

**BOROUGH OF PENNINGTON
ORDINANCE NO. 2015 - 5**

**ORDINANCE AUTHORIZING THE BOROUGH OF PENNINGTON
TO ACQUIRE INTEREST IN OPEN SPACE ON CARTER ROAD PURSUANT
TO AMENDED AND RESTATED MULTI-PARTY FUNDING AGREEMENT**

WHEREAS, the New Jersey Conservation Foundation has entered into an agreement with 350 Carter Road LLC and related entities for the purchase of approximately 240 acres of land along the east and west sides of Carter Road in Hopewell Township for a price of \$7,500,000;

WHEREAS, the land to be purchased on the east side of Carter Road is known as Block 40, Lots 14.01 and 14.05 (referred to as the “East Side Property”) and the land to be purchased on the west side is known as Block 39, Lots 12, 14.02 and 15 (known as the “West Side Property”);

WHEREAS, \$7,000,000 of the purchase price has been allocated to the East Side Property and \$500,000 of the purchase price has been allocated to the West Side Property (subject to a credit for a portion of the latter property being retained by the seller);

WHEREAS, the funding for this acquisition will be provided pursuant to a certain Amended and Restated Multi-Party Funding Agreement (“Amended Funding Agreement”), under which the New Jersey Conservation Foundation, Mercer County, the Borough of Pennington, and other municipalities and certain non-profit entities will be participants;

WHEREAS, by Resolution 2015-3.7, adopted on March 10, 2015, Pennington Borough Council has authorized the Borough to enter into the Amended Funding Agreement, which is attached to this Ordinance as Exhibit A;

WHEREAS, the participating entities in the Amended Funding Agreement include in addition to the New Jersey Conservation Foundation, Mercer County, Hopewell Township, Hopewell Borough, Pennington Borough, Princeton, Lawrence Township, Friends of Hopewell Valley Open Space (FOHVOS), D&R Canal Commission (D&R), Stonybrook-Millstone Watershed Association (SBMWA), and Friends of Princeton Open Space (FPOS);

WHEREAS, pursuant to the Amended Funding Agreement, Mercer County has agreed to provide grant funding toward the purchase price for the East Side Property through the Mercer County Municipal and Non-Profit Assistance Program in the amount of \$2,000,000., allocated in designated amounts among participating municipalities and non-profits, including an allocation to the Borough of Pennington in the amount of \$212,500.;

WHEREAS, the Amended Funding Agreement further provides that Mercer County will provide additional funding toward purchase of the East Side Property from the Mercer County Open Space, Recreation, and Farmland and Historic Preservation Trust Fund in the amount of \$1,500,000.;

WHEREAS, the Amended Funding Agreement also provides that Hopewell Township will supply an additional \$2,000,000. toward the purchase price of the East Side Property, and these funds too are allocated in designated amounts among participating municipalities and non-profits, including an allocation to the Borough of Pennington in the amount of \$212,500.;

WHEREAS, the New Jersey Conservation Foundation (NJCF) will be responsible for \$1,500,000. toward payment of the balance of the purchase price for the East Side Property as well as for payment of the entire \$500,000 purchase price for the West Side Property (less the credit for acreage retained by the seller);

WHEREAS, pursuant to the Amended Funding Agreement, a number of the parties, including Pennington Borough, have applied to Green Acres for grants to pay part of the purchase price for the East Side Property which would supplant funds otherwise payable by NJCF;

WHEREAS, Pennington Borough in particular has applied for a Green Acres grant to pay for a part of the East Side Purchase Price in the amount of \$115,000., which will be matched with the funds allocated to Pennington Borough under the County and Hopewell Township funding described above;

WHEREAS, pursuant to the Amended Funding Agreement, if Pennington Borough's application for this Green Acres grant has not been approved and funded by the date of closing on the purchase, NJCF agrees that it will at or before closing advance to Pennington the pending grant amount, including any required match, provided the grant, when received, is paid to NJCF, and provided further that in the event the grant is denied, Pennington Borough shall have no further obligation to repay to NJCF the amount advanced;

WHEREAS, it is a requirement of Green Acres funding that a party using that funding, including Pennington Borough, must initially acquire an interest in the property at closing, and the Amended Funding Agreement therefore requires that Pennington and other Green Acres grant recipients each acquire an undivided interest in the East Side Property proportionate to their Green Acres funding and related match, subject to ultimate conveyance of these interests so that fee simple title to the property will thereafter be vested solely in NJCF and Hopewell Township;

WHEREAS, according to the Amended Funding Agreement, Pennington Borough was to have acquired an undivided interest in the East Side Property amounting to 3.4535%, which was to have been based on a grant amount plus match equal to \$230,000. and an estimated Green Acres Certified Market Value for the land in the amount of \$6,660,000., but which anticipated that the percentage interest would be adjusted if Green Acres were to reduce the eligible acreage in the course of approving the final survey;

WHEREAS, Green Acres has now in fact reduced the eligible acreage, increasing Pennington's undivided interest in the East Side Property to 3.5 %, thereby ensuring that the percentage interest of Pennington will be equal to the percentage Green Acres requires as a basis for the contemplated grant;

WHEREAS, as part of the acquisition of the East Side Property, Pennington and others as appropriate must execute a certain Buyer's Declaration of Easements to Sellers, Deed of Conservation Easement in favor of the New Jersey Department of Environmental Protection and Mercer County, and an easement in favor of Lawrence Hopewell Trail Corporation, together with related documents, as required by the attached Amended Funding Agreement and as further described in the annexed Schedule B;

WHEREAS, at or before closing on the acquisition, Pennington and others as appropriate must execute agreements partially assuming the obligations of the Purchase Agreement in accordance with the percentage ownership interest each will acquire;

WHEREAS, Pennington and all other parties acquiring an interest in the East Side Property agree that the East Side Property shall be managed by NJCF, and they further agree to terms and conditions applying to the East Side Property which shall survive closing of title, including but not limited to guarantee of regular public access to the property, use of the property only for recreation, agriculture and conservation purposes, and deed restriction language preventing disposal or diversion of the property to a use other than recreation, conservation, open space and farmland preservation, and further subjecting the property to Green Acres restrictions and other prohibitions and encumbrances consistent with these purposes, all as further set forth in the annexed Amended Funding Agreement;

WHEREAS, pursuant to the Amended Funding Agreement, Pennington must transfer any interest it has in the East Side Property to NJCF upon the date Green Acres takes action on its grant application, whether approved or denied, or at the end of the third year after closing without action by Green Acres, whichever is earlier;

WHEREAS, NJCF and Hopewell Township shall assume all risks and responsibilities and shall hold Pennington and the others harmless from liability in connection with ownership and operation of the property, also as set forth in the annexed Amended Funding Agreement;

WHEREAS, these recitals of terms and conditions of the Amended Funding Agreement are drawn from that Agreement, and in the event of any conflict between the recitals and the Agreement, the Agreement shall control;

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

1. The Mayor, with the attestation of the Clerk, is hereby authorized to take all such actions and execute all such documents as may be necessary to acquire an interest in the East Side Property on behalf of Pennington Borough as described above, to convey that interest to the New Jersey Conservation Foundation as required, and to ensure that future use of the property is encumbered and restricted for recreation, conservation, open space and farmland preservation purposes, in compliance with the Amended Funding Agreement annexed hereto as Exhibit A.

2. This grant of authority to the Mayor and Borough Clerk shall include but not be limited to authorization to take the actions and execute the documents described in the annexed Exhibit B.

3. This grant of authority shall further include the execution of such other agreements, certificates, affidavits and instruments as may be necessary or desirable to effectuate the transactions contemplated by the Amended Funding Agreement and further described above.

4. This ordinance shall be effective upon passage and publication as required by law.

Introduced: March 19, 2015

Advertised: March 26, 2015

Public Hearing: April 13, 2015

Adoption: April 13, 2015

Final Publication: April 16, 2015

ATTEST:

APPROVED:

Elizabeth Sterling, Borough Clerk

Anthony Persichilli, Mayor