

**Pennington Borough Council
Regular Meeting – May 12, 2008**

Mayor Persichilli called the Regular Meeting of the Borough Council to order at 7:00 pm. Borough Clerk Betty Sterling called the roll with Council Members Chandler, Griffiths, Heinzl, 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.

Approval of Minutes

Council Member Tucker made a motion to approve the minutes of the March 3, 2008, Regular Meeting, second by Council Member Heinzl with all members present voting in favor.

Council Member Tucker made a motion to approve the minutes of the April 7, 2008, Regular Meeting, second by Council Member Lawver with all members present voting in favor.

Council Member Tucker made a motion to approve the minutes of the April 21, 2008, Special Meeting, second by Council Member Heinzl with all members present voting in favor.

Mayor’s Business

Mayor Persichilli announced the resignation of Roxanne Douvos from the Library Board of Trustees.

Mayor Persichilli stated that he has received some recommendations for appointments to the Recreation Commission and the Shade Tree Commission and they will be addressed at the next meeting.

Ordinances for Public Hearing and Adoption

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 Tucker made a motion to open the Public Hearing on Ordinance 2008-2, second by Council Member Lawver. Mr. Lawver asked that the Public Hearing on this Ordinance be continued to the June meeting. Mr. Bliss explained that essentially the question is whether this Ordinance will continue in the present form or whether it will be substantially changed, as that would require re-introduction. Mr. Lawver stated that most likely the Ordinance would need to be re-introduced. Council Member Ogren made motion to close the Public Hearing, second by Council Member Heinzl.

Mayor read Ordinance 2008-3 by title.

**BOROUGH OF PENNINGTON
ORDINANCE 2008-3**

**AN ORDINANCE CONCERNING THE INSTALLATION,
MAINTENANCE AND CALIBRATION OF WATER METERS
GREATER THAN ONE INCH AND AMENDING CHAPTER 206
OF THE CODE OF THE BOROUGH OF PENNINGTON**

WHEREAS, the Borough of Pennington, through its Water and Sewer Department, is required by the New Jersey Department of Environmental Protection to reduce unmetered water flows for fire suppression and domestic use to less than fifteen percent (15%) of all water pumped from Borough wells;

WHEREAS, the Borough of Pennington has undertaken a series of steps over the last five years to reduce unmetered flows, including the hiring of outside contractors with specialized equipment for leak detection, and such flows have been reduced from 30% to the current level of 24%;

WHEREAS, an essential next step is to monitor the installation, repair and replacement of water meters to ensure accurate measurement of water consumed by users;

WHEREAS, users of water requiring water meters of greater than one inch are responsible for providing their own meters, subject to the approval of the Superintendent of Public Works or designated representative;

WHEREAS, it is the intent of this ordinance to require that these users install, maintain, repair and replace their meters, as necessary, to comply with the Rules and Regulations of the Pennington Water and Sewer Department consistent with applicable State regulations and accepted industry standards;

NOW, THEREFORE, BE IT ORDAINED, by the Borough Council of the Borough of Pennington, that Chapter 206 of the Code of the Borough of Pennington, concerning water and sewers, is hereby amended by the insertion of the following provisions:

1. All water meters greater than one inch shall be installed, maintained, repaired and replaced pursuant to the Rules and Regulations of the Pennington Borough Water and Sewer Department.

2. All water users having meters greater than one inch shall have these meters calibrated and certified as accurate within five years after the date of installation and every five years thereafter. The calibration and certification shall be performed by a qualified water meter service company, using test equipment approved by the State Bureau of Weights and Measures. Documentation of the calibration and certification shall be submitted promptly to the Pennington Water and Sewer Department. The minimum permitted degree of accuracy of a meter shall be determined according to the Rules and Regulations of the Water and Sewer Department. Any meter failing to comply with the applicable standard of accuracy shall be repaired or replaced as necessary to meet the standard.

3. As used in this ordinance, the "Rules and Regulations of the Pennington Borough Water and Sewer Department" mean and include the Department's "Construction Rules and Regulation - Application and Design Instructions" and "Construction Rules and Regulation - Standard Details," which shall be consistent with applicable State regulations and the standards of the American Water Works Association (AWWA), as determined by the Borough Engineer.

4. The Pennington Water and Sewer Department shall notify water users of any failure to comply with an obligation to calibrate, certify, repair or replace a meter as required by this ordinance. Any such failure to comply which continues after 90 days from the date of such notice shall be subject to the fines and penalties prescribed by Section 206-16. In addition, if the user persistently fails or refuses to comply, the Water and Sewer Department may elect to perform the obligation of the user at the expense of the user. This right on the Borough's part shall not diminish in any way the liability of the user for the penalties and costs otherwise applicable.

BE IT FURTHER ORDAINED, that this Ordinance shall be effective upon its passage and publication as provided by law.

Council Member Lawver made a motion to open the Public Hearing on Ordinance 2008-3, second by Council Member Tucker. There were no comments from the public. Council Member Lawver made a motion to close the Public Hearing on Ordinance 2008-3, second by Council Member Heinzl with all members present voting in favor. Council Member Tucker made a motion to adopt Ordinance 2008-3, second by Council Member Lawver with all members present voting in favor.

Committee Reports

Planning & Zoning and Library – Ms. Heinzl reported that the Library Board met on April 24th. Ms. Heinzl announced that Amy DiDario has been hired to replace Carol Spencer. Ms. Heinzl stated that Amy is a student studying to be a Librarian and so this is a great opportunity for her. Ms. Heinzl reported that the Library software upgrade has been installed and volunteers are being trained on the new system. Ms. Heinzl stated that the Friends of the Pennington Library are sponsoring a special event on Wednesday, May 21st from 7 to 9 at the Historic Barn in Hopewell. Ms. Heinzl stated that this is a fundraiser featuring Ellen Sprague, a resident of Pennington, who will be talking about her new book, “If I Had Known Then”.

Ms. Heinzl reported that the Pennington School continued their hearing on their major site plan at the April Planning Board Meeting. Ms. Heinzl stated that the Planning Board voted unanimously to approve the site plan. Ms. Heinzl reviewed the major features of the application for Council.

Public Works/Economic Development – Mr. Lawver reported that the Economic Development Commission met on April 28th and they continue working on Commercial Brokers and Property Owners to compile a list of retail and office commercial properties and they are working with the Pennington Business and Professional Association to recreate a Business Directory that existed several years ago. Mr. Lawver stated that the Economic Development Commission has published their second newsletter with positive responses from business owners. Mr. Lawver stated that in addition the Economic Development commission is proposing a new Pennington Business of the Year Award to be awarding in early 2009. Mr. Lawver stated that finally the Economic Development Commission would like to see the Borough website revamped.

Mr. Lawver reported that the Public Works Committee met in April to continue to address the many water issues. Mr. Lawver reported that over the next couple of weeks, the wellhead at well 6 would be lowered in an effort to increase the volume of water that comes from the well. Mr. Lawver stated that initial conversations have begun with the DEP regarding the permit process for building a pad and installing a volatile organic compound filter for Well 8. Mr. Lawver reminded Council that Well 8 has been off line for the last year and a half and it is capable of pumping up to 50,000 gallons of water per day. Mr. Lawver stated that having well 8 up and running would do a lot towards solving long term water needs. Mr. Lawver stated that the Public Works Committee also discussed working on the specifications for a new garbage truck.

PENNINGTON BOROUGH PUBLIC WORKS

TO: Joseph Lawver, Chairman
Public Works Committee

FROM: Jeff Wittkop, Superintendent

DATE: May 1, 2008

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

WATER

Water pumped for the month of April 2008-	8,567,000
Daily-	285,500
Water pumped for the month of April 2007-	7,506,000
Daily-	250,200

For the month of April 2008 we averaged 35,000 gallons more per day than 2007.

TRASH

106.81 tons of household trash for the month of April 2008 vs. 93.19 tons in April 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 stated that at the last meeting there was a brief discussion of a proposed new Personnel Manual. Mr. Ogren stated that at the time, he requested that Council defer action on the manual to give employees the opportunity to comment on the proposed manual and to allow the Personnel Committee to consider the comments and act accordingly. Mr. Ogren stated that the committee did meet with several employees and made some minor changes to the proposed manual. Mr. Ogren stated that what Council has tonight is the revised version. Mr. Ogren stated that one substantive difference is that the policy on health benefits for retirees was inadvertently omitted from the original draft and it has now been added with no changes. Mr. Ogren thanked Council Members Heinzl and Tucker and Borough staff or their hard work on the Personnel Manual. Mr. Ogren thanked Betty Sterling for compiling the document and making numerous changes to get to the version before Council.

Community Services – Ms. Chandler stated that the Parks and Recreation Committee met in April. Ms. Chandler reported that American Flags along Main Street and Delaware have been hung, Kunkel Park playground equipment purchased with Mercer at Play Grant Funds has been installed and plans for the Memorial Day Parade are underway. Ms. Chandler reported that the next meeting will be held tomorrow night.

Public Safety – Mr. Tucker reported that the Police Department assisted with traffic on Route 31 on April 1st when a tractorcade proceeded to the NJ State House in Trenton to protest the elimination of the Department of Agriculture. No incidents were reported. Mr. Tucker reported that on April 3rd, Director Meytrott attended a meeting of the Hopewell Valley Municipal Alliance, several programs were discussed involving the youth of Hopewell Valley. Mr. Tucker reported that information on a new program called “Hopewell Can” would be forthcoming. Mr. Tucker stated that this program is being formed to award students for signing a pledge to remain drug and alcohol free. Mr. Tucker stated that Mr. Meytrott met with the Hopewell Valley Historic Society to finalize plans for their Homes of Pennington tour on April 19th. No incidents were reported. Mr. Tucker stated that on April 17th, the Tollgate School held their annual Safety Lockdown Drill and Mr. Meytrott observed that all systems were in proper working order and the school and staff acted flawlessly. Mr. Tucker reported that on April 30th, Director Meytrott represented the Police Department at the AAA Annual Awards Ceremony for student safety patrolers. Mr. Tucker reported that Joey Sipola, a student of the Tollgate School was honored at the ceremony.

Mr. Tucker gave the following statistics for the month of April 2008:

156	Motor Vehicle Stops
84	Summonses Issued
34	Parking Summonses
1	DUI
53	Warnings
7	Motor Vehicle Accidents
2	Adult Males – Arrested
6	Adult Females – Arrested
1	Juvenile Male

Finance – Mr. Griffiths stated that the process of consolidating bank accounts into The Bank of Princeton is moving ahead; meanwhile the Hopewell Valley Community Bank continues to register its objections to the decision. Mr. Griffiths stated that Hopewell Valley Community Bank wrote the Borough a letter on April 25th, which expresses their disappointment in the Borough’s decision based on their relationship with the Borough. Mr. Griffiths explained that they also expressed shock that the Borough awarded services to a bank that was not rated three stars by Veribanc. Mr. Griffiths stated that the Borough responded on May 5th to their concerns. Mr. Griffiths stated that historically the relationship with Hopewell Valley Community Bank has been unfavorable from an interest rate standpoint, as they have been paying us less interest than other banks. Mr. Griffiths reminded everyone that Hopewell Valley Community Bank triggered the RFP process by notifying the Borough that they would not be paying for payroll services after a certain date. Mr. Griffiths briefly explained the Veribanc rating system and stated that this rating would not have any bearing on the safety of Borough deposits, which are protected by two or more insurance vehicles. Mr. Griffiths went on to explain briefly the interest that was proposed in the RFP and how Mr. Ryan’s concerns were addressed. Mr. Griffiths stated that he and Mr. Dunworth would be meeting with Mr. Ryan on Friday to allow Mr. Ryan to air his objections.

Mr. Griffiths stated that the budget process is still at an impasse awaiting a decision on State Aid figures. Mr. Griffiths stated that he has compiled a “wish list” of items to be added back to the budget if funds are reinstated.

Mr. Griffiths reported that the Edmunds Finance Software has been upgraded to permit exporting information to Excel and he has begun building a database of Borough spending history for the past three years. Mr. Griffiths stated that this would allow him to do some analysis and look for opportunities to consolidate other types of spending.

Mr. Griffiths stated that he has begun to do an analysis on the benefits of continuing to own the Water/Sewer Company municipally given the upcoming capital expenditures. Mr. Griffiths stated that the analysis would take a little longer than he anticipated given the many billing categories and the antiquated software program that the Borough is using.

Mr. Ogren reported that the Shade Tree Commission held their annual Arbor Day Celebration on April 25th at the Tollgate School. Mr. Ogren thanked members of Council who attended and explained that he was

not there as he was representing the Mayor at a Statewide Arbor Day Celebration accepting an award for the Borough's 20 years designation as a "Tree City USA".

New Business

**Borough of Pennington
Resolution #2008-5.1**

There were no refunds for the month of May.

**Borough of Pennington
Resolution #2008 – 5.2**

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 \$ 1,681,543.20 from the following accounts:

Current	\$1,198,513.15
W/S Operating	\$ 113,684.68
Developers Escrow	\$ 33,170.58
Grant Fund	\$ 330,422.22
General Capital	\$ 2,340.50
Water/Sewer Capital	\$ 3,241.34
Animal Control Fund	\$ 126.00
Unemployment Trust	\$ 44.73
TOTAL	\$1,684,543.20

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	M				Ogren	X			
Heinzel	S				Tucker	X			

Council Member Griffiths made a motion to approve Resolution 2008-5.2, second by Council Member Heinzel. Council Members raised some questions on specific bills on the bill list. Upon a roll call vote, all members present voted in favor.

**Borough of Pennington
Resolution #2008–5.3**

**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.

Municipal Clerk	Salaries	\$ 15,000.00
Financial Administration	Salaries	\$ 15,000.00
Tax Collection	Salaries	\$ 7,000.00
Tax Map Maintenance	Other Expense	\$ 500.00
Tax Assessment	Salaries	\$ 5,000.00
Legal Services	Other Expense	\$20,000.00
Planning Board	Salaries	\$ 15,000.00
Construction	Salaries	\$ 15,000.00
Group Insurance	Other Expense	\$ 40,000.00

Police	Salaries	\$ 100,000.00
LOSAP	Other Expense	\$ 7,025.00
Prosecutor	Salaries	\$ 2,000.00
Streets	Salaries	\$ 40,000.00
Streets	Other Expense	\$ 20,000.00
Trash	Salaries	\$ 15,000.00
Borough Property	Salaries	\$ 5,000.00
Recreation	Salaries	\$ 5,000.00
Recreation	Other Expense	\$ 7,000.00
Library	Salaries	\$ 10,000.00
Library	Other Expense	\$ 44,625.00
Celebration of Public Events	Other Expense	\$ 1,300.00
Street Lighting	Other Expense	\$ 5,000.00
Telephone	Other Expense	\$ 5,000.00
Gas (Natural / Propane)	Other Expense	\$ 4,000.00
Gas, Fuel, Lubricants	Other Expense	\$ 10,000.00
Social Security	Other Expense	\$ 15,000.00
Interlocal – Janitorial Services	Other Expense	\$ 4,600.00
Interlocal – Health Services	Other Expense	\$ 25,075.00
Interlocal – Animal Control	Other Expense	\$ 6,700.00
Interlocal – Municipal Alliance	Other Expense	\$ 1,000.00
	Total	\$ 465,825.00

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

Water Operating	Other Expense	\$ 20,000.00
	TOTAL	\$ 20,000.00

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 2008-5.3, second by Council Member Griffiths with all members present voting in favor.

**Borough of Pennington
Resolution #2008 – 5.4**

**A RESOLUTION AUTHORIZING CHANGE ORDER NO. 5
UNDER CONTRACT WITH GRES PAVING COMPANY, INC. FOR
HALE STREET RECONSTRUCTION - PHASE I**

WHEREAS, the Borough Engineer has recommended that a change order be effected under the Contract between the Borough of Pennington and Gres Paving Company, Inc. for the project known as Hale Street Reconstruction - Phase I (VNHA #36354-500-52) in order to decrease contract quantities to match as-built quantities based on waiver of requirement for bituminous concrete core testing by the NJDOT;

WHEREAS, the proposed change order would result in a net decrease in contract price of \$1,150.;

WHEREAS, a copy of the proposed change order, designated Change Order No. 5, including itemization of the proposed decrease, is attached;

WHEREAS, the proposed change order, payable from the State Department of Transportation funds awarded for the project, has been reviewed and approved by the State Department of Transportation;

WHEREAS, funds are available in Account No. G-02-44-925-000-255; and

NOW, THEREFORE BE IT RESOLVED, by the Borough Council of the Borough of Pennington, that the aforesaid Change Order No. 5 is hereby approved.

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 2008-5.4, second by Council Member Tucker with all members present voting in favor.

**Borough of Pennington
Resolution #2008-5.5**

RESOLUTION AUTHORIZING THE MAYOR TO EXECUTE AN INTERLOCAL SERVICES AGREEMENT WITH THE BOARD OF FIRE COMMISSIONERS HOPEWELL TOWNSHIP FIRE DISTRICT NO. 1 FOR THE PROVISION OF FIRE INSPECTION SERVICES

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

WHEREAS, pursuant to the Interlocal Services Act (N.J.S.A. 40:8A-1 et.seq.), the Borough desires to contract with the Board of Fire Commissioners Hopewell Township Fire District No. 1 for the provision of those fire inspection services;

WHEREAS, the substance of the proposed agreement is contained in the form of Agreement annexed hereto;

WHEREAS, the Agreement provides that provision of the subject fire inspection services will entail no cost to the Borough;

NOW, THEREFORE, BE IT RESOLVED, by the Borough Council of the Borough of Pennington, that the Mayor of the Borough of Pennington be and hereby is authorized and directed to execute an interlocal services agreement between the Borough and the Board of Fire Commissioners Hopewell Township Fire District No. 1 for the provision of fire inspection services, substantially in the form annexed hereto, subject to approval as to final form by the Borough Attorney of the Borough of Pennington.

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 2008-5.5, second by Council Member Ogren with all members present voting in favor.

**Borough of Pennington
Resolution #2008 – 5.6**

RESOLUTION AUTHORIZING THE MAYOR TO EXECUTE AN INTERLOCAL SERVICES AGREEMENT WITH THE BOARD OF FIRE COMMISSIONERS OF HOPEWELL TOWNSHIP FIRE DISTRICT NO. 1 FOR THE PROVISION OF BASIC LIFE SUPPORT SERVICES

WHEREAS, the Borough of Pennington (the “Borough”), is responsible for providing Emergency Medical Services within the boundaries of the Borough; and

WHEREAS, pursuant to the Interlocal Services Act (N.J.S.A. 40:8A-1 et.seq.), the Borough desires to contract with the Board of Fire Commissioners of Hopewell Township Fire District No. 1 for the provision of Basic Life Support Services within the boundaries of the Borough;

WHEREAS, the proposed Interlocal Services Agreement, of which a copy is attached, is in substantially the same form as the 2007 agreement between these parties except the proposed Agreement incorporates a \$3,000 annual fee for these services;

NOW, THEREFORE, BE IT RESOLVED, by the Borough Council of the Borough of Pennington, that the Mayor of the Borough of Pennington is hereby authorized and directed to execute the attached Interlocal Services Agreement between the Borough of Pennington and the Board of Fire Commissioners of Hopewell Township Fire District No.1 for the provision of Basic Life Support Services within the boundaries of the Borough, subject to approval as to final form by the Borough Attorney of the Borough of Pennington.

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 2008-5.6, second by Council Member Heinzel. Mr. Lawver asked if anyone had pursued the possibility of having this agreement be a three-year agreement instead of a one-year agreement. Mr. Meytrott explained that it was discussed very briefly and it was decided to try for a year with the Basic Life Support fee of \$3,000 and then review the

agreement to see if it is working or if a fee based system would work better. Mr. Lawver stated that he feels it is better for the Borough to have longer-term agreements to provide predictability and to avoid the need to address the agreements over and over again when they are up for renewal. Mr. Meytrott stated that part of the issue this year is that this is the first year for the \$3,000. Upon a roll call vote, all members present voted in favor.

**BOROUGH OF PENNINGTON
RESOLUTION 2008- 5.7**

**RESOLUTION ADOPTING A COMPREHENSIVELY REVISED
PERSONNEL POLICIES AND PROCEDURES MANUAL AND
EMPLOYEE HANDBOOK, TO BE EFFECTIVE MAY 1, 2008**

WHEREAS, the Personnel Committee of Borough Council has proposed revisions to the personnel policies of the Borough to update the policy manual which was adopted by resolution of Borough Council on September 2, 1997 and has been amended by resolution from time to time thereafter;

WHEREAS, the revisions proposed by the Committee are comprehensive in both form and substance, bringing together and updating policies adopted from time to time and integrating them with policies required for insurance coverage under the Mid Jersey Joint Insurance Fund;

WHEREAS, the revised policies have been incorporated into a proposed “Personnel Policies and Procedures Manual and Employee Handbook” which, upon adoption by Borough Council, is required to be distributed to all Borough employees;

WHEREAS, the proposed Manual and Handbook provides guidelines only and shall not be construed to create an employment contract, and the Borough reserves the right, with or without notice, in an individual case or generally, to change any of its guidelines, policies, practices, working conditions or benefits at any time;

WHEREAS, as provided in the Manual and Handbook, no one is authorized to provide any employee with an employment contract or special arrangement concerning terms or conditions of employment unless the contract or arrangement is in writing and is signed by the Borough Administrator;

WHEREAS, employment with the Borough shall continue to be at-will, meaning employment may be terminated at any time, with or without cause or notice, by the employee or by the Borough;

WHEREAS, the proposed Manual and Handbook replaces and supercedes all prior manuals and handbooks but does not supercede the provisions of any bargaining unit agreement and does not purport to modify the requirements of State and Federal law;

WHEREAS, a copy of the proposed Manual and Handbook shall be made available for inspection by employees and the public in the office of the Borough Clerk during normal business hours;

WHEREAS, the Manual and Handbook, of which a copy is attached, is proposed to be effective on May 1, 2008;

NOW, THEREFORE, BE IT RESOLVED, by the Borough Council of the Borough of Pennington, that the attached Personnel Policies and Procedures Manual and Employee Handbook is hereby adopted effective May 1, 2008, replacing and superceding all prior personnel manuals and handbooks and subject to the understandings set forth above.

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 2008-5.8, second by Council Member Tucker with all members present voting in favor.

**Borough of Pennington
Resolution #2008-5.8**

**RESOLUTION AWARDING CONTRACT FOR HALE STREET RECONSTRUCTION
PHASE II TO TOP LINE CONSTRUCTION, CORP.**

WHEREAS, the Borough Council of the Borough of Pennington has authorized advertisement for bids for the project known as Hale Street Reconstruction – Phase II (VNHA #38029-220-22);

WHEREAS, on May 1, 2008 the Borough received four bids for the project;

WHEREAS, the bid of Top Line Construction Corp., 22 Fifth Street, Somerville, NJ 08876 in the amount of \$83,131.25, is the lowest responsible bid;

WHEREAS, the Borough Engineer has reviewed the bid and its conformity with bid specifications as well as the bidder's experience and ability to perform the work;

WHEREAS, the Borough Engineer has recommended that the Borough award the contract to Top Line Construction Corp., subject to concurrence by the New Jersey Department of Transportation;

WHEREAS, a summary of the bids is available in the office of the Borough Clerk;

WHEREAS, the Chief Financial Officer of the Borough has certified that Funds are available for the project in account #G-02-44-933-000-255;

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

1. The contract entitled "Hale Street Reconstruction – Phase II" is hereby awarded to Top Line Construction Corp. for the total bid amount of \$83,131.25, subject to approval by the State Department of Transportation.
2. The Mayor, with the attestation of the Borough Clerk, is hereby authorized to execute and enter into the said contract on behalf of the Borough upon approval of same by the Department of Transportation and the contractor's submission of documents required to be submitted and approved prior to contract execution.

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 2008-5.8, second by Council Member Heinzel. Mr. Ogren inquired as to a discrepancy between the Resolution and the letter from Van Note Harvey recommending payment. Mr. Lawver stated that there is a typo in the letter and the amount referenced on the Resolution is the correct amount. Upon a roll call vote, all members present voted in favor.

**BOROUGH OF PENNINGTON
RESOLUTION #2008-5.9**

**RESOLUTION AUTHORIZING THE BOROUGH OF PENNINGTON
TO ENTER INTO AN AMENDED RECREATION INTERLOCAL
SERVICES AGREEMENT WITH HOPEWELL TOWNSHIP,
HOPEWELL BOROUGH AND THE HOPEWELL
VALLEY REGIONAL SCHOOL DISTRICT**

WHEREAS, the parties and the Hopewell Valley Regional School District entered into an Interlocal Services Agreement in 2003 to provide recreation services in the Hopewell Valley;

WHEREAS, the Township of Hopewell has served as the lead agency under the terms of the Agreement, appointing a recreation director to plan, direct, coordinate and supervise the provision of recreation services, programs and facilities to the residents of Hopewell Valley; and

WHEREAS, the Borough of Pennington and the other parties have all benefitted from this Agreement; and

WHEREAS, beginning in 2007, Pennington Borough and Hopewell Borough agreed to make monetary contributions to the costs of providing services under the Agreement;

WHEREAS, in Budget Year 2007 Hopewell Borough and Pennington Borough each contributed \$3,000 to these costs, and they agreed to continue to discuss with the other parties a fair and equitable funding formula for ensuing years;

WHEREAS, the parties have since agreed that in Budget Year 2008 the Borough of Hopewell and the Borough of Pennington will continue to contribute \$3,000. apiece to recreation services for the year;

WHEREAS, the parties have further agreed to continue to work together to develop a Recreation program in Hopewell Township that will better reflect the present needs of recreation in the Hopewell Valley and will better reflect the significant budgetary constraints faced by the participating entities;

WHEREAS, these commitments are set forth in a proposed “2008 Amendment” to the 2003 Interlocal Services Agreement which is annexed hereto;

NOW, THEREFORE, BE IT RESOLVED, by Borough Council of the Borough of Pennington, that the Mayor, with the attestation of the Borough Clerk, is hereby authorized to enter into the aforesaid amendment to the 2003 Recreation Interlocal Services Agreement, of which a copy is attached.

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 2008-5.9, second by Council Member Heinzel with all members present voting in favor.

**BOROUGH OF PENNINGTON
RESOLUTION #2008-5.10**

RESOLUTION SUPPORTING THE APPLICATION OF THE HOPEWELL TOWNSHIP POLICE DEPARTMENT FOR STATE GRANT FUNDING FOR FURTHER STUDY OF CONSOLIDATION OF 911 ANSWERING POINTS AND DISPATCH CENTERS

WHEREAS, the Township of Hopewell Police Department maintains a 9-1-1 public safety answering point (PSAP) that services all of Hopewell Township, Hopewell Borough and Pennington Borough; and

WHEREAS, Ewing Township, Hopewell Borough, Hopewell Township, Lawrence Township and Pennington Borough are exploring the possibility of creating a regional PSAP/9-1-1 center; and

WHEREAS, the New Jersey State 9-1-1 office is making available grant funds for the consolidation of PSAP’s throughout the State.

NOW, THEREFORE, BE IT RESOLVED, by the Borough Council of the Borough of Pennington, County of Mercer, State of New Jersey, that the Borough supports the application of the Hopewell Township Police Department for a grant from the State of New Jersey, 9-1-1 Office, to further study consolidating the public safety answering points and dispatch centers for Ewing Township, Hopewell Borough, Hopewell Township, Lawrence Township and 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	X			
Griffiths	X				Ogren	S			
Heinzel	X				Tucker	M			

Council Member Tucker made a motion to approve Resolution 2008-5.10, second by Council Member Ogren with all members present voting in favor.

**BOROUGH OF PENNINGTON
RESOLUTION 2008-5.11**

RESOLUTION AUTHORIZING INTERLOCAL SERVICES AGREEMENT WITH MERCER COUNTY FOR EMERGENCY TELECOMMUNICATIONS SERVICES

WHEREAS, the Borough of Pennington seeks to enter into an interlocal services agreement with the County of Mercer to have the Mercer County Emergency Services Communications Center assist the Borough in providing telecommunications services for the period January 2008 through December 2009;

WHEREAS, as a result of this assistance, the Borough will receive, without charge, transferred 911 calls, assistance in the dispatch of fire apparatus, and operational communications for the fire service community in the Borough as needed;

WHEREAS, in exchange for receiving these services without charge, the Borough agrees to indemnify and hold harmless the County of Mercer for any liabilities that may arise out of using the services provided by the County Emergency Services Communications Center;

WHEREAS, the proposed form of agreement is attached hereto;

NOW, THEREFORE, BE IT RESOLVED, by the Borough Council of the Borough of Pennington, that the Mayor, with the attestation of the Borough Clerk, is hereby authorized to enter into the aforesaid Interlocal Services Agreement with Mercer County on behalf of the Borough.

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 2008-5.11, second by Council Member Heinzel with all members present voting in favor.

**BOROUGH OF PENNINGTON
RESOLUTION 2008-5.12**

**RESOLUTION AUTHORIZING CONTRACT WITH
PUMPING SERVICES, INC. FOR EVALUATION AND
REQUIRED REBUILDING OF SEWAGE PUMPS FOR
THE SKED STREET PUMP STATION**

WHEREAS, the two sewage pumps and the spare pump at the Sked Street Pump Station are in need of rebuilding in order to avoid the cost of replacement;

WHEREAS, the extent of the work required to rebuild each sewage pump is not known at this time;

WHEREAS, the extent of the work required to rebuild each pump will vary according to the particular condition of each pump, which can be determined only upon removal and disassembly of each pump;

WHEREAS, the work required to remove, disassemble, evaluate and rebuild sewage pumps is specialized in nature and requires extensive training and expertise;

WHEREAS, the work required to rebuild a particular pump cannot be reasonably described by written specifications without first removing and disassembling the pump, making the award of a contract for the work through public bidding or the solicitation of quotes impracticable;

WHEREAS, after searching for firms with the needed expertise, the Superintendent of the Department of Public Works has identified Pumping Services, Inc. of Middlesex, New Jersey as qualified to perform this specialized work;

WHEREAS, the Department of Public Works retained the services of Pumping Services, Inc. to remove and evaluate the spare pump at Sked Street and learned that the cost of rebuilding that pump would approximate \$5,000.;

WHEREAS, the Superintendent of Public Works estimates, based on the evaluation and quote for the spare pump, that having the other two pumps at Sked Street removed from the station, disassembled, evaluated and rebuilt could cost up to \$15,000 more;

WHEREAS, the Superintendent recommends that a contract be awarded to Pumping Services, Inc. for work on all three Sked Street pumps, inclusive of the spare pump as described above, in a total contract amount not to exceed \$20,000;

WHEREAS, the contract is for “an extraordinary unspecifiable service” that is not subject to public bidding under the Local Public Contracts Law, N.J.S.A. 40A:11-1, et seq.;

WHEREAS, the proposed contract is also below the threshold amount for public bidding under the Local Public Contracts Law;

WHEREAS, approval of this contract must comply with the Local Pay-To-Play Law, N.J.S.A. 19:44A-20.5, and the Code of the Borough of Pennington, and the contractor has filed with the Borough Clerk an appropriate Business Entity Disclosure Certification indicating such compliance;

WHEREAS, the contract with Pumping Services, Inc. must also comply with the Prevailing Wage Act, N.J.S.A. 34:11-56.25, et seq.;

WHEREAS, the “Service Quotation” of Pumping Services, Inc. for the work on the spare pump, containing also the standard terms and conditions of the contractor for work of this type, is attached hereto;

WHEREAS, the funds for the proposed contract have been certified as available by the Chief Financial Officer of the Borough;

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

1. the Mayor, with the attestation of the Borough Clerk, is hereby authorized to enter into a contract with Pumping Services, Inc. for removal, disassembly, evaluation and, to the extent required, rebuilding of the three pumps at the Sked Street Pump Station, provided:

- a. the contract is in form and amount approved by the Borough Administrator and the Borough Attorney;
- b. the contract complies with applicable laws and does not exceed \$20,000. in total amount;

2. notification of this contract award shall be published in the Hopewell Valley News as required by 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	S				Tucker	X			

Council Member Lawver made a motion to approve Resolution 2008-5.12, second by Council Member Heinzel. Mr. Dunworth and Mr. Wittkop provided a brief history on the need for repairs to the three sewer pumps. Mr. Bliss explained the legalities of awarding a contract for extraordinary unspecifiable circumstances. Upon a roll call vote, all members present voted in favor.

Council Discussion

Ordinance – Outdoor Dining – Mayor Persichilli stated that some of the restaurants in town are putting tables outside their restaurants, which is prohibited under the Town Center Ordinance unless the restaurant is a full service restaurant. Mayor Persichilli stated that some of the restaurants along Main Street are not full service and have tables out front, which has prompted some of the neighbors to raise questions. Mayor Persichilli inquired as to Council Members feelings on amending the Ordinance or keeping it as is. Ms. Heinzel inquired as to why the ordinance allows for full service restaurants to have outdoor dining unless it has to do with waiters and waitresses insuring that the area and tables are clear of debris, then maybe there is a way to address that concern in the amendment. Mr. Bliss stated that there is also another issue and that is that the tables cannot be located in the public right of way without formal Borough Council consent, so in addition to considering an amendment to the ordinance, there is also a need for formal approval. After some discussion, Council agreed that Mr. Bliss should prepare an amendment to the Ordinance for the June meeting. Mr. Bliss recommended that each restaurant that wishes to have outdoor dining in the public right of way, obtain approval from Borough Council each year. Discussion followed as to dealing with requests on a case-by-case basis and how that will allow Council to control the public right of way.

Ordinance – Recycling – Mr. Dunworth referred to a letter given to Council concerning a request from Mercer County regarding the solid waste management plan. Mr. Dunworth explained that this is all part of a renewed commitment to get towns to recycle more throughout the State. Mr. Dunworth explained that one of the requirements of the new plan is that each municipality adopts an ordinance. Mr. Dunworth stated that this plan deals with outreach, advertising and making residents aware of what they can do with certain items. Mr. Lawver stated that many of the requirements are on the municipality to ensure that residents are informed. Mr. Lawver stated that recently Council was approached regarding other items of the “Trash Ordinance” and he would suggest that those issues and concerns be addressed at the same time. Mr. Bliss will prepare an ordinance for the June meeting.

Ordinance and Escrow – Site Work Drainage / Grading – Mr. Dunworth stated that when an addition or new construction takes place in Pennington, there seems to be a gap when residents are not required to appear before the Planning Board because they meet the zoning requirements. Mr. Dunworth stated that for the second time, an addition has been constructed and a neighbor has come forward to complain that there are drainage issues caused by the addition. Mr. Dunworth stated that this issue will likely come up again and he would like Council to consider and Ordinance authorizing that an escrow be set up to offset Engineering costs. Mr. Ogren asked if this problem is caused by sump pump discharge. Mr. Dunworth explained that the issue he is referring to is caused by grading. After some discussion, Council felt that they did not want to proceed with an ordinance at this time. Mr. Dunworth stated that this request came from Nick Sciarrotta of Van Note Harvey and he would like to suggest that discussion of this be referred to the Public Works Committee.

Caterer’s Permit – Joseph Vu – Ms. Sterling explained that Mr. Vu has filed a Caterer’s Permit for an event at Avanti’s. Ms. Sterling explained that the permit requires the signatures of both the Public Safety Director and the Borough Clerk with the approval of Borough Council. No one expressed any objection to signing the permit.

Road Closing – June 1, 2008 – St. Matthew’s Church – Mr. Dunworth stated that St. Matthews Church has submitted a request to have the road closed for an event on June 1, 2008. Council Member Tucker made a motion to allow the road closing, second by Council Member Lawver with all members present voting in favor.

Administrator's Report

Holiday Walk 2007 – Paid Detail – Mr. Dunworth stated that a bill has been submitted to Mr. Brit West for Paid Detail for Holiday Walk 2007 amounting to \$660.00 including the administration fee. Mr. West has requested that the administration fee of \$120.00 be waived. Ms. Sterling explained that Mr. West came to the November meeting with a similar request, however no action was taken on the request. Mr. Lawver stated that he would like to recommend that a policy be put in place to waive the administrative fee for Pennington non-profit and government organizations, including the school district. Mr. Bliss stated that the ordinance will have to be amended, Council authorized Mr. Bliss to proceed.

League of Municipalities – Support for Motor Vehicles Surcharge to Offset Property Tax Increases – Mr. Dunworth explained that the State of NJ provides the Policing in some rural areas at no charge and given the State budget problems it was decided that towns utilizing the State Police should pay for those services. Mr. Dunworth stated that in addition the State continues to mandate changes to the Court System, which can be costly for some municipalities. Mr. Dunworth explained that a solution is being offered with a surcharge on certain fines that would offset the costs of court mandates. Council was not in favor of endorsing this proposal.

League of Municipalities - \$500.00 for COAH – Mr. Dunworth explained that the League of Municipalities is considering opposing the new COAH regulations and the League is looking for pledges from municipalities in the amount of \$500.00. A brief discussion took place with Council in agreement not to pledge funds at this time.

Professional Reports

There were no Professional reports.

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.

There were no comments from the public.

Closed Session

AT, 8:50 PM, BE IT RESOLVED, that Mayor and Council shall hereby convene in closed session for the purposes of discussing a subject or subjects permitted to be discussed in closed session by the Open Public Meetings Act, to wit:

- Tax Appeal – First States

AT, 9:17 PM, Mayor and Council returned to open session.

Council Member Ogren made a motion to approve the Closed Session Minutes of March 3, 2008 and April 7, 2008, second by Council Member Griffiths with all members present voting in favor.

At 9:19 PM, Council Member Lawver 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