

**Pennington Borough Council
Regular Meeting – January 9, 2017**

Mayor Persichilli called the Regular Meeting of the Borough Council to order at 7:27 pm. Borough Clerk Betty Sterling called the roll, Council Members Chandler, Griffiths, Lawver, Marciante and Mills in attendance. Mrs. Gnatt was absent.

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

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

Open to the Public – Agenda Items Only

Mayor Persichilli read the following statement:

The meeting is now 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.

Closed Session

AT, 7:29 PM, BE IT RESOLVED, that Mayor and Council shall hereby convene in closed session for the purposes of discussing a subject or subjects permitted to be discussed in closed session by the Open Public Meetings Act, to wit:

- Tax Appeal – Attorney Client Privilege
- Proposed consent to Verizon Wireless installations

AT, 7:56 PM, Mayor and Council returned to open session.

Approval of Minutes

Council Member Chandler made a motion to approve the minutes of the December 5, 2016 Regular Meeting, second by Council Member Mills with all members present voting in favor with the exception of Mr. Griffiths who abstained.

Council Member Chandler made a motion to approve the minutes of the December 12, Special Meeting, second by Council Member Griffiths with all members present voting in favor.

Council Member Chandler made a motion to approve the minutes of the December 28, 2016, Regular Meeting, second by Council Member Griffiths with all members present voting in favor with the exception of Mr. Lawver who abstained.

Committee Reports

Planning & Zoning / Open Space – No report.

Public Safety / Personnel – Mr. Marciante reported that by the end of the week the radios and decals will be installed in the new vehicle and it should be on the road soon. Mr. Marciante reported that the Police Department is up to full force. Mr. Marciante reported that fifteen tickets were issued throughout the Borough for not removing snow from sidewalks.

Mr. Marciante stated that the Personnel Committee has agreed that Mr. Smith be permitted to hire an intern at no charge to the Borough to gain experience and see where it leads down the road.

Public Works/ Library / Shade Tree / Senior Advisory – Mr. Lawver had no report.

Parks and Recreation – Mrs. Mills had no report.

Finance – Mr. Griffiths had no report. .

Historic Preservation / Board of Health / Environmental / Economic Development – Mrs. Chandler reported that the survey of the Historic District is completed and with the survey in hand they will be working on getting the CLG status.

Mrs. Chandler reported that the Board of Health had its annual joint meeting in December.

Mrs. Chandler reported that Economic Development will be holding their annual Business of the Year event on January 31, 2017 and this year the Pennington Fire Department will be receiving an award. Mrs. Chandler stated that the Historic Preservation Commission will be giving an award as well but a decision on that has not been made yet.

Mrs. Chandler stated that she has been discussing with Mrs. Heinzl the idea of formulating a summer intern program and she is willing to take the lead on that project. Mrs. Chandler stated that it is important to come up with a process to follow. Mrs. Chandler asked Council Members to consult their various boards and commissions to see if there is a need for intern services.

Ordinances for Introduction

Mayor Persichilli read Ordinance 2017-1 by title.

**BOROUGH OF PENNINGTON
ORDINANCE 2017 - 1**

BOND ORDINANCE PROVIDING FOR THE FUNDING OF AN EMERGENCY APPROPRIATION FOR ADDITIONAL COSTS NOT COVERED BY TWO GRANTS EXPECTED TO BE RECEIVED FROM THE STATE OF JERSEY DEPARTMENT OF TRANSPORTATION FOR IMPROVEMENTS TO KING GEORGE ROAD AND PARK AVENUE IN AND BY THE BOROUGH OF PENNINGTON, IN THE COUNTY OF MERCER, NEW JERSEY, APPROPRIATING \$40,000 THEREFOR AND AUTHORIZING THE ISSUANCE OF \$40,000 BONDS OR NOTES OF THE BOROUGH TO FINANCE PART OF THE COST THEREOF.

BE IT ORDAINED BY THE BOROUGH COUNCIL OF THE BOROUGH OF PENNINGTON, IN THE COUNTY OF MERCER, NEW JERSEY (not less than two-thirds of all members thereof affirmatively concurring) AS FOLLOWS:

Section 1. The improvement described in Section 3(a) of this bond ordinance is hereby authorized to be undertaken by the Borough of Pennington, in the County of Mercer, New Jersey (the "Borough") as a general improvement. For the improvement or purpose described in Section 3(a), there is hereby appropriated the sum of \$40,000 in addition to the two grants in the aggregate amount of \$572,932 expected to be received from the State of New Jersey Department of Transportation (together, the "State Grants"). Pursuant to N.J.S.A. 40A:2-11(c), no down payment is provided for the costs of the improvements since the project described in Section 3(a) hereof is being partially funded by the State Grants.

Section 2. In order to finance the cost of the improvement or purpose, negotiable bonds are hereby authorized to be issued in the principal amount of \$40,000 pursuant to the Local Bond Law. In anticipation of the issuance of the bonds, negotiable bond anticipation notes are hereby authorized to be issued pursuant to and within the limitations prescribed by the Local Bond Law.

Section 3. (a) The improvement hereby authorized and the purpose for the financing of which the bonds are to be issued is the funding of an emergency appropriation authorized by Resolution #2016-12.6, duly adopted on December 12, 2016, for additional costs for improvements to King George Road and Park Avenue, including all work and materials necessary therefor and incidental thereto not covered by the State Grants.

(b) The estimated maximum amount of bonds or bond anticipation notes to be issued for the improvement or purpose is as stated in Section 2 hereof.

(c) The estimated cost of the improvement or purpose is equal to the amount of the appropriation herein made therefor.

Section 4. All bond anticipation notes issued hereunder shall mature at such times as may be determined by the chief financial officer; provided that no bond anticipation note shall mature later than one year from its date. The bond anticipation notes shall bear interest at such rate or rates and be in such form as may be determined by the chief financial officer. The chief financial officer shall determine all matters in connection with bond anticipation notes issued pursuant to this bond ordinance, and the chief financial officer's signature upon the bond anticipation notes shall be conclusive evidence as to all such determinations. All bond anticipation notes issued hereunder may be renewed from time to time subject to the provisions of the Local Bond Law. The chief financial officer is hereby authorized to sell part or all of the bond anticipation notes from time to time at public or private sale and to deliver them to the purchasers thereof upon receipt of payment of the purchase price plus accrued interest from their dates to the date of delivery thereof. The chief financial officer is directed to report in writing to the governing body at the meeting next succeeding the date when any sale or delivery of the bond anticipation notes pursuant to this bond ordinance is made. Such report must include the amount, the description, the interest rate and the maturity schedule of the bond anticipation notes sold, the price obtained and the name of the purchaser.

Section 5. The Borough hereby certifies that it has adopted a capital budget or a temporary capital budget, as applicable. The capital or temporary capital budget of the Borough is hereby amended to conform with the provisions of this bond ordinance to the extent of any inconsistency herewith. To the extent that the purposes authorized herein are inconsistent with the adopted capital or temporary capital

budget, a revised capital or temporary capital budget has been filed with the Division of Local Government Services.

Section 6. The following additional matters are hereby determined, declared, recited and stated:

(a) The improvement or purpose described in Section 3(a) of this bond ordinance is not a current expense. It is an improvement or purpose that the Borough may lawfully undertake as a general improvement, and no part of the cost thereof has been or shall be specially assessed on property specially benefitted thereby.

(b) The period of usefulness of the improvement or purpose within the limitations of the Local Bond Law, according to the reasonable life thereof computed from the date of the bonds authorized by this bond ordinance, is 10 years.

(c) The Supplemental Debt Statement required by the Local Bond Law has been duly prepared and filed in the office of the Clerk, and a complete executed duplicate thereof has been filed in the office of the Director of the Division of Local Government Services in the Department of Community Affairs of the State of New Jersey. Such statement shows that the gross debt of the Borough as defined in the Local Bond Law is increased by the authorization of the bonds and notes provided in this bond ordinance by \$40,000, and the obligations authorized herein will be within all debt limitations prescribed by the Local Bond Law.

(d) An aggregate amount not exceeding \$1,500 for items of expense listed in and permitted under N.J.S.A. 40A:2-20 is included in the estimated cost indicated herein for the purpose or improvement.

Section 7. The Borough hereby declares the intent of the Borough to issue bonds or bond anticipation notes in the amount authorized in Section 2 of this bond ordinance and to use the proceeds to pay or reimburse expenditures for the costs of the purposes described in Section 3(a) of this bond ordinance. This Section 7 is a declaration of intent within the meaning and for purposes of Treasury Regulations.

Section 8. Any grant moneys in addition to the State Grants referred to in Section 1 hereof, received for the purpose described in Section 3(a) hereof shall be applied either to direct payment of the cost of the improvement or to payment of the obligations issued pursuant to this bond ordinance. The amount of obligations authorized but not issued hereunder shall be reduced to the extent that such funds are so used.

Section 9. The chief financial officer of the Borough is hereby authorized to prepare and to update from time to time as necessary a financial disclosure document to be distributed in connection with the sale of obligations of the Borough and to execute such disclosure document on behalf of the Borough. The chief financial officer is further authorized to enter into the appropriate undertaking to provide secondary market disclosure on behalf of the Borough pursuant to Rule 15c2-12 of the Securities and Exchange Commission (the "Rule") for the benefit of holders and beneficial owners of obligations of the Borough and to amend such undertaking from time to time in connection with any change in law, or interpretation thereof, provided such undertaking is and continues to be, in the opinion of a nationally recognized bond counsel, consistent with the requirements of the Rule. In the event that the Borough fails to comply with its undertaking, the Borough shall not be liable for any monetary damages, and the remedy shall be limited to specific performance of the undertaking.

Section 10. The full faith and credit of the Borough are hereby pledged to the punctual payment of the principal of and the interest on the obligations authorized by this bond ordinance. The obligations shall be direct, unlimited obligations of the Borough, and the Borough shall be obligated to levy *ad valorem* taxes upon all the taxable real property within the Borough for the payment of the obligations and the interest thereon without limitation of rate or amount.

Section 11. This bond ordinance shall take effect 20 days after the first publication thereof after final adoption, as provided by the Local Bond Law.

Council Member Griffiths made a motion to introduce Ordinance 2017-1, second by Council Member Chandler. Mr. Lawver asked for an explanation. Mrs. Sterling explained that Mr. McManimon recommended adopting this ordinance to fund the emergency resolution that was done in December so that we won't start off this budget year having to budget and additional \$40,000 to cover the shortfall between the DOT grants and the contract amount. Upon a roll call vote all members present voted in favor.

Mayor Persichilli read Ordinance 2017-2 by title.

**BOROUGH OF PENNINGTON
ORDINANCE NO. 2017-2**

**ORDINANCE AMENDING CHAPTER 159 OF THE BOROUGH
CODE TO AUTHORIZE THE SUPERINTENDENT OF PUBLIC WORKS
TO HELP ENFORCE THE GREASE INTERCEPTOR ORDINANCE**

WHEREAS, owners of properties in which any food establishment or facility is located in the

Borough of Pennington must install and maintain one or more exterior grease interceptors to prevent the discharge of grease and oil into the sewer system in excess of a maximum permitted concentration;

WHEREAS, maintenance of exterior grease interceptors includes regular removal of intercepted grease and oil to limit accumulation in excess of a specified maximum, the removal and hauling of grease and oil by a licensed waste disposal or rendering firm, and the keeping of accurate records of the dates of cleaning and the means of disposal;

WHEREAS, enforcement of the ordinance includes inspection of properties having exterior grease interceptors to measure concentrations and make copies of pertinent documents;

WHEREAS, the grease interceptor ordinance currently authorizes the Department of Health as the Borough's authorized representative for enforcement of the ordinance;

WHEREAS, Borough Council seeks to augment the enforcement resources of the Department of Health by authorizing as well the Superintendent of Public Works to make inspections and enforce the ordinance;

NOW, THEREFORE, BE IT ORDAINED, by the Borough Council of the Borough of Pennington, that Section 159-13.6 of the Code of the Borough of Pennington, concerning interceptor operation, maintenance and inspection, is hereby amended (with new language underlined, deleted language crossed out) as follows:

- A. Except for food preparation byproducts and/or wash water waste fat, grease and oil shall be removed to the greatest extent possible upstream of grease interceptors and disposed of in accordance with all applicable regulations.
- B. None of the following agents shall be placed directly into a grease interceptor or into any drain that leads to an interceptor:
 - (1) Emulsifiers, de-emulsifiers, surface active agents, enzymes, degreasers or any type of product that will liquefy grease interceptor wastes;
 - (2) Any substance that may cause excessive foaming in Borough sanitary sewers; or
 - (3) Any substance capable of passing the solid or semisolid contents of the grease interceptor to the receiving sewer.
- C. The influent to interceptors shall not exceed 140° F. The temperature at the closest point of measurement upstream of the grease interceptor shall be considered equivalent to the temperature of the influent.
- D. Toilets, urinals and other similar fixtures shall not discharge through a grease interceptor.
- E. All exterior grease interceptors shall be maintained by the owner at the owner's expense to ensure at all times that discharge of grease or oil from the property, establishment or facility does not violate this chapter. Maintenance shall include all steps necessary to achieve the intended purpose and maximum recovery of all contents, including floating materials, wastewater, bottom sludge and solids on a periodic basis. Interceptors shall be serviced at a frequency required to limit grease accumulation to not more than 25% of the volume between the bottom of the interceptor and the outlet pipe invert or more frequently as required by the Department of Health to prevent discharge of grease or oil into the sewer system. The initial service interval shall not exceed six months. The removal and hauling of grease and oil shall be performed by a licensed waste disposal or rendering firm. The owner shall maintain accurate manifests and logs of the dates of cleaning and the means of disposal of grease and oil. These records shall be subject to inspection by the Department of Health and the Superintendent of Public Works.
- F. If the exterior grease interceptor discharge exceeds the maximum permissible concentration, the Borough may require the owner, upon notice pursuant to § 159-34, to increase the grease interceptor maintenance frequency and/or repair, replace or upgrade the interceptor at the owner's expense. The owner shall install a manhole immediately downstream of the grease interceptor to permit observation, sampling and measurement of the discharge of grease and oil.
- G. An authorized representative of the Department of Health or the Superintendent of Public Works bearing proper credentials and identification shall be permitted to enter and inspect all properties having exterior grease interceptors upon reasonable notice. This right of inspection shall include the right to measure, observe, monitor, sample, test, record, review and make copies of all pertinent documents.

BE IT FURTHER ORDAINED, that this ordinance shall be effective upon passage and publication as required by law.

Council Member Lawver made a motion to introduce Ordinance 2017-2, second by Council Member Mills. Mrs. Heinzl stated that this brings the Public Works Superintendent into the review and inspection of the records and also the ability to request and inspect grease interceptors. Upon a roll call vote all members present voted in favor.

New Business

**BOROUGH OF PENNINGTON
RESOLUTION #2017 - 1.14**

**RESOLUTION AUTHORIZING AND APPROPRIATING A TEMPORARY BUDGET FOR THE
BOROUGH OF PENNINGTON FOR THE YEAR 2017**

WHEREAS, the Local Budget Law (N.J.S.A. 40A:4-19) provides that where any contract, commitments or payments are to be made prior to the final adoption of the 2016 budget, temporary appropriations in an amount not to exceed 26.25% of the total appropriations for the prior year shall be made for the purpose and amounts required in the manner and time therein provided; and

WHEREAS, 26.25% of the total appropriations of the 2016 budget exclusive of any appropriations for interest, debt redemption charges, Capital Improvement Fund and Public Assistance, in the said budget, is the sum of \$ 850,847.70 for the current fund budget and \$ 263,542.39 for the water and sewer utility fund;

NOW, THEREFORE, BE IT RESOLVED, that the attached temporary appropriations be made and that a certified copy of this resolution be transmitted to the Borough Finance Officer.

Record of Council Vote on Passage

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

Council Member Griffiths made a motion to approve Resolution 2017-1.14, second by Council Member Chandler with all members present voting in favor.

**BOROUGH OF PENNINGTON
RESOLUTION #2017- 1.15**

**A RESOLUTION AUTHORIZING AN AGREEMENT WITH VALLEY HEALTH MEDICAL
GROUP TO PERFORM ALCOHOL AND DRUG TESTING SERVICES FOR THE BOROUGH OF
PENNINGTON FOR THE YEAR 2017**

WHEREAS, the Borough is required to provide an alcohol and controlled substances program for CDL (commercial drivers license) drivers and other participants in compliance with 49 CFR 382 and 49 CFR 40; and

WHEREAS, Valley Health Medical Group is experienced in and capable of providing such services; and

WHEREAS, this contract shall be for specific services set forth in the Agreement attached to this resolution;

WHEREAS, the Borough agrees to the fees per service (ranging from \$40.00 to \$180.00) set forth in the Fee Schedule included in the Agreement;

WHEREAS, the services authorized by the contract are professional services and the amount of expense expected to be incurred under this contract for these services is in any event substantially below the threshold for public bidding;

WHEREAS, Valley Health Medical Group has completed and submitted a sworn Business Entity Disclosure Certification which certifies that neither the group nor any of its members has made or shall make any political contribution prohibited by relevant provisions of N.J.S.A. 19:44A-20.5 or Chapter 15, Article I of the Pennington Borough Code, regarding pay-to-play;

WHEREAS, Valley Health Medical Group shall comply with requirement for Anti-Discrimination and Affirmative Action as set forth in the annexed Schedule A;

WHEREAS, total fees of Valley Health Medical Group under this contract, including expenses, shall not exceed \$1,200.00 without the prior written approval of Borough Council; and

WHEREAS, the Chief Financial Officer of the Borough has certified that funds are available for this contract in Account #: 7-01-26-305-000-250.

NOW THEREFORE BE IT HEREBY RESOLVED, that the Mayor of the Borough, with the attestation of the Clerk, and subject to such changes in form as may be required by the Borough Attorney, is hereby authorized to execute the attached Agreement between the Borough and Valley Health Medical Group for the provision of Alcohol and Drug Testing Services for 2017.

Record of Council Vote on Passage

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

Council Member Lawver made a motion to approve Resolution 2017-1.15, second by Council Member Chandler with all members present voting in favor.

**BOROUGH OF PENNINGTON
RESOLUTION #2017 – 1.16**

RESOLUTION ADOPTING A CASH MANAGEMENT PLAN

WHEREAS, the State of New Jersey amended the State laws concerning investment of local government funds with the adoption of Chapter 148, P.L. 1997, and

WHEREAS, these new laws expand the responsibility of the Governing Body and the role of the Chief Financial Officer in cash management, and

WHEREAS, these new laws require the adoption of a Cash Management Plan, and

WHEREAS, the Chief Financial Officer has reviewed the new laws and drafted a Cash Management Plan to conform to those laws and to the current banking and investment practices of the Borough,

NOW, THEREFORE BE IT RESOLVED, by the Borough Council of the Borough of Pennington, County of Mercer, State of New Jersey that the attached Cash Management Plan is hereby adopted, and

BE IT FURTHER RESOLVED, that the Chief Financial Officer is hereby directed to present this resolution and adopted Cash Management Plan to the State of New Jersey and to all designated depositories and asset managers in accordance with the requirements of the applicable State laws.

Record of Council Vote on Passage

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

Council Member Griffiths made a motion to approve Resolution 2017-1.16, second by Council Member Lawver with all members present voting in favor.

**BOROUGH OF PENNINGTON
RESOLUTION #2017 – 1.17**

RESOLUTION ESTABLISHING ON-LINE BANKING AND CREDIT CARD ACCEPTANCE FOR THE PAYMENT OF TAX AND UTILITY CHARGES FOR THE YEAR 2017

WHEREAS, under New Jersey State Statute 40A:5-43 and New Jersey Administrative Code 5:30-9.1 through 5:30-9.10, local municipal units are permitted to offer residents electronic payments; and

WHEREAS, subject to those provisions the Borough of Pennington seeks to offer to its residents on-line payment for tax and utility charges in the form of on-line banking and credit cards; and

WHEREAS, the Borough’s current tax and utility software provider, Edmunds & Associates, has the ability to act as service provider for the acceptance of electronic payments, and will do so at a charge of \$1,200.00 per billing module, for a total of \$2,400.00 per year, and

WHEREAS, The Bank of Princeton has agreed to reimburse the Borough the fees charged by Edmunds & Associates, as described above; and

WHEREAS, under the provisions of the aforementioned statute and administrative code, Edmunds & Associates has named Links2Gov as their secured payment provider; and

WHEREAS, the charges paid by the property owner to the provider will be \$1.05 per banking

transaction, and up to 3.0% on each credit card transaction; and

WHEREAS, this agreement shall be in place for one year;

NOW, THEREFORE, BE IT RESOLVED, that the Borough Council of the Borough of Pennington approves the acceptance of electronic payments as outlined above.

BE IT FURTHER RESOLVED, that a copy of this resolution be forwarded to the Chief Financial Officer and the Tax and Utility Collector.

Record of Council Vote on Passage

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

Council Member Griffiths made a motion to approve Resolution 2017-1.17, second by Council Member Lawver with all members present voting in favor.

**BOROUGH OF PENNINGTON
RESOLUTION 2017-1.18**

**RESOLUTION AUTHORIZING RETENTION OF SERVICE FOR CONTINUING DISCLOSURE
AUDIT IN CONNECTION WITH ISSUANCE OF BONDS BY THE BOROUGH**

WHEREAS, in connection with the issuance of bonds the Borough has covenanted with bondholders to provide certain secondary market disclosure information on an annual basis to the Nationally Recognized Municipal Securities Information Repositories (pre-2009) and to the Municipal Securities Rulemaking Board’s Electronic Municipal Market Access Data Port (2009 to present), including audited financial statements, municipal budgets and/or other financial and operating data and ratings changes;

WHEREAS, by Resolution 2014-9.4 adopted on September 8, 2014, Borough Council authorized the Chief Financial Officer to engage the services of Phoenix Advisors, LLC, of Bordentown, New Jersey, to conduct a Disclosure Audit related to bonds previously issued by the Borough;

WHEREAS, the purpose of the Disclosure Audit was to ensure Borough compliance with its continuing disclosure obligations under bond covenants and SEC regulations;

WHEREAS, Borough Council now seeks to authorize an agreement with Phoenix Advisors, LLC, to continue its services in the current year to ensure continued disclosure compliance by the Borough;

WHEREAS, a proposed form of Agreement submitted by Phoenix Advisors to the Borough’s Chief Financial Officer, by letter dated December 15, 2016, is attached to this resolution;

WHEREAS, the proposed Agreement would retain Phoenix Advisors to perform in this fiscal year continuing disclosure agent service for an annual fee of \$950 for up to three (3) outstanding issues plus \$100 for each additional outstanding bond issue;

WHEREAS, the proposed Agreement would also name Phoenix Advisors as the Borough’s Independent Registered Municipal Advisor of Record, for no additional fee, to ensure its availability to answer questions and provide preliminary project and financing analysis for the Borough as needed;

WHEREAS, Phoenix Advisors agrees to comply with Anti-Discrimination and Affirmative Action laws as set forth in the attached Exhibit A;

WHEREAS, the funds for this service are available in the Borough’s operating budget in account #: 7-01-20-130-000-251;

NOW, THEREFORE, B E IT RESOLVED, by the Borough Council of the Borough of Pennington, that the Chief Financial Officer is hereby authorized to retain Phoenix Advisors LLC for the aforesaid services, as provided in the attached Agreement, for a sum not to exceed \$950.

Record of Council Vote on Passage

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

Council Member Griffiths made a motion to approve Resolution 2017-1.18, second by Council Member Lawver with all members present voting in favor.

**BOROUGH OF PENNINGTON
RESOLUTION #2017 – 1.19**

**RESOLUTION AUTHORIZING A CONTRACT WITH CM3 BUILDING SOLUTIONS ON
BEHALF OF INVENSYS BUILDING SYSTEMS FOR THE SUPPORT AND MAINTENANCE OF
ITS PROPRIETARY SOFTWARE AND FOR RELATED EQUIPMENT REPAIR IN
CONNECTION WITH OPERATION OF THE HVAC SYSTEM FOR BOROUGH HALL FOR THE
YEAR 2017**

WHEREAS, Invensys Building Systems (“Invensys”) is the designer of specialized software and equipment for the monitoring and regulation of HVAC systems and the identification of system-related problems requiring maintenance and repair; and Invensys has designed and installed such a control system for Borough Hall;

WHEREAS, the central component of the Invensys control system installed in Borough Hall for the monitoring and regulation of the HVAC system is a central control module designed and constructed by Invensys which consists of proprietary hardware and software and is connected to an Invensys-designed circuit of sensors throughout the building;

WHEREAS, CM3 Building Solutions (“CM3”) is an authorized factory representative of Invensys and is licensed by Invensys to conduct all operations necessary to support and maintain the proprietary hardware and software of Invensys;

WHEREAS, the Borough has entered into an agreement with CM3 on behalf of Invensys for a term of two years beginning January 1, 2016, subject to annual renewals and the availability of funding as required by law thereafter, for the maintenance of the central control module and related circuitry and sensors and for the performance of equipment repairs as needed by this control system (“Agreement”);

WHEREAS, the most important services to be provided by CM3 on behalf of Invensys under the proposed agreement relate to the support and maintenance of the central control module and related proprietary hardware and software used to monitor and regulate the HVAC system;

WHEREAS, the equipment repair services to be performed by CM3 on behalf of Invensys under the proposed agreement are incidental to and interrelated with maintenance of its proprietary hardware and software and combining responsibility for maintenance of that proprietary system in a single contract with responsibility for related equipment repair ensures accountability for repairs;

WHEREAS, the contract price for services relating solely to repair of equipment is below the threshold for public bidding, and the amount in question combined with the problems inherent in coordinating repairs with the use of proprietary software makes solicitation of competitive quotations not practicable;

WHEREAS, the Borough now seeks to renew the Agreement pursuant to its terms for the year 2017, at a price not to exceed \$14,532 for the year;

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

WHEREAS, prior to entering into the contract, CM3 and Invensys shall provide sworn statements made under penalty of perjury that neither they nor any of their covered principals, partners, officers or subsidiaries has made or will make during the term of this contract a political contribution in violation of the Code of the Borough of Pennington or N.J.S.A. 19:44A-20.5 prohibiting certain political contributions by business entities awarded contracts by the Borough for professional services;

NOW, THEREFORE, BE IT RESOLVED, by the Borough Council of the Borough of Pennington, that the Mayor and Borough Clerk, with the advice of the Borough Attorney, are hereby authorized to take such steps as necessary to renew the aforesaid Agreement for a contract price not to exceed \$14,532 for 2017.

Council Member Lawver made a motion to approve Resolution 2017-1.19, second by Council Member Mills. Mr. Lawver stated that the HVAC system has been limping along and Mr. Smith is working on a plan for replacement. Mr. Lawver asked if there is a cancellation clause in the agreement so that we are not locked in for the entire year. Mr. Smith stated that he could reach out to CM3 to get that answered. Mr. Griffiths asked if the new HVAC system is planned for 2017. Mr. Smith stated that he would like to do it in phases over a couple years. Mr. Smith stated that the unit over the Police Department is the worst and needs to be addressed first. Mr. Smith stated that he is trying to coordinate the HVAC work along with the possible roof replacement. After a brief discussion of the condition of the system and the roof, Council Members voted to table the resolution until the February meeting to get answers regarding the cancellation clause.

**BOROUGH OF PENNINGTON
RESOLUTION 2017 – 1.20**

**RESOLUTION CONFIRMING APPOINTMENT OF
SUPERINTENDENT OF PUBLIC WORKS**

WHEREAS, Richard Smith was appointed Superintendent of Public Works effective August 1,

2014; and he has served in that capacity without interruption to date;

WHEREAS, the Code of the Borough of Pennington provides that the Mayor shall annually nominate and, by and with the consent of Borough Council, appoint a qualified Superintendent of Public Works (Section 39-2);

WHEREAS, the Borough Code further provides that the Superintendent of Public Works shall serve until January 1 next succeeding the date of appointment and until a successor has qualified (Section 39-4);

WHEREAS, by Resolution 2015-3.11, Richard Smith’s re-appointment as Superintendent of Public Works, for his first full year, was formally approved effective January 1, 2015;

NOW, THEREFORE, BE IT RESOLVED, by the Borough Council of the Borough of Pennington, that Richard Smith again is hereby appointed as Superintendent of Public Works effective January 1, 2017.

Record of Council Vote on Passage

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

Council Member Lawver made a motion to approve Resolution 2017-1.20, second by Council Member Griffiths with all members present voting in favor.

**BOROUGH OF PENNINGTON
RESOLUTION #2017 – 1.21**

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 \$ 95,513.92 from the following accounts:

Current	\$ 16,736.55
W/S Operating	\$ 66,068.15
Developers Escrow	\$ 9,653.50
Grant Fund	\$ 555.64
Animal Control Fund	\$ 80.77
Recreation Trust	\$ 11.25
Other Trust Fund	\$ 1,946.08
General Capital	\$ 396.88
Water/Sewer Capital	\$ 65.10
TOTAL	\$ 95,513.92

Record of Council Vote on Passage

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

Council Member Griffiths made a motion to approve Resolution 2017-1.21, second by Council Member Mills with all members present voting in favor.

**BOROUGH OF PENNINGTON
RESOLUTION #2017 – 1.22**

A RESOLUTION AUTHORIZING SHARED SERVICES AGREEMENT WITH THE BOARD OF FIRE COMMISSIONERS OF HOPEWELL TOWNSHIP FIRE DISTRICT NO. 1 TO PROVIDE ALL REQUIRED FIRE INSPECTION SERVICES FOR THE PERIOD JANUARY 1, 2017 THROUGH DECEMBER 31, 2018

WHEREAS, the Borough of Pennington (“Borough”) is responsible for certain fire inspection services pursuant to the Uniform Fire Safety Act (N.J.S.A. 52:27D-195, et. seq.) (the “Fire Safety Act”); and

WHEREAS, pursuant to the Uniform Shared Services and Consolidation Act (N.J.S.A. 40A:65-1, et seq.) the Borough desires to contract with the Board of Fire Commissioners of Hopewell Township Fire District No. 1 (the “Board”) for the provision of fire inspection services and other certain services required by the Fire Safety Act; and

WHEREAS, the Borough and the Board are both “local units” and the fire inspection services and other certain services required by the Fire Safety Act are “shared services” within the meaning of N.J.S.A. 40A:65-3;

WHEREAS, the term of this Shared Services Agreement shall be two years, from January 1, 2017 through December 31, 2018;

NOW, THEREFORE, BE IT RESOLVED, by the Borough Council of the Borough of Pennington, that the Mayor of the Borough, with the attestation of the Borough Clerk, is hereby authorized to enter into and execute on behalf of the Borough a Shared Services Agreement providing for the aforesaid services in substantially the form annexed to this Resolution, subject to final approval as to form by the Borough Attorney.

Record of Council Vote on Passage

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

Council Member Marciante made a motion to approve Resolution 2017-1.22, second by Council Member Chandler with all members present voting in favor.

**BOROUGH OF PENNINGTON
RESOLUTION 2017 – 1.23**

RESOLUTION AUTHORIZING SHARED SERVICES AGREEMENT WITH THE TOWNSHIP OF MONTGOMERY FOR HEALTH SERVICES

WHEREAS, pursuant to the Uniform Shared Services and Consolidation Act, N.J.S.A. 40A:65-1, et seq.) and Title 8, Chapter 52 of the New Jersey Administrative Code, the Borough of Pennington seeks to enter into a contract with the Township of Montgomery (“Montgomery”) for the provision of Health Services to the Borough;

WHEREAS, the Montgomery Health Department is an experienced health services agency qualified to perform public health services as provided by law, currently serving 23,000 Montgomery residents in Somerset County;

WHEREAS, the Montgomery Health Department will provide health services to the Borough of a technical and professional nature as required by N.J.S.A. 26:A2-1, et seq., N.J.S.A. 40A:65-1 et seq, and N.J.S.A. 26:1A-15;

WHEREAS, the Montgomery Health Department will be responsible for Public Health Administration, Health Education, Environmental Health and Adult Preventive Health Programs in the Borough;

WHEREAS, all services performed by the Montgomery Health Department on behalf of the Borough shall use either Health Department staff or contracts with outside public health agencies and shall comply with all applicable State laws, regulations and standards, including the standards set forth in Title 8, Chapter 52 of the New Jersey Administrative Code;

WHEREAS, Montgomery represents that it currently has the following staffing:

- * Health Officer
- * Two (2) Registered Environmental Health Specialists;

- * Administrative Assistant;
- * Contract Consulting Health Educator;
- * Contract nursing/immunization audits from the Community Visiting Nurse Association;
- * Women’s Health and cancer screenings through Women’s Health & Counseling Center of Somerville;
- * Adolescent Health Services from HiTops of Princeton;
- * A Communicable Disease Investigator/REHS, to handle routine communicable disease investigations. More complex outbreaks will require consultation with the regional Epidemiologist at Mercer County Division of Health. Tuberculosis investigations will be transferred to the State-designated regional chest clinic;

WHEREAS, the Montgomery Health Department will provide properly licensed personnel within the jurisdiction of the Borough to carry out the public health activities described under “Scope of Services” in the attached Agreement;

WHEREAS, Montgomery will not be responsible for providing the services described under “Exclusions” in the attached Agreement;

WHEREAS, Montgomery will also provide coverage for all after-hours emergency responses, with all after-hours calls to be directed to the Montgomery Police Emergency Communications Center (through Somerset County Dispatch), which will contact the appropriate individual for response;

WHEREAS, the Montgomery Health Officer will participate on the Borough’s behalf in Mercer County’s Governmental Public Health Partnership, which is responsible for regional Community Health Improvement Planning and regional Community Public Health Partnerships;

WHEREAS, the Montgomery Health Department will also partner on the Borough’s behalf with local community stakeholders, including Visiting Nurses, local hospitals, school districts and the Municipal Alliance;

WHEREAS, it is understood that the fee for Montgomery’s services under the contract will be based on a per capita allocation of direct costs associated with performing the services described above, including employee salary, office expenses, subcontractor agreements, equipment and supplies, and personnel training, with the addition of costs for excess mileage and participation in the Mercer Governmental Public Health Partnership;

WHEREAS, the proposed agreement is for a three year period with renewals annually, meaning that it can be effectively terminated, on prescribed notice, at the end of each year;

WHEREAS, the fees for services reflect a two percent (2%) annual increase, with the understanding that if the actual cost of services exceeds the fee in a given year, or, conversely, there is a decline in costs, Montgomery reserves the right to provide the Borough a revised fee for the following year based upon such actual increase or decrease in costs;

WHEREAS, the annual fees which the Borough agrees to pay to Montgomery for services under the contract are as follows:

January 1, 2017 - December 31, 2017:	\$39,720.00
January 1, 2018 - December 31, 2018:	\$40,500.00
January 1, 2019 - December 31, 2019:	\$41,310.00

NOW, THEREFORE, BE IT RESOLVED, by the Borough Council of the Borough of Pennington, that the Mayor, with the attestation of the Borough Clerk, is hereby authorized to enter into a shared services agreement with Montgomery Township for the provision of health services, such agreement to comply in substance with the above recitals and to conform in substance with the proposed agreement annexed to this resolution, subject to final approval as to form by the Borough Attorney.

Record of Council Vote on Passage

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

Council Member Chandler made a motion to approve Resolution 2017-1.23, second by Council Member Griffiths with all members present voting in favor.

**BOROUGH OF PENNINGTON
RESOLUTION 2017 – 1.24**

**RESOLUTION AUTHORIZING SHARED SERVICES AGREEMENT WITH THE TOWNSHIP OF
MONTGOMERY FOR ANIMAL CONTROL SERVICES**

WHEREAS, pursuant to the Uniform Shared Services and Consolidation Act, N.J.S.A. 40A:65-1, et seq.), the Borough of Pennington seeks to enter into a contract with the Township of Montgomery (“Montgomery”) for the provision of Animal Control Services to the Borough;

WHEREAS, Montgomery provides full-service Animal Control to its 23,000 residents and also provides impound and shelter services to South Brunswick Township and Rocky Hill Borough;

WHEREAS, Montgomery will provide Animal Control Services to the Borough equivalent to the services it provides its own municipality, using Montgomery’s own staff or through contracts with outside agencies;

WHEREAS, without limiting the generality of the foregoing, Montgomery will provide a licensed Animal Control Officer and Animal Control Investigator to perform services in accordance with Best Practices promulgated by the New Jersey Department of Health, including but not limited to:

1. respond timely to calls and complaints concerning lost, stray, injured or nuisance domestic animals, as well as suspect rabid wild or domestic animals and vicious dogs;
2. capture stray domestic animals;
3. capture wild animals rabies vectors (eg., raccoons, skunks, groundhogs, foxes and bats) threatening the safety and health of residents;
4. investigate reports of animal bite incidents and vicious dogs, with seizure and impoundment of dogs meeting criteria for being vicious dogs under State law;
5. transport captured animals to impoundment facility;
6. evaluate captured animals being transported as to need for emergency veterinary care and contact veterinarian when necessary;
7. care for, feed and maintain sanitation of animals in the public pound and observe their physical condition and behavior;
8. promote the adoption of animals and support their spaying and neutering;
9. capture, impound and arrange for humane destruction of suspect rabid animals;
10. transport suspect rabies specimens for analysis at the State Public Health Laboratory;
11. investigate animal neglect and cruelty incidents;
12. investigate complaints regarding stray animals and licensed and unlicensed domesticated animals;
13. follow-up of routine dog bites, monitoring and release from home confinement;
14. patrol as appropriate for stray cats and dogs;
15. keep records to document all calls, activities and animals picked up, including the disposition of each animal;
16. issue summons for violations of local or state animal control regulations.

WHEREAS, Montgomery will impound and otherwise house animals from the Borough as needed at Montgomery’s municipal kennel facility, and Montgomery shall provide all normal and customary kennel services that it provides to its own impounded animals;

WHEREAS, Borough residents redeeming or surrendering animals must pay applicable Montgomery shelter fees and these fees will be retained by Montgomery as a host community benefit;

WHEREAS, determination of adoptability or need for euthanasia of any animal will be at the discretion of Montgomery subject to applicable state laws;

WHEREAS, Montgomery will provide coverage for after-hours response to animal control emergencies, which shall include but not be limited to:

1. any sick or threatening animal;

2. animal cruelty;
3. bats in house, if there is possible exposure;
4. dogs at large that are being held by resident or police;

WHEREAS, Montgomery will provide veterinary and animal handling support for one annual rabies vaccination clinic for cats and dogs, at a time and location determined by mutual agreement, with the Borough responsible for providing clerical/administrative support for this clinic;

WHEREAS, Montgomery will provide a monthly report documenting its activities and will maintain associated files according to New Jersey Records Retention standards;

WHEREAS, all services performed under the contract will be performed in accordance with applicable State standards, laws and regulations;

WHEREAS, the following services are not to be covered by the contract:

1. issuance of dog licenses (which shall remain the Borough’s responsibility);
2. capture of nuisance wildlife not presenting a threat to health and safety;
3. deer carcass removal;
4. dog census (which would require an extra fee);
5. initial “Notice of Bite and Confinement” reports (usually prepared by Police Department and forwarded to Animal Control for follow-up);
5. activities commonly known as “Trap/Neuter/Release” or Managed Feral Cat Colonies (with the understanding that Montgomery animal control policy does not support feral cat colonies);

WHEREAS, it is understood that the services provided by Montgomery shall include manpower, vehicle costs, veterinarian bills, euthanasia costs, adoption costs and, except as otherwise specified, all other costs it incurs related to work under the contract;

WHEREAS, it is further understood that the fee for Montgomery’s services under the contract is based on a per capita allocation of direct costs associated with performing the services described above, including employee salary, office expenses, subcontractor agreements, equipment and supplies, and personnel training, with additional costs for excess mileage and overtime;

WHEREAS, the proposed shared services agreement is for a three year period with renewals annually, meaning that it can be effectively terminated, on notice, at the end of each year;

WHEREAS, the fees for services reflect a two percent (2%) annual increase, with the understanding that if the actual cost of services exceeds the fee in a given year, or, conversely, there is a decline in costs, Montgomery reserves the right to provide the Borough a revised fee for the following year based upon such actual increase or decrease in costs;

WHEREAS, the annual fees agreed to be paid to Montgomery for services under the contract are as follows:

January 1, 2017 - December 31, 2017:	\$11,000.00
January 1, 2018 - December 31, 2018:	\$11,200.00
January 1, 2019 - December 31, 2019:	\$11,400.00

WHEREAS, the form of agreement proposed by Montgomery Township is attached;

NOW, THEREFORE, BE IT RESOLVED, by the Borough Council of the Borough of Pennington, that the Mayor, with the attestation of the Borough Clerk, is hereby authorized to enter into a shared services agreement with Montgomery Township complying in substance with the form attached and the related contract proposal, incorporating Best Practices as aforesaid, and subject as to form by the Borough Attorney.

Record of Council Vote on Passage

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

Council Member Lawver made a motion to approve Resolution 2017-1.24, second by Council Member Chandler. Mr. Bliss stated that the first time that this was discussed he recommended that this agreement

include a requirement that Montgomery Township adhere to Best Practices promulgated by the New Jersey Department of Health. Mr. Bliss stated that he has spoken to Health Officer, Stephanie Carey and she finds that acceptable so the agreement that we are approving is subject to approval by the Borough Attorney so that two matters can be addressed. Mr. Bliss stated that first is insertion of Best Practices and the other is resolution of the indemnification section of the agreement. Mr. Bliss stated our position is that each municipality should be responsible for their own negligence and the existing Montgomery agreement has in it that language but also additional language that has the Borough indemnifying Montgomery for events that occur while they are providing us services. Mr. Bliss stated that we have asked the Mid Jersey Joint Insurance Fund for an opinion and we are waiting for a response. Mr. Bliss stated that the language that is in the resolution will give us flexibility to modify the agreement for insurance purposes subject to approval by the Borough Attorney. Council Member Lawver made a motion to approve Resolution 2017-1.24, second by Council Member Chandler with all members present voting in favor.

**BOROUGH OF PENNINGTON
RESOLUTION #2017 – 1.25**

**RESOLUTION AUTHORIZING BOROUGH OF PENNINGTON TO ENTER INTO
A SHARED SERVICES AGREEMENT WITH HOPEWELL TOWNSHIP FOR
EMERGENCY AND POLICE DISPATCH SERVICES
FOR THE YEARS 2017 AND 2018**

WHEREAS, the Borough of Pennington desires to contract with Hopewell Township for the provision of emergency and police dispatch services; and

WHEREAS, the Uniform Shared Services and Consolidation Act permits a local unit to enter into a contract with another local unit for the provision of any services which any party to the agreement is empowered to render within its own jurisdiction; and

WHEREAS, the term of the proposed contract, entitled “Shared Services Agreement Police Dispatching And Emergency Communication Services Between The Township Of Hopewell And Borough Of Pennington”, shall be for two years beginning January 1, 2017 and continue through December 31, 2018; and

WHEREAS, the cost to the Borough for police dispatch services as outlined in the Shared Services agreement would be \$70,417.00 for 2017 and \$71,826.00 for 2018, which represents a 2% increase over the previous year for 2017 and a two-percent increase for 2018;

NOW, THEREFORE, BE IT RESOLVED, by the Borough Council of the Borough of Pennington, that the Mayor, with the attestation of the Borough Clerk, is hereby authorized to execute the aforesaid Shared Services Agreement with Hopewell Township for the provision of emergency and police dispatch services during the period January 1, 2017 through December 31, 2018; and

BE IT FURTHER RESOLVED, that the aforesaid Agreement shall be substantially in the form attached to this Resolution, subject to approval by the Borough Attorney.

Record of Council Vote on Passage

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

Council Member Marciante made a motion to approve Resolution 2017-1.25, second by Council Member Mills with all members present voting in favor.

**BOROUGH OF PENNINGTON
RESOLUTION #2017-1.26**

**RESOLUTION AUTHORIZING CARRY-OVER OF UNUSED
VACATION TIME FOR OFFICER DOUGLAS PINELLI**

WHEREAS, Sergeant First Class Douglas Pinelli has submitted a letter requesting that he be permitted to carry into the year 2017 any unused vacation time that he will not have used as of the end of the calendar year;

WHEREAS, the basis for this request is that Officer Pinelli has been unable to use vacation time because of personnel shortages and of training requirements for newly hired officers; and

WHEREAS, Officer Pinelli currently has an unused balance of nine (9.4166) vacation days (113 hours);

WHEREAS, the agreement between the Borough and the Pennington PBA provides in Article XXI,

par. 4, that an officer may carry over up to one-half of one year’s vacation allotment in a given year and no more;

WHEREAS, the Borough Personnel Manual also provides, in Article V, Section E, par.2, that up to one-half of vacation time earned in a particular year may be carried over to the subsequent year and no more, except the Personnel Manual provides further that exceptions may be made in highly extraordinary circumstances upon approval of the full authorized membership of Borough Council;

WHEREAS, Sgt. Pinelli’s request has been reviewed by the Borough Council and it has been determined that the exception permitted by the Personnel Manual is in the best interest of the Borough and ought to be granted in this case, subject to the following requirement:

1. that Officer Pinelli use up the additional carried-over vacation by June 30, 2017 or forfeit the time;

NOW, THEREFORE, BE IT RESOLVED, by the Borough Council of the Borough of Pennington that Officer Pinelli is hereby authorized to carry-over into 2017 unused vacation days totaling 9.4166 days (113 Hours) which he earned in 2016 provided he use up all such time on or before June 30, 2017 or forfeit the time.

Record of Council Vote on Passage

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

Council Member Chandler made a motion to approve Resolution 2017-1.26, second by Council Member Marciante with all members present voting in favor.

Council Discussion

Tree Removal – 107 Voorhees Avenue – Mr. Marciante who lives at 107 Voorhees Avenue stated that after talking with Mr. Bliss he has agreed to make a statement and then recuse himself from the remainder of the discussion. Mr. Bliss asked Mr. Marciante to step down from the dais to make his statement as he is speaking as a resident and not a Council Member.

Mr. Marciante stated that in 1980 Borough Public Works employees went around town and trimmed all of the trees in Pennington. Mr. Marciante stated that the same saw was used for all of the trees and that spread a virus to all of the trees. Mr. Marciante stated that every tree on his street is infected with the virus. Mr. Marciante stated that five years ago, Gabe Rosko and Jeff Wittkop came to his house and informed him that his tree was infected and it should come down in a couple of years and the tree is one-half in the Borough so the Borough would pay half and he as the homeowner would pay half. Mr. Marciante stated that he agreed to that. Mr. Marciante stated that other trees that were worse than his at the time were dealt with but his tree was not as bad so he waited for another three years. Mr. Marciante stated that when he heard that the Borough was getting a grant to remove infected trees he thought that now is the time that his tree will be removed. Mr. Marciante stated that as the tree commission was surveying the trees on the street, his neighbor went out and asked if this tree would be taken down. Mr. Marciante stated that his neighbor was told no that the tree is on private property. Mr. Marciante stated that this was in early September and he called the Borough Administrator to find out the status of the tree in front of his house. Mr. Marciante stated that he did not hear anything until he was a public works meeting on September 27th when he asked what the status was and he was told by Mr. Lawver and Mrs. Heinzel that the tree was his responsibility even though one-half of the tree was in the Borough right-of-way. Mr. Marciante stated that he was told that it would set a precedent and the Borough did not want to do that. Mr. Marciante stated that as he left the meeting he said this is not over. Mr. Marciante stated that he then contacted Rick Smith, Superintendent of Public Works and asked him to get a price for removal of the tree and stump grinding. Mr. Marciante stated that Mr. Smith indicated that Stonaker Tree Service was down the road and so Stonaker came down and gave an estimate of \$1,800.00. Mr. Marciante stated that he told Stonaker to go ahead and take down the tree. Mr. Marciante stated that on November 1st, 2016, Stonaker came to his house and in the middle of taking down the tree he received an e-mail from Mrs. Heinzel stating that all trees in the Borough right-of-way are the Borough’s responsibility and shall be paid for by the Borough. Mr. Marciante stated that he informed Mrs. Heinzel that the tree was almost down. Mr. Marciante stated that the bottom line is that he paid the \$1,800.00, the ordinance states that the Borough does not have to take the tree down, it says that the Borough shall pay to have the tree taken down. Mr. Marciante stated that he feels that the Borough should reimburse him for the cost of removing the tree.

Mr. Marciante offered to leave the meeting and Mr. Bliss asked him to stay as he reviewed the reading of the ordinance. Mr. Bliss stated that Borough Council may wish to hear comments from Mr. Marciante after he reads the ordinance. Mr. Bliss stated that the relevant section is 13-6, subsection a, which states “except as otherwise provided the planting, care and removal of trees or parts of trees on public property and on private property but within or encroaching upon the public right-of-way”. Mr. Bliss stated that in other words a tree that is encroaches upon the public right-of-way is covered by this paragraph. Mr. Bliss further stated that the ordinance says, “that the removal of that tree shall be paid for by the Borough to the extent provided for in the annual budget for the Shade Tree Committee approved by the Borough Council”. Mr. Bliss stated that

paragraph b states that, “the planting, care and removal of trees or parts of trees shall be subject to oversight by the Shade Tree Committee including but not limited to the cutting of roots of trees which encroach upon the public right-of-way”. Mr. Bliss tried to explain the intent of the ordinance and Mr. Marciante interrupted and said that he was told no, the Borough is not going to pay for the removal of the tree. Mr. Marciante stated that he took the tree down knowing what the ordinance says and he is not going to settle for it. Mr. Bliss stated that the last sentence of sub-paragraph b states that, “it shall be a violation of this article for any property owner to remove a tree or part of a tree in the public right-of-way”. Mr. Bliss stated that in other word, the reason why the Borough undertakes to pay the cost of removing trees either wholly or partially in the public right-of-way is that they control the process. Mr. Bliss stated that removal of trees within the jurisdiction of the Borough will be paid for by the Borough but it has to decide when, where and how the tree is removed. Mr. Marciante stated that he understands the ordinance. Mr. Marciante stated that he waited five years to have the tree taken down, it was a nuisance and he was told no so he had the tree taken down. Mr. Bliss stated that the issue here is who pays for a tree that is already down and the ordinance states that the Borough will pay but only if it controls the process. Mr. Bliss stated that if a property owner takes it upon themselves to remove a tree then the Borough is not responsible.

Mr. Griffiths stated that he is hung up on the offer that was made by a former Borough employee to pay one-half of the tree removal. Mr. Griffiths stated that to him that begins the process and an offer was made and accepted but then delayed. Mr. Bliss stated that would be true if the person making the offer had authority to bind the Borough, but that was not the case. Mr. Bliss stated that Borough Council as advised by the Shade Tree Committee has the authority to bind the Borough on these decisions. Mr. Bliss stated that the Borough agreed to undertake to pay for the removal, but only if it could control the process.

Mr. Bliss stated that the discussion is getting away from the ordinance and into the Law of Estoppel, essentially can a municipality be estopped from denying an obligation undertaken by an unauthorized employee and the answer is no they cannot be estopped assuming that the Borough acted innocently and in this situation he is hearing that the Borough innocently indeed mistakenly made a commitment that it was not authorized to make but not with the purpose of gaining an advantage. Mr. Bliss stated that he does not think that there is estoppel and the intent of the ordinance is that Borough Council wants to control the removal of trees wholly or partially in the public right-of-way.

Mrs. Chandler asked Mr. Marciante if he was aware that it was in the public right-of-way when he took the tree down. Mr. Marciante stated that he did know that but he was told no that the Borough was not going to pay for the removal.

Mr. Bliss stated that there are two issues here, one if the removal of the tree by a property owner without going through the process and who pays for it. Mr. Bliss stated that in this case the tree was taken down by mistake on the theory that it was not in the public right-of-way and with the representation that the Borough would not pay for it. Mr. Marciante stated that the tree was not taken down by mistake, when a Borough Official and the Public Works Chairman told him it was not on the list to come down and he took action on a tree that he has been waiting to take action on for five years.

Mrs. Chandler asked Mr. Marciante if he had the tree taken down knowing that the Borough would not pay for it. Mr. Marciante stated that he took it down knowing that the Borough Administrator and the Public Works Chairman said that they would not pay for it.

Mr. Griffiths asked about the theory that this tree was a public hazard. Mr. Marciante stated that it was dropping big limbs into the street. Mr. Bliss stated that to defend the integrity of the ordinance, the ordinance does have a provision in it for the Borough to intervene to remove diseased or hazardous trees from private property and in fact the Borough can go in and remove the diseased tree and put a lien on the property for the cost of removal. Mr. Bliss stated that is for a tree that wholly in the bounds of the private property. Mr. Bliss stated that as soon as it is wholly or partially in the public right-of-way, then the Borough takes control over when and how it is removed in exchange for paying for it. Mr. Marciante stated that is the problem, the Borough did not take control. Mr. Bliss stated that the Borough decided even with this being a diseased tree, the Borough has the authority to decide whether or not it is going to remove the tree. Mr. Marciante stated that five years ago he was told to wait because there was no money in the budget and so he waited and then when the grant came up and he was told that his tree was not on the list he decided to take action and remove the tree. Mr. Bliss stated that the language pertaining to the availability of funds in the Borough budget says to him that there is a plan rather than whether or not there is enough money.

Mr. Lawver stated that there are processes and procedures that have been put into place for residents who want to take down a tree even if the Borough deems that it does not have to come down. Mr. Lawver stated that the Borough controls that process, obtains three quotes and makes arrangement with the homeowner for reimbursement of the costs for the tree removal and payment of a fee for a replacement shade tree. Mr. Bliss stated that is referred to in sub-section e of the ordinance. Mr. Bliss explained that to the extent that there is an expenditure of Borough funds the Shade Tree Committee does not have the authority to approve tree removals, they can make recommendations to Borough Council who will then decide whether or not to expend the funds.

Mr. Marciante stated that he waited for five years and he was told that the tree was not on the list and he took it down. Mr. Marciante stated that the Borough agreed that the tree was diseased and need to come down and when he was told no he decided to take the tree down. Mr. Marciante stated that five years ago he agreed to pay half of the cost and the Borough should at least reimburse him for half of the cost.

At 8:37pm, Mr. Marciante excused himself from the remainder of the meeting.

Mr. Griffiths stated that Mr. Marciante jumped the gun by taking the tree down. Mayor Persichilli stated that the Borough has a priority list of trees covered by the budget and there were not enough funds to take this tree down at this time. Mayor Persichilli stated that the issue here is that Mr. Marciante did not get approval to take the tree down prior to having it taken down. Mayor Persichilli stated that if he chose to go out on his own and get the work done, then he should have to pay for it. Mayor Persichilli stated that the ordinance is very clear and the Borough has the right to say yes or no to a request for tree removal and only if there are funds available.

Mrs. Mills stated that much of the comments made by Mr. Marciante are based on a conversation he had with Gabe Rosko and Jeff Wittkop. Mrs. Mills asked if that agreement is in writing anywhere or was it just a conversation. Mr. Lawver stated that Mr. Rosko has a different interpretation of the conversation which is yes the tree is diseased, we are not sure if it is the Borough's problem or Mr. Marciante's problem but it is one of many trees in town that is diseased and it is being monitored. There was some discussion regarding the agreement that was made five years ago and also the discussion that took place at a public works meeting. Mr. Lawver stated that Mr. Marciante was not told no at the public works meeting he was told that there is a process, this tree is a problem and the Borough needs to figure out what to do. Mrs. Heinzl stated that she remembers the question being was his tree included in the list of trees that will be paid for with the \$25,000 grant that was received and the answer to that was no. Mr. Lawver stated that to be clear, the Shade Tree Committee had not finalized the list of which trees would be included for takedown under the grant. Mr. Smith stated that the location of this tree is deceiving and that is probably why it did not land on the initial Shade Tree list because it is not between the curb and the sidewalk. Mr. Smith stated that if the Shade Tree Committee had known that tree was in the right-of-way or eligible for Borough consideration he imagines that it would have ended up being on the list because it is a diseased pin oak. Mr. Lawver stated that is true but the list consists of eighty trees and the grant received will cover about twenty-five so there is no guarantee that even if it had made it onto the list it would have been included in the list of trees for takedown under the grant.

Mr. Griffiths stated that to boil this down, if the Borough reimburses Mr. Marciante it would establish a precedent that an individual has the power, authority and deserves reimbursement for unilaterally taking down trees and he does not think that Council wants to do that. Mr. Bliss stated that one more thing on the intent of the ordinance is that a private resident does not have the authority to take action on the say-so of a public employee. Mr. Bliss stated that it would be chaos if residents came in and said I know what the ordinance says, but so and so said I can do this. Mr. Bliss stated that given the level of exposure for public entities the law says that conventional laws of estoppel do not apply.

Mayor Persichilli asked for a vote of Council as to the decision and also offered to notify Mr. Marciante of whatever the decision is. Mrs. Mills stated that she has mixed feelings about this situation and yes Mr. Marciante did jump the gun but maybe there is a compromise that could be reached. Council briefly discussed the logistics of a compromise and given the language of the ordinance Mr. Bliss did not think it could be done. Mr. Lawver stated that if multiple residents took down trees without approval, Council would not be considering a compromise; they would be considering enforcement of fines.

Mr. Bliss stated that Council should take a vote on the action of whether or not to approve the reimbursement, notify Mr. Marciante of the decision and indicate that no further formal action is required. Mr. Bliss stated that if Council prefers to take formal action a resolution can be prepared for the next meeting.

Mayor Persichilli called for a vote. Mr. Bliss stated that Council will be voting on the proposition that the Borough reimburse Mr. Marciante for the cost of removing the tree. Mr. Bliss stated that a yes vote means reimburse and a no vote don't reimburse. Mrs. Sterling called the roll with all members present voting no. Mayor Persichilli stated that he would communicate the decision to Mr. Marciante.

Professional Reports

Mrs. Heinzl stated that the last time that the clock for downtown was discussed she was asked to call the Sun Bank representative in California and discuss an amount for lease of the space for the clock. Mrs. Heinzl stated that she asked Justin for a copy of an agreement that they have with other towns and he said he did not think that would be appropriate. Mrs. Heinzl stated that Sun Bank wants the Borough to make an offer to them to lease the property. Mrs. Heinzl stated that she suggested \$1.00 and that was unacceptable. Mrs. Heinzl asked for guidance from Council. Mr. Griffiths stated that he would not pay anything to put this clock up. Mayor Persichilli stated that maybe it is time to consider an alternative location. Mayor Persichilli stated that Howe Commons is interested in the clock. Mrs. Chandler stated that this is a downtown clock and should be downtown. Mrs. Mills stated that she would think that the bank would want to be neighborly and work with the Borough on this. After a brief discussion, several members were interested in installing the clock at Howe Commons. Mr. Lawver stated that Mrs. Heinzl should reach out to Justin and tell him that the Borough is willing to offer \$1.00 and ask them to come back with a counteroffer. Mr. Griffiths stated that Council is spending way too much time on this than is necessary. Mrs. Heinzl stated that another thing to consider is who is going to pay for installation and the electricity to run the clock. Mrs. Heinzl stated that discussion would be much easier with Howe Commons than Sun Bank. Mr. Griffiths stated that installation of the clock is probably going to be costly because that is not in the budget. Mr. Lawver stated that there are monies to be found to pay for the installation.

Mrs. Heinzl stated that Council Members received a copy of the Final Draft for the Volunteers Handbook. Mr. Lawver stated that he likes the handbook but he had a comment on the attendance policy. Mrs. Heinzl asked Council Members to review the draft and to let her know of any comments or questions.

Public Comment Period

Mayor Persichilli invited anyone interested in addressing Council to 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.

At 9:00pm with no further business to come before Council the meeting was adjourned.

Respectfully submitted,

Elizabeth Sterling
Borough Clerk