

**Pennington Borough Council
Regular Meeting – June 1, 2016**

Mayor Persichilli called the Regular Meeting of the Borough Council to order at 7:00 pm. Borough Clerk Betty Sterling called the roll, Council Members Chandler, Davy, Griffiths, Lawver and Marciante were present. Council Member Gnatt was absent.

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

Mayor Persichilli announced that notice of this meeting has been given to the Hopewell Valley News, Trenton Times and was posted on the bulletin board in Borough Hall and on the Borough web-site according to the regulations of the Open Public Meetings Act.

Mayor Persichilli asked everyone to stand for the Flag Salute.

Open to the Public – Agenda Items Only

Mayor Persichilli read the following statement:

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

There were no comments from the public.

Approval of Minutes

Council Member Chandler made a motion to approve the minutes of the May 4, 2016 Regular Meeting, second by Council Member Griffiths with all members present voting in favor.

Presentations

Mayor Persichilli stated that the Pennington Fire Company was scheduled to make an appearance but seeing that there is no one present from the Fire Company, Council would hear a presentation from the second scheduled presentation which is Joanne Held for the Environmental Commission.

Mrs. Held of 103 Lanning Avenue stated that she is currently serving as Acting Chairman of the Environmental Commission. Mrs. Held thanked Mayor and Council for the opportunity to come and report on the work of the Pennington Environmental Commission. Mrs. Held stated that Harry Compton and Art Firestone who are members of the commission are also in attendance tonight. Mrs. Held stated that Council received an Annual Accomplishment Report in the packages. Mrs. Held stated that she wrote this report because she and Mrs. Heinzl are working on preparing an application to Sustainable Jersey to get the Borough certified at the Bronze level as a Sustainable Community. Mrs. Held stated that one of the requirements to get credit for having an Environmental Commission it that you have to show that the commission is active and write an accomplishment report.

Mrs. Held stated that the Environmental Commission now has a full complement of six (6) members but they are still in need of two (2) alternate members. Mrs. Held stated that the commission has a lot of work that they want to do in the coming year and having more members would be helpful. Mrs. Held stated that their newest member, Karl Muessig is a geologist and he has been very helpful with reviewing the American Properties application. Mrs. Held stated that Mrs. Chandler serves as the liaison from Borough Council and they are very thankful for her participation in their meetings and the work that they are doing.

Mrs. Held stated that site plan reviews is one of the things that has always been on their list of activities but does not come up very often because they don't usually have a lot of big projects going on. Mrs. Held stated that in reviewing the American Properties application they realized that they do not have a good procedure in place for site plan reviews. Mrs. Held stated that in preparing the Sustainable Jersey application, one of the requirements is that the commission has to do site plan reviews so they are working on getting the process in place. Mrs. Held stated that they have spoken to Mary Mistretta and Josh Levy who is the Planning Board representative on the commission to try to work on getting a process in place and to make it more routine that the Environmental Commission should have a chance to look at everything and comment.

Mrs. Held stated that part of that process was to move their meeting date from the third Monday of the month to the first Monday of the month beginning in June to allow time for review of applications prior to the Planning Board meeting.

Mrs. Held stated that this past year the Environmental Commission participated in two Styrofoam collections along with the Hopewell Valley Green Team and also the paper shredding day that the Public Works Department assisted with. Mrs. Held stated that the Commission also had a booth at Pennington

Day both in 2015 and in 2016 in conjunction with the Hopewell Valley Green Team.

Mrs. Held stated that the topic for Pennington Day in 2015 was Recycling and for 2016 it was water supply. Mrs. Held stated that the commission has come up with a list of things that they would like to accomplish this year with the first being to memorialize their site plan review process so that everyone is aware of what needs to be done and when it needs to be done. Mrs. Held stated that secondly, they have discovered as part of the site plan review process that they really need an Environmental Resource Inventory so that we can rely on our own knowledge and not rely on the information provided by the applicant. Mrs. Held stated that there are resources available on line that they can tap into to make the process easier. Mrs. Held stated that the commission plans to continue their review of the site plan for American Properties to see if there are remaining issues that have not been addressed. Mrs. Held stated that the Borough Engineer has been doing a great job making sure that their questions have been addressed.

Mrs. Held stated that finally the Environmental Commission hosted an educational booth at Pennington Day this year and the topic for this year was water supply. Mrs. Held stated that the issue that is in the news right now is lead in drinking water; however it is not an issue in Pennington. Mrs. Held stated that there are people that do not know that. Mrs. Held stated that most people don't know what is in their water supply or how to read the water report that goes out. Mrs. Held stated that the commission spent some time educating themselves on this topic so that they would be prepared to educate residents and answer questions. Mrs. Held thanked Rick Smith for attending one of their meetings to share information about the water company and how it works.

Mrs. Held stated that they are very hopeful for the coming year and she will be back next year with another report and another list of goals for 2017. Mayor Persichilli thanked Mrs. Held for her report and asked what kinds of things the commission looked for when evaluating the American Properties application. Mrs. Held stated that they did not see a good description of how stormwater would be managed and there was a question about the existing trees on the property and how the wetlands would be protected and other questions like that. Mr. Marciante asked if the questions of renewable energy came up and Mrs. Held responded that it did not but that might be something that could be considered.

Since no one had arrived for the Fire Department presentation Mayor Persichilli proceeded with the agenda and since there were people present interested in the King George Road and Park Avenue project, Mayor Persichilli called for the Council Discussion item to be moved up on the agenda.

Council Discussion

King George Road/Park Avenue Project – Mr. Davy stated that at the last Council meeting it was suggested that the Public Works Committee review this project again and come up with some recommendations. Mr. Davy stated that the committee met and discussed it thoroughly and they reviewed several options and the costs of each option. Mr. Davy stated that Option 1 was to proceed with the project as designed which the residents of King George Road in particular were not in favor of. Mr. Davy stated that since the meeting we have also heard from residents of Park Avenue that they are not in favor of the design as well. Mr. Davy stated that the Public Works Committee was sympathetic to the concerns and issues raised by the residents of both roads.

Mr. Davy stated that the second option they considered was to maintain the road widths as they are now at 34 feet on King George Road and 31 feet on Park Avenue. Mr. Davy stated that would also mean removing the curbs and the Borough Engineer has advised that if the curbs are removed underdrains would need to be installed for additional stormwater management so that would add some costs to the project. Mr. Davy stated that the Borough Engineer recommended and the Public Works Committee concurred that there should be two speed tables on King George Road and two speed tables on Park Avenue. Mr. Davy stated that to complicate matters even more the Borough Engineer has said that if the curbs are removed then she would recommend that the proposed sidewalks also be removed. Mr. Davy stated that the Borough Engineer feels that the curbs add a protection to pedestrians walking on the sidewalks. Mr. Davy stated that if the roads are maintained as they are now at 34 and 31 feet, remove the curbs, add the additional underdrains and add the two speed tables on both roads it actually results in a \$10,000 savings on the project as designed. Mr. Davy stated that removal of the sidewalks would then add an additional savings of \$43,000.

Mr. Davy stated that the other alternative that the Public Works Committee considered was reducing both roads to a consistent 31 feet, removing the curbs, adding the additional underdrains as recommended by the Borough Engineer and installing two speed tables on King George Road and two speed humps on Park Avenue which would result in a \$35,000 savings. Mr. Davy stated that if we follow the Engineers suggestion that if the curbs are eliminated the sidewalks should also be eliminated and that would result in additional savings.

Mr. Davy stated that the Public Works Committee had a lively discussion and the majority was in favor of option two however they did not discuss the Engineers recommendation regarding sidewalks because that information came in today. Mr. Davy stated that there was also some sentiment in favor of reducing both roads to 31 feet as proposed in option 3.

Mr. Davy stated that the Borough Engineer has suggested that if Council decides to keep the road widths at 34 and 31 feet along with installation of sidewalks another six trees might have to be removed.

Mr. Davy stated that the majority of the Public Works Committee is in favor of Option 2, maintaining the existing width at 34 and 31 feet.

Mr. Griffiths asked if the Engineer had commented on the effect of removal of curbing with regard to long term erosion of the road. Mr. Davy stated that the committee talked about that and the belief and the practice is that the curbing helps to protect the slope of the road. Mr. Davy stated that it is interesting that there is that, but there is also the environmental concern regarding elimination of curbs to allow for runoff. Mr. Griffiths asked if sidewalks with no curbs are a viable option and if curbs protect the integrity of the sidewalk. Mr. Davy stated that has no bearing. Mrs. Chandler stated that there are sidewalks on King George right now with no curbs. Mrs. Chandler stated that sidewalks are very important to her. Mr. Davy stated that it makes sense to him that if we are constructing a sidewalk it should be on both sides of the road since we are a sidewalk town. Mr. Davy stated that because of cost considerations, the sidewalk is only proposed on one side of the road. Mr. Davy stated that in his opinion with the condition of the roads, the sole focus of Council should be on road repair and maintenance and any extras should be considered carefully for costs. Mrs. Chandler stated that if Council is voting on a decision that does not include sidewalks she would not approve the project. Mrs. Chandler asked if a sidewalk without curbs is an option. Mr. Davy stated that would be countermanding the recommendation of the Borough Engineer. Mr. Griffiths stated that if there are no curbs but there are sidewalks the Engineer is saying that would create a higher risk for pedestrians of the sidewalk but no curb and no sidewalk means that pedestrians are walking in the street. Mr. Griffiths stated that seems like a higher risk than sidewalks with no curbs. Mr. Davy reminded Council that the street is very wide. Mr. Griffiths stated that parking on the streets would force people into the road. Mr. Davy stated that the proposal is to leave the road exactly as it has always been and to date there have not been any pedestrian accidents.

Mr. Davy stated that what the committee tried to do was to keep the road exactly as the residents were asking which is to leave the width at 34 feet on King George and 31 feet on Park Avenue. Mr. Davy stated that Council can decide to keep the curbs and sidewalks but it will add costs as he explained previously. Mrs. Chandler stated that she does not care about curbs, but she would like sidewalks. Mrs. Chandler stated that the Borough has set a precedent that this is a walking town and it is a safe town to walk in. Mrs. Chandler stated that we have small children that walk to Kunkel Park along Park Avenue and the fact that it is a wide road does not protect our children walking to the park. Mr. Griffiths stated that it is difficult to elevate a zero risk. Mrs. Chandler asked if that means that sidewalks would go in after a child is struck by a car because that doesn't make any sense either.

Mr. Lawver stated that he has listened to Mr. Davy's comments and he thinks that Mr. Davy far oversimplified the issue by saying that our only concern should be maintaining the roads as they are now. Mr. Lawver stated that he is strongly in support of sidewalks on this project and he will continue to be in support of sidewalks for the very reason that we are a walkable community and we answer to the entire community and not just to the residents of King George Road and Park Avenue. Mr. Lawver stated that he has been around long enough to hear people arguing strongly against sidewalks and then we have put them through and they have been remarkable well received. Mr. Lawver stated that he remains concerned about the speed element that we will see even with the additional two speed bumps. Mr. Lawver stated that just because there has not been an issue in the past when we reconstruct these roads we know that speeds will increase and he is concerned that an incident will occur and it could have been prevented by having sidewalks.

Mr. Griffiths stated that the cost of the sidewalks amortized over twenty years is not really an issue. Mr. Davy stated that the overall scope of the project is estimated at a certain number and our NJDOT Grant award came in well under the engineer's estimate. Mr. Davy stated that the additional cost would not have a material effect on the long term financial structure. Mr. Griffiths stated that the argument that he would make is let's get it right as opposed to let's try to save money. Mr. Griffiths stated that collectively the decision needs to be do it right and pay for what it costs.

Mr. Davy stated that he would feel differently about the sidewalks if they were on both sides of the road because he does not see the point of putting them on one side of the road. Mrs. Chandler stated that one side is better than no side. Mr. Lawver stated that accepting something more imperfect because you can't have perfect is not the right approach. Mr. Lawver stated that he would love to put sidewalks on both sides of the street but having a sidewalk on one side of the street is a step towards moving in the right direction.

Mr. Lawver stated that he is the one on the committee who thinks that the road should be narrowed to 31 feet. Mr. Lawver stated that it would save some money, it would help along with the speed tables to control the speed and it would provide some uniformity. Mr. Lawver stated that it is not such a significant narrowing that there will be a significant change in the look and the feel of the roadway. Mr. Lawver stated that it would also still provide for two side of the street parking. Mr. Lawver stated that he is not going to argue for the narrowing of the street, but he will argue strongly for the sidewalk issue. Mr. Griffiths stated that narrowing the road to 31 feet would produce a savings that could be applied to the addition of sidewalks.

Mr. Davy stated that none of the options consider sidewalks and by keeping the road widths as they are now at 34 feet and 31 feet, the Borough Engineer is suggesting that more trees will need to come down with the addition of sidewalks. Mrs. Heinzl explained that if Council decides to make King George Road 31 feet rather than 34 feet there is a chance that additional trees would have to come down. Mrs. Heinzl stated that additional tree removal has to do with drainage requirements with the narrowing of the road.

Mrs. Heinzl stated that these numbers that Council is looking at are very preliminary and the Borough Engineer was hesitant to place a value on proposed changes to the project. Mr. Davy stated that the Borough Engineer has completed the design of Park Avenue and meetings have been held and if Council decides to go with option 2 or option 3 Park Avenue will have to be redesigned. Mr. Davy stated that the design of King George Road has not been completed. Mr. Griffiths asked if we will be able to meet the timing requirements for the DOT award. Mr. Davy stated that we have received an extension of award to December 2016.

Mr. Lawver stated that he thinks it is fair to say that option 1 is not being considered. Mr. Davy stated that the entire Public Works Committee was very sympathetic to the concerns and issues raised by the residents and the committee wanted to find whatever means necessary to accommodate their concerns which is how options 2 and 3 came about. Mr. Lawver stated that what Council needs to decide is whether there will be sidewalks or no sidewalks and as a second decision whether to go with option 2 or option 3, which is essentially 34 feet versus 31 feet for King George Road. Mrs. Chandler asked if curbs are on the table for consideration. Mr. Lawver stated that the Public Works Committee felt that eliminating the curbs was the right thing to do. Mr. Griffiths stated that there are cost and environmental advantages to that decision. Mr. Davy stated that on the flip side of that it countermands the recommendation of the Borough Engineer.

Mr. Griffiths asked why the decision was to put speed tables on King George Road, but speed humps on Park Avenue. Mr. Marciantie stated that the Fire Company is not in favor of speed humps because it tears up the equipment. After some discussion, it was decided that speed tables should be on both roads.

Mayor Persichilli asked the residents in attendance if they would like to speak on this issue if they have not already voiced their opinions. Mr. Rick Willever of 125 King George Road came forward and stated that twice a day he walks up and down King George Road and Park Avenue with his dog and there are times on Park Avenue where he has to go up on someone's grass or driveway to avoid being struck by a car. Mr. Willever strongly encouraged Council to consider sidewalks at least on one side. Mr. Willever stated that a couple of years ago Council had a contentious group from the other end of King George Road come out and Council "forced" sidewalks on them. Mr. Willever asked if there was a master plan that the Borough adheres to. Mr. Davy stated that there is a Master Plan. Mr. Willever stated that if that is the case and this is a walking town then sidewalks should go in. Mr. Willever stated that he would also be in favor of keeping the road at 34 feet.

Mrs. Mary Wagner of 8 Park Avenue came forward and asked for clarification regarding curbs and sidewalks. Mr. Davy stated that there would be no curbs. Mrs. Wagner stated that she would prefer not to have a sidewalk but she knows that there are people who want them. Mrs. Wagner stated that she has a neighbor with three children and a baby and she knows that they would like sidewalks, but that is one person on the whole street.

Mayor Persichilli stated that he has not voiced his opinion yet, but we always talk about this being a walking town and we try to do that. Mayor Persichilli stated that he has heard the comments about children walking up and down the streets, but there are also older residents who walk too and when you are in the street and you are older, you might not get out of the way quick enough. Mayor Persichilli stated that he is equally concerned about older and younger residents moving through town. Mayor Persichilli stated that he is in favor of sidewalks and he would also be in favor of curbs but if the right measures are taken he is fine with no curbs. Mayor Persichilli stated that although he does not vote unless there is a tie he would like to have his opinion known.

Mr. Davy stated that when the Public Works Committee meeting ended, sidewalks were part of the equation and the only reason it came up today was because of the Borough Engineer's recommendation. Mr. Griffiths asked if there was any information with regard to cost savings for narrowing King George Road from 34 feet to 31 feet. Mr. Lawver stated that there would be a savings in asphalt of about \$25,000. Some discussion took place with regard to the cost implications for making various changes to the design, some additions some deletions. Mr. Davy stated that the overall net impact for going from 34 feet to 31 feet would be a \$35,000 savings. Mr. Griffiths stated that he would be in favor of 31 feet for both King George Road and Park Avenue, sidewalks on at least on side for both streets, no curbs on either street, and parking on both sides and a total of four speed tables, two on each road.

Mr. John Brinster of 126 King George Road stated that he has only lived here for a couple of years but he would like to know if his existing sidewalk will remain in place. Mr. Davy stated that existing sidewalks would remain. Mr. Brinster stated that no trees will need to come down then. Mr. Lawver stated that there are some trees between the sidewalks and the roadway that might have to come down. Mrs. Heinzl stated that the Borough Engineer's perspective is that the more narrow the road the easier it is to achieve the necessary drainage. Mrs. Heinzl stated that if the Borough wants to go wider than the 28 feet that is designed then her feeling is that there is a chance that some trees might need to come down. Mr. Brinster asked if the road is narrowed to 31 feet would the existing sidewalks have to be changed. Mr. Lawver stated that there are a couple areas of sidewalk that will be corrected because there are existing drainage issues, one in particular where the sidewalk is lower than the road. Mr. Brinster stated that losing three feet would impact the ability to park in the street and most residents have to use the street for parking. Mr. Lawver stated that the standard width for two side of the street parking is 30 feet. Mr. Griffiths reminded everyone that there are 1,000 other people that are paying for the project.

Mrs. Nancy Willever of 125 King George Road stated that she thinks that Council would be making a big mistake by narrowing the road because they all bought their houses with the street being wide and it would be wrong to take away a right that they paid for. Mr. Griffiths stated that it is not a right and Council has a fiduciary responsibility to keep in mind the interests of all of the taxpayers in Pennington and the street is as much his as it is anyone's. Mr. Griffiths stated that the job of Council is to keep in mind and speak for all of the taxpayers in Pennington. Mrs. Willever stated that it would be less dangerous to have a wider street. Mr. Griffiths stated that the evidence contradicts that. Mr. Griffiths stated that narrower streets demand a higher level of focus from drivers and it does cause motorists to be more careful. Mrs. Willever asked if their opinion matters. Mr. Lawver stated that it does matter and Council has listened to everything that everyone has said. Mrs. Willever stated that the street should stay at 34 feet. Mr. Lawver stated that they have heard that.

Mrs. Kathleen McIlvaine of 111 King George Road stated that she would like to see the street remain at 34 feet because they love their street and they would like to keep it the same. Mrs. McIlvaine stated that her husband was backing out of driveway in the Borough and he hit a parked car. Mrs. McIlvaine stated that when the police responded they said it happened all the time because the streets are narrow so she would like to see the road stay at 34 feet especially because there is parking on both sides of the street. Mr. Griffiths stated that backing out and hitting another car happens even on wider streets due to people not paying attention as much as they should. Mayor Persichilli stated people should think before they park directly across from someone's driveway.

Mrs. Christine Dorsett of 18 Park Avenue stated that the cost of the sidewalks seem an expense to her. Mrs. Dorsett stated that she has lived on Lower King George and Park Avenue and people walk in the street even if there is a sidewalk so she does not think sidewalks are necessary. Mrs. Dorsett stated that for the ten cars that go down the street it is not necessary. Mr. Lawver stated that the traffic study that was done reports about 2500 cars on Park Avenue.

Mayor Persichilli thanked the residents for their comments.

Mr. Davy stated that Council needs to make a decision because the Borough Engineer is waiting for direction. Mr. Davy proposed option 2 which is to keep the road at 34 feet for King George Road and 31 feet for Park Avenue, one sidewalk on Park Avenue, no curbs and install two speed tables on King George Road and two speed tables on Park Avenue, parking on both sides of the road and underdrains. Mr. Davy made a motion, second by Mr. Marciante. Upon a roll call vote Mrs. Chandler, Mr. Davy and Mr. Marciante voted in favor and Mr. Griffiths and Mr. Lawver voted no. (Mrs. Gnatt was absent).

Mr. Davy stated that this is the direction that will be given to the Borough Engineer and once it is designed it will not change again.

Ordinances for Introduction

Mayor Persichilli read Ordinance 2016-13 by title. Mrs. Heinzl stated that this ordinance should be moved to Council Discussion as the time element that she thought was involved is not as strict as she thought. Mayor Persichilli stated that the ordinance will be discussed later in the meeting.

**BOROUGH OF PENNINGTON
ORDINANCE NO. 2016- 13**

AN ORDINANCE PROHIBITING SMOKING IN MUNICIPAL BUILDINGS AND PARKS AND RECREATIONAL FACILITIES AND ADJOINING PUBLIC AREAS AND AMENDING THE CODE OF THE BOROUGH OF PENNINGTON

Mayor Persichilli read Ordinance 2016-14 by title.

**BOROUGH OF PENNINGTON
ORDINANCE 2016-14**

AN ORDINANCE CONCERNING FLOOD DAMAGE PREVENTION AND AMENDING CHAPTER 108 OF THE BOROUGH CODE

WHEREAS, the New Jersey Department of Environmental Protection (NJ DEP) has notified all Mercer County municipalities that they are required to update their Flood Damage Prevention Ordinances in order to continue participation in and comply with the National Flood Insurance Program;

WHEREAS, NJ DEP has reviewed Pennington Borough's existing Flood Damage Prevention Ordinance enacted in 1988 and codified in Chapter 108 of the Borough Code and recommended replacing it with an updated ordinance in the form set forth below;

WHEREAS, this ordinance is a prerequisite for any resident to obtain flood insurance and for the Borough to obtain FEMA funding;

NOW, THEREFORE, BE IT ORDAINED, by the Borough Council of the Borough of Pennington, that Sections 108-1 through 108-5 of Chapter 108 of the Code of the Borough of Pennington are hereby superseded by the following:

**SECTION 1.0
STATUTORY AUTHORIZATION, FINDINGS OF FACT, PURPOSE AND OBJECTIVES**

1.1 STATUTORY AUTHORIZATION

The Legislature of the State of New Jersey has in N.J.S.A. 40:48-1, et seq., delegated to local governmental units responsibility for adopting regulations designed to promote the public health, safety, and general welfare of its citizenry.

1.2 FINDINGS OF FACT

- a) The flood hazard areas of the Borough of Pennington are subject to periodic inundation which results in loss of life and property, health and safety hazards, disruption of commerce and governmental services, extraordinary public expenditures for flood protection and relief, and impairment of the tax base, all of which adversely affect the public health, safety, and general welfare.
- b) These flood losses are caused by the cumulative effect of obstructions in areas of special flood hazard which increase flood heights and velocities, and when inadequately anchored, causes damage in other areas. Uses that are inadequately floodproofed, elevated or otherwise protected from flood damage also contribute to the flood loss.

1.3 STATEMENT OF PURPOSE

It is the purpose of this ordinance to promote the public health, safety, and general welfare, and to minimize public and private losses due to flood conditions in specific areas by provisions designed to:

- a) Protect human life and health;
- b) Minimize expenditure of public money for costly flood control projects;
- c) Minimize the need for rescue and relief efforts associated with flooding and generally undertaken at the expense of the general public;
- d) Minimize prolonged business interruptions;
- e) Minimize damage to public facilities and utilities such as water and gas mains, electric, telephone and sewer lines, streets, bridges located in areas of special flood hazard;
- f) Help maintain a stable tax base by providing for the second use and development of areas of special flood hazard so as to minimize future flood blight areas;
- g) Ensure that potential buyers are notified that property is in an area of special flood hazard; and
- h) Ensure that those who occupy the areas of special flood hazard assume responsibility for their actions.

1.4 METHODS OF REDUCING FLOOD LOSSES

In order to accomplish its purposes, this ordinance includes methods and provisions for:

- a) Restricting or prohibiting uses which are dangerous to health, safety, and property due to water or erosion hazards, or which result in damaging increases in erosion or in flood heights or velocities;
- b) Requiring that uses vulnerable to floods including facilities which serve such uses, be protected against flood damage at the time of initial construction;
- c) Controlling the alteration of natural floodplains, stream channels, and natural protective barriers, which help accommodate or channel flood waters;
- d) Controlling filling, grading, dredging, and other development which may increase flood damage; and,
- e) Preventing or regulating the construction of flood barriers which will unnaturally divert flood waters or which may increase flood hazards in other areas.

**SECTION 2.0
DEFINITIONS**

Unless specifically defined below, words or phrases used in this ordinance shall be interpreted so as to give them the meaning they have in common usage and to give this ordinance its most reasonable application.

Appeal — A request for a review of the Construction Official's interpretation of any provision of this ordinance or a request for a variance.

Area of Special Flood Hazard —Land in the floodplain within a community subject to a one percent or greater chance of flooding in any given year. It is shown on the FIRM as Zone V, VE, V1-30, A, AO, A1-A30, AE, A99, or AH.

Base Flood —A flood having a one percent chance of being equaled or exceeded in any given year.

Base Flood Elevation (BFE) – The flood elevation shown on a published Flood Insurance Study (FIS) including the Flood Insurance Rate Map (FIRM). For zones AE, AH, AO, and A1-30 the elevation represents the water surface elevation resulting from a flood that has a 1-percent or greater chance of being equaled or exceeded in any given year.

Basement — Any area of the building having its floor subgrade (below ground level) on all sides.

Breakaway Wall — A wall that is not part of the structural support of the building and is intended through its design and construction to collapse under specific lateral loading forces without causing damage to the elevated portion of the building or supporting foundation system.

Development — Any man made change to improved or unimproved real estate, including but not limited to buildings or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations, or storage of equipment or materials located within the area of special flood hazard.

Digital Flood Insurance Rate Map (DFIRM) — The official map on which the Federal Insurance Administration has delineated both the areas of special flood hazards and the risk premium zones applicable to the community.

Elevated Building — A non-basement building (i) built, in the case of a building in an Area of Special Flood Hazard, to have the top of the elevated floor, elevated above the base flood elevation plus freeboard by means of piling, columns (posts and piers), or shear walls parallel to the flow of the water, and (ii) adequately anchored so as not to impair the structural integrity of the building during a flood up to the magnitude of the base flood. In an Area of Special Flood Hazard "elevated building" also includes a building elevated by means of fill or solid foundation perimeter walls with openings sufficient to facilitate the unimpeded movement of flood waters.

Existing Manufactured Home Park or Subdivision — A manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including, at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) is completed before the effective date of the floodplain management regulations adopted by a community.

Flood or Flooding — A general and temporary condition of partial or complete inundation of normally dry land areas from:

- a) The overflow of inland or tidal waters and/or
- b) The unusual and rapid accumulation or runoff of surface waters from any source.

Flood Insurance Rate Map (FIRM) — The official map on which the Federal Insurance Administration has delineated both the areas of special flood hazards and the risk premium zones applicable to the community.

Flood Insurance Study (FIS) — The official report in which the Federal Insurance Administration has provided flood profiles, as well as the Flood Insurance Rate Map(s) and the water surface elevation of the base flood.

Floodplain Management Regulations — Zoning ordinances, subdivision regulations, building codes, health regulations, special purpose ordinances (such as a floodplain ordinance, grading ordinance and erosion control ordinance) and other applications of police power. The term describes such State or local regulations, in any combination thereof, which provide standards for the purpose of flood damage prevention and reduction.

Floodproofing — Any combination of structural and nonstructural additions, changes, or adjustments to structures which reduce or eliminate flood damage to real estate or improved real property, water and sanitary facilities, structures and their contents.

Floodway — The channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without accumulatively increasing the water surface elevation more than 0.2 foot.

Freeboard — A factor of safety usually expressed in feet above a flood level for purposes of flood plain management. "Freeboard" tends to compensate for the many unknown factors that could contribute to flood heights greater than the height calculated for a selected size flood and floodway conditions, such as wave action, bridge openings, and the hydrological effect of urbanization of the watershed.

Highest Adjacent Grade — The highest natural elevation of the ground surface prior to construction next to the proposed or existing walls of a structure.

Historic Structure — Any structure that is:

- a) Listed individually in the National Register of Historic Places (a listing maintained by the Department of Interior) or preliminarily determined by the Secretary of the Interior as meeting the requirements for individual listing on the National Register;
- b) Certified or preliminarily determined by the Secretary of the Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the Secretary to qualify as a registered historic district;
- c) Individually listed on a State inventory of historic places in States with historic preservation programs which have been approved by the Secretary of the Interior; or
- d) Individually listed on a local inventory of historic places in communities with historic preservation programs that have been certified either:
 - (1) By an approved State program as determined by the Secretary of the Interior; or

- (2) Directly by the Secretary of the Interior in States without approved programs.

Lowest Floor — The lowest floor of the lowest enclosed area [including basement]. An unfinished or flood resistant enclosure, useable solely for the parking of vehicles, building access or storage in an area other than a basement is not considered a building's lowest floor provided that such enclosure is not built so to render the structure in violation of other applicable non-elevation design requirements of 44 CFR Section 60.3.

Manufactured Home — A structure, transportable in one or more sections, which is built on a permanent chassis and is designed for use with or without a permanent foundation when attached to the required utilities. The term "manufactured home" does not include a "recreational vehicle".

Manufactured Home Park or Manufactured Home Subdivision — A parcel (or contiguous parcels) of land divided into two (2) or more manufactured home lots for rent or sale.

New Construction — Structures for which the start of construction commenced on or after the effective date of a floodplain regulation adopted by a community and includes any subsequent improvements to such structures.

New Manufactured Home Park or Subdivision — A manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) is completed on or after the effective date of the floodplain management regulations adopted by the municipality.

Recreational Vehicle — A vehicle which is [i] built on a single chassis; [ii] 400 square feet or less when measured at the longest horizontal projections; [iii] designed to be self-propelled or permanently towable by a light duty truck; and [iv] designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational, camping, travel, or seasonal use.

Start of Construction — For other than new construction or substantial improvements under the Coastal Barrier Resources Act (P.L. No. 97-348) includes substantial improvements and means the date the building permit was issued, provided the actual start of construction, repair, reconstruction, rehabilitation, addition, placement, or other improvement was within 180 days of the permit date. The actual start means either the first placement of permanent construction of a structure on a site such as the pouring of a slab or footings, the installation of piles, the construction of columns, or any work beyond the stage of excavation, or the placement of a manufactured home on a foundation.

Permanent construction does not include land preparation, such as clearing, grading and filling nor does it include the installation of streets and/or walkways, nor does it include excavation for a basement, footings or piers, or foundations or the erection of temporary forms, nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or not part of the main structure. For a substantial improvement, the actual start of construction means the first alteration of any wall, ceiling, floor, or other structural part of a building, whether or not that alteration affects the external dimensions of the building.

Structure — A walled and roofed building, a manufactured home, or a gas or liquid storage tank that is principally above ground.

Substantial Damage — Damage of any origin sustained by a structure whereby the cost of restoring the structure to its condition before damage would equal or exceed 50 percent of the market value of the structure before the damage occurred.

Substantial Improvement — Any reconstruction, rehabilitation, addition, or other improvement of a structure, the cost of which equals or exceeds 50 percent of the market value of the structure before the "start of construction" of the improvement. This term includes structures which have incurred "substantial damage", regardless of the actual repair work performed. The term does not include, however, either:

- a) Any project for improvement of a structure to correct existing violations of State or local health, sanitary or safety code specifications which have been identified by the local code enforcement officer and which are the minimum necessary to assure safe living conditions; or
- b) Any alteration of a "historic structure", provided that the alteration will not preclude the structure's continued designation as a "historic structure".

Variance — A grant of relief from the requirements of this ordinance that permits construction in a manner that would otherwise be prohibited by this ordinance.

Violation — The failure of a structure or other development to be fully compliant with this ordinance. A new or substantially improved structure or other development without the elevation certificate, other certifications, or other evidence of compliance required in 44 CFR §60.3(b)(5), (c)(4), (c)(10), (e)(2), (e)(4), or (e)(5) is presumed to be in violation until such time as that documentation is provided.

3.1 LANDS TO WHICH THIS ORDINANCE APPLIES

This ordinance shall apply to all areas of special flood hazards within the jurisdiction of the Borough of Pennington, Mercer County, New Jersey.

3.2 BASIS FOR ESTABLISHING THE AREAS OF SPECIAL FLOOD HAZARD

The areas of special flood hazard for the Borough of Pennington, Community No. 340251, are identified and defined on the following documents prepared by the Federal Emergency Management Agency:

- a) A scientific and engineering report “Flood Insurance Study, Mercer County, New Jersey (All Jurisdictions)” dated July 20, 2016.
- b) “Flood Insurance Rate Map for Mercer County, New Jersey (All Jurisdictions)” as shown on Index, and DFIRM panel(s) 34021C0108F, 34021C0109F, whose effective date is July 20, 2016.

The above documents are hereby adopted and declared to be a part of this ordinance. The Flood Insurance Study, maps and advisory documents are on file at 30 North Main Street, Pennington, New Jersey.

3.3 PENALTIES FOR NONCOMPLIANCE

No structure or land shall hereafter be constructed, re-located to, extended, converted, or altered without full compliance with the terms of this ordinance and other applicable regulations. Violation of the provisions of this ordinance by failure to comply with any of its requirements (including violations of conditions and safeguards established in connection with conditions) shall constitute a misdemeanor. Any person who violates this ordinance or fails to comply with any of its requirements shall upon conviction thereof be fined not more than \$1,000.00 or imprisoned for not more than 90 days, or both, for each violation, and in addition shall pay all costs and expenses involved in the case. Nothing herein contained shall prevent the Borough of Pennington, from taking such other lawful action as is necessary to prevent or remedy any violation.

3.4 ABROGATION AND GREATER RESTRICTIONS

This ordinance is not intended to repeal, abrogate, or impair any existing easements, covenants, or deed restrictions. However, where this ordinance and other ordinance, easement, covenant, or deed restriction conflict or overlap, whichever imposes the more stringent restrictions shall prevail.

3.5 INTERPRETATION

In the interpretation and application of this ordinance, all provisions shall be:

- a) Considered as minimum requirements;
- b) Liberally construed in favor of the governing body; and,
- c) Deemed neither to limit nor repeal any other powers granted under State statutes.

3.6 WARNING AND DISCLAIMER OF LIABILITY

The degree of flood protection required by this ordinance is considered reasonable for regulatory purposes and is based on scientific and engineering considerations. Larger floods can and will occur on rare occasions. Flood heights may be increased by man-made or natural causes. This ordinance does not imply that land outside the area of special flood hazards or uses permitted within such areas will be free from flooding or flood damages.

This ordinance shall not create liability on the part of the Borough of Pennington, any officer or employee thereof or the Federal Insurance Administration, for any flood damages that result from reliance on this ordinance or any administrative decision lawfully made thereunder.

**SECTION 4.0
ADMINISTRATION**

4.1 ESTABLISHMENT OF DEVELOPMENT PERMIT

A Development Permit shall be obtained before construction or development begins, including placement of manufactured homes, within any area of special flood hazard established in section 3.2. Application for a Development Permit shall be made on forms furnished by the Construction Official and may include, but not be limited to; plans in duplicate drawn to scale showing the nature, location, dimensions, and elevations of the area in question; existing or proposed structures, fill, storage of materials, drainage facilities; and the location of the foregoing. Specifically, the following information is required:

- a) Elevation in relation to mean sea level, of the lowest floor (including basement) of all structures;
- b) Elevation in relation to mean sea level to which any structure has been floodproofed.
- c) Certification by a registered professional engineer or architect that the floodproofing methods for any nonresidential structure meet the floodproofing criteria in section 5.2-2; and,
- d) Description of the extent to which any watercourse will be altered or relocated as a result of proposed development.

4.2 DESIGNATION OF THE LOCAL ADMINISTRATOR

The Construction Official is hereby appointed to administer and implement this ordinance by granting or denying development permit applications in accordance with its provisions.

4.3 DUTIES AND RESPONSIBILITIES OF THE ADMINISTRATOR

Duties of the Construction Official shall include, but not be limited to:

4.3-1 PERMIT REVIEW

- a) Review all development permits to determine that the permit requirements of this ordinance have been satisfied.
- b) Review all development permits to determine that all necessary permits have been obtained from those Federal, State or local governmental agencies from which prior approval is required.
- c) Review all development permits to determine if the proposed development is located in the floodway. If located in the floodway, assure that the encroachment provisions of 5.3 a) are met.

4.3-2 USE OF OTHER BASE FLOOD AND FLOODWAY DATA

When base flood elevation and floodway data has not been provided in accordance with section 3.2, BASIS FOR ESTABLISHING THE AREAS OF SPECIAL FLOOD HAZARD, the Construction Official shall obtain, review, and reasonably utilize any base flood elevation and floodway data available from a Federal, State or other source, in order to administer sections 5.2-1, SPECIFIC STANDARDS, RESIDENTIAL CONSTRUCTION, and 5.2-2, SPECIFIC STANDARDS, NONRESIDENTIAL CONSTRUCTION.

4.3-3 INFORMATION TO BE OBTAINED AND MAINTAINED

- a) Obtain and record the actual elevation (in relation to mean sea level) of the lowest floor (including basement) of all new or substantially improved structures, and whether or not the structure contains a basement.
- b) For all new or substantially improved floodproofed structures:
 - i. verify and record the actual elevation (in relation to mean sea level); and
 - ii. maintain the floodproofing certifications required in section 4.1 c).
- c) Maintain for public inspection all records pertaining to the provisions of this ordinance.

4.3-4 ALTERATION OF WATERCOURSES

- a) Notify adjacent communities and the New Jersey Department of Environmental Protection, Dam Safety and Flood Control Section and the Land Use Regulation Program prior to any alteration or relocation of a watercourse, and submit evidence of such notification to the Federal Insurance Administration.
- b) Require that maintenance is provided within the altered or relocated portion of said watercourse so the flood carrying capacity is not diminished.

4.3-5 SUBSTANTIAL DAMAGE REVIEW

- a) After an event resulting in building damages, assess the damage to structures due to flood and non-flood causes.
- b) Record and maintain the flood and non-flood damage of substantial damage structures and provide a letter of Substantial Damage Determination to the owner and the New Jersey Department of Environmental Protection, Dam Safety and Flood Control Section.
- c) Ensure substantial improvements meet the requirements of sections 5.2-1, SPECIFIC STANDARDS, RESIDENTIAL CONSTRUCTION, and 5.2-2, SPECIFIC STANDARDS, NONRESIDENTIAL CONSTRUCTION.

4.3-6 INTERPRETATION OF FIRM BOUNDARIES

Make interpretations where needed, as to the exact location of the boundaries of the areas of special flood hazards (for example, where there appears to be a conflict between a mapped boundary and actual field conditions). The person contesting the location of the boundary shall be given a reasonable opportunity to appeal the interpretation as provided in section 4.4.

4.4 VARIANCE PROCEDURE

4.4-1 APPEAL BOARD

- a) The Planning Board shall hear and decide appeals and requests for variances from the requirements of this ordinance.
- b) The Planning Board shall hear and decide appeals when it is alleged there is an error in any requirement, decision, or determination made by the Construction Official in the enforcement or administration of this ordinance.
- c) Those aggrieved by the decision of the Planning Board, or any taxpayer, may appeal such decision to the Superior Court of New Jersey, as provided in N.J.S.A. 40:55D-17h & 18..
- d) In passing upon such applications, the Planning Board, shall consider all technical evaluations, all relevant factors, standards specified in other sections of this ordinance, and:
 - i. the danger that materials may be swept onto other lands to the injury of others;
 - ii. the danger to life and property due to flooding or erosion damage;
 - iii. the susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner;
 - iv. the importance of the services provided by the proposed facility to the community;
 - v. the necessity to the facility of a waterfront location, where applicable;
 - vi. the availability of alternative locations for the proposed use which are not subject to flooding or erosion damage;
 - vii. the compatibility of the proposed use with existing and anticipated development;
 - viii. the relationship of the proposed use to the comprehensive plan and floodplain management program of that area;

- ix. the safety of access to the property in times of flood for ordinary and emergency vehicles;
 - x. the expected heights, velocity, duration, rate of rise, and sediment transport of the flood waters and the effects of wave action, if applicable, expected at the site; and,
 - xi. the costs of providing governmental services during and after flood conditions, including maintenance and repair of public utilities and facilities such as sewer, gas, electrical, and water systems, and streets and bridges.
- e) Upon consideration of the factors of section 4.4-1 d) and the purposes of this ordinance, the Planning Board may attach such conditions to the granting of variances as it deems necessary to further the purposes of this ordinance.
 - f) The Construction Official shall maintain the records of all appeal actions, including technical information, and report any variances to the Federal Insurance Administration upon request.

4.4-2 CONDITIONS FOR VARIANCES

- a) Generally, variances may be issued for new construction and substantial improvements to be erected on a lot of one-half acre or less in size contiguous to and surrounded by lots with existing structures constructed below the base flood level, providing items i.-xi. in section 4.4-1 d) have been fully considered. As the lot size increases beyond the one-half acre, the technical justification required for issuing the variance increases.
- b) Variances may be issued for the repair or rehabilitation of historic structures upon a determination that the proposed repair or rehabilitation will not preclude the structure's continued designation as a historic structure and the variance is the minimum necessary to preserve the historic character and design of the structure.
- c) Variances shall not be issued within any designated floodway if any increase in flood levels during the base flood discharge would result.
- d) Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.
- e) Variances shall only be issued upon:
 - i. A showing of good and sufficient cause;
 - ii. A determination that failure to grant the variance would result in exceptional hardship to the applicant; and,
 - iii. A determination that the granting of a variance will not result in increased flood heights, additional threats to public safety, extraordinary public expense, create nuisances, cause fraud on or victimization of the public as identified in section 4.4- 1 d), or conflict with existing local laws or ordinances.
- f) Any applicant to whom a variance is granted shall be given written notice that the structure will be permitted to be built with a lowest floor elevation below the base flood elevation and that the cost of flood insurance will be commensurate with the increased risk resulting from the reduced lowest floor elevation.

SECTION 5.0

PROVISIONS FOR FLOOD HAZARD REDUCTION

5.1 GENERAL STANDARDS

In all areas of special flood hazards, compliance with the applicable requirements of the Uniform Construction Code (N.J.A.C. 5:23) and the following standards, whichever is more restrictive, is required:

5.1-1 ANCHORING

- a) All new construction to be placed or substantially improved and substantial improvements shall be anchored to prevent flotation, collapse, or lateral movement of the structure.
- b) All manufactured homes to be placed or substantially improved shall be anchored to resist flotation, collapse or lateral movement. Methods of anchoring may include, but are not to be limited to, use of over-the-top or frame ties to ground anchors. This requirement is in addition to applicable state and local anchoring requirements for resisting wind forces.

5.1-2 CONSTRUCTION MATERIALS AND METHODS

- a) All new construction and substantial improvements shall be constructed with materials and utility equipment resistant to flood damage.
- b) All new construction and substantial improvements shall be constructed using methods and practices that minimize flood damage.

5.1-3 UTILITIES

- a) All new and replacement water supply systems shall be designed to minimize or eliminate infiltration of flood waters into the system;
- b) New and replacement sanitary sewage systems shall be designed to minimize or eliminate infiltration of flood waters into the systems and discharge from the systems into flood waters;
- c) On-site waste disposal systems shall be located to avoid impairment to them or contamination from them during flooding; and
- d) For all new construction and substantial improvements the electrical, heating, ventilation, plumbing and air-conditioning equipment and other service facilities shall be designed and/or located so as to prevent water from entering or accumulating within the components during conditions of flooding.

5.1-4 SUBDIVISION PROPOSALS

- a) All subdivision proposals and other proposed new development shall be consistent with the need to minimize flood damage;
- b) All subdivision proposals and other proposed new development shall have public utilities and facilities such as sewer, gas, electrical, and water systems located and constructed to minimize flood damage;
- c) All subdivision proposals and other proposed new development shall have adequate drainage provided to reduce exposure to flood damage; and,
- d) Base flood elevation data shall be provided for subdivision proposals and other proposed new development which contain at least fifty (50) lots or five (5) acres (whichever is less).

5.1-5 ENCLOSURE OPENINGS

All new construction and substantial improvements having fully enclosed areas below the lowest floor that are usable solely for parking of vehicles, building access or storage in an area other than a basement and which are subject to flooding shall be designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of floodwaters. Designs for meeting this requirement must either be certified by a registered professional engineer or architect or must meet or exceed the following minimum criteria: A minimum of two (2) openings in at least two exterior walls of each enclosed area, having a total net area of not less than one (1) square inch for every square foot of enclosed area subject to flooding shall be provided. The bottom of all openings shall be no higher than one (1) foot above grade. Openings may be equipped with screens, louvers, or other covering or devices provided that they permit the automatic entry and exit of floodwaters.

5.2 SPECIFIC STANDARDS

In all areas of special flood hazards where base flood elevation data have been provided as set forth in section 3.2, BASIS FOR ESTABLISHING THE AREAS OF SPECIAL FLOOD HAZARD or in section 4.3-2, USE OF OTHER BASE FLOOD DATA, the following standards are required:

5.2-1 RESIDENTIAL CONSTRUCTION

- a) New construction and substantial improvement of any residential structure located in an A or AE zone shall have the lowest floor, including basement together with the attendant utilities and sanitary facilities, elevated at or above the base flood elevation plus one (1) foot or as required by ASCE/SEI 24-14, Table 2-1, whichever is more restrictive;

5.2-2 NONRESIDENTIAL CONSTRUCTION

In an Area of Special Flood Hazard, all new construction and substantial improvement of any commercial, industrial or other nonresidential structure shall have the lowest floor, including basement together with the attendant utilities and sanitary facilities:

either

- a) Elevated to or above the base flood elevation plus one (1) foot or as required by ASCE/SEI 24-14, Table 2-1, whichever is more restrictive; and/or
- b) Be floodproofed so that below the base flood level plus one (1) foot or as required by ASCE/SEI 24-14, Table 6-1, whichever is more restrictive, the structure is watertight with walls substantially impermeable to the passage of water;
- c) Have structural components capable of resisting hydrostatic and hydrodynamic loads and effects of buoyancy; and,
- d) Be certified by a registered professional engineer or architect that the design and methods of construction are in accordance with accepted standards of practice for meeting the applicable provisions of this subsection. Such certification shall be provided to the official as set forth in section 4.3-3 b) ii.

5.2-3 MANUFACTURED HOMES

- a) Manufactured homes shall be anchored in accordance with section 5.1-1 b).
- b) All manufactured homes to be placed or substantially improved within an area of special flood hazard shall:
 - i. Be consistent with the need to minimize flood damage,
 - ii. Be constructed to minimize flood damage,
 - iii. Have adequate drainage provided to reduce exposure to flood damage; and,
 - iv. Be elevated on a permanent foundation such that the top of the lowest floor is at or above the base flood elevation plus one (1) foot or as required by ASCE/SEI 24-14, Table 2-1, whichever is more restrictive.

5.3 FLOODWAYS

Located within areas of special flood hazard established in section 3.2 are areas designated as floodways. Since the floodway is an extremely hazardous area due to the velocity of flood waters which carry debris, potential projectiles, and erosion potential, the following provisions apply:

- a) Prohibit encroachments, including fill, new construction, substantial improvements, and other development unless a technical evaluation demonstrates that encroachment shall not result in any increase in flood levels during the occurrence of the base flood discharge.
- b) If section 5.3 a) is satisfied, all new construction and substantial improvements must comply with section 5.0 PROVISIONS FOR FLOOD HAZARD REDUCTION.
- c) In all areas of special flood hazard in which base flood elevation data has been provided and no floodway has been designated, the accumulative effect of any proposed development, when combined with all other existing and anticipated development, shall not

increase the water surface elevation of the base flood more than two-tenths (0.2) of a foot at any point.

**SECTION 6.0
SEVERABILITY**

If any section, subsection, paragraph, sentence, clause, or phrase of this Ordinance shall be declared invalid for any reason whatsoever, such a decision shall not affect the remaining portions of the Ordinance, which shall remain in full force and effect, and for this purpose the provisions of this Ordinance are hereby declared to be severable.

**SECTION 7.0
ENACTMENT**

7.01 ADOPTION

This Ordinance shall be effective on *July 20, 2016* and shall remain in force until modified, amended or rescinded by *Borough of Pennington, Mercer County, New Jersey*.

Council Member Chandler made a motion to introduce Ordinance 2016-14, second by Council Member Griffiths. Mr. Lawver asked which two areas are affected by this ordinance. Mrs. Heinzl stated that she distributed a map to Council Members showing the locations; one along the border of King George Road and Hopewell Township and another along Lewisbrook, outside of the Borough. Mr. Lawver asked about the Blackwell property. Mrs. Heinzl stated that property is not identified on the FEMA map. Mrs. Heinzl stated that the ordinance is needed so that if someone wanted to build in one of these areas, they would have to adhere to the requirements of this ordinance. Mrs. Heinzl stated that currently there are no structures within the Flood Damage Protection Zone. Mr. Lawver stated that he is a little surprised that the strip by the landfill and the Blackwell property are not included. Mr. Griffiths stated that these maps are tentative and they do get revised every three to five years. Mr. Griffiths stated that in three to five years those properties might be listed on the map. Mr. Griffiths stated that in that case, Council would need to pass an ordinance to include the new map. Mr. Griffiths stated that the flood zone designation is really for insurance and construction purposes and all the Borough is doing is passing an ordinance. Mr. Lawver stated that this ordinance puts a host of new requirements on anyone who is doing work on their property. Mr. Lawver stated that today this is fine, because there is no one in the flood zone that will be affected, but tomorrow if the map changes and this ordinance is in place then there is a burden on anyone in the flood zone. Mr. Lawver stated that we don't have a choice except to comply with the ordinance as written. Mr. Griffiths stated that the effect is financial; it is insurance ratings and construction requirements in order to comply with insurance ratings. Mr. Griffiths stated that those things happen with or without our approval. Mrs. Heinzl stated that this ordinance is actually amending an ordinance from 1988 and that ordinance was not as clear as this one is. Mrs. Heinzl stated that essentially this ordinance as amended is a requirement of DEP and without it no one in town would qualify to obtain flood insurance and the Borough would no longer be eligible for FEMA funding. Mr. Griffiths stated that if the map changes and the Borough does not accept the new map, that property owner would not be able to get flood insurance which means the property value would drop to zero. Upon a roll call vote all members present voted in favor.

Ordinances for Public Hearing and Adoption

Mayor Persichilli read Ordinance 2016-6 by title.

**BOROUGH OF PENNINGTON
ORDINANCE 2016-6**

**AN ORDINANCE CONCERNING LAND USE AND LAND USE APPLICATIONS AND AMENDING
THE CODE OF THE BOROUGH OF PENNINGTON**

WHEREAS, the Planning Board of the Borough of Pennington has recommended various changes to the Borough Code which would amend, supplement or clarify provisions of Chapter 215 concerning Zoning, Chapter 163 concerning site plan approval, and Chapter 185 concerning Swimming Pools;

WHEREAS, Borough Council of the Borough of Pennington accepts the recommendations of the Planning Board and seeks to amend the Code accordingly, with [brackets] indicating language to be deleted and underlining indicating language to be added;

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

1. Section 163-54 of Chapter 163 of the Borough Code, concerning exceptions to required site plan approval, is amended as follows

163-4. Site plan approval required; exceptions.

Prior to the issuance of a building permit or certificate of occupancy for any [new structure other than a single-family dwelling, addition to an existing nonresidential structure, conversion of a one- or two-family dwelling to three or more units or for any new multifamily structure or use] development on a lot wholly or partly in the Borough, a site plan shall be reviewed by the Planning Board [or, where appropriate, by the Board of

Adjustment]. No site plan review shall be required for:

A. A change in occupancy or use of any nonresidential structure where the Borough Zoning Officer has determined that the new use is permitted either by reason of Chapter 215, Zoning, or because of prior Planning Board or Zoning Board approval, and will not intensify site traffic circulation, required parking or endanger the general health, safety and public welfare; or

B. A rear addition of less than 150 square feet for a one-story addition or 300 square feet for a two-story addition to a commercial structure in a commercial zone, provided that no variances are required and there is no impact on site circulation.

C. Detached one- or two-dwelling unit buildings.

2. Section 185-6.A of Chapter 185 of the Borough Code, concerning the location of swimming pools, is amended as follows:

(1) Private swimming pools, wading pools and hot tubs [No private swimming pool or wading pool] shall be erected in the rear yard only [to extend out beyond the front line of the main building].

(2) No private swimming pool or wading pool shall be larger in area than 50% of the rear yard and in no case shall a pool be constructed less than 15 [six] feet from any [rear] property line [or less than six feet from any side property line].

3. Section 215-31 of Chapter 215 of the Borough Code, concerning sign regulations, is amended to include the following definitions:

215-31. Definitions and word usage.

B. Words and phrases used in this article shall have the meanings set forth in this article:

BANNERS, FLAGS, PENNANTS – [A rectangular-shaped fabric sign] Flexible material not permanently attached to a structure which is typically supported by a pole or bracket; [a temporary bracket or device may support the banner].

NEON/TUBULAR Sign – Any sign made of illuminated tubing.

INFLATABLE SIGN – Any inflated display used on a permanent or temporary basis to advertise or draw attention to a business, product or event. Inflatable signs include balloons.

4. Section 215-38 of Chapter 215 of the Borough Code, concerning prohibited signs, is amended as follows

215-38. Prohibited signs.

Unless specifically permitted by the approving authority or this article, the following signs are prohibited:

B. Mechanically moving signs, inflatable signs, neon signs, light emitting diode (LED) signs, unshielded bulb signs, flashing signs and animated signs of any kind and signs containing reflective elements except that neon or LED signs are permitted as interior signs in the Highway-Business zone.

5. Section 215-43 of Chapter 215 of the Borough Code, concerning signs permitted in the Highway Business Zone, is amended as follows:

215-43. Signs permitted in Highway Business Zone.

In the Highway Business (B-H) zone, the following signs shall be permitted.

F. Interior signs. All signs located on the interior side of a window and intended to be visible from the exterior of the building and located within a distance of 24 inches from the inside face of the glass shall total not more than [40] 20 percent of the glass area of the window behind which they are placed and together with a façade wall sign shall not exceed 10% of the “ground floor entry façade area” as required by Section 215-43 D. No interior sign lighting shall exceed one foot candle, measured at a distance of two feet from the light source.

* * *

J. In addition to the above applicable signs, each permitted non-residential use may be permitted one neon or LED sign located on the inside of display windows only. Such sign shall be considered an interior sign, subject to the limitations in Subsection F. above.

* * *

L. Banners, flags and pennants and other moving signs used for advertising purposes, whether containing a message or not, may be permitted to advertise special events including but not limited to grand openings, special sales, and promotion of seasonal events or products, provided the following conditions and procedures

are followed:

1. Banners, flags and pennants shall not exceed 20 square feet and no more than two banners, flags, or pennants shall be erected.
2. An application form describing the type and size of the banners, flags or pennants shall be submitted to the zoning officer who shall review such form within 7 days.
3. Banners, flags or pennants shall be removed within the time period stated on the application but no later than 30 days.
4. No approved banners, flags or pennants shall be allowed on more than three occasions during a calendar year.

6. Section 215-55 of Chapter 215 of the Borough Code, concerning restoration of structures, is amended as follows:

215-55. Restoration.

Any nonconforming structure or use existing at the time of the passage of this chapter may be restored or repaired in the event of partial destruction thereof, provided that said structure or use thereof is not abandoned or removed. Partial destruction shall occur when the cost of such restoration or repair is less than 50% of the assessed value of the building. In the case of more than partial destruction of any structure or use, any subsequent structure or use shall conform with all provisions of this chapter.

Nothing in this chapter shall prevent any such existing nonconforming structure from being restored to a safe condition or from being repaired, reconstructed or structurally altered, provided that such restoration, repair, reconstruction or alteration would comply with all other municipal regulations and ordinances; and would not [provided, further, that no restoration, repair, reconstruction or alteration shall] in any way enlarge or extend any nonconforming structure or nonconforming use.

7. Section 215-57 of Chapter 215 of the Borough Code, concerning alteration of buildings, is amended to delete the section as follows:

[215-57. Alterations.

A nonconforming building may be reconstructed but not enlarged or extended, unless said building is changed to a building conforming or more nearly conforming to the requirements of this chapter; provided, however, that alterations or enlargements that do not increase the degree of nonconformity are permitted.]

8. This ordinance shall take effect upon passage and publication as required by law.

Council Member Lawver made a motion to open the Public Hearing on Ordinance 2016-14, second by Council Member Chandler. There were no comments from the public. Mr. Griffiths stated that this ordinance still does not allow the corner property owner to put in a pool. Mr. Lawver stated that it does not and that is why he will vote no. Council Member Chandler made a motion to close the Public Hearing on Ordinance 2016-6, second by Council Member Lawver with all members present voting in favor. Council Member Chandler made a motion to adopt Ordinance 2016-6, second by Council Member Lawver. Some discussion took place with regard to the section of the ordinance pertaining to setbacks for pools. Mrs. Heinzl stated that this Ordinance was introduced and referred back to the Planning Board where it was found to be consistent with the Master Plan and now it is back before Council for final adoption. Mr. Griffiths stated that now he has changed his mind. Mr. Marciante asked what could happen if the ordinance is not adopted. Mrs. Heinzl stated that the site plan piece of the ordinance is what needs to be adopted. Mrs. Heinzl asked Mr. Bliss if the setback section which is in question could be removed. Mr. Bliss stated that would be a material change and would require reintroduction. Mr. Davy stated that the larger picture is to ensure that the Borough has some say in what happens on properties partially in the Borough and partially in the Township. Mrs. Heinzl asked if it would be fair to revisit the issue of setbacks at another time so that this ordinance could be moved forward. Mr. Griffiths stated that he understands the larger issue of dual municipalities and the need to get that done. Mr. Bliss stated that would require another ordinance addressing the particular issue. Mr. Bliss explained that if Council excises the amendment, Council runs the risk of someone arguing that the ordinance is invalid. Mrs. Heinzl stated that there are other zoning amendments that will be coming before Council and the issue of the setbacks could be included with those. Mr. Griffiths stated that if there is a commitment to introduce a new ordinance that has language addressing the corner property restriction then he would vote yes tonight in order to preserve the integrity of the dual municipality language. Upon a roll call vote all members present voted in favor with the exception of Mr. Lawver who voted no.

Mayor Persichilli read Ordinance 2016-11 by title.

**BOROUGH OF PENNINGTON
ORDINANCE #2016 – 11**

**AN ORDINANCE TO PROVIDE FOR AND DETERMINE THE RATE OF
COMPENSATION OF OFFICERS AND EMPLOYEES OF THE BOROUGH OF
PENNINGTON, COUNTY OF MERCER, STATE OF NEW JERSEY
FOR THE YEAR 2016**

**BE IT ORDAINED BY THE BOROUGH COUNCIL OF THE BOROUGH OF
PENNINGTON AS FOLLOWS:**

SECTION I: EMPLOYMENT POSITIONS/ANNUAL COMPENSATION

- a. The following official and employment designations are hereby confirmed and the rate of compensation of each officer and employee of the Borough of Pennington, whose compensation shall be on an annual basis, is:

Borough Administrator	\$ 50,222.43
Borough Clerk	\$ 40,918.73
Treasurer / Assistant Chief Financial Officer	\$ 69,911.25
Tax Collector	\$ 29,398.22
Utility Collector	\$ 29,398.22
Technical Assistant to Construction	\$ 11,430.56
Tax Assessor	\$ 12,484.80
Zoning Officer	\$ 8,448.78
Land Use Admin/Admin Asst.	\$ 49,242.60
Deputy Registrar	\$ 2,127.77
Supt. of Public Works	\$123,180.00
Judge of Municipal Court	\$ 11,870.03
Court Administrator	\$ 16,589.25
Prosecutor - (Flat Fee per Court Session)	\$ 300.00
Public Defender – (Flat Fee per Court Session)	\$ 200.00
Public Safety Director	\$ 55,831.85
Construction Official	\$ 26,212.73
Plumbing Sub-Code	\$ 38.78 / hour
Fire Sub-Code	\$ 39.36 / hour
Electric Sub-Code	\$38.00 / hour

- b. One person may serve in more than one office or position of employment as listed in Section a hereof.
- c. The amounts shown in Section a. hereof are the maximum amounts to be paid, however, at the discretion of Borough Council, lesser amounts can be paid.
- d. The salary amount shown in Section a. for Supt. of Public Works is a maximum amount expected to be paid when the incumbent obtains all licensure required for management of water distribution and treatment and sanitary sewer collection. The present salary of \$85,680. shall be increased by increments of \$7,500. upon qualification for each of the following licenses, respectively: W-1, Water Distribution; T-1, Water Treatment; C-2, Sanitary Sewer Collection – Level 2; W-2, Water Distribution – Level 2; and T-2, Water Treatment – Level 2.
- e. The rate of compensation of each employee, paid on an hourly basis is as follows:

	Minimum	Maximum
Finance		
Municipal CFO(p/t)	\$ 25.00	\$ 79.02
Police Department:		
Crossing Guards	\$ 15.00	\$ 26.00
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 ordinance shall take effect upon final adoption and publication according to law, but the salaries herein provided for shall be retroactive to January 1, 2016.

Council Member Chandler made a motion to open the Public Hearing on Ordinance 2016-11, second by Council Member Lawver. There were no comments from the public. Council Member Chandler made a motion to close the Public Hearing, second by Council Member Lawver with all members present voting in favor. Council Member Chandler made a motion to adopt Ordinance 2016-11, second by Council Member Lawver with all members present voting in favor.

Committee Reports

Planning & Zoning / Open Space – No report.

Public Works / Personnel – Mr. Davy stated that his report was covered under the earlier discussion.

Parks & Recreation / Library / Shade Tree / Senior Advisory – Mr. Lawver reported that the Memorial Day Parade was cancelled and the committee is going to step back and look at a process for future years. Mr. Lawver reported that the concert was held and it was a successful partnering with the Hopewell Valley Arts Council and more events will be considered for the future.

Mr. Lawver reported that the Senior Advisory Board is still awaiting a meeting by the Property Association that must approve the Hut’s change of use, the meeting was supposed to take place at the beginning of May and has been postponed to sometime in June leaving the senior community without a future home.

Mr. Lawver reported that he was unable to attend the Library Board meeting.

Mr. Lawver reported that the Shade Tree Commission has completed the five year strategic plan. Mr. Lawver also reported that the commission had a successful representation at Pennington Day.

Mr. Lawver reported that the Library website is up and it is fantastic.

Public Safety – Mr. Marciante reported that the Police Department is at full force and Officer Francis has completed his probationary period.

Finance – Mr. Griffiths stated that the Finance Committee did not meet, but he sees that the Audit report has been distributed. Mrs. Sterling stated that the Audit was received today and will be on the agenda for the July meeting. Mrs. Sterling stated that there are two recommendations, one has already been taken care of and the other will be taken care of shortly.

Historic Preservation / Board of Health / Environmental / Economic Development – Mrs. Chandler stated that Joann Held was here earlier and reported on the Environmental Commission. Mrs. Chandler stated that she would like to thank Ricky Smith and John Meyer for coming to their meeting and reporting on water quality since it is a timely conversation and fortunately for Pennington there are no concerns at this time.

Mrs. Chandler reported that the Historic Preservation Commission met and there was some conversation about the Tollgate House which is not in the Historic District but there was a presentation to the Planning Board to develop behind the house. Mrs. Chandler stated that there was some concern that the builder suggested that the Tollgate House might be torn down in order to accommodate the new house. Mrs.

Chandler stated that this is a possibility because the Tollgate House is not in the Historic District however they got beyond that and as part of the agreement, the owner of the Tollgate House has agreed to do a deed restriction so it will not be torn down and will have to be caught up in the review process of the Historic Preservation Commission. Mrs. Heinzl stated that the Planning Board considered an application to subdivide the property that the Tollgate House fronts on. Mrs. Heinzl stated that the Planning Board approved the application with several conditions one of them being that the owner agrees to give the Borough an easement of protection to protect the Tollgate House.

Mrs. Chandler stated that another thing that they talked about is the forty foot front yard setback that currently exists in the R-80 zones which includes the Historic District. Mrs. Chandler stated that setback does not really make sense for the Historic District because none of the houses are forty feet back therefore residents are forced to go to the Planning Board to approve what has been historically correct.

Mrs. Chandler reported that the Board of Health met and one of the things that came up is that Pennington Borough does not have a late fee for our Health Ordinance and they will be discussing this further at the next meeting. Mrs. Chandler stated that looking forward towards the renewal of our Agreement with Montgomery Township; the State is possibly looking at not funding many requirements and that is a concern in terms of budgeting for 2017.

New Business

**Borough of Pennington
Resolution #2016 – 6.1**

RESOLUTION AUTHORIZING REFUNDS

BE IT RESOLVED, that a refund be issued to CoreLogic Real Estate Tax Services, Attn: Refund Department, PO Box 961250, Fort Worth, TX 76161-9858, for refund of 2016 2nd quarter taxes, Block 405, Lot 10, also known as 220 King George Road, in the amount of \$4,184.36.

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				absent	Marciante	M			

Council Member Marciante made a motion to approve Resolution 2016-6.1, second by Council Member Griffiths with all members present voting in favor.

**BOROUGH OF PENNINGTON
RESOLUTION #2016 – 6.2**

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 \$223,458.72 from the following accounts:

Current	\$ 163,921.14
W/S Operating	\$ 51,640.98
Developer’s Escrow	\$ 7,505.60
Trust – Other	\$ 146.00
Recreation	\$ 245.00
TOTAL	\$ 223,458.72

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				absent	Marciante	M			

Council Member Marciante made a motion to approve Resolution 2016-6.2, second by Council Member Griffiths with all members present voting in favor.

**BOROUGH OF PENNINGTON
RESOLUTION 2016 – 6.3**

**RESOLUTION TO AMEND THE 2016 ADOPTED BUDGET (CHAPTER 159)
SPECIAL ITEMS OF REVENUE AND APPROPRIATION FOR
2016 CLEAN COMMUNITIES GRANT AWARDS**

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

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

WHEREAS, the Borough of Pennington has received \$6,378.92 from the New Jersey Department of Environmental Protection and wishes to amend its 2016 Budget to include this amount as revenue;

NOW THEREFORE BE IT RESOLVED, that the Borough Council of the Borough of Pennington hereby requests the Director of the Division of Local Government Services to approve the insertion of a special item of revenue in the budget of the year 2016 in the sum of \$6,378.92, which is now available as revenue from:

DEP – Clean Community Grant Award Program

BE IT FURTHER RESOLVED that a like sum of \$6,378.92 be and the same is hereby appropriated under the caption of:

DEP – Clean Community Grant Award Program

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

Record of Council Vote on Passage

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

Council Member Griffiths made a motion to approve Resolution 2016-6.3, second by Council Member Marciante with all members present voting in favor.

**BOROUGH OF PENNINGTON
RESOLUTION 2016 – 6.4**

**RESOLUTION REQUESTING CHANGE IN TITLE, TEXT, OR AMOUNT OF APPROPRIATION
PURSUANT TO NJS 40A:4-85**

WHEREAS, NJS 40A: 4-85 provides that the Director of the Division of Local Government Services may, at the request of, or with the consent of, the governing body of any county or municipality, make such correction of the title, text, or amount of any appropriation appearing in the budget as may be necessary to make said item of appropriation available for the purpose or purposes required for the needs of any county or municipality,

NOW, THEREFORE, BE IT RESOLVED, that in accordance with the provisions of NJS 40A:4-85, the Borough of Pennington hereby requests the Director of the Division of Local Government Services to make the following correction in the 2016 budget:

From 2016 Bond Ordinance
To
Purchase of Dump Truck and Air Compressor

BE IT FURTHER RESOLVED that the foregoing correction is, in the opinion of the governing body, warranted and authorized by the statute referred to above, and is necessary for the orderly operation of the Borough for the reasons set forth:

The intent was to fully fund the 2016 Capital Projects

Record of Council Vote on Passage

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

Council Member Griffiths made a motion to approve Resolution 2016-6.4, second by Council Member Lawver with all members present voting in favor.

**BOROUGH OF PENNINGTON
RESOLUTION 2015 – 6.5**

**RESOLUTION IN SUPPORT OF A COMPLETE STREETS POLICY FOR
PENNINGTON BOROUGH**

WHEREAS, Pennington Borough is committed to creating a pedestrian and bikeway system to the extent feasible, by creating street corridors that safely accommodate all road users of all ages, abilities and disabilities; and

WHEREAS, the New Jersey Department of Transportation Complete Streets policy states “A Complete Street is defined as means to provide safe access for all users by designing and operating a comprehensive, integrated, connected multi-modal network of transportation options.”; and

WHEREAS, as part of this policy, the New Jersey Department of Transportation strongly encourages the adoption of similar policies by regional and local jurisdictions who apply for funding through Local Aid programs; and

WHEREAS, the benefits of complete streets include: improving safety for pedestrians, bicyclists, children, older citizens, non-drivers and the mobility challenged as bicycling and walking trip generators such as employment, education, residential, recreation, retail centers and public facilities; promoting healthy lifestyles; creating more livable communities; reducing traffic congestion and reliance on carbon fuels thereby reducing greenhouse gas emissions; and saving money by incorporating sidewalks, bike lanes, safe crossings and transit amenities into the initial design of a project, thus sparing the expense of retrofits later; and

WHEREAS, the Pennington Borough Council supports to the extent practicable, the application of a Pennington Borough “Complete Streets” policy that will apply to all road, bridge, and building projects undertaken by Pennington Borough; and

WHEREAS, the Pennington Borough Council hereby supports a “Complete Streets” initiative and urges its continuation throughout Mercer County in an attempt to create a comprehensive, integrated, connected street network and safely accommodates all road users of all abilities and disabilities and for all trips;

WHEREAS, the Pennington Borough Council recognizes that exceptions from the establishment of bicycle and pedestrian ways in new construction and reconstruction projects may be allowed if any one of the following conditions are met:

- a. Bicyclists and pedestrians are prohibited by law from using the roadway.
- b. Detrimental environmental or social impacts outweigh the need for these accommodations.
- c. The safety or timing of a project is compromised by the inclusion of Complete Streets design practices.
- d. The cost of incorporating new bicycle, pedestrian, and/or public transit facilities is excessive. The need for and/or probable use of the facility shall be considered in making the determination as to whether or not an exception should be approved at this time or held for future consideration.
- e. All exemptions, including any not listed above must be documented and approved by the Borough Council.

NOW, THEREFORE, BE IT RESOLVED by the Borough Council of Pennington Borough, in the County of Mercer, State of New Jersey that it hereby supports a “Complete Streets” policy for all public street projects, wherever possible and practicable, that are undertaken by the Borough of Pennington, the County of Mercer and the municipalities within the County of Mercer in order to ultimately achieve a network of roadways that may safely accommodate travel by pedestrians, bicyclists, public transit, and motorized vehicles and their passengers, with special priority given to bicyclist and pedestrian safety.

BE IT FURTHER RESOLVED, that a copy of this Resolution be forwarded to the County of Mercer, the municipalities within Mercer County and the NJ Department of Transportation.

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	X			
Gnatt				absent	Marciante	M			

Council Member Marciante made a motion to approve Resolution 2016-6.5, second by Council Member Chandler with all members present voting in favor.

**BOROUGH OF PENNINGTON
RESOLUTION 2016-6.6**

**RESOLUTION AUTHORIZING PURCHASE OF NEW WORK TRUCK FOR THE DEPARTMENT
OF PUBLIC WORKS UNDER NEW JERSEY STATE CONTRACT**

WHEREAS, the Pennington Department of Public Works is in need of a new work truck;

WHEREAS, the Superintendent of Public Works has determined that the needed truck is available under NJ State Contract #A88759 (T2101), comm. code 072-03-073414 Line #13, Section 4: Truck, Cab and Chassis, Class 3, Regular Cab, to Accommodate a 8/9 ft Body (“State Contract”);

WHEREAS, the Superintendent has obtained a quote from Hertrich Fleet Services, Inc., located at 1427 Bay Road, Milford, Delaware 19963, for a 2016 Chevrolet Silverado 3500HD Work Truck Regular Cab Chassis DRW 4WD, 137.5” wb;

WHEREAS, Hertrich Fleet Services, Inc. is a qualified vendor under the aforesaid State Contract and its proposal is consistent with the State Contract; and

WHEREAS, a copy of the proposal from Hertrich Fleet Services in the total amount of \$55,187.15 is attached to this Resolution; and

WHEREAS, the purchase of the truck as proposed is subject to all the terms and conditions of the aforesaid State Contract; and

WHEREAS, purchase of the truck as proposed conforms with the Local Public Contracts Law and does not require further public bidding; and

WHEREAS, the Chief Financial Officer has certified that funds needed for the purchase are available;

NOW, THEREFORE, BE IT RESOLVED, by the Borough Council of the Borough of Pennington that the acquisition of the aforesaid truck for the Pennington Department of Public Works pursuant to the attached proposal from Hertrich Fleet Services, Inc. is hereby authorized, and the Borough Administrator and Borough Clerk are further authorized to execute such purchase orders and other documents as are needed to effectuate the purchase.

Record of Council Vote on Passage

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

Council Member Griffiths made a motion to approve Resolution 2016-6.6, second by Council Member Marciante. Mrs. Chandler asked if this truck would be replacing a current truck. Mr. Smith stated that the department has a 2001 Chevy that is limping along and prior to that there was a 1998 Chevy that was sold at auction. Mrs. Chandler asked if there was a replacement equipment schedule. Mr. Griffiths stated that there is and this is part of that schedule. Upon a roll call vote all members present voted in favor.

**BOROUGH OF PENNINGTON
RESOLUTION NO. 2016-6.7**

**RESOLUTION AUTHORIZING PURCHASE OF AIR COMPRESSOR FROM FOLEY RENTS OF
PISCATAWAY, NEW JERSEY**

WHEREAS, the Pennington Department of Public Works is in need of a new tow-behind air compressor;

WHEREAS, the Superintendent of Public Works has obtained quotes for this purchase from three vendors;

WHEREAS, the lowest quote for the desired equipment has been provided by Foley Rents, 833 Centennial Avenue, Piscataway, New Jersey 08855;

WHEREAS, Foley Rents will provide one new Model XAS185 Atlas Copco 185 cfm compressor for a total price of \$17,100 pursuant to the attached proposal and specifications, together with all applicable warranties;

WHEREAS, the amount of the purchase is below the threshold for advertising and formal bidding under the Local Public Contracts Law;

WHEREAS, the Chief Financial Officer has certified that funds are available for the purchase;

NOW, THEREFORE, BE IT RESOLVED, by the Borough Council of the Borough of Pennington that the purchase of the above specified equipment for a total price of \$17,100. pursuant to the attached proposal of Foley Rents is hereby authorized, and the Borough Administrator and Borough Clerk are directed to issue an appropriate purchase order and take such additional steps as needed to effectuate the purchase.

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				absent	Marciante	X			

Council Member Lawver made a motion to approve Resolution 2016-6.7, second by Council Member Griffiths. Mr. Lawver asked if we have fully explored sharing options and also how often an air compressor would be used. Mr. Smith stated that the air compressor does not get used very often as of now, but he would like to use it for upcoming projects like cracks in the road and water boxes but currently it is used mostly to run the jackhammer. Mr. Smith stated that when they need the air compressor they need it. Mr. Smith stated that the current air compressor has been there since before Morris Fabian and Dave Stout started which is about 20 years. Mr. Griffiths stated that a compressor like this one would probably cost \$750.00 per day to rent. Mr. Smith stated that the issue is that when they need it they need it and that could be in the middle of the night. Upon a roll call vote all members present voted in favor.

**BOROUGH OF PENNINGTON
RESOLUTION 2016-6.8**

**RESOLUTION OF CONCURRENCE WITH PROPOSED SPEED REDUCTION ON ROUTE NJ 31
BETWEEN WASHINGTON CROSSING/PENNINGTON-BLACKWELL ROAD (CR 546)
(PENNINGTON CIRCLE) AND SOUTHERLY HOPEWELL TOWNSHIP-PENNINGTON
BOROUGH CORPORATE LINE**

WHEREAS, staff of the New Jersey Department of Transportation (NJDOT), Bureau of Traffic Engineering (BTE), has conducted a survey regarding the current speed limits along Route NJ 31 in the Township of Hopewell and the Borough of Pennington;

WHEREAS, the speed limit investigation included a review of current speed check data, the pacing of vehicles in the normal traffic stream, roadway conditions, motor vehicle crash data and an evaluation of the adjacent land use;

WHEREAS, the speed check data obtained included 85th percentile speed values, which is an accepted national standard used by NJDOT when evaluating speed limits along New Jersey State Highways;

WHEREAS, based on the results of this investigation, the BTE staff has determined that a speed reduction from 45 miles per hour to 40 miles per hour is supported in the segment of Route NJ 31 known as Zone 2, between Washington Crossing/Pennington-Blackwell Road (CR 546) (Pennington Circle) and the southerly Hopewell Township-Pennington Borough corporate line;

WHEREAS, the speed limits in all other zones within both municipalities along Route NJ 31, Zone 1 and Zones 3 through 6, were found to be realistic and reasonable for prevailing conditions;

WHEREAS, the proposed speed limit reduction will require NJDOT to revise the current speed zoning regulation in both municipalities as indicated below;

WHEREAS, in order to legally establish the revised speed limit, the NJDOT is required to promulgate a Traffic Regulation Order (TRO), for which an initial step is to receive a Resolution of Concurrence from the affected municipal governing bodies;

WHEREAS, Pennington Borough Council concurs with the proposed speed limits on Route NJ 31, including the proposed speed limit reduction in Zone 2, as indicated below;

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

1. The Borough of Pennington concurs with the following speed limits in the Township of Hopewell and Borough of Pennington along Route NJ 31 (for both directions of traffic):

- (1) Zone 1: 45 MPH between the Ewing Township-Hopewell Township corporate line (Bull Run Road) and Washington Crossing/Pennington Road-Blackwell Road (CR 546)

(approximate mileposts 4.71 to 6.09);

- (2) Zone 2: 40 MPH between Washington Crossing/Pennington Road-Blackwell Road (CR 546) to the southerly Hopewell Township-Pennington Borough corporate line (approximate mileposts 6.09 to 6.73);
- (3) Zone 3: 45 MPH between the southerly Hopewell Township-Pennington Borough corporate line and 2,000 feet north of the Conrail Reading Railroad underpass (approximate mileposts 6.73 to 7.40);
- (4) Zone 4: 35 MPH between 2,000 feet north of the Conrail Reading Railroad underpass and Franklin Avenue (approximate mileposts 7.40 to 8.02);
- (5) Zone 5: 40 MPH between Franklin Avenue and Woodsville Road (County Road 612) (approximate mileposts 8.02 to 10.19);
- (6) Zone 6: 45 MPH between Woodsville Road and the Hopewell Township (Mercer County)-East Amwell Township (Hunterdon County) corporate line (County Road 518) (approximate mileposts 10.19 to 12.27).

2. Council directs the Borough Clerk to send a certified copy of this Resolution with raised seal to the Bureau of Traffic Engineering, NJDOT.

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				absent	Marciante		M		

Council Member Marciante made a motion to approve Resolution 2016-6.8, second by Council Member Griffiths. Mr. Lawver asked what happened to the discussion about having the speed limit the same at 40 mph straight through. Mr. Meytrott stated that was the original discussion but he was told that there was an issue with Borough Council because it would raise the Borough speed limit. Mr. Davy stated that this is the resolution that was considered at the last meeting and it was decided that Council wanted to be consistent with whatever Hopewell Township was doing. Mrs. Heinzl stated that the Township wanted the zone to be all the same, but that would raise the speed limit in the Borough and Council was not in favor of that. Mr. Meytrott stated that the speed limit would be raised from 35 to 40 mph in the one section by Broemel Place. Mr. Meytrott stated that he thinks it is very insignificant. Mr. Davy asked if Mr. Meytrott was recommending this resolution. Mr. Meytrott stated that he is not; he would be in favor of Hopewell Township’s recommendation for one speed limit of 40 mph. Mr. Meytrott stated that he recommended that the Borough be consistent with Hopewell Township. Upon a roll call vote all members present voted against the resolution.

Council Discussion

Block Party Requests – June 12th – Scudder Court – Council Members had no concerns with this request. Mr. Marciante stated that there is also a request for July 4th for Voorhees Avenue. Council Members had no concerns with this request.

Mayor Persichilli opened up a discussion on Ordinance 2016-14 which was on the agenda earlier in the meeting but moved to Council Discussion.

**BOROUGH OF PENNINGTON
ORDINANCE NO. 2016- 13**

AN ORDINANCE PROHIBITING SMOKING IN MUNICIPAL BUILDINGS AND PARKS AND RECREATIONAL FACILITIES AND ADJOINING PUBLIC AREAS AND AMENDING THE CODE OF THE BOROUGH OF PENNINGTON

WHEREAS, pursuant to N.J.S.A. 40:48.2, the governing body of a municipality may make, amend, repeal, and enforce such other ordinances, regulations, rules and by-laws not contrary to the laws of this state or of the United States, as it may deem necessary and proper for the good of government, order and protection of person and property, and for the preservation of the public health, safety and welfare of the municipality and its inhabitants, and as may be necessary to carry into effect the powers and duties conferred and imposed by any law; and

WHEREAS, the previous State legislation which prohibited municipalities from passing strict local smoking laws that differed from the State standards was repealed and the State now expressly authorizes municipalities to enact strict ordinances regulating smoking under N.J.S.A. 26:3D-63; and

WHEREAS, N.J.S.A. 2C:33-13b also provides that the owner and/or operator of a public place, such as public parks and recreational areas, may prohibit smoking on such property; and

WHEREAS, the Borough Council recognizes the well-known health and safety risks posed by smoking and finds that it is within the public interest to prohibit smoking on public property, such as public parks and recreation areas; and

WHEREAS, the Borough Council has determined that the public interest is especially implicated in preventing the youth of the Borough of Pennington from being exposed and succumbing to the temptations of experimenting with tobacco products; and

WHEREAS, the Borough Council also finds that the appearance of parks and recreation areas would be enhanced and the limited resources of the Borough's Department of Public Works conserved if smoking were controlled in such areas, thereby keeping such areas free of the litter generated by the smoking of cigarettes, such as cigarette butts, ashes and packaging.

NOW, THEREFORE BE IT RESOLVED, by the Borough Council of the Borough of Pennington that the Code of the Borough of Pennington, shall be amended as follows:

1. Chapter 192, concerning Tobacco, shall be amended by the addition of a new Article III entitled "Public Places," which shall include the following new sections.

Section 192-10. Definitions.

As used in this article, the following words shall have the meanings indicated.

MUNICIPAL BUILDING shall include all structures owned, leased, rented and/or operated by the Borough of Pennington, and/or occupied by Borough employees and used for official business of the Borough of Pennington.

PARKS AND RECREATIONAL FACILITIES shall include all public parks, playgrounds, ball fields, swimming pools, gardens, plazas publicly owned or leased by the Borough of Pennington and all property owned or leased by the Borough upon which the public is invited or upon which the public is permitted and where individuals gather for recreational activities, including all areas adjacent to such facilities, including, but not limited to, any sidewalk, parking area, driveway or drive aisle.

SMOKING means and includes inhaling or exhaling the smoke from, or the burning or possession of a lighted cigar, cigarette, pipe or any other matter or substance which contains tobacco or any other matter that can be smoked, or the inhaling or exhaling of smoke.

Section 192-11. Prohibition of smoking in public places; signs.

- A. Municipal Buildings. Smoking shall be prohibited in all Municipal Buildings and within a thirty-five-foot radius of the front entrance of all Municipal Buildings. No-smoking signs or the international no-smoking symbol (consisting of a pictorial representation of a burning cigarette enclosed in a red circle with a diagonal red line through it) shall be clearly, sufficiently and conspicuously posted at the front entrances of all buildings where smoking is prohibited by this article. The signs shall be clearly visible to the public and shall contain letters or a symbol which contrast in color with the sign, indicating that smoking is prohibited in the building and within the proscribed 35-foot radius. The sign shall also indicate that violators are subject to a fine.
- B. Parks and Recreational Facilities. Smoking shall be prohibited in all public parks and recreation facilities owned or leased by the Borough of Pennington and all property owned or leased by the Borough upon which the public is invited or upon which the public is permitted and where individuals gather for recreational activities, including all area adjacent to such facilities, including, but not limited to any sidewalk, parking area, driveway or drive aisle. ~~which have been designated with no smoking signs. Smoking will be allowed by individuals who are outside of a thirty five-foot radius of non-smoking individuals and recreation structures located on park and recreational land owned or leased by the Borough of Pennington.~~ No-smoking signs or the international no-smoking symbol (consisting of a pictorial representation of a burning cigarette enclosed in a red circle with a diagonal red line through it) shall be clearly posted in areas regulated by this article. The sign shall also indicate that violators are subject to a fine. ~~However, the posting of said signs shall not congest the overall appearance of the areas regulated by this chapter nor impose an inordinate expense upon the Borough of Pennington.~~
- C. Municipal Vehicles. Smoking shall be prohibited in any vehicle registered to the Borough of Pennington.

Section 192-12. Enforcement.

The enforcement authority of this chapter shall be the Business Administrator, Public Safety Director, Health Officer or their designees.

Section 192-13. Violations and penalties.

Any person who violates any provision of this article shall be subject to a fine of not less than \$100 for the first offense, \$250 for the second offense and \$500 for each subsequent offense.

2. Chapter 143, concerning Parks and Recreation Areas, in particular Section 143-3 concerning Prohibited Uses of Park Facilities, shall be amended by a new subsection I of section 143-3 as follows:

I. No person shall smoke or be in possession of a lighted cigar, cigarette, pipe or any other matter or substance which can be smoked in violation of Chapter 192, Article III, of the Code of the Borough of Pennington.

3. In the event any part of this Ordinance is found to be invalid for any reason by any court of competent jurisdiction, such judgment shall be limited in its effect to the part or parts of the Ordinance actually adjudged to be invalid, and the remaining parts of this Ordinance shall be deemed severable therefrom and shall not be affected.

4. This ordinance shall take effect upon final passage and publication in accordance with law.

Mr. Marciante asked why this ordinance is needed. Mrs. Heinzl stated that Mayor Persichilli brought this ordinance back from a Municipal Alliance meeting and municipalities formerly fell under State regulations with regard to smoking in public places and now we can enact our own ordinance. Mrs. Heinzl stated that in addition the Borough can get recognition for having this ordinance under the Mayor's Wellness Campaign and would get points under the Sustainable Jersey program. Mrs. Heinzl stated that as Joann Held mentioned the Borough is working towards certification for Sustainable Jersey and if we can get 150 points we would qualify as a Bronze Community which would gain us access to grants and the like. Mrs. Heinzl stated that she would like to say that she thought Joann Held did a great presentation and through working with her on the Sustainable Jersey project we have been introduced to some really good policies like the Complete Streets Policy. Mrs. Marciante asked if Howe Commons would fall under this ordinance. Mr. Lawver stated that is private property and this ordinance would pertain to public property. Mr. Lawver stated that this would pertain to Borough parks, the Municipal Building, the Public Works Facility, Borough owned vehicles etc. Mr. Marciante asked if that meant that employees could not walk outside and have a cigarette. Mrs. Heinzl stated not in front of the building. Mr. Lawver stated that they can't smoke in the trucks as they are going down the street. Mr. Meytrott stated that this came up at the Municipal Alliance meeting through a presentation by Barbara Spectra who is the Director of the Mercer Council on Alcohol and Drug Dependency. Mr. Meytrott stated that the concern is with smoking tobacco and e-cigarettes and things of that nature. Mr. Lawver stated that he did not see anything about e-cigarettes but if Council is going to do this, then it should include e-cigarettes. Mr. Lawver stated that it also does not address chewing tobacco and that should be included as well. Mr. Marciante was not in favor of an ordinance regulating smoking. Mr. Lawver stated that he would propose adding vaping and chewing tobacco to the ordinance. Mr. Bliss was authorized to make adjustments to the ordinance to include vaping and chewing tobacco and the ordinance would be considered for introduction at the July meeting.

Professional Reports

Mr. Bliss reminded Mayor and Council of the need for a closed session.

Public Comment Period

Mayor Persichilli asked that anyone wishing to speak please come forward and state their name and address for the record and limit comments to the Governing Body to a maximum of 3 minutes.

There were no comments from the public.

At 8:34 pm, Mr. Lawver excused himself from the Closed Session and the remainder of the regular meeting.

Closed Session

AT, 8:34PM, 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:

- PSE&G – Lease Negotiation

AT, 8:58PM, Mayor and Council returned to open session.

Mr. Marciante stated that he contacted Pegasus Investments in California and they lease the bank on the corner of Main and Delaware to Sun Bank. Mr. Marciante stated that Sun Bank does not have any issue with putting the clock on the corner, but Pegasus Investments wants a return on their money. Mr. Marciante stated that Pegasus is not opposed to having the clock on their property, but they want the Borough to make them an

offer. After some discussion, Mr. Marciante was instructed to come up with a proposal.

Council Member Griffiths made a motion to adjourn the meeting, second by Council Member Marciante.

Respectfully submitted,

Elizabeth Sterling
Borough Clerk