

**Pennington Borough Council
Regular Meeting – July 7, 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 and Tucker in attendance. Council Member Ogren arrived at 7:25pm.

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 the public for comments on items on the agenda for which no public discussion is provided. In an effort to provide everyone interested an opportunity to address his or her comments to the Governing Body, a public comment time limit has been instituted for each speaker. **Please come forward and state your name and address for the record. Please limit comments to the Governing Body to a maximum of 5 minutes.**

Mr. Eli Perris of 41 East Welling Ave. asked if the delineation map that is referred to in Ordinance 2008-2 is available or when it will be available. Mr. Lawver responded that he is not sure that a map is going to be available. Mr. Lawver explained that the Department of Environmental Protection is requiring that Pennington Borough adopt this Ordinance as part of the expansion permit for the Stonybrook Sewerage Plant. Mr. Lawver stated that the model ordinance that the Borough got from the DEP and the one that is in front of Council today, which may still undergo some changes, has been dramatically scaled back. Mr. Lawver stated that the Borough is not going to map every water way, storm drain runoff in the Borough; it would be too costly. Mr. Lawver stated that the ordinance before Council proposes a 50 foot line so Mr. Perris could measure from the stream bank; 50 feet out towards the house and that will be all the Borough would ask for.

Approval of Minutes

Council Member Heinzl made a motion to approve the minutes of the May 12, 2008 Regular Meeting, second by Council Member Lawver with all members present voting in favor.

Mayor's Business

Mayor Persichilli announced the resignation of Patrolman Kevin Tatur from the Pennington Police Department effective June 23, 2008. Mr. Meytrott stated that Mr. Tatur was a Pennington Police Officer for the past 13 years and did a really outstanding job. Mr. Meytrott stated that Mr. Tatur has relocated with his family to Huntersville, North Carolina where he will be working. Mr. Meytrott stated that Mr. Tatur is enthused about his new job. Mr. Meytrott stated that Mr. Tatur left New Jersey with some trepidation as he liked his job and most of his family is here. Mr. Meytrott stated that Mr. Tatur wished to thank Borough Council for the opportunity to begin his career as a police officer here in Pennington.

Mayor Persichilli invited Mrs. Nancy Mollis to come forward to make a presentation on behalf of the Traffic Calming Initiative Committee. Mayor Persichilli stated that he had the opportunity to review the report prepared by the Traffic Committee and he commended the committee on an excellent job. Ms. Mollis stated that she did not have an actual presentation to make, however if Council Members had questions on the report that was distributed, she would be happy to respond. Ms. Mollis briefly outlined how the report was compiled, the statistics gathered and the recommendations made for each street discussed in the report.

Mayor Persichilli stated that the report does not include letters of support or opposition from residents of the streets mentioned in the report. Ms. Mollis stated that when they first came before Council about a year ago, they had a petition that is on file, but was never formally submitted. Ms. Mollis stated that the committee did not address this particular issue, but would be happy to proceed however Council wanted.

Ms. Heinzl recognized Gerry Lax and Francie McManimon, also in attendance at the meeting and commended the committee on a job well done. Ms. Heinzl stated that this committee met monthly and went through in detail each of the streets involved in the study. Mr. Lawver also added his thanks to the committee. Mr. Lawver stated that some of the recommendations in the report are already in the process, for instance, the Borough has submitted a grant application for improvements to lower King George Road which includes sidewalks, curbing and bike lanes. Mr. Lawver stated that the Borough has received a grant for improvements to Burd Street and there has been some discussion of the intersection of Academy and Burd Street as part of the project. Mr. Lawver stated that other than that, some of the recommendations that were made in the report, though good ideas would be tough to do with the tight budget that the Borough is working with.

Mayor Persichilli thanked Nancy Mollis and the committee for their hard work. Mayor Persichilli stated that the biggest issue facing the Borough is the issue of money. Mayor Persichilli stated that the data accumulated by the traffic committee can be used in applying for grant money from both the County and

the State. Mayor Persichilli stated that the next step is to turn the report over to Borough Engineer, Don Fetzter for discussion by the Public Works Committee.

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 an Ordinance establishing a Riparian Buffer Conservation Zone;

WHEREAS, the Borough of Pennington believes the 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.

“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 natural 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 Borough of Pennington.

“Surface Water Body” means any above ground 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.

IV. ESTABLISHMENT OF RIPARIAN BUFFER CONSERVATION ZONES

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

1. For areas adjacent to 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 shall extend 50 feet horizontally outward from the perpendicular.
2. 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. 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.

V. USES PERMITTED IN RIPARIAN BUFFER CONSERVATION ZONES

A. Any 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 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, if permitted uses in the affected Land Use Zone District, do not require approval by the Zoning Enforcement Officer or compliance with an approved RBCZ Management Plan. Such uses include passive recreation areas of public and private lands, including lawns and gardens, hiking, bicycle and bridle trails.
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.
5. Uses permitted under Section VII and Section IX.

VI. PERFORMANCE STANDARDS FOR RIPARIAN BUFFER CONSERVATION ZONES

A. For all RBCZs, the following conditions shall apply when the applicant is required to appear before the Planning Board:

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 additional or expanded lawn areas.
2. Any proposed use or any portion of a lot or lots within the RBCZ except those not requiring Planning Board and/or Zoning Board approval as described in Section V above, 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, encourage 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 unless such disturbance can be completed within the allowable limits of the Flood Hazard Area Control Act;
 - 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. For all RBCZs:

1. Encroachment within the RBCZ shall only be allowed where previous development or disturbance has occurred unless it serves the public health or safety in accordance with Section IX..
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 three years 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 three-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. For 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 or Section VII.
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.

IX. ACTIVITIES PERMITTED IN STREAM BUFFER CONSERVATION ZONES WHEN NECESSARY FOR PUBLIC HEALTH AND SAFETY.

A. For 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. The proposed project will serve an essential public health or safety need; or
2. The proposed use is required to serve an existing public health or safety need; or
3. There is no alternative available to meet the established public health or safety need.

B. 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 1,500 square feet total.

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

A. When a landowner or applicant disputes the boundaries of an RBCZ, 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.

B. Within 45 days of a complete submission of Section .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 X.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 Zoning Officer 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 may be brought 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 may be considered a separate offense.

XIII. EFFECTIVE DATE

This Ordinance shall take effect upon final adoption and publication in accordance with the law.

Council Member Lawver made a motion to reintroduce Ordinance 2008-2, second by Council Member Ogren. Some minor language changes were discussed and implemented and upon a roll call vote, all members present voted in favor of introduction.

Mayor Persichilli read Ordinance 2008-6 by title.

**BOROUGH OF PENNINGTON
COUNTY OF MERCER**

ORDINANCE NO. 2008-6

CALENDAR YEAR 2008

**ORDINANCE TO EXCEED THE MUNICIPAL BUDGET APPROPRIATION LIMITS
AND TO ESTABLISH A CAP BANK
(N.J.S.A. 40A: 4-45.14)**

WHEREAS, the Local Government Cap Law, N.J.S. 40A: 4-45.1 et seq., provides that in the preparation of its annual budget, a municipality shall limit any increase in said budget to 2.5% unless authorized by ordinance to increase it to 3.5% over the previous year's final appropriations, subject to certain exceptions; and

WHEREAS, N.J.S.A. 40A: 4-45.15a provides that a municipality may, when authorized by ordinance, appropriate the difference between the amount of its actual final appropriation and the 3.5% percentage rate as an exception to its final appropriations in either of the two succeeding years; and

WHEREAS, the Mayor and Borough Council of the Borough of Pennington in the County of Mercer finds it advisable and necessary to increase its CY 2008 budget by up to 3.5 % over the previous year's final appropriations, in the interest of promoting the health, safety and welfare of the citizens; and

WHEREAS, the Mayor and Borough Council hereby determines that a 3.5 % increase in the budget for said year, amounting to \$19,990.34 in excess of the increase in final appropriations otherwise permitted by the Local Government Cap Law, is advisable and necessary, and

WHEREAS, the Mayor and Borough Council hereby determines that any amount authorized herein above that is not appropriated as part of the final budget shall be retained as an exception to the final appropriation in either of the next two succeeding years.

NOW THEREFORE BE IT ORDAINED, by the Mayor and Borough Council of the Borough of Pennington, in the County of Mercer a majority of the full authorized membership of this governing body affirmatively concurring, that, in the CY 2008 budget year, the final appropriations of the Borough of Pennington shall, in accordance with this ordinance and N.J.S.A. 40 A: 4-45.14, be increased by 3.5 %, amounting to \$69,966.19 and that the CY 2008 municipal budget for the Borough of Pennington be approved and adopted in accordance with this ordinance; and

BE IT FURTHER ORDAINED, that any amount authorized hereinabove that is not appropriated as part of the final budget shall be retained as an exception to final appropriation in either of the next two succeeding years: and

BE IT FURTHER ORDAINED, that a certified copy of this ordinance as introduced be filed with the Director of the Division of Local Government Services within 5 days of introduction; and

BE IT FURTHER ORDAINED, that a certified copy of this ordinance upon adoption, with the recorded vote included thereon, be filed with said Director within 5 days after such adoption.

Council Member Lawver made a motion to introduce Ordinance 2008-6, second by Council Member Griffiths with all members present voting in favor.

Mayor Persichilli read Ordinance 2008-7 by title.

**BOROUGH OF PENNINGTON
ORDINANCE #2008-7**

**AN ORDINANCE TO PROVIDE FOR AND DETERMINE THE RATE OF
COMPENSATION OF OFFICERS AND EMPLOYEES OF THE BOROUGH OF
PENNINGTON, COUNTY OF MERCER, STATE OF NEW JERSEY
FOR THE YEAR 2008**

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

SECTION I: EMPLOYMENT POSITIONS/ANNUAL COMPENSATION

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

Borough Administrator – Part Time	\$ 15,000.00
Borough Clerk	\$35,095.76
Treasurer	\$55,674.04
Tax Collector	\$18,386.36
Deputy Clerk	\$16,712.33
Utility Collector	\$25,465.80
Tax Assessor	\$13,032.78
Zoning Officer	\$7,246.47
Land Use Admin/Admin Asst.	\$42,235.09
Deputy Registrar	\$1,824.98
Supt. of Public Works	\$49,604.30
Supt. of Water Dept.	\$21,108.05
Supt. of Sewer Dept.	\$21,108.05
Judge of Municipal Court	\$10,384.47
Prosecutor	\$3,451.77
Court Administrator	\$14,228.50
Public Safety Director	\$50,817.74
Construction Official	\$22,482.53
Plumbing Sub-Code	\$33.75/hour
Fire Sub-Code	\$33.75/hour
Electric Sub-Code	\$8,998.91
Technical Assistant to Construction	\$15.60/hour

- b. One person may serve in more than one office or position of employment as listed in Section a hereof.
- c. The amounts shown in Section a. hereof are the maximum amounts to be paid, however, at the discretion of Borough Council, lesser amounts can be paid.
- d. The rate of compensation of each employee, paid on an hourly basis is as follows:

	Minimum	Maximum
Finance		
Municipal CFO(p/t)	\$25.00	\$67.78
Police Department:		
Crossing Guards	\$15.00	\$21.63
Special Police	\$16.92 per hour	
Part Time Employees – All Departments:		
Part Time or Temporary	\$8.00	\$19.47
Part Time/Temporary/Licensed	up to a maximum of	\$33.75

SECTION II: Employee/Personnel Manual.

The terms and conditions of employment as set forth in the Borough Employee or Personnel Manual, as the same may exist and change from time to time, are hereby incorporated herein by reference. The Personnel Manual does not create a contract of employment and except for employees who are tenured; no contract of employment other than “at will” has been expressed or implied. The policies, rules and benefits described in the Manual are subject to change at the sole discretion of the Borough Council at any time.

SECTION III:

All ordinances or parts of ordinances inconsistent with this ordinance are hereby repealed.

SECTION IV:

Terms and Conditions of employment for Police and Public Works employees are specified in the respective labor agreements.

SECTION V:

This ordinance shall take effect upon final adoption and publication according to law, but the salaries herein provided for shall be retroactive to January 1, 2008.

Council Member Heinzl made a motion to introduce Ordinance 2008-7, second by Council Member Ogren with all members present voting in favor.

Mayor Persichilli read Ordinance 2008-8 by title.

**Borough of Pennington
Ordinance 2008-8**

**AN ORDINANCE ADOPTING THE AMENDED MERCER
COUNTY RECYCLING PLAN AND AMENDING AND
SUPPLEMENTING CHAPTER 172 OF THE CODE
OF THE BOROUGH OF PENNINGTON**

Council Member Lawver asked that this Ordinance be referred to the Public Works Committee for further discussion.

Introduction of 2008 Budget

**Borough of Pennington
Resolution #2008-7.4**

RESOLUTION TO INTRODUCE BUDGET FOR 2008

Section 1.

Municipal Budget of the Borough of Pennington, County of Mercer for the Fiscal Year 2008.

Be It Resolved, that the following statement of revenues and appropriations shall constitute the Municipal Budget for the year 2008;

Be It Further Resolved, that said Budget be published in The Pennington Post in the issue of July 17th, 2008.

The Governing Body of the Borough of Pennington does hereby approve the following as the Budget for the year 2008: (copy in budget file)

Council Member Griffiths made a motion to approve Resolution 2008-7.4, introducing the budget for 2008, second by Council Member Ogren. Mr. Griffiths gave a summary of the budget before Council for introduction. Mr. Griffiths thanked the finance committee for their help with this budget and though a lot of cuts were made, a lot of requests were also honored. Mr. Ogren felt it should be noted that the across the board percentage cuts to State Aid were disproportionate for towns with population under 10,000, like Pennington, without regard to the efficiency of small towns or consideration for shared services. Mr. Ogren stated that on top of the cuts to State Aid this year, the State also instituted a cap on local tax levies and so this budget, given the circumstances, was a real challenge.

Mr. Dunworth outlined some minor adjustments to the document before Council which did not change the bottom line of the budget. The changes simply redistributed amounts within the budget lines. Upon a roll call vote, all members present voted in favor of introduction of the budget.

Ordinance for Public Hearing and Adoption

Mr. Tucker read Ordinance 2008-4 by title.

**BOROUGH OF PENNINGTON
Ordinance 2008-4**

**AN ORDINANCE PROVIDING FOR OUTDOOR DINING
AREAS AS A PERMITTED ACCESSORY USE FOR ALL
RESTAURANTS IN THE TOWN CENTER ZONING
DISTRICT, AMENDING CHAPTER 215 OF THE CODE OF
THE BOROUGH OF PENNINGTON**

WHEREAS, the Borough of Pennington seeks to promote interest in the downtown area by encouraging a mixture of small-scale businesses which complement and are compatible with each other and together create a pedestrian-oriented shopping environment;

WHEREAS, Borough Council recognizes that there exists in the downtown area a demand for outdoor dining in connection with restaurants of various kinds;

WHEREAS, current zoning for the Town Center Zoning District, as set forth in Section 215-71.C. of the Code of the Borough of Pennington, permits as an accessory use only “[o]utdoor dining contiguous to full-service restaurants;”

WHEREAS, Borough Council determines that, to promote the viability and vitality of the Town Center area, permitting outdoor dining contiguous to all restaurants, subject to proper regulation, is desirable;

NOW, THEREFORE, BE IT ORDAINED, by the Borough Council of the Borough of Pennington, as follows:¹

1. Section 215-71, subsection C, of the Code of the Borough of Pennington (“Code”), delineating permitted accessory uses in the Town Center Zoning District, is amended to delete the requirement that outdoor dining be permitted only when contiguous to a “full-service” restaurant, so that outdoor dining shall be permitted when contiguous to any restaurant in the Town Center, as follows:

C. Permitted accessory uses. The accessory uses permitted in the Town Center Zone are the following:

- (1) Off-street parking facilities for the use of customers and employees;
- (2) Private garage space for the storage of commercial vehicles used in conjunction with a permitted business use;
- (3) Sidewalk sales by adjacent retail merchandise stores when authorized by a permit issued by the Borough Clerk;
- (4) Outdoor dining contiguous to [full-service] restaurants;
- (5) Storage sheds related to the primary use, limited to one in number;
- (6) Garages for residential uses;
- (7) Other accessory uses which the Planning Board acting as a Board of Adjustment finds are clearly incidental and subordinate to the primary use and enhance the character of the town center as depicted in the master plan and in this section.

2. Section 215-94 of the Code, pertaining to the regulation of outdoor dining otherwise permitted by the Code, is amended to read:

Outdoor dining shall be subject to the following:

- A. The outdoor dining area shall be part of a permitted restaurant use as defined in § 215-8.
- B. The outdoor dining area may be located within a required front yard area. Encroachment within a Borough right-of-way may be permitted only with the revocable approval of Borough Council [approval,] or its designated representative, which must be obtained annually.
- C. The outdoor dining area shall meet the side and rear yard setback requirements for the zone in which it is located. When abutting the R-80, R-100, R-A and O-R Zones, the minimum yard requirements for the abutted zones shall be met.
- D. The outdoor seating capacity of the facility shall conform to off-street parking requirements.
- E. Site plan review and approval is required unless there are no permanent physical changes to the site.
- F. The outdoor dining area shall be designed to preserve circulation on the site and any affected Borough right-of-way while also protecting the safety of patrons and pedestrians.
- G. The owner shall police the area to ensure that it is clean and free of litter and complies with applicable noise standards.
- H. The owner of an approved outdoor dining area which is located wholly or in part in the Borough right-of-way shall indemnify and hold harmless the Borough of Pennington and its agents and employees from and against all claims, damages, losses and expenses, including but not limited to attorney fees, arising out of the operation of the outdoor dining area. No such dining area shall be approved, or once approved, permitted to operate, unless the owner has on file with the Borough Clerk a current Certificate of Insurance which certifies that:

(1) the owner’s obligation to indemnify and hold harmless the Borough as provided herein is insured by an insurance carrier authorized to do business in the State of New Jersey;

¹As used herein, brackets [] denote language to be deleted; underlining indicates language to be added.

(2) the Borough of Pennington is named as an additional insured under this insurance with respect to claims, damages, losses and expenses arising out of operation of the outdoor dining area;

(3) the insurance in effect provides at least the following types and amounts of incurred liability coverage:

a. General Liability - one million dollars (\$1,000,000.) per occurrence;

b. Premises Liability - one million dollars (\$1,000,000.) per occurrence;

c. Products and Completed Operations Liability - one million dollars (\$1,000,000.);

d. Personal and Advertising Injury - one million dollars (\$1,000,000.) per occurrence;

e. Property Liability - fifty thousand dollars (\$50,000.) per occurrence;

f. Medical Expense - five thousand dollars (\$5,000.) per person;

g. Workers' Compensation - statutory limits;

h. Employers' Liability - five hundred thousand dollars (\$500,000.) per person/ per occurrence.

(4) the Borough shall be provided ten (10) days' written notice of any cancellation of this insurance.

3. This Ordinance shall take effect upon its passage and publication as provided by law.

Council Member Tucker made a motion to open the Public Hearing on Ordinance 2008-4, second by Council Member Heinzl. There were no comments from the public; however Mr. Lawver stated that Council received one letter in support of the Ordinance and one letter in opposition to the Ordinance. Council Member Lawver made a motion to close the Public Hearing on Ordinance 2008-4, second by Council Member Griffiths with all members present voting in favor. Council Member Lawver made a motion to adopt Ordinance 2008-4, second by Council Member Tucker. Ms. Heinzl gave an update on the discussion that the Planning Board held on Ordinance 2008-4. Upon a roll call vote, all members present voted in favor.

Mr. Tucker read Ordinance 2008-5 by title.

**BOROUGH OF PENNINGTON
Ordinance 2008-5**

**AN ORDINANCE WAIVING ADMINISTRATIVE FEES IN CONNECTION
WITH PAID DETAIL SERVICE BY BOROUGH POLICE OFFICERS AT
CERTAIN NON-PROFIT EVENTS PROMOTING PENNINGTON, AMENDING
THE CODE OF THE BOROUGH OF PENNINGTON**

WHEREAS, Borough Police Officers are permitted to engage in off-duty special work known as "Paid Detail Service;"

WHEREAS, Paid Detail Service is defined as services in the nature of special or private police duty which the Borough is not obligated to provide as normal police services;

WHEREAS, Paid Detail Service is provided by Officers in their off-duty hours to individuals, groups, clubs, institutions and others who make payments for such services;

WHEREAS, all requests for Paid Detail Service are made through the Borough's Director of Public Safety and all payments for such services are made to the Borough;

WHEREAS, the Borough charges a fee for Paid Detail Service which in addition to compensating the Officer or Officers performing these services includes an administrative fee payable to the Borough;

WHEREAS, Borough Council now seeks to waive its administrative fee for Paid Detail services at events sponsored by a local school or local non-profit organization which promote and support community programs and civic pride in Pennington;

WHEREAS, Borough Council also seeks to correct a typographical error in Ordinance 2007-15, which was the last amendment to the fees for Paid Detail services;

NOW, THEREFORE, BE IT ORDAINED, by the Borough Council of the Borough of Pennington, as follows:²

1. Ordinance 2007-15, previously adopted by Borough Council and purporting to amend Section 98-21 of the Borough Code, is hereby amended to refer to, amend and supplant rather Section 98-24 of the Code, pertaining to fees for Paid Detail services; and the Code provision designated Section 98-21 prior to adoption of Ordinance 2007-15, pertaining to fees for Municipal Court discovery, shall be restored and remain unaffected by that Ordinance.
2. The aforesaid Section 98-24 of the Code, pertaining to fees for Paid Detail Service, is hereby further amended, superceding all prior versions of that section, as follows:
 - 98-24. The fee paid to the Borough for Paid Detail Service shall be as follows:
 - a. In calendar year 2007, beginning on the effective date of this ordinance, \$55. for each hour of service by each Borough Officer with a minimum payment of \$220. per officer.
 - b. In calendar year 2008, \$65. for each hour of service by each Borough Officer with a minimum payment of \$260. per officer.
 - c. In calendar year 2009, \$75. for each hour of service by each Borough Officer with a minimum payment of \$300. per officer.
 - d. Of the hourly rates specified, \$10 per hour shall be retained by the Borough as an administrative fee.

3. Article IV of Chapter 98 of the Borough Code is further amended by the addition of the following new section:

The Borough waives its administrative fee in connection with Paid Detail Service for any event which promotes and supports community programs and civic pride in Pennington and is sponsored by a local school or local non-profit organization. As used herein, "local school or local non-profit organization" shall mean a local school or local non-profit organization which confines its activities to the Hopewell Valley.

4. This ordinance shall take effect upon its passage and publication as provided by law.

As used herein, brackets [] denote language to be deleted; underlining indicates language to be added

Council Member Lawver made a motion to open the Public Hearing on Ordinance 2008-5, 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 2008-5, second by Council Member Tucker with all members present voting in favor. Council Member Lawver made a motion to adopt Ordinance 2008-5, second by Council Member Tucker with all members present voting in favor.

Committee Reports

Planning & Zoning and Library –Ms. Heinzl reported that the Library Board did not meet in June, however the summer programming is underway. Ms. Heinzl stated that new this summer, the Library is planning to host Middle School book discussions, bringing together area High School students with Timberlane Middle School students who have required reading that they have to do before the fall.

Ms. Heinzl stated that when the Library Board last met, the budget was finalized and the Board identified some potential savings by switching the internet service from the Verizon Hub Line at \$300.00 per month to a FIOS Service. Ms. Heinzl stated that the Library Board has agreed to pass the savings of approximately \$200.00 per month along to the Borough for tax relief this year.

Ms. Heinzl reported that the Planning Board met on June 11th. Ms. Heinzl reported that an application for Gary Mertz at 228 South Main Street will be continued at the July 9th meeting. Ms. Heinzl stated that a variance and minor sub-division at 212 King George Road was approved. Ms. Heinzl stated that the Planning Board also discussed the proposed Ordinance on Outdoor Dining.

Ms. Heinzl stated that the Environmental Commission met on June 16th and heard a report by the Climate Change Workshop Committee which has been rejuvenated with some new members. Several activities including a "Green Market" are planned for sometime in the fall.

Public Works/Economic Development – Mr. Lawver reported that the Public Works Committee did not meet in June. Mr. Lawver gave the Water and Trash report for the month of June.

PENNINGTON BOROUGH PUBLIC WORKS

TO: Joseph Lawver, Chairman
Public Works Committee

FROM: Jeff Wittkop, Superintendent

DATE: July 2, 2008

RE: COUNCIL REPORT FOR THE MONTH OF JUNE 2008

WATER

Water pumped for the month of June 2008 -	9,316,000
Daily-	310,500
Water pumped for the month of June 2007-	8,580,000
Daily-	286,000

For the month of June 2008 we averaged 24,500 gallons **more** per day than 2007.

TRASH

81.90 tons of household trash for the month of June 2008 vs. 85.22 tons in June 2007

The Pennington Borough Water Department, Annual Drinking Water Quality Report for the Year 2007 (CCR Consumer Confidence Report) has been mailed and distributed to all water customers.

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

Personnel – Mr. Ogren reported that the Personnel Committee did meet in June to discuss the possibility of making the Tax Collector position part-time upon the anticipated retirement of the current Tax Collector. Mr. Ogren stated that the possibility of hiring from within was also discussed; however these are very preliminary discussions and will be considered further early next year.

Community Services – Ms. Chandler reported that the Pennington Parks and Recreation met in June to finalize the summer calendar of events. Ms. Chandler stated that the first movie in the park held on June 20th was very sparsely attended and the July 4th concert which was postponed to Sunday July 6th was also not very well attended.

Public Safety – Mr. Tucker reported the following statistics for the month of June 2008.

2	Thefts
1	Harassment Complaint
3	Trespass Complaints
88	Motor Vehicle Stops
41	Motor Vehicle Summonses
2	Parking Summonses
1	DUI Summons
55	Warnings
7	Investigations
1	Adult Female arrest
2	Adult Males arrest

Mr. Tucker reported that as stated earlier, Patrolman Kevin Tatur has relocated to North Carolina with his family. Mr. Tucker stated that in addition the Department has received an oral resignation from one other officer, which will reduce the staff to four for the time being. Mr. Tucker stated that the position has been advertised and Mr. Meytrott has received sixty-one resumes. Mr. Tucker reported that Mr. Meytrott has completed a number of interviews and it appears there are five viable candidates and the Borough is getting close to filling the vacancy.

Mr. Tucker reported that the Public Safety Committee met on June 17th and again on June 20th to discuss the vacancies and the committee firmly recommends that Council commit to keeping its own Police Department, at least until the current contract expires at the end of 2009.

Mr. Tucker stated that the committee also discussed the banning of dogs at public events and in public places in response to the concerns raised by Mr. Robert Hage of Burd Street. Mr. Tucker stated that after reviewing and discussing research data gathered by Mr. Meytrott and the Borough staff members, the committee unanimously decided not to recommend an Ordinance banning dogs in public places during public events. Mr. Tucker stated that the problem would be enforcement of such an ordinance. Mr. Tucker stated that the committee however has been working with the Parks and Recreation Commission to strongly discourage people from bringing dogs to events sponsored by the Borough. Mr. Tucker stated that the Committee understands that there is no fail-safe guarantee whether the Borough has an ordinance or not as there are many dogs in town and the committee encourages dog owners to keep their dogs under control. Mr. Tucker stated that the leash law will be strongly enforced. Mr. Tucker thanked Mr. Hage for his comments and efforts regarding this issue. Ms. Heinzl stated that during the discussion of this issue it

seemed that largely the burden is on the dog owner and the committee decided to try to get information out to the public. Ms. Heinzl stated that the Borough Animal Control Officer was able to put together a flyer which will be posted on the website. Ms. Heinzl stated that the flyer addresses what to do if you are bit by a dog and also what to do if your dog bites someone. Ms. Heinzl asked Council to review the flyer and advise if there is anything else they would like to see on it before it goes to the website. Mr. Lawver suggested handing the flyer out to dog owners at the time of licensing. Mr. Lawver stated that it should be noted on the flyer that the Borough discourages pets at public events. There was some further discussion regarding handing out the flyers to people who bring their pets to public events and also posting signs that indicate that the leash law will be enforced.

Finance – Mr. Griffiths stated that he had no further report other than the budget report given earlier.

New Business

**Borough of Pennington
Resolution #2008-7.1**

RESOLUTION AUTHORIZING REFUNDS

BE IT RESOLVED, that a refund be made to Laura Cassavell, 33 E. Curlis Avenue, Pennington, NJ 08534 in the amount of \$162.50 for an engineering inspection escrow balance for Block 801 Lot 13, 33 E. Curlis Avenue.

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			
Heinzl	S				Tucker	M			

Council Member Tucker made a motion to approve Resolution 2008-7.1, second by Council Member Heinzl with all members present voting in favor.

**Borough of Pennington
Resolution #2008 – 7.2**

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 \$ 1,782,463.69 from the following accounts:

Current	\$ 1,517,396.12
W/S Operating	\$ 207,545.92
Developers Escrow	\$ 3,862.66
Grant Fund	\$ 51,722.19
General Capital	\$ 1,750.00
Animal Control Fund	\$ 186.80
TOTAL	\$ 1,782,463.69

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			
Heinzl	X				Tucker	M			

Council Member Tucker made a motion to approve Resolution 2008-7.2, second by Council Member Griffiths. Council Members question specific bills on the bill list. Upon a roll call vote, all members present voted in favor.

**Borough of Pennington
Resolution #2008-7.3**

**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.

Police	Salaries	\$30,000.00
Police	Other Expense	\$15,000.00
Legal	Other Expense	\$10,000.00
Interlocal – BLS	Other Expense	\$ 3,000.00
Interlocal – Recreation	Other Expense	\$ 3,000.00
	Total	\$ 61,000.00

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

Water	Salaries	\$ 10,000.00
Water	Other Expense	\$ 10,000.00
Sewer	Other Expense	\$ 20,000.00
	TOTAL	\$ 40,000.00

Record of Council Vote on Passage

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

Council Member Griffiths made a motion to approve Resolution 2008-7.3, second by Council Member Lawver with all members present voting in favor.

**Borough of Pennington
Resolution #2008-7.5**

**RESOLUTION AUTHORIZING AND APPROVING AN INTERLOCAL AGREEMENT
BETWEEN THE BOROUGH OF PENNINGTON AND THE MERCER COUNTY
IMPROVEMENT AUTHORITY FOR CURBSIDE COLLECTION OF RECYCLABLES FOR THE
TERM OF AUGUST 1, 2008 THROUGH DECEMBER 31, 2012 INCLUSIVE OF OPTIONS TO
RENEW**

WHEREAS, there exists a need in the Borough of Pennington to provide recycling services to the residents of Mercer County; and

WHEREAS, the Mercer County Improvement Authority (“MCIA”) has been designated by the County of Mercer as the implementing agency for the Solid Waste Management Plan within Mercer County under the Solid Waste Management Act N.J.S.A. 13:1E-1 et. seq. for the curbside collection of recyclables; and

WHEREAS, the Borough of Pennington wishes to continue its participation in the Mercer County Solid Waste Management Plan by having MCIA provide for the Curbside Recycling Program throughout the Borough during the term of the agreement; and

WHEREAS, N.J.S.A. 40:8A-1 et seq., the New Jersey Interlocal Services Act permits the Borough to enter into an agreement with the MCIA to provide for said Curbside Recycling Services during the Term of the Agreement; and

WHEREAS, the Agreement between the MCIA and the Borough for the Curbside Recycling Collection Program is for an initial term of seventeen (17) months commencing on August 1, 2008 through December 31, 2009 (contract price of \$39,306), plus three (3) one-year renewal options (calendar year 2010 at contract price of \$29,033; calendar year 2011 at contract price of \$30,055; and calendar year 2012 at contract price of \$31,295); and

WHEREAS, the Agreement between the Borough and the MCIA supersedes all prior Interlocal Agreements for Curbside Recycling;

NOW, THEREFORE, BE IT RESOLVED, by the Borough Council of the Borough of Pennington, in the County of Mercer and State of New Jersey, that the Interlocal Services Agreement by and between the Borough and the MCIA for curbside collection of recyclables for the initial seventeen-month term of the agreement plus three (3) one-year renewal options indicated above is hereby authorized and accepted by the Borough of Pennington and the Mayor with the attestation of the Borough Clerk is hereby authorized to execute said agreement.

BE IT FURTHER RESOLVED, that the Agreement shall take effect upon the adoption of an appropriate resolution by the MCIA and the execution of the Agreement by and between the Borough of Pennington and the MCIA in accordance with N.J.S.A. 40:8A-1 et seq.

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 2008-7.7, second by Council Member Griffiths with all members present voting in favor.

**Borough of Pennington
Resolution #2008-7.6**

**APPROVAL TO SUBMIT A GRANT APPLICATION AND EXECUTE
A GRANT AGREEMENT WITH THE NEW JERSEY DEPARTMENT OF
TRANSPORTATION FOR THE LOWER KING GEORGE ROAD
RECONSTRUCTION PROJECT**

WHEREAS, Borough Council determines that the segment of King George Road between Park Avenue and East Delaware Avenue requires reconstruction;

NOW THEREFORE BE IT RESOLVED, that the Borough Council of the Borough of Pennington, formally approves the grant application for the above stated project;

BE IT FURTHER RESOLVED, that the Borough Engineer is hereby authorized to submit an electronic application identified as MA-2009 Pennington Borough – 00539 to the New Jersey Department of Transportation on behalf of the Borough of Pennington.

BE IT FURTHER RESOLVED, that the Mayor with the attestation of the Borough Clerk are hereby authorized to sign the grant agreement on behalf of the Borough of Pennington and that their signature constitutes acceptance of the terms and conditions of the grant agreement and approves the execution of the grant agreement.

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 2008-7.6, second by Council Member Tucker. Ms. Heinzel asked when specifics on the grant application and the scope of work would be available. Mr. Lawver stated that the actual scope of work will be determined after an award is made. Upon a roll call vote, all members present voted in favor.

**BOROUGH OF PENNINGTON
RESOLUTION 2008-7.7**

**RESOLUTION GRANTING CONDITIONAL
AUTHORIZATION FOR VITO'S PIZZA TO
MAINTAIN A TEMPORARY OUTDOOR
DINING AREA IN THE PUBLIC RIGHT OF WAY**

WHEREAS, Egnazio (Nat) Casano is the owner of Vito's Pizza, a restaurant located at 2 N . Main Street on the corner of North Main Street and West Delaware Avenue in the Borough of Pennington;

WHEREAS, Mr. Casano has applied to Borough Council for permission to place movable tables and chairs on the sidewalk immediately adjacent to the restaurant, in particular, 4 tables and 11 chairs on the Main Street side of the restaurant and 2 tables and 4 chairs on the Delaware Avenue side of the restaurant, as shown in the attached sketch;

WHEREAS, Borough Council finds that the availability of outdoor dining contributes to the vitality of the Town Center and is consistent with the pedestrian-friendly environment envisioned for this area;

WHEREAS, Borough Council determines that approval of the proposed outdoor dining area for Vito's Pizza, on a temporary and conditional basis as set forth further below, is in the public interest;

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

1. Vito's Pizza is hereby granted permission to locate up to 6 tables and 15 chairs on the sidewalk immediately adjacent to the restaurant provided the following conditions are met;
 - A. The tables and chairs shall be arranged as shown on the attached sketch with no more than 4 tables and 11 chairs on the Main Street side of the restaurant and no more than 2 tables and 4 chairs on the Delaware side of the restaurant.
 - B. The outdoor dining area and affected sidewalk shall at all times be kept clean and free of litter and in compliance with all applicable health regulations.
 - C. Operation of the outdoor dining area shall comply with the Borough Noise Ordinance, as set forth in Chapter 133 of the Borough Code.
 - D. The outdoor dining area may be used only during the operating hours of the restaurant.
 - E. Egnazio Casano and Vito's Pizza shall indemnify and hold harmless the Borough of Pennington and its agents and employees from and against all claims, damages, losses and expenses, including but not limited to attorney fees, arising out of the operation of the outdoor dining area approved by this resolution.
 - F. The outdoor dining area approved by this resolution shall not operate until Mr. Casano and Vito's Pizza has filed with the Borough Clerk, on or before July 18, 2008, a current Certificate of Insurance which certifies that:
 - (1) the obligation to indemnify and hold harmless the Borough as provided above is insured by an insurance carrier authorized to do business in the State of New Jersey;
 - (2) the Borough of Pennington and its agents and employees are named as additional insureds under this insurance with respect to claims, damages, losses and expenses arising out of operation of the outdoor dining area; and
 - (3) the insurance in effect provides (a) at least \$1,000,000. of incurred liability coverage under each of the following types of coverage: general liability; premises liability; products and completed operations liability; personal and advertising injury liability; (b) property liability coverage in the amount of \$50,000.; (c) medical expense coverage in the amount of \$5,000.; (d) workers compensation coverage with the limits required by statute; and (e) employer's liability coverage in the amount of \$500,000. per person/per occurrence.
 - (4) the Borough will be given 10 days' written notice of any cancellation of this insurance.
 - G. The outdoor dining area complies with all applicable requirements of Section 215-94 of the Borough Code which regulates outdoor dining areas otherwise permitted by the Code.
2. The conditional authorization for outdoor dining granted by this resolution may be revoked by the Borough at any time, with or without notice to Mr. Casano or Vito's Pizza. This conditional authorization also shall be subject to such additional or amended conditions as Borough Council may deem appropriate at any time.
3. This conditional authorization shall in any event expire on December 31, 2008.

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 2008-7.7, second by Council Member Heinzel. Mr. Bliss explained that because the outdoor dining proposed by Vito's Pizza is in the public right-of-way, Vito's must get approval from Borough Council. Mr. Lawver stated that Viva Gelato/Sumo

Sushi do not need to get approval from Borough Council for the tables that they have to the side of the building as they received approval for outdoor dining as part of the site plan review through the Planning Board. Mr. Lawver stated that Viva Gelato/Sumo Sushi would only need to get approval if they want to put tables out front in the public right-of-way. Some discussion took place with regard to the drawing submitted by Vito's Pizza and the placement of chairs and the conditions of the resolution. Mr. Bliss suggested that in the future, business owners come before Borough Council to make their requests so that any questions that come up can be ironed out at that time. Some minor language changes were made and upon a roll call vote, all members present voted in favor.

**Borough of Pennington
Resolution #2008-7.8**

**RESOLUTION AUTHORIZING THE TAX COLLECTOR TO DETERMINE
AN EXTENSION OF THE GRACE PERIOD FOR 3RD QUARTER 2008
TAX PAYMENTS**

BE IT RESOLVED, that the Pennington Borough Council hereby authorizes an extension of the grace period for third quarter 2008 tax payments; and

BE IT FURTHER RESOLVED, that the Tax Collector is hereby authorized to determine the extension period upon receipt of the 2008 Final Tax Bills, said period not to exceed 30 days beyond the mailing date of the bills.

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 2008-7.8, second by Council Member Heinzel with all members present voting in favor.

Council Discussion

Volunteer Tuition Credit Program –Mr. Dunworth stated that a member of the First Aid Squad came into the office with a signed statement from the First Aid Squad that he is a member in good standing. Mr. Dunworth stated that the gentleman wants to get into the Volunteer Tuition Credit Program. Mr. Dunworth stated that this program is an attempt by the State to keep volunteers active. Mr. Dunworth stated that one of the requirements is that the municipality needs to adopt a Resolution to participate in this program. Mr. Dunworth stated that there is no cost to the Borough other than some minor record keeping that will need to be done. Council Members raised some questions on the program and following the discussion it was decided to do a Resolution for the August meeting.

DCRP Ordinance – Mr. Dunworth stated that about a year ago, the State made some changes to the pension program. Mr. Dunworth explained that New Jersey has what is called a defined benefit pension system, now there is a shift occurring to what is called a defined contribution system, which compares to a 401K in private industry. Mr. Dunworth stated that the State is requiring municipalities to adopt an ordinance adopting the DCRP program. Mr. Dunworth stated that Council has been provided with a model ordinance for review. Mr. Dunworth stated that Bob Casey of the Administrator's Group has sent an e-mail stating that there are some issues with the model ordinance. Mr. Dunworth stated that in order to do the Ordinance, the Borough needs to identify those positions in town that are similar to appointments by the Governor and approved by the Senate. Mr. Dunworth stated that if the Borough hires anyone into a position that is a DCRP position they must go into the DCRP program. Mr. Dunworth stated that though very confusing, the Borough is required to adopt an Ordinance. Mr. Lawver suggested waiting to see how other towns handle this ordinance as Pennington does not have many positions that would be affected by this change.

Administrator's Report

Mr. Dunworth had nothing further report.

Professional Reports

There were no reports from Professionals.

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.

Mr. Robert Hage of 413 Burd Street thanked Borough Council for listening to him numerous times on the issue of banning dogs at public events. Mr. Hage stated that he is not pleased with the decision of Council; however the Borough may be a little better off now than before this discussion. Mr. Hage spoke further encouraging Council to adopt an ordinance banning dogs from public events.

Council responded to Mr. Hages concerns. Mayor Persichilli encouraged Mr. Hage to get support from Borough residents and come back to Council. Mayor Persichilli stated that he is more aware of dogs at public events now and the more it is discussed the more the town might come on board in support of an ordinance. Mr. Tucker stated that he did hear from a couple of residents that would not be in support of an ordinance. Mr. Lawver stated that he understands Mr. Hages concerns however the evaluation that Borough Council has made is that there are many risks out there and Council has the ability to control some of the risks. Mr. Lawver stated that by taking the steps that Council is taking and by furthering the education and being more active in discouraging dogs at public events, Council feels that they have invested an appropriate amount of time and effort into mitigating what is a rather small risk. Mr. Lawver stated that Council feels that this risk can be controlled by means other than an ordinance. Mr. Lawver stated that if there is a change in the character of dogs that attend public events, Borough Council will have to revisit this issue, but right now Council feels that they have taken appropriate steps to mitigate the risk without overstepping their bounds. Ms. Heinzl stated that as we move forward hopefully pet owners will think twice before bringing their dogs to public events.

At 9:30 PM, Council Member Tucker made a motion to adjourn the meeting, second by Council Member Griffiths with all members present voting in favor.

Respectfully submitted,

Elizabeth Sterling
Borough Clerk