

**Pennington Borough Council
Regular Meeting – August 4, 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 Griffiths, Heinzl, Lawver, Ogren, and Tucker in attendance. Council Member Chandler was absent.

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

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.**

There were no comments from the public.

Approval of Minutes

Council Member Tucker made a motion to approve the minutes of the June 2, 2008, Regular Meeting, second by Council Member Heinzl. Mr. Ogren requested clarification on page 18. Upon a roll call vote all members present voted in favor of the minutes as corrected.

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

Mayor's Business

Mayor Persichilli asked members of the Sidewalk Committee, Eileen Heinzl, Tom Ogren and Joe Lawver to give their report.

Ms. Heinzl stated that the Sidewalk Committee has met over a period of many months to discuss the sidewalks in town. Ms. Heinzl stated that sidewalks are an issue that Borough Council has been talking about for at least the past four years. Ms. Heinzl stated that Borough Council is aware that Pennington is a walk able community and that mostly everyone has a sidewalk in front of their house. Ms. Heinzl stated that the Borough Master Plan calls for new construction to install new sidewalks and Borough ordinances require that residents maintain the sidewalks in front of their homes. Ms. Heinzl stated that in connection with some school funding applications that the Borough has submitted to increase pedestrian safety, Council has learned that there are about 200 students that walk or ride their bikes back and forth to school. Ms. Heinzl stated that there are a lot of residents that walk and Pennington has a nice downtown. Ms. Heinzl stated that Council recently introduced an ordinance allowing outdoor dining on the sidewalks downtown. Ms. Heinzl stated that there are sidewalks in roughly 85 percent of Pennington and most residents have maintained their sidewalks, but there continues to be problem areas throughout the Borough and that is what the sidewalk committee has sought to address.

Mr. Lawver stated that over the past six months to a year, two sidewalk surveys have been done with the purpose being to identify sidewalks throughout town that are in a state of disrepair. Mr. Lawver stated that of the 950 properties in the Borough, roughly 200 to 300 have some repairs necessary. Mr. Lawver stated that 35 sidewalks have been identified as high priority and need to be addressed right away. Mr. Lawver stated that the standards used were: if the sidewalk had either a raised lip or stub toe of three inches or greater, if the sidewalks had deteriorated to a point where less than half was still intact, and gaps or cracks between squares of more than two inches. Mr. Lawver stated that if a homeowner with a sidewalk having one or more of these conditions were to seek a new insurance policy, the company would require that the sidewalk be fixed before a policy were issued. Mr. Lawver stated that the 35 sidewalks identified are the sidewalks that the Borough is seeking to address with a plan that the sidewalk committee has come up with.

Mr. Ogren stated that in Pennington, it is hard to discuss fixing sidewalks without talking about trees. Mr. Ogren stated that most of the priority sidewalks identified involve tree roots lifting part of the sidewalk. Mr. Ogren stated that two aspects of Pennington are its walk ability and its tree lined streets so as we deal with sidewalks we want to make sure to maintain the asset of the tree lined streets. Mr. Ogren stated that the sidewalk ordinance that was adopted last year, clearly gives the homeowner responsibility for repair and maintenance of sidewalks which is true throughout the State. Mr. Ogren stated that the ordinance also deals with the issue of trees and tree roots, giving a shared responsibility for the problem between the property owner and the Borough, with the Borough being responsible for cutting the tree roots and the homeowner being responsible for replacement of the sidewalk. Mr. Ogren stated that in Pennington, there are three County roads, Delaware, Main and Ingleside, and most of the tree root problems are on those streets. Mr. Ogren stated that the Borough has asked Mercer County to be responsible for the roots on

those streets. Mr. Ogren stated that the Borough will be left with dealing with quite a few trees throughout town, with the cost easily absorbed through the Shade Tree budget. Mr. Ogren stated that every case will be looked at to identify the best solution for the problem.

Mr. Lawver stated that in order to move forward, the Sidewalk Committee is proposing the following: amending the sidewalk ordinance to waive the sidewalk permit fees for a period of one-year, working with the Borough Engineer to revise the sidewalk specifications so that they are not as rigorous, and working with homeowners with regard to tree work. Mr. Lawver stated that now it will be up to the homeowner to step up and take responsibility for their sidewalks. Mr. Lawver stated that the 35 identified property owners will be invited to a meeting early in September. Mr. Lawver stated that the Borough is looking to pair property owners together to obtain better pricing from contractors. Mr. Lawver stated that after the one year period, the recourse for Council will be to move towards more rigorous enforcement of the sidewalk ordinances that are in place.

Mr. Tucker stated that there is no question that many sidewalks are in bad shape and are hazardous, but the repair is expensive and even though the fee will be waived there are many residents who will not be able to afford the repair costs. Mr. Lawver stated that his is on the list and he has gotten quotes as low as \$32.44 per linear foot of sidewalk to as high as \$67.00 per linear square foot of sidewalk. Mr. Lawver stated that the more sidewalk that is being repaired at one time the less it will cost. Mr. Lawver stated that by bringing people together the committee is hoping to assist homeowners with getting the best price.

Ordinances for Introduction

Mayor Persichilli read Ordinance 2008-9 by title.

BOROUGH OF PENNINGTON ORDINANCE NO. 2008 - 9

AN ORDINANCE PROVIDING ONE-YEAR WAIVER OF PERMIT FEES FOR SIDEWALK REPAIR, AND AMENDING THE CODE OF THE BOROUGH OF PENNINGTON

WHEREAS, all repair and maintenance of sidewalks and driveways in the Borough is the responsibility of adjacent property owners;

WHEREAS, the Borough Code requires that all installation, repair and maintenance of sidewalks and driveways in the public right of way, other than minor repairs, be regulated by the Borough to promote public safety, to protect drainage along roads within the Borough, and to ensure consistency of design;

WHEREAS, the Code provides that no such installation, repair or maintenance may be undertaken unless, among other things, the property owner first obtains a permit from the Borough;

WHEREAS, the Code further provides that each applicant for a permit shall pay a fee of fifty dollars (\$50) if the work will affect less than three square yards and a fee of one hundred dollars (\$100) for larger areas;

WHEREAS, the Borough seeks to encourage residents to undertake repair and replacement of defective sidewalks and driveways within the public right-of-way;

WHEREAS, as an inducement to residents for this purpose, Borough Council has determined to waive applicable permit fees for one year, nonetheless keeping all other Code requirements for sidewalk repair and maintenance in effect;

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

1. Subsection (e) of Section 177-24 of the Code of the Borough of Pennington, concerning permits for certain installation, repair and maintenance of sidewalks and driveways, is hereby amended by the addition of a one-year waiver of permit fees, the amended Section 177-24 thereafter to read in its entirety as follows:

§ 177-24.

No individual shall remove an existing sidewalk within the borough except as provided herein. No person shall install, repair or maintain a driveway or sidewalk within the public right-of-way in the Borough except in compliance with the following:

- (a) All repair and maintenance of sidewalks and driveways shall be the responsibility of the adjacent property owner as required by law. All installation, repair and maintenance of sidewalks and driveways in the public right-of-way, other than minor repairs as herein defined, shall require a permit from the Borough. Permits shall be obtained by application to the Borough. When a permit is required, no work shall commence until the permit has been issued and notice given to the Borough Engineer.
- (b) Minor repairs not requiring a permit shall be limited to the filling of small holes or cracks which do not affect the gutter line or drainage

along the municipal street and do not materially affect the appearance of the sidewalk or the driveway area within the public right-of-way.

(c) All installation, repair and maintenance of sidewalks and driveways within the public right-of-way shall comply with specifications and requirements established by the Borough and kept on file in the office of the Borough Clerk. All such work shall be subject to the inspection and approval of the Borough Engineer as further provided below.

(d) Prior to the issuance of any permit for the installation, repair or maintenance of any driveway or sidewalk within the Borough right-of-way, the applicant shall file with the Borough Clerk a certificate of insurance certifying that there is in full force and effect liability and property damage insurance for the protection of the applicant and the Borough of Pennington from any and all claims relating to the work, including personal injury and property damage, in minimum amounts of one hundred thousand dollars (\$100,000.00) per claim and three hundred thousand dollars (\$300,000.00) per occurrence. The Borough and the Borough Engineer shall be included as additional insureds on the applicant's insurance policy.

(e) All installations, repairs and maintenance of driveways or sidewalks shall be made under the supervision of the Borough Engineer or Borough authorized agent and shall be subject to such periodic inspection as the Engineer may deem necessary. Except as further provided herein, [E]ach applicant for a permit shall pay a fee of fifty dollars (\$50) provided the work covered by the permit is proposed to affect not more than three square yards of driveway or sidewalk in the public right of way[.], and a fee of one hundred dollars (\$100) for work which will affect a larger area [The permit fee for work proposed to affect a larger area shall be one hundred dollars (\$100)]. The applicable fee shall cover the issuance of the permit, examination of drawings, supervision and inspection of work. However, no fees shall be required for any permit lawfully applied for during the one-year period beginning September 19, 2008.¹

(f) The pavement adjacent to the work shall be neatly saw cut.

(g) If repair or replacement of the driveway or sidewalk is necessitated in whole or in part by changes in the roots or root systems of one or more trees in the public right of way, the Borough alone shall be authorized to prune or otherwise modify the involved roots or root systems. However, the permittee in these instances shall be responsible for removing the affected area of driveway or sidewalk to permit the Borough to do its work and shall reconstruct the affected area of driveway or sidewalk after the Borough has completed its work.

(h) Every person installing, repairing or maintaining driveways and sidewalks shall be required to place and maintain suitable warning devices, caution notices and barriers pursuant to the requirements of the Borough Engineer. All work shall be conducted in such manner as to minimize the obstruction of traffic, preserve the safety of pedestrians and limit inconvenience to the public and occupants of adjoining property.

(i) Every permittee, as a condition of accepting any permit issued hereunder, shall save and hold harmless the Borough of Pennington and indemnify the Borough, its officers, agents, servants and employees from and against any and all loss, damage, claim, expense or demand whatsoever arising out of or relating in any way to the installation, repair or maintenance of any driveway or sidewalk and the issuance of any permit therefor as provided in this section.

(j) Any person violating any provision of this section shall, upon conviction thereof, be subject to a fine not exceeding \$1,000.00. Such person also shall be required to correct the work as necessary to bring it into compliance with applicable specifications and requirements.

2. This ordinance shall take effect upon final passage and publication as provided by law.

Council Member Lawver made a motion to introduce Ordinance 2008-9, second by Council Member Heinzl with all members present voting in favor.

¹Brackets [] denote deleted language; underlining ____ indicates new language.

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 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 open the Public Hearing on Ordinance 2008-2, second by Council Member Heinzl. Mayor Persichilli asked for comments from the public. There were none. Council Member Tucker made a motion to close the Public Hearing, second by Council Member Heinzl with all members present voting in favor. Council Member Lawver made a motion to adopt Ordinance 2008-2, second by Council Member Ogren. Mr. Lawver explained that this Ordinance started with a request for the DEP which was tied to the expansion application for Stonybrook Sewerage Authority. Mr. Lawver stated that Stonybrook is at capacity and needs to be expanded in order to accommodate future growth in town. Mr. Lawver stated that the model ordinance that was provided was very restrictive and onerous to the Borough and after many go rounds with the Public Works Committee and Omni

Engineering, and Van Note Harvey, the Public Works Committee has come up with this Ordinance which is far less restrictive but still serves to meet the objectives of the DEP. Mr. Lawver stated that having said that, he is still uncomfortable with the Ordinance because the DEP is asking the Borough to take on a role that really should be a DEP function alone. Mr. Lawver stated that the DEP is responsible for controlling the water ways in the State and now through implementation of this ordinance the DEP is asking the Borough to take on a portion of that responsibility and that is what has him most uncomfortable. Mr. Lawver stated that the ordinance has been stripped down to its least offensive state, but there is still a question of whether the Borough should take on the responsibility. Upon a roll call vote, all members present voted in favor of adoption of the ordinance.

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 Tucker made a motion to open the Public Hearing on Ordinance 2008-6, second by Council Member Heinzl. Mayor Persichilli opened the public hearing for comments from the public. There were no comments. Council Member Tucker made a motion to close the Public Hearing, second by Council Member Heinzl with all members present voting in favor. Council Member Tucker made a motion to adopt Ordinance 2008-6, second by Council Member Heinzl 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 Tucker made a motion to open the Public Hearing on Ordinance 2008-7, second by Council Member Heinzl. Mayor Persichilli opened the Public Hearing to comments from the public. There were no comments. Council Member Ogren made a motion to close the Public Hearing, second by Council Member Heinzl with all members present voting in favor. Council Member Tucker made a motion to adopt Ordinance 2008-7, second by Council Member Heinzl with all members present voting in favor.

Public Hearing and Adoption of 2008 Budget

Mayor Persichilli read Resolution 2008-8.4 by title. Council Member Tucker made a motion to open the Public Hearing on Resolution 2008-8.4, second by Council Member Lawver. Mayor Persichilli opened the Public Hearing on the 2008 Budget. Mr. Stewart Schwab of 38 South Main Street asked what the total increase for a taxpayer would be including water and sewer. Mr. Griffiths explained that the tax rate went up by 4.0 percent, the property values went up and so the compounded increase is 5.3 percent. Mr. Griffiths explained that the average house is assessed at \$527,000 which amounts to an \$80.00 tax increase. Mr. Lawver stated that water sewer bills are based on usage but the average increase would amount to \$36.00 for a total of \$116.00 per household. Mr. Schwab had questions relating to debt service, which were answered by Borough Auditor, Bob Morrison. There were no further comments from the public. Council Member Ogren made a motion to close the Public Hearing on the 2008 Budget, second by Council Member Heinzl with all members present voting in favor.

**Borough of Pennington
Resolution #2008-8.4**

RESOLUTION TO ADOPT BUDGET FOR 2008

BE IT RESOLVED by the Borough Council of the Borough of Pennington, County of Mercer, that the budget hereinbefore set forth is hereby adopted and shall constitute an appropriation for the purposes stated of the sums therein set forth as appropriations, and authorization of the amount:

- (a) \$2,178,285.00 - (item 2 below) for municipal purposes, and
- (b) - (item 3 below) for school purposes in Type I School Districts only (N.J.S. 18A:9-2) to be raised by taxation, and
- (c) - (item 4 below) to be added to the certificate of amount to be raised by taxation for local school purposes in Type II School Districts only (N.J.S. 18A:9-3) and certification to the County Board of Taxation of the following summary of general revenue and appropriations.
- (d) \$ 52,346.25 - (sheet 43) Open Space, Recreation, Farmland & Historic Preservation Trust Fund Levy.

SUMMARY OF REVENUES

1. General Revenues		
Surplus Anticipated	\$335,358.50	
Miscellaneous Revenue Anticipated	\$724,297.72	
Receipts from Delinquent Taxes	\$ 96,000.00	
2. Amount to be Raised by Taxation for Municipal Purposes (item 6(a), Sheet 11)		\$2,178,285.00
3. Amount to be Raised by Taxation for Schools in Type I School Districts Only: Item 6, Sheet 42 Item 6(b), Sheet 13 (N.J.S. 40A:4-14) Total Amount to be Raised by Taxation for Schools In Type 1 School Districts Only		
4. To be added to the Certificate for Amount to Be Raised by Taxation in Type II School Districts Only: Item 6(b), Sheet 13 (N.J.S. 40A:4-14)		
Total Revenues		\$ 3,333,941.22

SUMMARY OF APPROPRIATIONS

5. General Appropriations: Within "CAPS"		
(a&b) Operations Including Contingent	\$1,944,709.10	
(e) Deferred Charges and Statutory Charges – Municipal	\$ 75,500.00	
(f) Judgements		
Excluded from "CAPS"		
(a) Operations – Total Operations Excluded from "CAPS"	\$ 401,232.12	
(c) Capital Improvements	\$ 265,000.00	
(d) Municipal Debt Service	\$ 403,500.00	

(e) Deferred Charges – Municipal	\$ 34,000.00
(n) Transferred to Board of Education for Use of Local Schools (N.J.S. 40:48-17.1 & 17.3)	
(g) Cash Deficit	
(k) For Local District School Purposes	
(m) Reserve for Uncollected Taxes (Include other Reserves)	\$ 210,000.00

6. School Appropriations – Type I School Districts Only (N.J.S. 40A:4-13)

Total Appropriations \$3,333,941.22

Record of Council Vote on Passage

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

Council Member Tucker made a motion to approve Resolution 2008-8.4, second by Council Member Heinzel with all members present voting in favor.

Presentation of Audit Report for 2007

Mayor Persichilli invited Borough Auditor, Bob Morrison to come forward to present the 2007 Audit Report. Mr. Morrison apologized for not having bound audit reports to distribute to Council tonight, but his office manager had a family emergency and was unable to get them done for tonight. Mr. Morrison stated that the good news is that when the report is given to Council Members there are no items that require attention. Mr. Morrison stated that there are no recommendations in the report. Mr. Morrison stated that their opinion is qualified simply because the Borough does not have a fixed asset program in place. Mr. Morrison explained that it would not be cost effective to implement a fixed asset program at this point. Mr. Morrison stated that from a financial standpoint, the numbers reported on the Annual Financial Statement in February are essentially the numbers that are reflected in the audit. Mr. Morrison explained that that is a good thing because it means that Council can rely on financial information coming out of the Finance Office. Mr. Morrison briefly discussed the possibility of consolidating accounts to make the budget process a little smoother. Mr. Morrison stated that there are a couple of issues on the horizon that the Borough has put themselves in good shape for. Mr. Morrison stated that the law on cap levies is a hard four percent annual increase. Mr. Morrison stated that there a couple of important exceptions and they are pension costs and reduction in State Aid, both big numbers for the Borough. Mr. Morrison explained that pension costs are presently on a phase in schedule with one pension system being completely phased in after this year and the other having one more year. Mr. Morrison stated after that the Borough might see some more stability in pension appropriations from year to year. Mr. Morrison stated that as far as debt levels go, the Borough is well within the legal boundaries, at roughly twenty percent of the debt load that the Borough would be allowed to carry. Mr. Morrison stated that the issues the Borough has going forward are primarily whether the Borough will be able to fund increased costs given the law that is in place and will revenues be able to remain stagnant or will they need to be increased. Mr. Morrison stated that reports on internal controls were appropriate given the limited number of employees. Mr. Morrison stated that the other area that they focused on was compliance with laws and regulations at both the State and Federal levels and with local ordinances. Mr. Morrison stated that they found the Borough to be in compliance. Mr. Morrison congratulated the Borough on its vigilance and stated that they are very satisfied with the way the town is operating.

Mr. Griffiths pointed out that if the State Aid had not been cut, there would have been no tax increase this year. Mr. Griffiths stated that the State continues to force municipalities to spend money in order to keep up with its regulations and that comes out of property taxes even though little or no benefit is realized by the Borough.

Mr. Tucker commended the Borough staff on a job well done and an audit with no recommendations once again.

Committee Reports

Planning & Zoning and Library – Ms. Heinzel reported that Library has been busy this summer. Ms. Heinzel stated that the children’s programs have averaged about fifty children per week. Ms. Heinzel stated that children’s program was self funded with participating families paying the cost of the program. Ms. Heinzel thanked the middle and high school children that assisted with the Summer Reading Program. Ms. Heinzel reported that the Middle School Program which was started this year has been very successful. Ms. Heinzel stated that Story Time will begin again in September. Ms. Heinzel stated that new furniture has been set up in the Children’s area of the Library thanks to the Friends of the Pennington Public Library. Ms. Heinzel stated that the Girl Scout garden is being well cared for by the Girl Scouts again this year. Ms. Heinzel stated that the Library Board did not meet this summer, but will meet again on August 28th.

Ms. Heinzel reported that the Planning Board met in July, she did not attend but reported that the application at 229 South Main Street was approved as presented. Ms. Heinzel reported that the house and streetscape will remain intact. Ms. Heinzel reported that the application at 228 South Main Street has been carried to the next meeting.

Ms. Heinzel reported that the Environmental Commission met on July 21st and will meet again on August 18th.

Public Works/Economic Development – Mr. Lawver reported that the Public Works Committee will be meeting tomorrow, August 5, 2008. Mr. Lawver gave the following report for water and trash.

PENNINGTON BOROUGH PUBLIC WORKS

TO: Joseph Lawver, Chairman
Public Works Committee

FROM: Jeff Wittkop, Superintendent

DATE: August 1, 2008

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

WATER

Water pumped for the month of July 2008-		9,556,000
Daily-		308,200
 Water pumped for the month of July 2007-		 8,398,000
Daily-		270,900

For the month of July 2008 we averaged 37,300 gallons more per day than 2007.

TRASH

97.36 tons of household trash for the month of June 2008 vs. 92.66 tons in June 2007

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

All our fire hydrants have been flushed during the month of July, leak tested, four hydrants have been found leaking, one has been repaired, three are outstanding.

Mr. Lawver gave a status report on the road reconstruction work on Brookside Avenue. Mr. Lawver stated that the project has not gone as planned. Mr. Lawver stated that the concrete work for curbs and driveway aprons was done by a sub-contractor and a lot of the work had to be redone. Mr. Lawver stated that DeSantis Construction has taken full responsibility and that project should be completed within the next couple of weeks.

Personnel – Mr. Ogren stated that the Personnel Committee did not meet in July.

Community Services – Ms. Chandler was not in attendance. No report was given.

Public Safety – Mr. Tucker reported that investigations on five applicants for the vacancy in the Police Department have been completed; four of the candidates were invited to participate in the interview phase on July 23rd. Mr. Tucker reported that Mr. Meytrott has represented the Borough as various meetings throughout the month.

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

9	Criminal Mischief Situations
91	Motor Vehicle Stops
49	Motor Vehicle Summonses
5	Parking Summonses
2	DUI Summonses
51	Warnings
9	Motor Vehicle Accident Reports
12	Investigation Reports
2	Adult Males Arrested
3	Adult Females Arrested
1	Juvenile Arrest

Mr. Tucker reported on the interview process and announced that the recommendation is that Mark Offerman be hired to fill a vacancy in the Police Department with a start date of August 19th, 2008.

Mr. Meytrott added that Mr. Offerman is a trained police officer and will be able to fill the vacancy created when Officer Kevin Tatur resigned. Mr. Meytrott stated that there may be another resignation in the very near future and he is continuing to investigate some other candidates that submitted applications.

Finance – Mr. Griffiths reported that the Finance Committee did not meet in July, the draft audit report was received and reviewed and as mentioned previously there are no recommendations. Mr. Griffiths stated that the Finance Committee will meet sometime in August or September to take a look at the “burn rate” and make sure that spending is under control.

Mr. Dunworth stated that in a couple of months the memos will go out to begin the budget process for 2009.

New Business

**Borough of Pennington
Resolution #2008-8-1**

RESOLUTION AUTHORIZING REFUNDS

BE IT RESOLVED, that a refund be made to The Pennington School, 112 West Delaware Avenue, Pennington, NJ 08534 in the amount of \$185.27 including interest for a Planning Board escrow balance for Block 10 - Lot 2.

Record of Council Vote on Passage

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

Council Member Tucker made a motion to approve Resolution 2008-8.1, second by Council Member Heinzel with all members present voting in favor.

**Borough of Pennington
Resolution #2008 – 8.2**

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 \$ 2,190,458.36 from the following accounts:

Current	\$ 1,431,538.44
W/S Operating	\$ 35,654.81
Developers Escrow	\$ 1,043.00
Grant Fund	\$ 41,187.06
Water/Sewer Capital	\$ 14,441.23
Animal Control Fund	\$ 4,530.29
Recreation	\$ 995.88
Trust Fund	\$ 18,352.46
COAH Trust	\$ 322,311.53
Open Space Fund	\$ 212,510.83
Unemployment	\$ 11,576.66
Sovereign Bank	\$ 96,316.17
TOTAL	\$ 2,190,458.36

Record of Council Vote on Passage

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

Council Member Tucker made a motion to approve Resolution 2008-8.2, second by Council Member Heinzel. Council Members raised questions on specific bills on the bill list. Upon a roll call vote, all members present voted in favor.

**BOROUGH OF PENNINGTON
RESOLUTION 2008 – 8.3**

**RESOLUTION GRANTING CONDITIONAL AUTHORIZATION FOR
CUP OF JOE TO MAINTAIN A TEMPORARY OUTDOOR
DINING AREA IN THE PUBLIC RIGHT OF WAY**

WHEREAS, Dana Unfried and Diane O'Donnell are the owners of Cup of Joe, a coffee shop and restaurant located at 20 N . Main Street in the Borough of Pennington;

WHEREAS, Ms. Unfried, on behalf of ownership, has applied to Borough Council for permission to place movable tables and chairs on the sidewalk immediately adjacent to the restaurant and at the curb, in particular, 2 tables and 4 chairs adjacent to the front of the building on North Main Street and one table and two chairs adjacent to the curb on that street, 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 Cup of Joe, 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. Cup of Joe is hereby granted permission to locate up to 2 tables and 4 chairs on the sidewalk immediately adjacent to the front of the building and one table and 2 chairs at the curb as aforesaid, provided the following conditions are met;

A. The tables and chairs shall be arranged as shown on the attached sketch.

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 coffee shop and restaurant. When the shop and restaurant is not open, all tables and chairs shall be stacked adjacent to the building.

F. Dana Unfried and Diane O'Donnell and Cup of Joe 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.

G. The outdoor dining area approved by this resolution shall not operate until Dana Unfried and Diane O'Donnell and Cup of Joe have filed with the Borough Clerk 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.

H. The outdoor dining area complies with all applicable requirements of Section 215-94 of the Borough Code which regulates out door 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 Dana Unfried, Diane O'Donnell or Cup of Joe. 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				absent	Lawver	M			
Griffiths	X				Ogren	S			
Heinzel	X				Tucker	X			

Council Member Lawver made a motion to approve Resolution 2008-8.3, second by Council Member Ogren. A minor wording change was made in Section 1D. Upon a roll call vote, all members present voted in favor.

**Borough of Pennington
Resolution #2008-8.4**

RESOLUTION TO ADOPT BUDGET FOR 2008

BE IT RESOLVED by the Borough Council of the Borough of Pennington, County of Mercer, that the budget hereinbefore set forth is hereby adopted and shall constitute an appropriation for the purposes stated of the sums therein set forth as appropriations, and authorization of the amount:

- (a) \$2,178,285.00 - (item 2 below) for municipal purposes, and
- (b) - (item 3 below) for school purposes in Type I School Districts only (N.J.S. 18A:9-2) to be raised by taxation, and
- (d) - (item 4 below) to be added to the certificate of amount to be raised by taxation for local school purposes in Type II School Districts only (N.J.S. 18A:9-3) and certification to the County Board of Taxation of the following summary of general revenue and appropriations.
- (d) \$ 52,346.25 - (sheet 43) Open Space, Recreation, Farmland & Historic Preservation Trust Fund Levy.

SUMMARY OF REVENUES

4. General Revenues		
Surplus Anticipated	\$335,358.50	
Miscellaneous Revenue Anticipated	\$724,297.72	
Receipts from Delinquent Taxes	\$ 96,000.00	
2. Amount to be Raised by Taxation for Municipal Purposes (item 6(a), Sheet 11)		\$2,178,285.00
7. Amount to be Raised by Taxation for Schools in Type I School Districts Only: Item 6, Sheet 42		
Item 6(b), Sheet 13 (N.J.S. 40A:4-14)		
Total Amount to be Raised by Taxation for Schools In Type 1 School Districts Only		
8. To be added to the Certificate for Amount to Be Raised by Taxation in Type II School Districts Only: Item 6(b), Sheet 13 (N.J.S. 40A:4-14)		
Total Revenues		\$ 3,333,941.22

SUMMARY OF APPROPRIATIONS

9. General Appropriations:		
Within "CAPS"		
(a&b) Operations Including Contingent	\$1,944,709.10	
(e) Deferred Charges and Statutory Charges – Municipal	\$ 75,500.00	
(f) Judgements		
Excluded from "CAPS"		
(a) Operations – Total Operations Excluded from "CAPS"	\$ 401,232.12	
(c) Capital Improvements	\$ 265,000.00	
(d) Municipal Debt Service	\$ 403,500.00	
(e) Deferred Charges – Municipal	\$ 34,000.00	
(o) Transferred to Board of Education for Use of Local Schools (N.J.S. 40:48-17.1 & 17.3)		
(h) Cash Deficit		
(i) For Local District School Purposes		
(m) Reserve for Uncollected Taxes (Include other Reserves)	\$ 210,000.00	
10. School Appropriations – Type I School Districts Only (N.J.S. 40A:4-13)		
Total Appropriations		\$3,333,941.22

Record of Council Vote on Passage

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

Council Member Tucker made a motion to approve Resolution 2008-8.4, second by Council Member Heinzel with all members present voting in favor.

**Borough of Pennington
Resolution #2008 – 8.5**

A RESOLUTION TO SUPPORT AND PARTICIPATE IN THE VOLUNTEER TUITION CREDIT PROGRAM (P.L. 1998, c. 145)

WHEREAS, the Borough Council of the Borough of Pennington in the County of Mercer, deems it appropriate to enhance the recruitment and retention of volunteer firefighters and emergency medical volunteers in the Borough of Pennington; and

WHEREAS, the State of New Jersey has enacted P.L. 1998, c. 145 which permits municipal governments to allow their firefighting and emergency medical volunteers to take advantage of the Volunteer Tuition Credit Program at no cost to the municipal government.

NOW, THEREFORE, BE IT RESOLVED, by the Borough Council of the Borough of Pennington, in the County of Mercer that the Volunteer Tuition Program as set forth in P.L. 1998, c. 145 is herewith adopted for the volunteer firefighters and emergency medical volunteers in the municipality; and

BE IT FURTHER RESOLVED, that the Borough Clerk is herewith delegated the responsibility to administer the program and is authorized to enter into all agreements and to maintain files of all documents as may be required under the P.L. 1998, c.145, a copy of which is herewith made part of this resolution.

Record of Council Vote on Passage

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

Council Member Heinzel made a motion to approve Resolution 2008-8.5, second by Council Member Ogren with all members present voting in favor.

**Borough of Pennington
Resolution #2008 – 8.6**

A RESOLUTION AUTHORIZING PAYMENT REQUEST NO. 1 TO DESANTIS CONSTRUCTION, INC. FOR WORK COMPLETED ON THE BROOKSIDE AVENUE RECONSTRUCTION PROJECT

WHEREAS, DeSantis Construction, Inc. has completed certain work pursuant to its contract for the Brookside Avenue Reconstruction Project (VNHA #36713-500-52); and

WHEREAS, Van Note Harvey Associates, P.C. has reviewed and inspected the improvements that have been constructed and has approved payment for same pursuant to the Contractor's Request for Payment No. 1 (\$35,190.57) less two percent (2%) retainage (\$703.81), the net due therefore amounting to \$34,486.76; and

WHEREAS, this is a partial payment under the contract; and

WHEREAS, funds are available in account # G-02-44-931-000-250; and

NOW, THEREFORE, BE IT RESOLVED, by the Borough Council of the Borough of Pennington, that payment to DeSantis Construction, Inc. in the amount of \$34,486.76, pursuant to payment request No. 1, is hereby authorized.

Record of Council Vote on Passage

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

Council Member Lawver made a motion to approve Resolution 2008-8.6, second by Council Member Ogren with all members present voting in favor.

**Borough of Pennington
Resolution #2008-8.7**

**RESOLUTION AUTHORIZING JOINT GRANT APPLICATION
WITH HOPEWELL TOWNSHIP AND HOPEWELL BOROUGH FOR MUNICIPAL ALLIANCE
FUNDING**

WHEREAS, Hopewell Township, Hopewell Borough and Pennington Borough intend to file a joint application with the County of Mercer for funding of the Hopewell Valley Municipal Alliance for 2009;

WHEREAS, all three municipalities have annually executed agreements to participate in the Municipal Alliance Program and each year have jointly signed and submitted the grant renewal application; and

WHEREAS, each of the municipalities has agreed to provide a proportionate share of the required local contribution based on respective student enrollment in the Hopewell Valley school system;

WHEREAS, Pennington's proportionate share for 2009 is \$1,360.00; and

WHEREAS, funds for this purpose will be available in Borough account #9-01-42-104-000-267, Interlocal Agreements;

NOW, THEREFORE BE IT RESOLVED, by the Borough Council of the Borough of Pennington, that the Mayor, with the attestation of the Clerk, is hereby authorized to execute the aforesaid application for funding and to take such additional steps as may be required to further the application, and all such actions taken by the Mayor and Clerk to date are hereby accepted and ratified.

Record of Council Vote on Passage

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

Council Member Tucker made a motion to approve Resolution 2008-8.7, second by Council Member Heinzel with all members present voting in favor.

**Borough of Pennington
Resolution #2008-8.8**

**RESOLUTION CERTIFYING THAT ALL MEMBERS OF THE BOROUGH COUNCIL OF THE
BOROUGH OF PENNINGTON HAVE REVIEWED THE SECTIONS OF THE 2007 ANNUAL
AUDIT ENTITLED GENERAL COMMENTS AND RECOMMENDATIONS**

Resolution 2008-8.8 was pulled from the agenda and will be rescheduled for the September meeting.

**BOROUGH OF PENNINGTON
RESOLUTION 2008-8.9**

**RESOLUTION AUTHORIZING CANCELLATION OF OUTSTANDING
CHECKS**

WHEREAS the Chief Financial Officer has requested permission to cancel certain outstanding checks from the Borough's accounts, as set forth on the attached listing;

NOW, THEREFORE, BE IT RESOLVED by the Mayor and Council of the Borough of Pennington that the Chief Financial Officer is hereby authorized to cancel outstanding checks of the Borough as set forth on the attached listing; and

BE IT FURTHER RESOLVED that a refund be issued to any individual that claims a check subsequent to its cancellation.

Record of Council Vote on Passage

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

Council Member Lawver made a motion to approve Resolution 2008-8.9, second by Council Member Ogren with all members present voting in favor.

Council Discussion

Mr. Ogren stated that he distributed two handouts to Council Members prior to the meeting. Mr. Ogren stated that they are for information purposes only. Mr. Ogren stated the first one is a follow up to the traffic calming report and the other item has to do with maintaining the character of Pennington. Mr. Ogren stated that last year Borough Council adopted an Ordinance imposing some limitations on house size and floor area ratio. Mr. Ogren stated that he compared those requirements with a recent new house construction activity and attached a comparison and some thoughts he had that may or may not want to be shared with the Planning Board.

Administrator's Report

Mr. Dunworth reported that the entry sign on the corner of Delaware Avenue and King George Road is missing the sponsor sign for the second time. Mr. Dunworth stated that Mr. Burke Sinclair had asked that this be brought up at the Council Meeting to see what could be done about replacing the sign. Mr. Dunworth stated that just today he received a phone call and the sign will be replaced at no charge to the Borough. Mr. Dunworth stated that Mr. Sinclair has indicated that he will have it installed on the sign so that it cannot be removed.

Mr. Dunworth stated that information has been coming in from the League of Municipalities regarding the annual convention in November. Mr. Dunworth asked that anyone interested in attending this year, let Betty Sterling know so that arrangements can be made. Mayor Persichilli encouraged Borough Council and any employees interested in going to the convention to go down for the day for specific seminars and avoid staying in a hotel to save money.

Mr. Griffiths asked if any more information regarding State mandates has come in and also is there another forum that the Borough could get involved with regarding this issue as this is a crushing burden for smaller municipalities. Mr. Dunworth stated that a little known organization, the Council on Local Mandates exists. Mr. Dunworth stated that they have a lot of authority and municipalities can work through the Council to have laws overridden. Mr. Morrison stated that we will be hearing a lot about the Council in the near future, as he knows of several towns that will be petitioning the Council regarding smaller towns having to pay for State Police coverage.

Mr. Dunworth stated that late this afternoon a letter came in from Cindy Coppola, Borough Planner asking for a response to their proposal submitted several months ago regarding the new COAH rules. Mr. Dunworth stated that the letter indicates that she needs a response by August 15th as to how Council wants to proceed or they will not have time to complete the requirements by the December deadline. Mr. Dunworth stated that the proposal is for completion of a new Housing Element and Fair Share Plan at a cost of \$25,000. Mr. Griffiths stated that the funds were deleted from the budget and the decision that was made was to resubmit the same document that was submitted in the past because the rules keep changing. Mr. Griffiths stated that there is no indication that the rules are stable which would allow municipalities to respond in a constructive matter. Mr. Griffiths stated that each time the rules are changed; consultants are racking up charges to issue new plans that become obsolete virtually the day it is submitted. Mayor Persichilli asked Mr. Bliss to comment on the consequences that the Borough would face if we decided to just do nothing related to COAH. Mayor Persichilli stated that Pennington Borough is built out; we have some obligations that we will have to adhere to with regard to the landfill site and the proposed site for the YMCA. Mayor Persichilli asked Mr. Bliss how other towns are opting out of COAH without having a problem and should Council consider that option. Mr. Bliss stated that he has not worked with a town that has opted out or did not actively pursue fulfillment of affordable housing obligations. Mr. Bliss stated that even in Princeton Borough, another built out community, there has been active pursuit of affordable housing. Mr. Bliss stated that there is an underlying fear of the redevelopment options that the Builder's Remedy can produce. Mr. Bliss stated for the Borough this would mean building up, meaning redevelopment of multi-stories. Mr. Ogren stated that of the 566 municipalities in the State of New Jersey, hundreds have opted out of the COAH process. Mr. Ogren stated that it is important to realize that not participating does not necessarily mean that the Borough would eliminate its ordinance requiring affordable housing on the sites that we have. Mr. Ogren stated that sites earmarked for affordable housing will stay that way, whether or not the Borough is involved in the COAH process going forward. Mr. Ogren stated that COAH requirements have escalated and his concern with developed towns is how to meet the requirements when there is no vacant land. Ms. Heinzl stated that she understood from previous discussions that the Borough still plans to fulfill its obligations under the first and second round and resubmitting the plan that has already been prepared for the third round. Mr. Bliss stated that several years ago the borough was involved in litigation regarding providing water and sewer outside the Borough limits, based on a notion that all municipalities have a constitutional obligation to support regional development of affordable housing, the Borough defense was that we are in compliance with our COAH obligations. Mr. Lawver stated that biggest wildcard is not the smaller properties that could be bought up; it is the School Administration Building. Following the discussion, Council agreed that the plan prepared and submitted for the third round should be resubmitted as the Borough has already spent a lot of money to comply with the third round. Mr. Lawver suggested reaching out to municipalities who are not participating to ascertain what their approach has been and what experiences they have had. Mayor Persichilli stated that Council has tried to maintain the diverse population, but the taxes are driving people out. Mayor Persichilli stated that if the Borough had to buy houses and convert them, the taxpayers would not be able to afford the additional expense and more residents will be driven out. Mayor Persichilli stated that there has to be a way to do what is best for the municipality.

Professional Reports

There were no further reports from Professionals.

Public Comment Period

Mayor Persichilli asked that anyone from the public wishing to speak, come forward, state name and address for the record and limit comments to the Governing Body to a maximum of 5 minutes.

There were no comments from the public.

AT, 8:42 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:

- Personnel

AT, 8:47 PM, Mayor and Council returned to open session.

Mr. Meytrott recommended that Mr. Mark Offerman of Hamilton, NJ be appointed as a probationary police officer with the Pennington Police Department with an official start date of August 19th. 2008. Mr. Meytrott stated that probationary period would be one year.

Council Member Tucker made a motion to approve the recommendation to hire Mr. Mark Offerman to fill the vacancy in the Police Department created by the resignation of Kevin Tatur, second by Council Member Griffiths with all members present voting in favor.

At 8:50 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