

**Pennington Borough Council
Regular Meeting – December 28, 2015**

Council President Joseph Lawver called the Regular Meeting of the Borough Council to order at 12:30pm. Borough Clerk Betty Sterling called the roll, Council Members Chandler, Davy, Griffiths, Lawver and Marciante were present. Mayor Persichilli was absent and Council Member Gnatt arrived at 12:37pm.

Also present were Borough Administrator Eileen Heinzl, Public Works Superintendent Rick Smith and Borough Attorney Walter Bliss.

Council President Lawver 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.

Council President Lawver asked everyone to stand for the Flag Salute.

Open to the Public – Agenda Items Only

Council President Lawver read the following statement:

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

There were no comments from the public.

Approval of Minutes

Council Member Chandler made a motion to approve the minutes of the November 24, 2015, Special Meeting, second by Council Member Marciante with all members present voting in favor.

New Business

**BOROUGH OF PENNINGTON
RESOLUTION #2015 – 12.12**

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 \$ 106,747.48 from the following accounts:

Current	\$ 88,918.48
W/S Operating	\$ 13,189.55
Developers Escrow	\$ 2,724.80
Grant Fund	\$ 1,673.25
COAH Trust Fund	\$ 241.40
TOTAL	\$ 106,747.48

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	S				Lawver	X			
Gnatt				absent	Marciante	X			

Council Member Chandler made a motion to approve Resolution 2015-12.12, second by Council Meeting Davy with all members present voting in favor.

**Borough of Pennington
Resolution #2015 – 12.13**

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:

Appropriations:	To:	From:
Shared Service – EMS Dispatch	\$ 2,000.00	
Borough Administrator – Salary	\$10,000.00	
Administration – Other Expense		\$ 1,000.00
Streets – Other Expense		\$ 3,000.00
Trash – Other Expense		\$ 6,000.00
Police – Other Expense		\$ 2,000.00
Total Current Fund	\$ 12,000.00	\$ 12,000.00

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	S				Lawver	X			
Gnatt				absent	Marciante	X			

Council Member Griffiths made a motion to approve Resolution 2015-12.13, second by Council Member Davy with all members present voting in favor.

Mrs. Gnatt arrived at 12:37pm.

**BOROUGH OF PENNINGTON
RESOLUTION 2015 – 12.14**

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. 2015.7.8, 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 serve 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 \$1,813.00;

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 sums remaining to be paid to Mason, Griffin & Pierson from the Affordable Housing Trust Fund amount to \$4,377.36, representing the balance of the \$14,000 originally authorized;

WHEREAS, the additional sums payable to Mason, Griffin & Pierson amount to \$4,428.69:

WHEREAS, the funds needed to pay these additional sums are to be charged to the Legal Budget under 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 pay to Mason, Griffin & Pierson from the Affordable Housing Trust Fund the amount of \$4,377.36;
2. the Mayor or the Business Administrator are hereby further 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 \$4,428.69, and to pay such amount to the firm, charging it to the Legal Budget under the General Fund;
3. 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 \$1,900.00, also to be charged to the Legal Budget under the General Fund.

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				Abstain	Lawver	X			
Gnatt	X				Marciante	X			

Council Member Chandler made a motion to approve Resolution 2015-12.14, second by Council Member Griffiths. Mr. Bliss explained that the amount for Ms. McKenzie in the resolution is specified at \$1,250 but the invoices attached total \$1,813.00 so the resolution needs to be amended to read not to exceed \$1,900.00. Mrs. Heinzl explained that Ms. McKenzie is the Special Master appointed by the Court. Mr. Marciante asked if we got out of the litigation before the final bill, then we should not have to pay the final bill. Mr. Bliss stated that the \$1,900 amount is a not to exceed amount and we could pay less. Mrs. Sterling will verify the dates prior to making payment and if services were rendered after the date of withdrawal they will not be paid. Upon a roll call vote all members present voted in favor.

**PENNINGTON BOROUGH
RESOLUTION NO. 2015-12.15**

**RESOLUTION AUTHORIZING AMENDMENT OF AGREEMENT WITH BOROUGH
ADMINISTRATOR TO ADJUST HOURS AND ANNUAL SALARY**

WHEREAS, pursuant to Resolution No. 2014-4.6, adopted by Borough Council on April 7, 2015, Borough Council appointed and entered into an Agreement with Eileen Heinzl as part-time Borough Administrator;

WHEREAS, pursuant to that Resolution and Agreement, Ms. Heinzl was to work in the office four hours per day, four days per week, and otherwise be reasonably available to communicate with staff during off hours to provide the coverage needed to supervise Borough operations;

WHEREAS, Ms. Heinzl's starting salary was set at \$34,425. beginning May 5, 2014, based on an expectation of 16 hours per week or 832 hours per full year;

WHEREAS, over the past 21 months Ms. Heinzl has worked substantially in excess of 16 hours

per week and has not had a raise despite successfully completing her probationary period on November 5, 2014 and her first anniversary on May 5, 2015;

WHEREAS, Borough Council now seeks to formally adjust Ms. Heinzel’s in-office hours to 22 hours per week and increase her salary retroactive to these milestone dates;

WHEREAS, Council in particular authorizes a salary increase of two per cent (2%) retroactive to November 5, 2014 and an additional two percent (2%) retroactive to May 5, 2015;

WHEREAS, these salary increases are well within the range authorized by the Borough Salary Ordinance for the position of Borough Administrator, and the funds for making the required retroactive payments are available in the Budget;

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

1. The above-described adjustment of the Administrator’s hours to 22 in-office hours per week and the described salary increases with payments retroactive to November 5, 2014 and May 5, 2015, respectively, are hereby authorized;
2. The Mayor, with the attestation of the Clerk, is hereby authorized to enter into an Amendment of the Borough’s Agreement with the Administrator reflecting these changes, provided all other terms and conditions of the Agreement shall remain unchanged.

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	S				Lawver	X			
Gnatt	X				Marciante	X			

Council Member Griffiths made a motion to approve Resolution 2015-12.15, second by Council Member Davy with all member present voting in favor.

Council Discussion

There were no items for Council Discussion. Mr. Bliss requested a closed session.

Closed Session

AT, 12:39PM, 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:

- Pending Litigation – Hopewell Twp. Vs. Director, Division of Taxation

Open Session

AT, 1:25 PM, Mayor and Council returned to open session.

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

Council Member Chandler made a motion to approve the Closed Session Minutes of the November 24, 2015 Special Meeting for content but not for release, second by Council Member Griffiths with all members present voting in favor.

At 1:26PM, Council Member Gnatt made a motion to adjourn the meeting, second by Council Member Chandler.

Respectfully submitted,

Elizabeth Sterling
Borough Clerk