard to the sketch attached to the resolution and whether the sketch matched the manufacturer’s specifications and it was agreed that the sketch met the specifications. Upon a roll call vote, all members present voted in favor.

**PENNINGTON BOROUGH
RESOLUTION NO. 2015 – 12.8**

**RESOLUTION AUTHORIZING ADDITIONAL COSTS FOR SERVICES OF BOROUGH
ATTORNEY**

WHEREAS, by Resolution 2015-1.4 adopted on January 5, 2015, Borough Council appointed Walter R. Bliss, Jr. as Borough Attorney subject to a professional services agreement which provided that he be compensated for his services at the hourly rate of \$120 per hour together with reimbursement for certain out-of-pocket costs;

WHEREAS, the contract for professional services between Mr. Bliss and the Borough further provided that total fees for his legal services, including reimbursed costs, not exceed in the aggregate \$40,000. without the prior written approval of Borough Council;

WHEREAS, fees and reimbursements paid to Mr. Bliss through October 2015 total \$37,975.53;

WHEREAS, Mr. Bliss’ invoice for fees and reimbursements in November 2015 totals \$3,046.66, which if approved, would cause total fees and reimbursements for the year to exceed \$40,000;

WHEREAS, Mr. Bliss’ fees in December, 2015, which include continued participation in pending

litigation and related expenses, are expected to require additional sums not to exceed \$4,000;

WHEREAS, payment of Mr. Bliss' November invoice plus a reserve for his fees and reimbursements in December will require a total of \$5,022.19 in excess of the \$40,000 cap on his annual compensation;

WHEREAS, the reasons for this cost overrun relate to unanticipated hours expended on non-routine matters, including dispute resolution, litigation and contract negotiation;

WHEREAS, the Chief Financial Officer has certified that funds are available in the 2015 Legal budget line #5-01-20-155-000-261;

NOW, THEREFORE, BE IT RESOLVED, by the Borough Council of the Borough of Pennington, that an increase in the total annual expenditures for the services and expenses of the Borough Attorney are hereby authorized in the amount of \$5,022.19.

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	M			
Gnatt	X				Marciante	X			

Council Member Lawver made a motion to approve Resolution 2015-12.8, second by Council Member Griffiths. Mr. Griffiths explained that the Borough Attorney went over the initial amount that was authorized and this resolution authorizes additional funds through the end of the year. Upon a roll call vote all members present voted in favor.

**BOROUGH OF PENNINGTON
RESOLUTION NO. 2015-12.9**

RESOLUTION AUTHORIZING ACCEPTANCE OF BID OF PUBLIC SERVICE ELECTRIC AND GAS COMPANY AND AUTHORIZING NEGOTIATION OF LEASE OF PUBLIC WORKS LANDS FOR CONSTRUCTION AND OPERATION OF SOLAR ENERGY ELECTRIC GENERATING FACILITY

WHEREAS, Pennington Borough seeks to lease a portion of its lands in Hopewell Township used by the Borough Department of Public Works (Block 46, Lot 13 on the Hopewell Township Tax Map) for construction of solar voltaic arrays to generate solar energy for conversion to electricity, including but not limited to generation of electricity for use by the Department of Public Works and the Borough's Water and Sewer Utility;

WHEREAS, the Borough has advertised for bids to lease roof and/or ground space to bidders having the experience and capacity to build, operate and maintain a quality, certified solar electric generating system at no cost to the Borough;

WHEREAS, in accordance with the advertisement for bids, the successful bidder will enter into negotiations with the Borough with the ultimate goal of arriving at and entering into a 20-year lease agreement, contingent upon all required approvals by State and local agencies, providing for construction of a solar system and lease payments to the Borough based on annual kWh of energy produced by the system,

WHEREAS, on the date for receipt of bids, June 16, 2015, the Borough received a single bid, from Public Service Electric and Gas Company ("PSE&G"), proposing to enter into a lease of land for the construction of approximately 350 kW-DC ground-mounted solar panels and related equipment and installations, which would be owned, operated and maintained by PSE&G and be expected to generate approximately 444,000 kWh-AC in the first year of operation;

WHEREAS, the proposed annual lease rate is \$0.045 per kWh-AC with an annual payment multiplier of 2.5 percent, yielding estimated annual lease payments of approximately \$19,980 in year 1 increasing to \$31,941 in year 20;

WHEREAS, review of the PSE&G proposal indicates that it meets the Borough's criteria for award, including amount of lease rate, relevant experience and financial resources;

WHEREAS, in accordance with the advertisement for bids and bidding instructions, the acceptance of the PSE&G bid proposal will not create any rights on PSE&G's part unless and until the lease has been negotiated and approved by Borough Council and all contingencies to the lease have been satisfied;

WHEREAS, the obligation of the parties to enter into and consummate the lease shall be contingent upon successful negotiation, preparation, execution and delivery of the lease and related documents on terms which must be satisfactory to each party in its sole discretion, and upon each party's satisfactory completion of the due diligence investigation it deems necessary in its sole discretion;

WHEREAS, the time for award of this bid has been extended by consent of PSE&G to December 15, 2015;

NOW, THEREFORE, BE IT RESOLVED, by the Borough Council of the Borough of Pennington, that the lease rate and lease term proposed by PSE&G are hereby accepted, subject to the successful negotiation, preparation, execution and delivery of the lease and related documents on terms which must be satisfactory to each party in its sole discretion, and upon each party's satisfactory completion of the due diligence investigation it deems necessary in its sole discretion.

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 2015-12.9, second by Council Member Davy with all members present voting in favor.

**BOROUGH OF PENNINGTON
RESOLUTION 2015-12.10**

**RESOLUTION AUTHORIZING BOROUGH INTERVENTION IN HOPEWELL TOWNSHIP
VS.DIRECTOR, DIVISION OF TAXATION, NOW PENDING IN STATE TAX COURT**

WHEREAS, on or about November 12, 2015, the Township of Hopewell filed a complaint with the Tax Court of New Jersey encaptioned Township of Hopewell v. Director, Division of Taxation, seeking to appeal the table of equalized valuations certified by the Director as of October 1, 2015 ("Table");

WHEREAS, Pennington Borough is a member of the Hopewell Valley Regional School District, together with Hopewell Township and Hopewell Borough, and the Table is used to apportion the appropriations of the regional school district among the municipalities based upon equalized valuation of their ratable wealth;

WHEREAS, the purpose of the litigation is to have the Court rule out the use of a certain real estate transaction used by the Director in computing the Table, thereby adjusting the Table to increase the ratio of assessed valuation to true value of real property in the Township;

WHEREAS, if Hopewell Township is successful in its appeal, its share of the appropriations of the Hopewell Valley Regional School District will be substantially reduced and the share of Pennington Borough will be substantially increased;

WHEREAS, calculations by the Pennington Borough Tax Assessor indicate that based on last year's school appropriations, the financial impact of Hopewell Township prevailing in the litigation will amount to approximately \$345,926.; representing the difference between Pennington's contribution under the current Table using last year's school figures and what Pennington's contribution would be under the revised table the Township seeks;

WHEREAS, the estimated dollar impact translates to an increase in Pennington's school tax rate of about 7 cents per \$100 of assessed valuation (.007);

WHEREAS, on November 24, 2015, Borough Council orally authorized the Borough Attorney to petition the Court to intervene in the litigation on behalf of the Borough to defend its interests, resulting in a Motion to Intervene filed December 1, 2015, granted by the Court without opposition on December 8, 2015;

WHEREAS, Hopewell Borough also has a substantial stake in the outcome of the litigation, and on December 3, 2015, the Borough Council of Hopewell Borough authorized Walter Bliss, Pennington's attorney, to intervene in the litigation on its behalf, in contemplation of a 50/50 splitting of his fees for services to both entities;

WHEREAS, on December 4, 2015, a Motion to Intervene was filed on behalf of Hopewell Borough, which was also granted without opposition on December 8, 2015;

WHEREAS, discovery in this matter is scheduled to end on December 31, 2015, the parties are scheduled to have a conference with the Court on January 5, 2015, and trial is scheduled for January 7, 2015 if necessary;

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

1. the prior authorization of the Borough Attorney to intervene on behalf of Pennington in the litigation Hopewell Township v. Director, Division of Taxation, is hereby formally approved

and ratified; and the Attorney is further authorized to continue his representation of Pennington until the matter is concluded;

2. the Attorney’s joint representation of Hopewell Borough and the 50/50 sharing of fees for joint services is also approved and ratified.

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 2015-12.10, second by Council Member Griffiths. Mr. Bliss stated that the intervention was granted for both the Borough of Pennington and the Borough of Hopewell, and there has been an initial production of discovery by Hopewell Township and a meeting has been scheduled with the Division of Taxation on December 17th. Upon a roll call vote all members present voted in favor.

**BOROUGH OF PENNINGTON
RESOLUTION 2015- 12.11**

RESOLUTION AUTHORIZING PROFESSIONAL SERVICES AGREEMENT WITH APPRAISER JOSEPH L. MAZOTAS, MAI, FOR SERVICES IN CONNECTION WITH INTERVENTION IN HOPEWELL TOWNSHIP VS.DIRECTOR, DIVISION OF TAXATION, NOW PENDING IN STATE TAX COURT

WHEREAS, on or about November 12, 2015, the Township of Hopewell filed a complaint with the Tax Court of New Jersey encaptioned Township of Hopewell v. Director, Division of Taxation, seeking to appeal the table of equalized valuations certified by the Director as of October 1, 2015 (“Table”);

WHEREAS, Pennington Borough is a member of the Hopewell Valley Regional School District, together with Hopewell Township and Hopewell Borough, and the Table is used to apportion the appropriations of the regional school district among the municipalities based upon equalized valuation of their ratable wealth;

WHEREAS, the purpose of the litigation is to have the Court rule out the use of a certain real estate transaction used by the Director in computing the Table, thereby adjusting the Table to increase the ratio of assessed valuation to true value of real property in the Township;

WHEREAS, if Hopewell Township is successful in its appeal, its share of the appropriations of the Hopewell Valley Regional School District will be substantially reduced and the share of Pennington Borough will be substantially increased;

WHEREAS, the Court in Township of Hopewell v. Director, Division of Taxation has permitted Pennington Borough and Hopewell Borough to intervene in the litigation as defendant-intervenors, and both Boroughs will be represented jointly by the same attorney with a 50/50 sharing of fees and reimbursements;

WHEREAS, expert appraisal services are required to prepare and prosecute the position of the Boroughs in the litigation and for this purpose the attorney recommends that the Boroughs retain Joseph L. Mazotas, MAI, 344 Nassau Street, Princeton, New Jersey 08540 (“Appraiser”), pursuant to a form of Professional Services Agreement attached to this resolution;

WHEREAS, pursuant to the attached Agreement, Appraiser will be compensated at the rate of \$175 per hour plus reimbursement of reasonable out-of-pocket costs, with total fees and reimbursements not to exceed \$3,000.in the aggregate;

WHEREAS, all fees and reimbursements shall be shared 50/50 between Pennington Borough and Hopewell Borough;

WHEREAS, the necessary funds are available in account #: 5-01-20-155-000-250;

NOW, THEREFORE, BE IT RESOLVED, by Borough Council of the Borough of Pennington, that the attached Professional Services Agreement between Pennington Borough/ Hopewell Borough and Joseph L. Mazotas, MAI, is hereby approved as to Pennington Borough.

Record of Council Vote on Passage

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

Council Member Chandler made a motion to approve Resolution 2015-12.11, second by Council Member Griffiths. Mr. Bliss stated that this is a contract with an appraiser that we need to guide us through the discovery and advise as to whether we have a case. Mr. Bliss stated that there is a \$3,000 cap on the expense which will be split with Hopewell Borough. Upon a roll call vote all members present voted in favor.

Professional Reports

Mrs. Heinzl stated that she submitted a report and she would like to remind everyone about the Holiday Party on December 23rd at 12:00pm.

Mr. Meytrott reported that Hopewell Township has been very cooperative over the last couple weeks on a couple items that they have been working on.

Public Comment

Mayor Persichilli read the following statement for anyone interested in speaking before Council: Please come forward and state your name and address for the record. Please limit comments to the Governing Body to a maximum of three (3) minutes.

There were no comments from the public.

Closed Session

AT, 8:00 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:

- Personnel – Borough Administrator
- Litigation – Hopewell Twp. Vs. Director, Division of Taxation
- Contract Negotiations – Mason Griffin Pierson – Declaratory Judgement
- Contract Negotiations – Landfill – Attorney/Client Consultation

Open Session

AT, 8:28 PM, Mayor and Council returned to open session.

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

Council Member Marciante made a motion to approve the minutes of the October 5, 2015 Closed Session for content but not for release, second by Council Member Chandler with all members present voting in favor with the exception of Mr. Griffiths who abstained.

Council Member Chandler made a motion to approve the minutes of the November 2, 2015 Closed Session for content but not for release, second by Council Member Griffiths with all members present voting in favor.

Mayor Persichilli asked to return to Council Discussion. Mr. Marciante stated that the Borough is moving ahead with acquiring a clock from Hopewell Township. Mr. Marciante stated that the Township wants to donate the clock to the Borough, but we have to find a place to put it. Council agreed to accept the clock and figure out where and how to install it at a later time.

Mr. Marciante stated that the other thing that he would like to address is the issue of cell towers. Mr. Marciante stated that the Pennington School has AT & T lined up to install another antenna on top of their water tower. Mr. Marciante asked if there was a permit process for this. Mrs. Chandler stated that Council had discussed this previously with regard to non-profit entities and how this is a profit maker for them. Mr. Lawver stated that the Borough needs to figure out how to tax these for profit aspects. Mr. Marciante asked if a permit is needed and if there is a way to tax the school for this. Mr. Bliss stated that a hospital is tax exempt, but they pay taxes on their gift shop, their physical therapy and professional offices. Mr. Bliss stated that if Council would like him to look into it he would. Mr. Lawver stated that maybe the Borough needs to talk with the Pennington School. Mayor Persichilli stated that he and Mrs. Heinzl have talked about setting up a meeting with Graham McWhirter of the Pennington School. Mayor Persichilli stated that he would look into this with the Borough Administrator.

At 8:35 pm, Council Member Chandler made a motion to adjourn the meeting, second by Council Member Gnatt.

Respectfully submitted,

Elizabeth Sterling
Borough Clerk