

**Pennington Borough Council
Regular Meeting – April 7, 2008**

Mayor Persichilli called the Regular Meeting of the Borough Council to order at 7:02 pm. Borough Clerk Betty Sterling called the roll with Council Members Chandler, Griffiths, Heinzel, Lawver, Ogren and Tucker in attendance.

Also present were Superintendent of Public Works, Jeff Wittkop, Public Safety Director, Bill Meytrott, Borough Administrator, Eugene Dunworth and Borough Attorney, Walter Bliss.

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

Open to the Public – Agenda Items Only

Mayor Persichilli read the following statement:

Meeting open to 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 5 minutes.**

There were no comments from the public.

Mayor's Business

Mayor Persichilli announced the resignation of Carol Spencer, Library Assistant.

Mayor Persichilli read the following Proclamation and presented it to Mr. Nils Stout on behalf of the Borough Council:

PROCLAMATION

WHEREAS, older adults in Pennington Borough and throughout the U.S. are a growing population with evolving needs; and

WHEREAS, older Americans are valuable members of our society who are rich with experience and deserving of our respect; and

WHEREAS, the number of baby boomers reaching traditional retirement age continues to increase, a fact that spotlights the need for increased attention to the needs of older adults; and

WHEREAS, our older citizens of today and tomorrow promise to be among the most active and engaged older adult populations in our Nation's history;

WHEREAS, it is the responsibility of this and all U.S. communities to work together and prepare for changing older adult populations by modernizing systems of care and providing consumers with more control over their lives; and

WHEREAS, overall quality of life can be greatly enhanced when supportive communities help their older citizens obtain:

Evidence-based approaches to making behavioral changes that can reduce risk of disease, disability, and injury.

The tools to make informed decision about, and gain better access to, existing health and long-term care options.

More options to avoid placement in nursing homes and remain at home as long as possible.

NOW, THEREFORE, I Anthony J. Persichilli, Mayor of the Borough of Pennington, do hereby proclaim May 2008 to be Older Americans Month. I urge everyone to take time this May to honor our older adults and the professionals, family members, and citizens who care for older adults. I urge all citizens and communities to work collaboratively to strengthen the services Pennington Borough provides to its older adults in ways that recognize the changing nature of their needs, and that provide older adults with more opportunities to make informed choices about their lives. Our efforts can improve the lives of our older citizens and help pave the way for future generations.

Presentations

Fire Inspections – Mayor Persichilli invited Mr. Charles Marciante to come forward. Mayor Persichilli stated that at a previous Borough Council meeting, Mr. Marciante agreed to assist Borough Council by researching this topic and reporting back to Borough Council.

Mr. Marciante gave a brief history of how fire inspection came to be done by the Hopewell Township Board of Fire Commissioners as it is today. Mr. Marciante explained the connection between the Pennington First Aid Squad and the Board of Fire Commissioners. Mr. Marciante stated Hopewell Township Board of Fire Commissioners does the fire inspections for the Borough, currently at no charge. Mr. Marciante stated that the Board of Fire Commissioners does all work involved with the inspections, bills and collects all fees. Mr. Marciante stated that the Board of Fire Commissioners provides a paid EMT to the Pennington First Aid Squad five days a week at no charge to the Borough. Mr. Marciante stated that the Board of Fire Commissioners also pays seventy-five percent of the First Aid Squad's LOSAP contribution. Mr. Marciante gave some statistics on ambulance calls, fire inspection fees collected and approximate costs of services provided currently at no charge to the Borough or the First Aid Squad. Mr. Marciante recommended that the Borough continue the contract with the Board of Fire Commissioners and that the Borough agree to pay the requested \$3,000 for 2008, as it would be very costly for the Borough to bring these inspections back into the Borough. Mr. Marciante explained that aside from needing a certified fire inspector there would also be administrative costs involved. Ms. Cindy Orlandi and Ms. Julie Aberger of the Pennington First Aid Squad were also in attendance and they both agreed that the Borough should contract with the Board of Fire Commissioners and agree to the \$3,000 fee for BLS services. Mayor Persichilli thanked Mr. Marciante for researching this issue for Borough Council.

Pennington First Aid – Ms. Julie Aberger, Head of Training and Education for the Pennington First Aid Squad and Ms Cyndi Orlandi, Captain of the Pennington First Aid Squad spoke to Borough Council on the importance of supporting local volunteer First Aid Squads. Ms. Aberger stated that they want to remain in very close contact with the Borough Council because it is becoming harder and harder for volunteer First Aid Squads to continue without the support of the municipalities. Ms. Aberger explained that there is a statewide problem for volunteer squads to provide daytime coverage. Ms. Aberger stated that volunteer squads are falling prey to budgetary cuts and lack of volunteers, throughout the State. Ms. Aberger stated that ten years ago, Pennington First Aid Squad applied for to the State for accreditation so that they could be a certified training site and hopefully recruit new members. Ms. Aberger explained that it is difficult to keep members once they complete the training because they don't understand the time commitment or the rigor of the job. Ms. Aberger stated that she would like Council to be aware that even though Pennington First Aid has been successful in keeping their volunteer squad going, it should not be taken for granted. Ms. Aberger stressed that the First Aid Squad needs the support of the Borough. Ms. Aberger suggested that a member of the First Aid Squad should sit on the Public Safety Committee to provide facts and information when needed. Ms. Aberger pointed out that a paid EMT is making between \$40,000 and \$50,000 and to bear the cost of a 24/7 First Aid Squad would be detrimental to the Borough. Ms. Aberger stressed that the First Aid Squad would like to be treated as a part of the Borough and not as a separate entity. Ms. Aberger distributed CD's to Borough Council to view. Ms. Aberger explained that she was Executive Producer of a Volunteer Video put together by the State of New Jersey, Department of Health. Ms. Aberger stated that because she was involved in the making of the video, she used Pennington First Aid Squad in the video. Ms. Aberger stated that Pennington Borough's ambulances and people are now being aired throughout New Jersey. Ms. Aberger stated that the video would show exactly what the First Aid Squad does and how they do it.

Mr. Tucker stated that presently the Public Safety Committee is a committee of three Council Members, however consideration would be given to expanding the committee to include others. Some discussion took place and it was agreed that Council would give this further consideration.

Mr. Dunworth stated that what prompted the discussions with regard to the fire inspections and the First Aid Squad was that Hopewell Township Fire District submitted the two interlocal agreements for consideration. Mr. Dunworth asked, based on the discussions held tonight, can we go forward with these agreements for the May meeting? Council agreed to proceed with approving the agreements at the May meeting.

Mayor Persichilli stated that Mr. Cantorik from Stonybrook Regional Sewerage Authority was scheduled to attend tonight but cancelled due to illness.

Ordinances for Introduction

Mayor Persichilli read Ordinance 2008-2 by title.

Borough of Pennington Ordinance 2008-2

AN ORDINANCE CONCERNING RIPARIAN BUFFER CONSERVATION ZONES AND AMENDING THE CODE OF THE BOROUGH OF PENNINGTON

WHEREAS, the Borough Council of the Borough of Pennington seeks to adopt and to incorporate in the Code of the Borough of Pennington, with certain revisions, the Model Ordinance for a Riparian Buffer Conservation Zone prepared by the Passaic River Coalition and the Division of Watershed Management of the New Jersey Department of Environmental Protection;

WHEREAS, the Model Ordinance is consistent with the requirements set forth in New Jersey Stormwater Management Rule N.J.A.C. 7:8;

NOW, THEREFORE, BE IT ORDAINED, by the Borough Council of the Borough of Pennington, that the Code of the Borough of Pennington is hereby amended to incorporate the following:

I. INTENT AND PURPOSE

The governing body of the Borough of Pennington finds that riparian lands adjacent to streams, lakes, or other surface water bodies that are adequately vegetated provide an important environmental protection and water resource management benefit. It is necessary to protect and maintain the beneficial character of riparian areas by implementing specifications for the establishment, protection, and maintenance of vegetation along the surface water bodies within the jurisdiction of the Borough, consistent with the interest of landowners in making reasonable economic use of parcels of land that include such designated areas. The purpose of this Ordinance is to designate Riparian Buffer Conservation Zones, and to provide for land use regulation therein in order to protect the streams, lakes, and other surface water bodies of the Borough; to protect the water quality of watercourses, reservoirs, lakes, and other significant water resources within the Borough; to protect the riparian and aquatic ecosystems of the Borough; to provide for the environmentally sound use of the land resources of the Borough; and to complement existing state, regional, county, and municipal stream corridor protection and management regulations and initiatives. The specific purposes and intent of this Ordinance are to:

A. Restore and maintain the chemical, physical, and biological integrity of the water resources of the Borough;

B. Prevent excessive nutrients, sediment, and organic matter, as well as biocides and other pollutants, from reaching surface waters by optimizing opportunities for filtration, deposition, absorption, adsorption, plant uptake, biodegradation, and denitrification, which occur when stormwater runoff is conveyed through vegetated buffers as stable, distributed sheet flow prior to reaching receiving waters;

C. Provide for shading of the aquatic environment so as to moderate temperatures, retain more dissolved oxygen, and support a healthy assemblage of aquatic flora and fauna;

D. Provide for the availability of natural organic matter (fallen leaves and twigs) and large woody debris (fallen trees and limbs) that provide food and habitat for small bottom dwelling organisms (insects, amphibians, crustaceans, and small fish), which are essential to maintain the food chain;

E. Increase stream bank stability and maintain natural fluvial geomorphology of the stream system, thereby reducing stream bank erosion and sedimentation and protecting habitat for aquatic organisms;

F. Maintain base flows in streams and moisture in wetlands;

G. Control downstream flooding; and

H. Conserve the natural features important to land and water resources, e.g., headwater areas, groundwater recharge zones, floodways, floodplains, springs, streams, wetlands, woodlands, and prime wildlife habitats.

II. STATUTORY AUTHORITY

The Borough of Pennington is empowered to regulate land uses under the provisions of the New Jersey Municipal Land Use Law, N.J.S.A. 40:55D-1 et seq., which authorizes each municipality to plan and regulate land use in order to protect public health, safety and welfare by protecting and maintaining native vegetation in riparian areas. The Borough is also empowered to adopt and implement this Ordinance under provisions provided by the following legislative authorities of the State of New Jersey:

A. Water Pollution Control Act, N.J.S.A. 58:10A et seq.

B. Water Quality Planning Act, N.J.S.A. 58:11A-1 et seq.

C. Spill Compensation and Control Act, N.J.S.A. 58:10-23 et seq.

D. Soil Erosion and Sediment Control Act, N.J.S.A. 4:24-39 et seq.

E. Flood Hazard Area Control Act, N.J.S.A. 58:16A-50 et seq.

III. DEFINITIONS

“Administrative Authority” means the Planning Board and Board of Adjustment or Construction Office with all of the powers delegated, assigned, or assumed by them according to statute or ordinance.

“Applicant” means a person applying to the Planning Board and Board of Adjustment or the Construction Office proposing to engage in an activity that is regulated by the provisions of this

ordinance, and that would be located in whole or in part within a regulated Riparian Buffer Conservation Zone.

“Category One (C1) Waters” shall have the meaning ascribed to this term by the Surface Water Quality Standards at N.J.A.C. 7:9B-1.15, which have been identified for protection from degradation in water quality characteristics because of their clarity, color, scenic setting, and other characteristics of aesthetic value, exceptional ecological significance, exceptional recreational significance, exceptional water supply significance, or exceptional fisheries resources.

“Category Two Waters” means those waters not designated as Outstanding Natural Resource Waters or Category One in the Surface Water Quality Standards at N.J.A.C. 7:9B-1.15 for purposes of implementing the antidegradation policies set forth at N.J.A.C. 7:9B-1.5(d).

“Floodway” shall have the meaning ascribed to this term by the Flood Hazard Area Control Act (N.J.S.A. 58:16A-50 et seq.) and regulations promulgated there under published at N.J.A.C. 7.13 et seq., and any supplementary or successor legislation and regulations from time to time enacted or promulgated.

“Intermittent Stream” means surface water drainage channels with definite bed and banks in which there is not a permanent flow of water. Streams shown as a dashed line on either the USGS topographic quadrangle maps or the USDA County Soil Survey Maps of the most recent edition that includes hydrography are included as intermittent streams.

“Lake, pond, or reservoir” means any impoundment, whether naturally occurring or created in whole or in part by the building of structures for the retention of surface water, excluding sedimentation control and stormwater retention/detention basins and ponds designed for treatment of wastewater.

“Perennial stream” means a stream that flows continuously throughout the year in most years. These streams usually appear as a blue line on USGS topographic quadrangle maps or on USDA County Soil Survey Maps.

“Riparian Buffer Conservation Zone (RBCZ)” means an area of land or water within or adjacent to a Surface Water Body within the municipality and designated on the Riparian Buffer Conservation Zone Map promulgated by [municipality] in accordance with Section IV of this Ordinance.

“Riparian Buffer Conservation Zone Management Plan” means a plan approved by the Engineer of [municipality]. The plan shall be prepared by a landscape architect, professional engineer or other qualified professional, and shall evaluate the effects of any proposed activity/uses on any RBCZ. The plan shall identify existing conditions, all proposed activities, and all proposed management techniques, including any measures necessary to offset disturbances to any affected RBCZ.

“Surface Water Body” means any perennial stream, intermittent stream, lake, pond, or reservoir, as defined herein. In addition, any state open waters identified in a letter of interpretation issued by the New Jersey Department of Environmental Protection Land Use Regulation Program shall also be considered surface water bodies.

“Tributary” means a waterway above ground which flows into a larger stream.

IV. ESTABLISHMENT OF RIPARIAN BUFFER CONSERVATION ZONES

A. Riparian Buffer Conservation Zones (RBCZs) shall be delineated as follows:

1. In the case of Category One (C1) waters, the RBCZ shall equal the Special Water Resource Protection Area, and shall be measured as defined at N.J.A.C. 7:8-5.5(h). Special Water Resource Protection Areas are established along all waters designated as C1 at N.J.A.C. 7:9B and perennial or intermittent streams that drain into or upstream of the C1 waters as shown on the USGS quadrangle map or in the County Soil Surveys within the associated HUC 14 drainage.

2. For areas adjacent to surface water bodies designated Category Two Waters for Trout Production (FW2-TP) the RBCZ shall be measured from the defined edge of the intermittent or perennial stream, or centerline if the bank is not defined, and from the defined edge of a lake, pond or reservoir at bank-full flow or level, and shall extend 150 feet horizontally outward from the perpendicular. Where steep slopes (in excess of 10 percent) are located within the designated widths, the RBCZ shall be extended to include the entire distance of this sloped area.

3. For areas adjacent to other surface water bodies, the RBCZ shall be measured from the top of bank of an intermittent or perennial stream, or centerline if bank is not defined, and from the defined edge of a lake, pond or reservoir at bank-full flow or level, and shall extend 75 feet horizontally outward from the perpendicular. Where steep slopes (in excess of 15 percent) are located within

the designated widths, the RBCZ shall be extended to include the entire distance of this sloped area to a maximum of 300 feet.

4. For areas adjacent to surface water bodies for which the Floodway has been delineated, the RBCZ shall cover the entire Floodway area, or the area described in Section IV.A.1. or IV.A.2., whichever area has the greatest extent. Floodway delineations shall be based upon the State's adopted floodway delineations. However, requests for alterations to the adopted delineations can be provided to the New Jersey Department of Environmental Protection for consideration if site specific information is available.

B. An RBCZ is an overlay to the existing zoning districts. The provisions of the underlying district shall remain in full force except where the provisions of the RBCZ differ from the provisions of the underlying district, in which case the provision that is more restrictive shall apply. These provisions apply to land disturbances resulting from or related to any activity or use requiring application for any of the following permits or approvals: Building permit; Zoning variance; Special exception; Conditional use; Subdivision/land development approval.

C. A map of the RBCZs of the entire Borough of Pennington, including all land and water areas within its boundaries, which designates Surface Water Bodies, is included as part of this Ordinance, and is appended hereto. Maps of the Borough on which these designations have been overlain shall be on file and maintained by the Borough Clerk. This map conforms to all applicable laws, rules and regulations applicable to the creation, modification and promulgation of zoning maps.

[Subsection D in Model Ordinance deleted]

D. The applicant or designated representative shall be responsible for the initial determination of the presence of an RBCZ on a site, and for identifying the area on any plan submitted to the Borough in conjunction with an application for a construction permit, subdivision, land development, or other improvement that requires plan submissions or permits. This initial determination shall be subject to review and approval by the municipal engineer, governing body, or its appointed representative, and, where required, by the New Jersey Department of Environmental Protection.

E. The Borough Master Plan provides the legal basis for zoning and land use regulation at the local level. The technical foundation for local RBCZs in the Borough should be incorporated into the Master Plan. A technical report on the need for Riparian Buffer Conservation Zones in the Borough may be adopted as part of the Master Plan (N.J.S.A 40:55D-28b(11)). The technical report should include the following information: a statement setting forth the rationale and need to protect RBCZs; reference to the methods used to designate and delineate RBCZs.

V. USES PERMITTED IN RIPARIAN BUFFER CONSERVATION ZONES

A. For Category One (C1) RBCZs, permitted uses are governed by N.J.A.C. 7:8-5.5(h), unless otherwise exempt. If exempt from NJAC 7:8-5.5(h), the uses shall be governed by this ordinance as if the RBCZ was not a Category One (C1) RBCZ.

B. Any other RBCZ area shall remain in a natural condition or, if in a disturbed condition, including agricultural activities, at the time of adoption of this ordinance may be restored to a natural condition. There shall be no clearing or cutting of trees and brush, except for removal of dead vegetation and pruning for reasons of public safety or for the replacement of invasive species with indigenous species. There shall be no OK altering of watercourses, dumping of trash, soil, dirt, fill, vegetative or other debris, regrading or construction. The following uses are permitted either by right or after review and approval by the Planning Board and Board of Adjustment in RBCZs. No new construction, development, use, activity, encroachment, or structure shall take place in an RBCZ, except as specifically authorized in this Section. The following uses shall be permitted within an RBCZ:

1. Open space uses that are primarily passive in character shall be permitted by right to extend into an RBCZ, provided near stream vegetation is preserved. These uses do not require approval by the Zoning Enforcement Officer or compliance with an approved RBCZ Management Plan. Such uses include wildlife sanctuaries, nature preserves, forest preserves, fishing areas, game farms, fish hatcheries and fishing reserves, operated for the protection and propagation of wildlife, but excluding structures. Such uses also include passive recreation areas of public and private parklands, including unpaved hiking, bicycle and bridle trails, provided that said trail have been stabilized with pervious materials.
2. Fences, for which a permit has been issued by the Construction Code Office, to the extent required by applicable law, rule or regulation.
3. Crossings by farm vehicles and livestock, recreational trails, roads, railroads, storm water lines, sanitary sewer lines, water lines and public utility transmission lines, provided that the land disturbance is the minimum required

to accomplish the permitted use, subject to approval by the Zoning Enforcement Officer, provided that any applicable State permits are acquired, and provided that any disturbance is offset by buffer improvements in compliance with an approved RBCZ Management Plan and that the area of the crossing is stabilized against significant erosion due to its use as a crossing.

4. Stream bank stabilization or riparian reforestation, which conform to the guidelines of an approved RBCZ Management Plan, or wetlands mitigation projects that have been approved by the Department of Environmental Protection, subject to approval by the Zoning Enforcement Officer and subject to compliance with an approved RBCZ Management Plan.

VI. PERFORMANCE STANDARDS FOR RIPARIAN BUFFER CONSERVATION ZONES

A. All encroachments proposed into Category One (C1) RBCZs shall comply with the requirements at N.J.A.C. 7:8-5.5(h) and shall be subject to review and approval by the New Jersey Department of Environmental Protection, unless exempt. If exempt, the encroachment shall be subject to the provisions of VI.B below.

B. For all other RBCZs, the following conditions shall apply:

1. All new major and minor subdivisions and site plans shall be designed to provide sufficient areas outside of the RBCZ to accommodate primary structures, any normal accessory uses appurtenant thereto, as well as all planned lawn areas.

2. Portions of lots within the RBCZ must be permanently restricted by deed or conservation easement held by the Borough, its agent, or another public or private land conservation organization, which has the ability to provide adequate protection to prevent adverse impacts within the RBCZ. A complete copy of the recorded conservation restriction that clearly identifies the deed book and pages where it has been recorded in the office of the clerk of the applicable county or the registrar of deeds and mortgages of the applicable county must be submitted to the municipality. The applicant shall not commence with the project or activity prior to making this submittal and receiving actual approval of the plan modification and receipt of any applicable permits from the Department of Environmental Protection. The recorded conservation restriction shall be in the form approved by the municipality and shall run with the land and be binding upon the property owner and the successors in interest in the property or in any part thereof. The conservation restriction may include language reserving the right to make de minimus changes to accommodate necessary regulatory approvals upon the written consent of the municipality, provided such changes are otherwise consistent with this chapter. The recorded conservation restriction shall, at a minimum, include:

a. A written narrative of the authorized regulated activity, date of issuance, and date of expiration, and the conservation restriction that, in addition, includes all of the prohibitions set forth at N.J.S.A. 13:8B-2b(1) through (7);

b. Survey plans for the property as a whole and, where applicable, for any additional properties subject to the conservation restrictions. Such survey plans shall be submitted on the surveyor's letterhead, signed and sealed by the surveyor, and shall include metes and bounds descriptions of the property, the site, and the areas subject to the conservation restriction in New Jersey State Plane Coordinates, North American Datum 1983, and shall depict the boundaries of the site and all areas subject to the conservation restriction as marked with flags or stakes onsite. All such survey plans shall be submitted on paper and in digital CAD or GIS file on a media and format defined by the Borough. The flags or stakes shall be numbered and identified on the survey plan; and

c. A copy or copies of deeds for the property as a whole that indicate the deed book and pages where it has been recorded in the office of the clerk of the applicable county or the registrar of deeds and mortgages of the applicable county.

3. Any lands proposed for development which include all or a portion of an RBCZ shall as a condition of any major subdivision or major site plan approval, provide for the vegetation or revegetation of any portions of the RBCZ which are not vegetated at the time of the application or which were disturbed by prior land uses, including for agricultural use. Said vegetation plan shall utilize native and non-invasive tree and plant species to the maximum extent practicable in accordance with an approved Riparian Buffer Conservation Zone Management Plan, described in Section X.

4. For building lots which exist as of the date of adoption of this ordinance, but for which a building permit or a preliminary site plan approval has not been obtained or is no longer valid, the required minimum front, side, and rear setbacks may extend into the RBCZ, provided that a deed restriction and/or conservation easement is applied which prohibits clearing or construction in the RBCZ.

5. All stormwater shall be discharged outside of but may flow through an RBCZ and shall comply with the Standard For Off-Site Stability in the "Standards for Soil Erosion and Sediment Control in New Jersey", established under the Soil Erosion and Sediment Control Act, N.J.S.A. 4:24-39 et seq. (See N.J.A.C. 2:90-1.3.)

6. If stormwater discharged outside of and flowing through an RBCZ cannot comply with the Standard For Off-Site Stability cited in Section VI.5, then the stabilization measures in accordance with the requirements of the above standards may be placed within the RBCZ, provided that:

- a. Stabilization measures shall not be placed closer than 50 feet from the top of the bank at bank-full flow or level of affected surface water bodies;
- b. The encroachment shall only be allowed where the applicant demonstrates that the functional value and overall conditions of the RBCZ will be maintained to the maximum extent practicable;
- c. A conceptual project design meeting shall be held with the appropriate Borough staff and Soil Conservation District staff to identify necessary stabilization measures; and
- d. All encroachments proposed under this section shall be subject to review and approval by the Administrative Authority.

VII. NONCONFORMING STRUCTURES AND USES IN RIPARIAN BUFFER CONSERVATION ZONES

Nonconforming structures and uses of land within the RBCZ are subject to the following requirements:

- A. Legally existing but nonconforming structures or uses may be continued.
- B. Any proposed enlargement or expansion of the building footprint within a Category One (C1) RBCZ shall comply with the standards in N.J.A.C. 7:8-5.5(h).
- C. For all other RBCZs:
 1. Encroachment within the RBCZ shall only be allowed where previous development or disturbance has occurred.
 2. Existing impervious cover shall not be increased within the RBCZ as a result of encroachments where previous development or disturbances have occurred.
 3. Discontinued nonconforming uses may be resumed any time within one year from such discontinuance but not thereafter when showing clear indications of abandonment. No change or resumption shall be permitted that is more detrimental to the RBCZ, as measured against the intent and purpose under Section I, than the existing or former nonconforming use. This one-year time frame shall not apply to agricultural uses that are following prescribed Best Management Practices for crop rotation. However, resumption of agricultural uses must be strictly confined to the extent of disturbance existing at the time of adoption of this ordinance.

VIII. USES PROHIBITED IN RIPARIAN BUFFER CONSERVATION ZONES

- A. Any use within a Category One (C1) RBCZ shall comply with the standards in N.J.A.C. 7:8- 5.5(h).
- B. For other RBCZs, any use or activity not specifically authorized in Section V or Section VII shall be prohibited within the RBCZ. By way of example, the following activities and facilities are prohibited:
 1. Removal or clear-cutting of trees and other vegetation or soil disturbance such as grading, except for selective vegetation removal for the purpose of stream or riparian area stabilization or restoration projects that require vegetation removal or grading prior to implementation.

2. Storage of any hazardous or noxious materials.
3. Use of fertilizers, pesticides, herbicides, and/or other chemicals in excess of prescribed industry standards or the recommendations of the Soil Conservation District.
4. Roads or driveways, except where permitted in compliance with Section V.
5. Motor or wheeled vehicle traffic in any area, except as permitted by this Ordinance.
6. Parking lots.
7. Any type of permanent structure, except structures needed for a use permitted by Section V.
8. New subsurface sewage disposal areas. The expansion and replacement of existing subsurface sewage disposal areas for existing uses is permitted.
9. Residential grounds or lawns, except as otherwise permitted pursuant to this Ordinance.

IX. ACTIVITIES PERMITTED IN STREAM BUFFER CONSERVATION ZONES IN THE CASE OF NO REASONABLE OR PRUDENT ALTERNATIVE OR EXTREME HARDSHIP

A. For Category One (C1) RBCZs, requests for exemptions that fall under the purview of the Stormwater Management Rules must be authorized by the New Jersey Department of Environmental Protection, as per N.J.A.C 7:8-5.5(h)1.ii.

B. For other RBCZs, hardship variances may be granted by the Zoning Board of Adjustment in cases of a preexisting lot (existing at the time of adoption of this ordinance) when there is insufficient room outside the RBCZ for uses permitted by the underlying zoning and there is no other reasonable or prudent alternative to placement in the RBCZ, including obtaining variances from setback or other requirements that would allow conformance with the RBCZ requirements, and provided the following demonstrations are made:

1. An applicant shall be deemed to have established the existence of an extreme economic hardship, if the subject property is not capable of yielding a reasonable economic return if its present use is continued or if it is developed in accordance with provisions of this ordinance and that this inability to yield a reasonable economic return results from unique circumstances peculiar to the subject property which:
 - a. Do not apply to or affect other property in the immediate vicinity;
 - b. Relate to or arise out of the characteristics of the subject property because of the particular physical surroundings, shape or topographical conditions of the property involved, rather than the personal situations of the applicant; and are not the result of any action or inaction by the applicant or the owner or his predecessors in title.
 - c. The necessity of acquiring additional land to locate development outside the RBCZ shall not be considered an economic hardship unless the applicant can demonstrate that there is no adjacent land that is reasonably available or could be obtained, utilized, expanded or managed in order to fulfill the basic purpose of the proposed activity.
2. An applicant shall be deemed to have established compelling public need if the applicant demonstrates, based on specific facts, that one of the following applies:
 - a. The proposed project will serve an essential public health or safety need;
 - b. The proposed use is required to serve an existing public health or safety need; or
 - c. There is no alternative available to meet the established public health or safety need.
3. A variance can only be granted if it is shown that the activity is in conformance with all applicable local, state, and federal regulations, and that the exception granted is the minimum relief necessary to relieve the hardship.

C. If the above demonstrations are made, then the encroachment of impervious surfaces (structures or pavement) otherwise permitted by the underlying zoning is permitted to the extent of 750 square feet total. Said encroachment is not permitted closer than 100 feet from the top of the bank at bank-full flow or level of Category Two Waters for Trout Production (FW2-TP), or closer than 50 feet from the top of the bank at bank-full flow or level of other surface water bodies.

D. If such an exception is granted, the applicant shall rehabilitate an environmentally degraded RBCZ area within or adjacent to the same site, and at least equivalent in size to the RBCZ reduction permitted, or, if not possible, rehabilitate or expand an RBCZ area at least equivalent in size within a nearby site and, if available, within the same watershed. Rehabilitation

shall include reforestation, stream bank stabilization and removal of debris, in accordance with an RBCZ Management Plan, as described in Section X below.

[See Ed note.]

X. RIPARIAN BUFFER CONSERVATION ZONE MANAGEMENT PLAN

A. Within any RBCZ, no construction, development, use, activity, or encroachment shall be permitted unless the effects of such development are accompanied by preparation, approval, and implementation of a Riparian Buffer Conservation Zone Management Plan.

B. The landowner, applicant, or developer shall submit to the Borough Planning Board, or its appointed representative, a Riparian Buffer Conservation Zone Management Plan prepared by an environmental professional, professional engineer or other qualified professional which fully evaluates the effects of any proposed uses on the RBCZ. The Riparian Buffer Conservation Zone Management Plan shall identify the existing conditions including:

1. existing vegetation;
2. field delineated surface water bodies;
3. field delineated wetlands;
4. the 100-year floodplain;
5. flood hazard areas, including floodway and flood fringe areas, as delineated by the New Jersey Department of Environmental Protection;
6. soil classifications as found on soil surveys;
7. existing subdrainage areas of site with HUC-14 (Hydrologic Unit Code) designations;
8. slopes in each subdrainage area segmented into sections of slopes less than or equal to fifteen (15) percent; above fifteen percent but less twenty (20) percent; and greater than twenty (20) percent.

The proposed plan shall describe all proposed uses/activities, and fully evaluate the effects of all proposed uses/activities in an RBCZ, and all proposed management techniques, including proposed vegetation and any other measures necessary to offset disturbances to the RBCZ. A discussion of activities proposed as well as management techniques proposed to offset disturbances and/or enhance the site to improve the RBCZ's ability to function effectively as an RBCZ shall also be included with the RBCZ Management Plan submittal to the Borough.

C. The Plan shall be reviewed and must be approved by the Engineer of [municipality], in consultation with the Environmental Commission, as part of the subdivision and land development process.

D. The Riparian Buffer Conservation Zone Management Plan must include management provisions in narrative and/or graphic form specifying:

1. The manner in which the area within the RBCZ will be owned and by whom it will be managed and maintained.
2. The conservation and/or land management techniques and practices that will be used to conserve and protect the RBCZ, as applicable.
3. The professional and personnel resources that are expected to be necessary, in order to maintain and manage the RBCZ.
4. A revegetation plan, if applicable, that includes: three (3) layers of vegetation, including herbaceous plants that serve as ground cover, understory shrubs, and trees that when fully mature, will form an overhead canopy. Vegetation selected must be native, non-invasive species, and consistent with the soil, slope and moisture conditions of the site. The revegetation plan shall be prepared by a qualified environmental professional, landscape architect, or professional engineer, and shall be subject to the approval of the Municipal Engineer, in consultation with the Environmental Commission. Dominant vegetation in the Riparian Buffer Conservation Zone Management Plan shall consist of plant species that are suited to the stream buffer environment. The Engineer of [municipality] may require species suitability to be verified by qualified experts from the Soil Conservation District, Natural Resources Conservation Service, New Jersey Department of Environmental Protection, US Fish and Wildlife Service and/or State or Federal forest agencies.

E. A Riparian Buffer Conservation Zone Management Plan is not required where the RBCZ is not being disturbed and conservation easements/deed restrictions are applied to ensure there will be no future clearing or disturbance of the RBCZ.

F. Performance of the Riparian Buffer Conservation Zone Management Plan shall be guaranteed for two years by a surety, such as a bond, cash or letter of credit, which shall be provided to the Borough prior to the Borough issuing any permits or approving any uses relating to the applicable use or activity.

XI. BOUNDARY INTERPRETATION, APPEALS PROCEDURES, INSPECTIONS, CONFLICTS, SEVERABILITY

A. When a landowner or applicant disputes the boundaries of an RBCZ, or the defined bank-full flow or level, the landowner or applicant shall submit evidence to the Planning Board that describes the RBCZ, presents the landowner or applicant's proposed RBCZ delineation, and presents all justification for the proposed boundary change. For Category One (C1) RBCZs, the landowner or applicant must first obtain approval from the New Jersey Department of Environmental Protection. A decision from the Department must be included with the evidence submitted for municipal review.

B. Within 45 days of a complete submission of Section XI.A above, the Engineer of the Borough, or appointed representative, shall evaluate all material submitted and shall make a written determination, a copy of which shall be submitted to the Board and the landowner or applicant. Failure to act within the 45-day period shall not be interpreted to be an approval of the proposed boundary change.

C. Any party aggrieved by any such determination or other decision or determination under Section XI.B. may appeal to the Planning Board under the provisions of this ordinance. The party contesting the location of the RBCZ boundary shall have the burden of proof in case of any such appeal.

D. Any party aggrieved by any determination or decision of the Planning Board under this Ordinance may appeal to the Borough Council. The party contesting the determination or decision shall have the burden of proof in case of any such appeal.

E. Inspections:

1. Lands within or adjacent to an identified RBCZ shall be inspected by the Borough Engineer when:

- a. A subdivision or land development plan is submitted;
- b. A building permit is requested;
- c. A change or resumption of a nonconforming use is proposed;

d. A discontinued nonconforming use is resumed more than a year later, as described in Section VII.

2. The RBCZ may also be inspected periodically by representatives from the Borough if excessive or potentially problematic erosion is present, other problems are discovered, or at any time when the presence of an unauthorized activity or structure is brought to the attention of municipal officials or when the downstream surface waters are indicating reduction in quality.

F. Conflicts: All other ordinances, parts of ordinances, or other local requirements that are inconsistent or in conflict with this ordinance are hereby superseded to the extent of any inconsistency or conflict, and the provisions of this ordinance apply.

G. Severability:

1. Interpretation: This Ordinance shall be so construed as not to conflict with any provision of New Jersey or Federal law.

2. Notwithstanding that any provision of this Ordinance is held to be invalid or unconstitutional by a court of competent jurisdiction, all remaining provisions of the Ordinance shall continue to be of full force and effect.

3. The provisions of this Ordinance shall be cumulative with, and not in substitution for, all other applicable zoning, planning and land use regulations.

XII. ENFORCEMENT

A prompt investigation shall be made by the appropriate personnel of the Borough of any person or entity believed to be in violation hereof. If, upon inspection, a condition which is in violation of this Ordinance is discovered, a civil action in the Special Part of the Superior Court, or in the Superior Court, if the primary relief sought is injunctive or if penalties may exceed the jurisdictional limit of the Special Civil Part, by the filing and serving of appropriate process. Nothing in this Ordinance shall be construed to preclude the right of the Borough, pursuant to N.J.S.A 26:3A2-25, to initiate legal proceedings hereunder in Municipal Court. The violation of any section or subsection of this Ordinance shall constitute a separate and distinct offense

independent of the violation of any other section or subsection, or of any order issued pursuant to this Ordinance. Each day a violation continues shall be considered a separate offense.

[The municipality should include a discussion of compliance and enforcement actions taken in the event of non-compliance.]

XIII. EFFECTIVE DATE

This Ordinance shall take effect upon final adoption and publication in accordance with the law on **[date]**.

Council Member Lawver made a motion to introduce Ordinance 2008-2, second by Council Member Tucker. Mr. Lawver invited Mr. Jim Cosgrove of Omni Environmental to explain why Pennington Borough is being asked to do this ordinance. Mr. Lawver stated that the Public Works Committee discussed this ordinance and they had serious reservations. Mr. Lawver stated that rather than have Mr. Cosgrove come to the Public Works Committee meeting; he felt because of timing issues that it would be better to have this presentation to Council. Mr. Cosgrove explained that the Riparian Corridor Conservation Zone Ordinance is being required of Pennington Borough in order to adopt a Waste Water Management Plan Amendment to provide for an expansion of the Stonybrook Sewer Treatment Plant. Mr. Cosgrove stated that in June of 2006, Stonybrook had submitted a new Waste Water Management Plan for the Borough. Mr. Cosgrove stated that the DEP reviewed the document and provided them with comments after many months and in December of 2007 a revised document was submitted. Mr. Cosgrove stated that at that point, they reported to DEP that Hopewell Township had adopted a Riparian Corridor Ordinance and that they would work with Pennington Borough to prepare an Ordinance for the Borough. Mr. Cosgrove stated that unfortunately, DEP got back to him and said that was not good enough and they would not act on the Waste Water Management Plan until Pennington Borough moves forward with an ordinance. Mr. Cosgrove stated that he is hoping that by having the Borough introduce the ordinance tonight he can get them to continue their review of the Waste Water Management Plan. Mr. Cosgrove stated that the timing and approval of the review is very important because of other new regulations that are coming down. Mr. Cosgrove stated that if the Waste Water Management Plan is not adopted in the very near future, the ability to expand the treatment plant could be severely compromised. Mr. Cosgrove stated that having said this he anticipated some concerns with respect to this ordinance. Mr. Cosgrove stated that Pennington Borough is very different from other municipalities with regard to this model ordinance that has been introduced. Mr. Cosgrove stated that he thinks the model ordinance needs to be tweaked a little to better characterize the situation here in the Borough. Mr. Cosgrove stated that in comparing this model ordinance with the ordinance that Hopewell Township adopted, they are very different. Mr. Cosgrove stated that if Hopewell Township were trying to adopt the ordinance that they adopted now, the DEP would have some issues because a lot has changed since 2004. Mr. Cosgrove stated that he would encourage the Borough to make changes to this model ordinance. Council Members discussed their concerns with regard to the ordinance. Mr. Cosgrove recommended having a master riparian buffer map, so that anyone looking at the map would know exactly what they were dealing with. Mr. Cosgrove suggested getting together for a small group meeting to come up with some revisions to the model ordinance. Mr. Cosgrove stated that the key is to try to get the DEP to adopt the Waste Water Management Plan before the end of May. Council thanked Mr. Cosgrove for his time. Upon a roll call vote, all members present voted in favor of introduction of the ordinance with the understanding that there will be significant revisions made to the ordinance prior to adoption.

Committee Reports

Planning & Zoning and Library – Ms. Heinzl reported that the Library Board did not meet in March due to spring break, the Library Board will meet on April 24th. Ms. Heinzl reported that the Library is planning to have some children march in the Memorial Day Parade to promote the summer reading program. Ms. Heinzl stated that plans are underway for the summer reading program and registration will begin in the next few weeks. Ms. Heinzl stated that as in past years the Library will sponsor an Ice Cream contest for children to develop an ice cream flavor and name to compliment the summer reading theme, which this year is, Bugs.

Ms. Heinzl reported that the Planning Board met on March 12th and continued the hearing on the application of the Pennington School. Ms. Heinzl gave an update on the application and stated that the hearing will conclude at the April 9th meeting.

Ms. Heinzl reported that Judge Feinberg issued an opinion in favor of the Planning Board approval of the application for 31 North Main Street.

Ms. Heinzl reported that the Traffic Calming Committee has continued to meet and will meet again April 16th. Ms. Heinzl stated that a report with recommendations would be forthcoming.

Public Works – Mr. Lawver reported that the Public Works Committee met and continued to address the issue of unaccounted for water. Mr. Lawver stated that the Public Works Committee is going to propose an ordinance, which will put into place new rules for large meters that are not properly reading the water flow. Mr. Lawver stated that after the large meters are addressed they would move onto the residential meters, towards the end of the year.

Mr. Lawver gave the following water and trash report for March 2008:

PENNINGTON BOROUGH PUBLIC WORKS

TO: Joseph Lawver, Chairman
Public Works Committee

FROM: Jeff Wittkop, Superintendent

DATE: April 7, 2008

RE: **COUNCIL REPORT FOR THE MONTH OF MARCH 2008**

WATER

Water pumped for the month of March 2008-	8,362,000
Daily-	269,742
Water pumped for the month of March 2007-	8,178,000
Daily-	263,800

For the month of March 2008 we averaged 6,000 gallons **more** per day than 2007.

TRASH

70.90 tons of household trash for the month of March 2008 vs. 84.85 tons in March 2007

Residents are reminded that leaves should be placed in open bags without sticks or any debris for pickup. They may be put out on Monday and Thursday morning for pickup.

Mulch is available at the Senior Center for residents of Pennington Borough.

Personnel – Mr. Ogren reported that the Personnel Committee had two meetings since the last Council Meeting. Mr. Ogren stated that the Committee consisting of Council Members Heinzel and Tucker met with Borough Administrator, Gene Dunworth and Borough Clerk, Betty Sterling to review a proposed Personnel Policy and Employee Handbook. Mr. Ogren stated that this is a requirement of the Mercer County Joint Insurance Fund. Mr. Ogren explained that the draft was prepared by the Borough Attorney and the Borough Clerk and has been reviewed by the Committee and a final draft will be distributed to Borough Council Members for consideration. Mr. Ogren stated that there is a timing issue, as Mercer County JIF would like to have this done by May 1st. Mr. Ogren asked if this item could be on the agenda for consideration at the April 21st budget meeting.

Mr. Ogren stated that the Shade Tree Commission would be holding its annual Arbor Day celebration at the Tollgate School on April 25th, 2008.

Community Services – Ms. Chandler reported that the Parks and Recreation Committee met in March. Ms. Chandler stated that the Family Swim program held at the Pennington School was very successful. Ms. Chandler stated that the Recreation Committee has two people interested in joining the Committee and they are Kristen Higgins and Francie McManimon to fill two vacancies. Ms. Chandler reported that the Committee is working on this year's calendar of events and the Memorial Day Parade. Ms. Chandler stated that the playground equipment at Kunkel Park has been removed and the new equipment should be installed soon.

Public Safety – Mr. Tucker reported that Mr. Meytrott represented the Police Department at the annual First Aid Squad Captain's Banquet. Mr. Meytrott has continued to meet with the Chief's of Police from Hopewell Township, Ewing Township, and Lawrence Township for the purpose of discussing a regionalized communication system.

Mr. Tucker reported that Mr. Meytrott also represented the Borough at a monthly meeting of the Pennington Business and Professional Association. Mr. Tucker stated that the Borough's inspection officials were in attendance at the request of the Business Association. Mr. Tucker stated that the Borough officials did a splendid job explaining the rules and regulations that are imposed on anyone doing work in the Borough. Mr. Tucker reported that on March 8th there was a brief but violent windstorm that took out the power for about three hours. Mr. Tucker stated that the Public Safety Committee did meet to discuss some personnel matters.

Mr. Tucker gave the following statistics for March 2008:

114	Motor Vehicle Stops
55	Summonses Issued
19	Parking Summonses
1	DUI
50	Warnings
7	Motor Vehicle Accidents
4	Adult Males – Arrested

Finance – Mr. Griffiths reported that the Banking RFP’s have come in and it looks like the Borough will benefit from its efforts. Mr. Griffiths stated that there are two banks that are being considered as they provided the best interest rates. Mr. Griffiths stated that the Borough should pick up some additional revenue from interest and also save some funds by eliminating bank service fees and payroll processing fees. Mr. Griffiths stated that the Finance Committee would like to award the RFP at the budget meeting on April 21st.

Mr. Griffiths stated that with regard to the budget, we are at a fork in the road driven by the \$106,000 reduction in State funding. Mr. Griffiths stated that the decision on the reduced funding has not been finally decided and so the Borough cannot proceed much further with the budget until we know the final figures. Mr. Griffiths explained that the finance committee has prepared for the worst by identifying \$106,000 in budget cuts to keep the budget balanced and hoped for the best by preparing a list of items that were requested and to the degree that the state aid is reinstated, items will be added back in.

Mr. Griffiths stated that the next step is to schedule the budget workshop for April 21st. Mr. Dunworth inquired as to Council Members availability. Council agreed that if Chief Financial Officer, Sandy Webb and / or Borough Auditor Bob Morrison were available that the meeting should be scheduled for April 21st at 7:00 pm.

New Business

**Borough of Pennington
Resolution #2008-4.1**

RESOLUTION AUTHORIZING REFUNDS

BE IT RESOLVED, that a refund be issued to James & Laura Barrow, 6 Voorhees Way, Pennington, NJ, for an escrow balance for a Planning Board application for property located at 229 S. Main Street, Block 801, Lot 26, Application no. P05-020, in the amount of \$216.50.

Record of Council Vote on Passage

COUNCILMAN	AYE	NAY	N.V.	A.B.	COUNCILMAN	AYE	NAY	N.V.	A.B.
Chandler	X				Lawver	X			
Griffiths	S				Ogren	X			
Heinzel	X				Tucker	M			

Council Member Tucker made a motion to approve Resolution 2008-4.1, second by Council Member Griffiths with all members present voting in favor.

**Borough of Pennington
Resolution #2008 – 4.2**

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 \$ 801,337.05 from the following accounts:

Current	\$ 715,142.68
W/S Operating	\$ 74,831.82
Developers Escrow	\$ 10,048.25
Grant Fund	\$ 719.52
Animal Control Fund	\$ 273.60
Recreation Trust	\$ 321.18
TOTAL	\$ 801,337.05

Record of Council Vote on Passage

COUNCILMAN	AYE	NAY	N.V.	A.B.	COUNCILMAN	AYE	NAY	N.V.	A.B.
Chandler	X				Lawver	M			
Griffiths	S				Ogren	X			
Heinzel	X				Tucker	X			

Council Member Lawver made a motion to approve Resolution 2008-4.2, second by Council Member Griffiths. Mr. Lawver questioned the need for multiple membership dues for various associations. After some discussion, Mr. Dunworth was directed to have employees include a brief explanation, for 2009 memberships, justifying their request for membership in various associations. Mr. Lawver explained that

he has a problem with two people joining the same association considering the fact that the finance committee has been cutting items as small as \$100 from the budget just to balance the budget and he would like to make sure that the Borough is getting some value out of these memberships. Upon a roll call vote, all members present voted in favor.

**Borough of Pennington
Resolution #2008-4.3**

**RESOLUTION AUTHORIZING AMENDMENTS TO THE
2008 TEMPORARY BUDGET**

WHEREAS, the 2008 Budget for the Borough of Pennington has not been adopted; and

WHEREAS, additional funds are necessary to meet various obligations of the Borough of Pennington;

NOW, THEREFORE, BE IT RESOLVED, that the following additional appropriations be made in the 2008 Temporary Budget for the Current Account.

Construction	Salaries	\$ 10,000.00
Borough Property	Other Expense	\$ 10,000.00
Tax Collector	Other Expense	\$ 1,000.00
Gas, Motor Fuels, Oil	Other Expense	\$ 4,000.00
Planning Board	Salaries	\$ 7,000.00
Group Insurance	Other Expense	\$ 10,000.00
Police	Salaries	\$ 25,000.00
Prosecutor	Salaries	\$ 1,000.00
Streets	Salaries	\$ 5,000.00
Trash	Other Expense	\$ 20,000.00
Telephone	Other Expense	\$ 2,000.00
Municipal Court	Salaries	\$ 5,000.00
Total		\$ 100,000.00

BE IT FURTHER RESOLVED, that the following additional funds be appropriated for the 2008 Temporary Budget for the Water and Sewer Fund:

Water Operating	Salaries	\$ 15,000.00
Sewer Operating	Salaries	\$ 15,000.00
Stony Brook Sewer Authority	Other Expense	\$ 76,095.00
TOTAL		\$ 106,095.00

Record of Council Vote on Passage

COUNCILMAN	AYE	NAY	N.V.	A.B.	COUNCILMAN	AYE	NAY	N.V.	A.B.
Chandler	X				Lawver	X			
Griffiths	S				Ogren	M			
Heinzel	X				Tucker	X			

Council Member Ogren made a motion to approve Resolution 2008-4.3, second by Council Member Griffiths with all members present voting in favor.

**BOROUGH OF PENNINGTON
RESOLUTION NO. 2008- 4.4**

**RESOLUTION AUTHORIZING APPLICATION FOR
FUNDING TO NJDOT SAFE ROUTES TO SCHOOL PROGRAM**

WHEREAS, the New Jersey Department of Transportation has announced a federal-aid Safe Routes to School Program to encourage and enable children, including those with disabilities, to walk and bicycle to school, to make bicycling and walking to school safer and more appealing modes of transportation, and to facilitate the planning, development and implementation of projects and activities that will improve safety and reduce traffic, fuel consumption and air pollution in the vicinity of primary and middle schools;

WHEREAS, the Safe Routes to School Program provides funds for a variety of projects and activities including the planning, design and construction of such things as sidewalks, crosswalks, bike lanes, multi-use paths and traffic calming within two miles of an elementary or middle school;

WHEREAS, the Borough of Pennington has an acute need for crosswalks and other improvements to permit Pennington school children to walk safely to the Tollgate Grammar School and Timberlane Middle School;

WHEREAS, the Borough has prepared an application for funding under the Safe Routes to School Program for safety improvements at the following crosswalks: South Main Street and Curlis Avenue; Burd Street and Curlis Avenue; and West Delaware Avenue and Green Street, and the replacement of deteriorated sidewalks and missing curbing along South Main Street.

WHEREAS, Borough Council enthusiastically supports these improvements and the purposes of the Safe Routes to School Program;

NOW, THEREFORE, BE IT RESOLVED, by the Borough Council of the Borough of Pennington, that the aforesaid application for funding to the Safe Routes to School Program is hereby authorized and approved for submission to the N.J. Department of Transportation.

Record of Council Vote on Passage

COUNCILMAN	AYE	NAY	N.V.	A.B.	COUNCILMAN	AYE	NAY	N.V.	A.B.
Chandler	X				Lawver	X			
Griffiths	X				Ogren	M			
Heinzel	X				Tucker	S			

Council Member Ogren made a motion to approve Resolution 2008-4.4, second by Council Member Tucker. Mr. Ogren briefly explained the proposed application, which focuses on two crosswalk intersections, Green and Delaware and South Main and Curlis, an elevated crosswalk at Burd, just south of Curlis and improvements to 500 linear feet of sidewalks along South Main Street and curbing where there is no existing curbing. Mr. Ogren explained that he has gotten letters from both the School District and Mercer County in support of the application.

Ms. Chandler asked if this application would pay to replace the sidewalks along South Main Street? Mr. Ogren stated that if funds were awarded for that part of the project then yes, some of the sidewalks would be replaced. Mr. Ogren stated that given the amount of money that is being requested, he doubts that the Borough would get funding for everything. Mr. Ogren stated that the application includes a list of priorities and sidewalks are listed as the last priority. Ms. Chandler stated that she is concerned about the conflict considering that the Borough has done a review of all the sidewalks in town, if some of the sidewalks are replaced through a grant and others are not, there would seem to be a little inequity and she cautioned proceeding down a dangerous slope. A question came from the audience as to who would get the lucky sidewalk replacement. Mr. Ogren stated that was a good question.

Ms. Heinzel stated that this concern was discussed, but it was felt that if federal grant money could be obtained to repair sidewalks on a route to school, it seemed like it was worth a shot. Ms. Chandler stated that she felt the money should be applied to other things and not to sidewalks as it would not be fair to pay for sidewalks just because they are closer to the school than someone else.

Mr. Lawver stated that he would be very surprised if the Borough were to receive the full amount of the grant request.

Mayor Persichilli stated that because it seemed like people in the audience had an interest in this topic, he would allow comments from the public at this time.

Mr. Tom Timperman suggested that if the intent is to slow down traffic on Burd Street then he would suggest moving the elevated crosswalk to the North side of Burd and Curlis because motorists are cutting down Curlis to avoid the traffic light at Main and Delaware and they travel quite quickly down the street.

Mr. Lawver commended Mr. Ogren on his great work in pulling this application together. Mr. Lawver stated that the application was very thorough and comprehensive. Mr. Lawver stated that who knows if the Borough will get any funding, but each time the Borough applies to the DOT, there is a record that Pennington has done its homework, we know what needs to be done and we need their help. Mr. Lawver felt that at some point it would pay off, whether with this application or a future application.

Mayor Persichilli stated that the details of the application are available for anyone who would like to view the amount of work that went into the application. Upon a roll call vote, all members present voted in favor of Resolution 2008-4.4.

**Borough of Pennington
Resolution #2008 – 4.5**

**RESOLUTION AUTHORIZING AN INTERLOCAL AGREEMENT WITH
HOPEWELL TOWNSHIP TO PROVIDE
HEALTH SERVICES FOR 2008**

WHEREAS, the Borough of Pennington desires to contract with Hopewell Township for the provision of interlocal health services; and

WHEREAS, the Interlocal Services Act permits a local unit to enter into a contract with another government unit for the provision of a service which any party to the agreement is empowered to render; and

WHEREAS, the Interlocal agreement with Hopewell Township is to be completed to the satisfaction of the Borough Administrator and Borough Attorney, as well as to the satisfaction of Hopewell Township; and

WHEREAS, the cost to the Borough for the health services as outlined in the Interlocal agreement would be \$31,075.00, which represents a 4% increase over the previous year;

NOW, THEREFORE, BE IT RESOLVED, by the Borough Council of the Borough of Pennington, that the Mayor and Clerk are hereby authorized to execute the attached interlocal services agreement with Hopewell Township for the provision of health services as outlined in the agreement, subject to the approval by the Borough Attorney as to form.

Record of Council Vote on Passage

COUNCILMAN	AYE	NAY	N.V.	A.B.	COUNCILMAN	AYE	NAY	N.V.	A.B.
Chandler	X				Lawver	X			
Griffiths	X				Ogren	X			
Heinzel	S				Tucker	M			

Council Member Tucker made a motion to approve Resolution 2008-4.5, second by Council Member Heinzel with all members present voting in favor.

**Borough of Pennington
Resolution #2008-4.6**

RESOLUTION AUTHORIZING A PROFESSIONAL SERVICES AGREEMENT WITH PARS ENVIRONMENTAL INCORPORATED FOR THE COMPLETION OF THE 2007 RIGHT TO KNOW SURVEY

WHEREAS, the Borough Council of the Borough of Pennington seeks to retain the services of PARS Environmental, Inc., licensed engineers, to assist the Borough in completion of the 2007 Right To Know Survey; and

WHEREAS, the contemplated services include inventory of areas that contain hazardous chemicals and completion of the 2007 Right to Know Survey for each area as follows:

1. Borough Hall/Library/Police Dept.
2. Senior Citizen Center
3. Public Works Garage
4. Well House 4 & 5
5. Well House 6
6. Well House 7
7. Well House 8 & 9

WHEREAS, PARS Environmental, Inc. will prepare the appropriate number of surveys and distribute them to all required state and local agencies as well as provide a copy for the Borough files; and

WHEREAS, PARS Environmental, Inc. has agreed to perform these functions at a lump sum amount of \$1,800.00;

NOW THEREFORE BE IT RESOLVED, by the Borough Council of the Borough of Pennington, that the Mayor and Borough Clerk of the Borough are hereby authorized to enter into an agreement on behalf of the Borough for services as stated above, subject to approval of the form of agreement 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	S			
Griffiths	X				Ogren	X			
Heinzel	X				Tucker	M			

Council Member Tucker made a motion to approve Resolution 2008-4.6, second by Council Member Lawver with all members present voting in favor.

**Borough of Pennington
Resolution 2008-4.7**

RESOLUTION AUTHORIZING RELEASE OF ENGINEERING ESCROW AND PERFORMANCE GUARANTEE RELATING TO INSTALLATION OF WATER VALVES AND FIRE HYDRANT BY COMMERCE BANK (VNHA #34021-500-22)

WHEREAS, Commerce Bank has posted an engineering escrow and a certain performance guarantee relating to the installation of fire hydrant and related water valves for its property (VNHA #34021-500-22);

WHEREAS, the aforesaid performance guarantee amounts to \$8,788.46, inclusive of interest to date;

WHEREAS, the Borough Engineer has inspected the water valves and fire hydrant as installed and finds them to comply with the Borough of Pennington Water and Sewer Department rules and regulations;

WHEREAS, the Borough Engineer has recommended that the aforesaid Performance Guarantee be released to Commerce Bank;

WHEREAS, the Borough Engineer also recommends release of any remaining engineering escrow to Commerce Bank, which has already been done;

NOW, THEREFORE, BE IT RESOLVED, by the Borough Council of the Borough of Pennington, that the Borough Clerk is hereby authorized to release and return to Commerce Bank the aforesaid balance of the Performance Guarantee plus any further interest earned thereon.

Record of Council Vote on Passage

COUNCILMAN	AYE	NAY	N.V.	A.B.	COUNCILMAN	AYE	NAY	N.V.	A.B.
Chandler	X				Lawver	X			
Griffiths	X				Ogren	S			
Heinzel	M				Tucker	X			

Council Member Heinzel made a motion to approve Resolution 2008-4.7, second by Council Member Ogren with all members present voting in favor.

**Borough of Pennington
Resolution #2008 – 4.8**

**RESOLUTION AUTHORIZING PAYMENT REQUEST NO. 6
TO PENN-BOWER, INC. FOR WORK COMPLETED
UNDER THE 2007 PUBLIC WORKS MAINTENANCE AND EMERGENCY SERVICES
CONTRACT**

WHEREAS, Penn-Bower, Inc. has completed certain work pursuant to the 2007 Public Works Maintenance and Emergency Services Contract (VNHA #37473-500-52) relating to Park Street water main repair; and

WHEREAS, Van Note Harvey Associates, P.C. has reviewed and inspected the improvements that have been constructed and has approved payment for same pursuant to the contractor's Request for Payment No. 6 (\$3,307.49) net of two percent retainage (\$66.15), the net due therefore amounting to \$3,241.34; and

WHEREAS, this is a partial payment under the contract;

WHEREAS, funds are available in account # W-06-00-553-000-250;

NOW, THEREFORE, BE IT RESOLVED, by the Borough Council of the Borough of Pennington, that payment to Penn-Bower, Inc. in the amount of \$3,241.34, pursuant to Payment Request No. 6, is hereby authorized.

Record of Council Vote on Passage

COUNCILMAN	AYE	NAY	N.V.	A.B.	COUNCILMAN	AYE	NAY	N.V.	A.B.
Chandler	X				Lawver	M			
Griffiths	X				Ogren	X			
Heinzel	S				Tucker	X			

Council Member Lawver made a motion to approve Resolution 2008-4.8, second by Council Member Heinzel with all members present voting in favor.

**BOROUGH OF PENNINGTON
RESOLUTION 2008-4.9**

**RESOLUTION AUTHORIZING NEW INTERLOCAL
SERVICES AGREEMENT AFFECTING USE, MAINTENANCE
AND CLEANING OF THE SENIOR CENTER**

WHEREAS, use of the Senior Center on Reading Street in the Borough of Pennington is shared by Hopewell Borough, Hopewell Township and Pennington Borough;

WHEREAS, responsibilities for maintenance of the Senior Center are also shared among the three municipalities;

WHEREAS, the formula for sharing responsibilities is in need of updating, to better reflect each municipality's pro-rata use of the Center;

WHEREAS, the three municipalities intend to enter into an interlocal services agreement for 2008, superceding prior agreements, by which Hopewell Township will continue to provide weekly cleaning services at the Center and pay to Pennington Borough the sum of \$4,000; Hopewell Borough will pay Pennington \$1,000 for the year; and Pennington will provide cleaning supplies for the building and be responsible for all maintenance to the outside of the building, snow and ice removal, HVAC maintenance, plumbing, painting and replacement of light bulbs;

WHEREAS, the proposed form of agreement is annexed to this Resolution;

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 annexed agreement on behalf of Pennington Borough.

Record of Council Vote on Passage

COUNCILMAN	AYE	NAY	N.V.	A.B.	COUNCILMAN	AYE	NAY	N.V.	A.B.
Chandler	X				Lawver	S			
Griffiths	X				Ogren	X			
Heinzel	X				Tucker	M			

Council Member Tucker made a motion to approve Resolution 2008-2.9, second by Council Member Lawver with all members present voting in favor.

**Borough of Pennington
Resolution #2008-4.10**

RESOLUTION OPPOSING THE FAILURE OF THE GOVERNOR'S PROPOSED STATE BUDGET FOR THE 2008-2009 FISCAL YEAR TO TREAT PROPERTY TAX RELIEF AS OUR PRIORITY

WHEREAS, on February 26, 2008, in Trenton, Governor Jon S. Corzine presented his FY 2009 Budget proposal to a Joint Session of the State Legislature, which proposal now goes to the Legislators, which must pass a balanced budget by the start of the State's next Fiscal Year, which begins on July 1; and

WHEREAS, the proposal, which represents what the Governor called "many unpleasant choices," calls for the elimination of two Departments of State Government (the Departments of Agriculture and Personnel) and the State Commerce Commission, and asks all other Departments to absorb funding cuts, and further calls for sacrifice in a number of other areas, including direct property tax relief, hospital aid, higher education assistance and Medicaid, with the inordinately deep cuts in municipal property tax relief funding; and

WHEREAS, one year after the historic Special Session for Property Tax Reform, which purportedly eliminated the need for a Citizens' Convention, our property taxpayers will once again be asked for patience, and they will be asked to shoulder more that their fair share of the funding burden; and

WHEREAS, local officials have done so much with so little for so long, that State Budget-makers now believe some can do everything with absolutely nothing; and

WHEREAS, municipal property tax relief will be slashed by \$189.6 million; and

WHEREAS, for municipalities with a population of less than 5,000, there will be no CMPTRA funding this year; for municipalities with a population total between 5,000 and 10,000, this relief will be limited to one-half of the amount received in the State's 2006-2007 budget; and the \$32.6 million distributed according to the CMPTRA formula, which municipalities received last year as 2008 Municipal Property Tax Assistance, is gone; and

WHEREAS, all municipalities will receive level Energy Tax Receipts Property Tax Relief funding, despite State Law that "requires" annual inflationary adjustments of this (and CMPTRA) funding; and

WHEREAS, last year, municipal efficiency was promoted to the tune of \$34.8 million, but in this proposal, this funding has been eliminated; and

WHEREAS, last year's \$32 million in Municipal Homeland Security Funding is gone, Special Municipal Aid funding is cut from \$153 million to \$145.4 – a loss of \$7.6 million, Extraordinary Aid funding is reduced by \$1.7 million – from \$34 million to \$32.3 million and the \$8 million Regional Efficiency Aid Program will not be funded; and

WHEREAS, beyond these cuts, certain municipalities served by the State Police will be asked to contribute \$20 million to the State's General Fund, and Homestead Rebates for Homeowners will be cut by \$257 million, and for Renters by \$124 million; and

WHEREAS, the Borough of Pennington will lose \$106,000 under the proposed 2008-2009 State budget, which is equal to, two tax points and represents a loss of one-third of all of our State Aid;

NOW, THEREFORE, BE IT RESOLVED, that the Borough Council of the Borough of Pennington calls on its elected representative in Trenton, Senator Shirley Turner and Assembly Members Reed Gusciora and Bonnie Watson Coleman, to work with their colleagues in the Legislature and with the Governor to support a budget which does not disproportionately cut State Aid to municipalities based on population level without regard to efficiencies achieved through shared services; and

BE IT FURTHER RESOLVED, that copies of this resolution be forwarded to Governor Jon S. Corzine, Acting State Treasurer R. David Rousseau, Senate President Richard J. Codey, Senate Minority Leader Thomas H. Kean, Assembly Speaker Joseph J. Roberts, Assembly Minority Leader Alex Decroce, the Chairs and Members of the Senate and Assembly Budget and Appropriations Committees, our own Senator Shirley Turner and Assembly Members Reed Gusciora and Bonnie Watson Coleman and to the New Jersey State League of Municipalities.

Record of Council Vote on Passage

COUNCILMAN	AYE	NAY	N.V.	A.B.	COUNCILMAN	AYE	NAY	N.V.	A.B.
Chandler	X				Lawver	X			
Griffiths	X				Ogren	M			
Heinzel	S				Tucker	X			

Council Member Ogren mentioned that he had requested some language changes to the Resolution. Mr. Dunworth asked Mrs. Sterling to read the changes into the record. Council Member Ogren made a motion to approve Resolution 2008-4.10 as amended, second by Council Member Heinzel with all members present voting in favor.

**BOROUGH OF PENNINGTON
RESOLUTION # 2008 - 4.11**

**A RESOLUTION AUTHORIZING THE FILING OF A
RECYCLING TONNAGE GRANT
FOR 2007**

WHEREAS, the Mandatory Source Separation and Recycling Act, P.L. 1987, c.102, has established a recycling fund from which tonnage grants may be made to municipalities in order to encourage local source separation and recycling programs; and

WHEREAS, it is the intent and the spirit of the Mandatory Source Separation and Recycling Act to use the tonnage grants to develop new municipal recycling programs and to continue and to expand existing programs; and

WHEREAS, the New Jersey Department of Environmental Protection has promulgated recycling regulations to implement the Mandatory Source Separation and Recycling Act; and

WHEREAS, the recycling regulations impose on municipalities certain requirements as a condition for applying for tonnage grants, including, but not limited to, making and keeping accurate, verifiable records of materials collected and claimed by the municipality; and

WHEREAS, a resolution authorizing this municipality to apply for such tonnage grants for the calendar year 2007 will memorialize the commitment of this municipality to recycling and to indicate the assent of the Council of Pennington Borough to the efforts undertaken by the municipality and the requirements contained in the Recycling Act and recycling regulations; and

WHEREAS, such a resolution should designate the individual authorized to ensure the application is properly completed and timely filed.

NOW, THEREFORE, BE IT RESOLVED by the Council of Pennington Borough that Pennington Borough, hereby, endorses the submission of the recycling tonnage grant application to the New Jersey Department of Environmental Protection and designates W. Jeffrey Wittkop to ensure that the application is properly filed.

BE IT FURTHER RESOLVED that the monies received from the recycling tonnage grant be deposited in a dedicated recycling trust fund to be used solely for the purposes of recycling.

Record of Council Vote on Passage

COUNCILMAN	AYE	NAY	N.V.	A.B.	COUNCILMAN	AYE	NAY	N.V.	A.B.
Chandler	X				Lawver	M			
Griffiths	X				Ogren	X			
Heinzel	S				Tucker	X			

Council Member Lawver made a motion to approve Resolution 2008-4.11, second by Council Member Heinzel. Mr. Lawver stated that this grant would not be enough to pay the new State imposed \$3.00 per ton tax on trash. Upon a roll call vote all members present voted in favor.

**BOROUGH OF PENNINGTON
RESOLUTION #2008-4.12**

**RESOLUTION AUTHORIZING RELEASE OF PERFORMANCE
GUARANTEE FOR INSTALLATION OF GREASE INTERCEPTOR
AND MONITORING WELL FOR JANN'S SWEET SHOP**

WHEREAS, the Borough Engineer has recently completed inspection of the installation of a grease monitoring well for Jann's Sweet Shop in Pennington Borough (VNHA#37449-500-52);

WHEREAS, as a result of the inspection the Borough Engineer has determined that the installation has been substantially completed, subject only to (a) completion of interior plumbing work and inspection and approval of same by the Plumbing Inspector and (b) payment of all amounts due for the professional-services escrow required for the project;

WHEREAS, Jann's Sweet Shop has posted a performance guarantee of \$8,225 for the project;

WHEREAS, the Borough Engineer has recommended that Borough Council authorize release of the full amount of this performance guarantee subject to satisfaction of the specified conditions;

NOW, THEREFORE, BE IT RESOLVED, by the Borough Council of the Borough of Pennington, that upon presentation of documentation that the Plumbing Inspector has inspected and approved the interior plumbing related to the project and all obligations for escrow payments have been satisfied by Jann's Sweet Shop, the Borough Clerk is hereby authorized to release to the Sweet Shop the full amount of the aforesaid performance guarantee plus any interest earned thereon.

Record of Council Vote on Passage

COUNCILMAN	AYE	NAY	N.V.	A.B.	COUNCILMAN	AYE	NAY	N.V.	A.B.
Chandler	X				Lawver	M			
Griffiths	X				Ogren	X			
Heinzel	X				Tucker	S			

Council Member Lawver made a motion to approve Resolution 2008-4.12, second by Council Member Tucker with all members present voting in favor.

**Borough of Pennington
Resolution 2008-4.13**

**RESOLUTION AUTHORIZING ADVERTISEMENT FOR
PUBLIC BIDS FOR THE RECONSTRUCTION OF A PORTION OF HALE STREET**

WHEREAS, the Borough of Pennington has a need to undertake the reconstruction of a portion of Hale Street in the Borough;

WHEREAS, the needed reconstruction includes milling of existing paved areas, application of dense-graded aggregate base course, bituminous concrete base course and surface course, installing storm sewer pipes, inlets and appurtenances, construction of concrete driveway aprons, curbs, sidewalks, traffic signs and traffic road-striping and markings;

WHEREAS, the Borough seeks to retain a contractor to perform such project, supplying all materials, equipment and labor for the work;

WHEREAS, the work shall be performed pursuant to specifications and subject to review and approval by the Borough Engineer;

WHEREAS, necessary funding for the project is presently available;

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

(1) the Borough Engineer is hereby authorized to prepare all specifications and other documents required for the aforesaid contract;

(2) the Borough Administrator, in coordination with the Borough Engineer, is hereby authorized to advertise publicly for bids for the proposed contract, in compliance with the Local Public Contracts Law.

Record of Council Vote on Passage

COUNCILMAN	AYE	NAY	N.V.	A.B.	COUNCILMAN	AYE	NAY	N.V.	A.B.
Chandler	X				Lawver	M			
Griffiths	X				Ogren	X			
Heinzel	X				Tucker	S			

Council Member Lawver made a motion to approve Resolution 2008-4.13, second by Council Member Tucker with all members present voting in favor.

Council Discussion

Budget Workshop Meeting – April 21st, 2008 – Mr. Dunworth stated that he will check with the Shade Tree Commission to have them reschedule their meeting and also check with Sandy Webb and Bob Morrison on their availability.

Pets at Public Events – Ms. Chandler stated that she met with the Parks and Recreation Commission who host the concerts, movie nights and the parade and their feeling was that they did not wish to ban pets from these events, however they understand the concerns and the need for vigilance. Ms. Chandler stated that the Commission will be posting a notice on event announcements that all pets will be required to be well behaved and on leashes as indicated by the Borough Ordinance. Mr. Chandler stated that she met with Cindy Beloff of Pennington Day and they echoed the same sentiment in that they do not wish to ban pets at Pennington Day, however they will also require that all dogs must be leashed according to the Borough Ordinance. Ms. Chandler stated that for participants of the dog show, there is a long list of requirements for the dogs that participate.

Administrator's Report

Mr. Dunworth reminded Council that the May 5th, 2008 meeting has been rescheduled to May 12, 2008.

Mr. Dunworth stated that Senator Shirley Turner has notified the Borough that we will receive our annual award of \$4,000 for Clean Communities.

Mr. Dunworth stated that Council has copies of a letter from Alter Teixeira requesting the same services provided in the past for Pennington Day, including Public Works and Police services. Mr. Dunworth stated that Pennington Day would be held on May 17th.

Professional Reports

Mr. Meytrott stated that the Supreme Court has ruled that the Alcotest machine is now admissible. Mr. Meytrott stated that there are approximately four cases pending for Pennington Borough. Mr. Meytrott stated that penalties could now be assessed on those cases.

Public Comment Period

Mayor Persichilli opened the meeting for public comment and requested that anyone wishing to speak come forward, state name and address for the record and limit comments to a maximum of five minutes.

Mrs. Susan Porcella of 11 East Delaware Avenue expressed concern with the plans to convert the Twin Pines Airport into athletic fields and asked who would be responsible for the upkeep of these fields. Mayor Persichilli stated that this topic is still under discussion.

Mrs. Porcella also stated that there are businesses in town that need to be reminded of the zoning requirements for outdoor dining. Mrs. Porcella stated that the zoning ordinance should be enforced.

Mr. Mark Blackwell of 34 North Main Street inquired as to when the Nuisance Ordinance would be adopted as he thought it would be on the agenda tonight. Mr. Griffiths stated that the Borough does not have jurisdiction over that ordinance; the Board of Health does; however Council discussed it at the last meeting. Ms. Heinzl stated that at the last meeting Council raised concerns about the proposed ordinance. Mr. Blackwell stated that he has concerns with the ordinance and he is sure that there are other residents that will have concerns. Mr. Blackwell stated that it seems that the ordinance is encouraging neighbors to complain about each other. Mr. Blackwell inquired as to who would be enforcing the ordinance.

Mr. Lawver asked Mr. Bliss to comment on what role does the Borough has if the Board of Health introduces an ordinance that Council finds objectionable other than advising the Board of Health of concerns that they have. Mr. Bliss stated that the Board of Health has the independent authority to adopt ordinances, therefore we will have as much influence as they choose to give Council if they have the ultimate say. Mr. Blackwell stated that there is a difference in the garbage rules between the Board of Health Ordinance and the Borough Code so which set of rules would residents follow? Ms. Heinzl asked if the Borough ordinance would supersede what is in the Board of Health Ordinance? Mr. Bliss stated that he would have to do further research. Mr. Blackwell asked when and where the Public Hearing on this ordinance will be held, would it be at the Board of Health meeting? Mr. Blackwell stated that he would be attending the Board of Health meeting to express his concerns.

After further discussion including comments from the public, Council Member Lawver made a motion to request that the Board of Health reconsider the proposed ordinance as introduced and bring it back to Borough Council for review and public discussion prior to adoption, second by Council Member Heinzl. In addition, Ms. Heinzl recommended that Borough Council and resident concerns be outlined and communicated to the Board of Health. Upon a roll call vote, all members present voted in favor.

Mr. Mark O'Dea, owner of multiple properties in Pennington asked if there were a conflict between the proposed Board of Health Ordinance and a Borough Ordinance, which would supersede the other? Mr. Bliss stated that on general principal and to the extent that the nuisance ordinance derives from State Statute, and the powers granted to the Board of Health are by State Statute, then there is the possibility that Borough Ordinances could be superseded if the Borough Ordinances stray into the jurisdiction of the Board

of Health. Mr. Bliss stated that when it comes to garbage collection his initial reaction was that falls within the police power of the municipality, since we are in the business of collecting garbage and have a set of rules as to when it can be put out and so forth. Discussion took place with regard to enforcement of ordinances and which ordinance would be enforced if there were a conflict in the ordinances.

Mayor Persichilli read the following resolution to convene in closed session.

AT, 9:26 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:

- Presbyterian Homes Tax Appeal

AT, 10:10 PM, Mayor and Council returned to open session.

Council Member Lawver made a motion to increase the authorization for Co-Counsel on the Presbyterian Homes Tax Appeal from \$5,000 to \$10,000, second by Council Member Heinzl with all members present voting in favor.

Council Member Tucker made a motion to approve additional payment of \$3,775 to Virginia Kerr for work involved with the Presbyterian Homes Tax Appeal, second by Council Member Lawver with all members present voting in favor.

Council Member Heinzl made a motion to approve the December 3, 2007 and December 12, 2007, closed session minutes for content, but not for release, second by Council Member Lawver. Upon a roll call vote, Council Members Heinzl, Lawver and Tucker voted in favor, Council Members Griffiths, Chandler and Ogren all abstained. Due to the tie vote, Mayor Persichilli voted in favor of approval.

At 10:15 PM, Council Member Griffiths made a motion to adjourn the meeting, second by Council Member Heinzl with all members present voting in favor.

Respectfully submitted,

Elizabeth Sterling
Borough Clerk