

**Pennington Borough Council
Regular Meeting – September 8, 2008**

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

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

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

Mayor's Business

Mayor Persichilli called for a moment of silence in remembrance of 9-11.

Mayor Persichilli read the following Proclamation honoring Kevin Tatur and his service to the Borough as a police officer.

PROCLAMATION

WHEREAS, *Kevin Tatur is ending his years of service with the Pennington Borough Police Department having served as a police officer from 1994 to 2008; and*

WHEREAS, *during Kevin Tatur's tenure as a police officer with the Pennington Borough Police Department, the Department grew to having six full-time police officers; and*

WHEREAS, *Officer Kevin Tatur was responsible for creating and maintaining the "Community Policing" model successfully in the Borough of Pennington; and*

WHEREAS, *Officer Kevin Tatur was always reliable, courteous, fair minded, and willing to learn and teach others; and*

WHEREAS, *Officer Kevin Tatur embodied the principles of an excellent, dedicated and honest police officer;*

NOW, THEREFORE, BE IT RESOLVED, *that I, Anthony J. Persichilli, Mayor of the Borough of Pennington, on this 8th Day of September, 2008 do hereby commend, applaud and appreciate the efforts and contributions of Kevin Tatur during his time of service in the Borough of Pennington and on behalf of the Borough Council of the Borough of Pennington and all residents express our gratitude to him for his unselfish, dedicated service to our town.*

Mayor Persichilli introduced Mark Offermann hired to replace Officer Tatur. Public Safety Director Bill Meytrott introduced Mark Offermann who started employment with the Borough on August 19th. Mr. Meytrott gave some background on Mr. Offermann's work experience. Borough Attorney Walter Bliss administered the oath of office to Mr. Offermann.

Mayor Persichilli introduced Mr. Tom Adelman who spoke briefly on the Green Market to be held on October 18th from 10 to 3 at the Pennington School. Mr. Adelman asked if the Borough would provide a Borough garbage truck and public works employee for the day to demonstrate the difference between household trash and recycling. Mayor Persichilli called for a voice vote, Borough Council was in favor of approving use of the garbage truck and overtime for one Public Works employee for the day.

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 August 4th, 2008, Regular Council Meeting, second by Council Member Ogren. Upon a roll call vote all members present voted in favor with the exception of Council Member Chandler who abstained.

Ordinances for Introduction

Council Member Ogren made a motion to table Ordinance 2008-10, second by Council Member Lawver. Mr. Ogren stated his reasons for asking that this Ordinance be tabled are timing and substance. Mr. Ogren stated that he is not aware of any urgency to introducing this Ordinance. Mr. Ogren stated that the purpose of the Ordinance is to have a slight increase in COAH fees as authorized under the new COAH regulations and the sooner the ordinance is adopted that sooner the Borough can collect the higher fees. Mr. Ogren stated that this assumes that the Borough has a lot of development pending, which is not the case. Mr. Ogren stated that tabling this ordinance should not have any financial impact on the Borough. Mr. Ogren stated that procedurally, COAH has not approved the regulations which were published in June and the earliest that they will be approved is September 22nd. Mr. Ogren stated that there are also a host of lawsuits against COAH right now that suggest holding off on any deadlines. Mr. Ogren stated that nevertheless, from a substantive standpoint there are some wording problems that he sees and this ordinance goes way beyond the existing ordinance. Mr. Ogren stated that this is not just an increase in fees, it broadens the applicability of the fees to virtually everything done in town, including alterations. Mr. Ogren stated that this is not a model COAH ordinance and it might be a better idea to wait until COAH provides a model ordinance. Mr. Lawver stated that it appears that two large sites that could potentially be developed in the future are excluded in this ordinance and why would the Borough pass an ordinance that will exclude a large percentage of commercial development in town. Mr. Bliss explained that Ms. Coppola informed him that there is no fear of offending a COAH deadline by not introducing the ordinance; however the rationale for introduction tonight would be to begin the necessary review by COAH which would in turn hasten the date which the Borough would be able to hold the public hearing and adoption. Mr. Bliss explained that Resolution 2008-9.11 goes along with this ordinance to express to COAH that the Borough has introduced the ordinance. Mr. Bliss stated that a model ordinance might help the Borough with some of the language problems. Upon a roll call vote, all members present voted in favor of tabling Ordinance 2008-10.

**BOROUGH OF PENNINGTON
ORDINANCE NO. 2008-10**

AN ORDINANCE AMENDING AND SUPPLEMENTING CHAPTER 98, ENTITLED "FEES", OF THE CODE OF THE BOROUGH OF PENNINGTON, COUNTY OF MERCER, STATE OF NEW JERSEY AND SPECIFICALLY BY AMENDING ARTICLE I, ENTITLED "AFFORDABLE HOUSING DEVELOPMENT FEES" IN ACCORDANCE WITH THE RECENTLY ADOPTED THIRD ROUND SUBSTANTIVE RULES OF THE NEW JERSEY COUNCIL ON AFFORDABLE HOUSING (COAH), PROPOSED AMENDMENTS TO THE "THIRD ROUND SUBSTANTIVE RULES" AS PUBLISHED IN THE JUNE 16, 2008 NEW JERSEY REGISTER, AND THE "STATEWIDE NON-RESIDENTIAL DEVELOPMENT FEE ACT" [SECTIONS 32 THROUGH 38 OF P.L.2008, C.46 (C.40:55D-8.1 THROUGH C.40:55D-8.7)]

WHEREAS the Borough of Pennington received "Second Round Substantive Certification" of its adopted "Housing Plan Element And Fair Share Plan" from COAH on June 5, 2002; and

WHEREAS the Borough Council of the Borough of Pennington has complied with the requirements of the New Jersey Council On Affordable Housing (COAH) and has adopted an ordinance establishing mandatory development fees for the provision of affordable housing, which ordinance was approved by COAH on August 5, 1998; and

WHEREAS the Borough Council of the Borough of Pennington has adopted an amendment to the aforementioned approved development fee ordinance to increase the fee percentages pursuant to N.J.A.C. 5:94-6.6(a) and 6.7(a), which ordinance was approved by COAH on May 2, 2007; and

WHEREAS the Borough of Pennington Planning Board adopted a "Housing Plan Element And Fair Share Plan" on May 9, 2007, pursuant to the Municipal Land Use Law at N.J.S.A. 40:55D-1, et seq., to address the Borough's Third Round housing obligation; and

WHEREAS the Pennington Borough Council has complied with the requirements of the New Jersey Council On Affordable Housing (COAH) by submitting a resolution dated May 9, 2007 petitioning COAH for Third Round Substantive Certification and endorsing the "Housing Plan Element And Fair Share Plan"; and

WHEREAS the Borough of Pennington now desires to further modify Article I, entitled "Affordable Housing Development Fees", in Chapter 98, entitled "Fees", to comply with COAH's recently adopted "Third Round Substantive Rules" (N.J.A.C. 5:97 et seq.), proposed amendments to the "Third Round Substantive Rules" as published in the June 16, 2008 New Jersey Register, and the "Statewide Non-Residential Development Fee Act" [Sections 32 through 38 of P.L.2008, c.46 (C.40:55D-8.1 through C.40:55D-8.7)];

NOW, THEREFORE, BE IT ORDAINED BY THE BOROUGH COUNCIL OF THE BOROUGH OF PENNINGTON in the County of Mercer and the State of New Jersey, that Article I of Chapter 98, entitled "Affordable Housing Development Fees", of the Borough of Pennington is hereby amended and supplemented as follows.

SECTION 1. Change Article I, entitled "Affordable Housing Development Fees", of Chapter 98 of the Code of the Borough of Pennington to read in its entirety as follows:

**"ARTICLE I
AFFORDABLE HOUSING DEVELOPMENT FEES**

98-1. Purpose.

In Holmdel Builder's Ass'n v. Holmdel Borough, 121 N.J. 550 (1990), the New Jersey Supreme Court determined that mandatory development fees are authorized by the Fair Housing Act of 1985, N.J.S.A. 52:27D-301, et seq., and the State Constitution, subject to the Council On Affordable Housing's (COAH) adoption of rules. The purpose of this ordinance is to establish standards for the collection, maintenance and expenditure of development fees pursuant to COAH's rules. Fees collected pursuant to this ordinance shall be used for the sole purpose of providing "low" and "moderate" income housing. This ordinance shall be interpreted within the framework of COAH's rules on development fees.

Pursuant to the Statewide Non-Residential Development Fee Act (Sections 32-38 of P.L.2008, c.46), COAH is authorized to adopt and promulgate regulations necessary for the establishment, implementation, review, monitoring and enforcement of municipal affordable housing trust funds and corresponding spending plans. To provide an incentive for municipalities to seek substantive certification from the Council, municipalities that are under the jurisdiction of the Council may retain fees collected from non-residential development.

98-2. Basic Requirements.

- A. The ability to impose, collect and spend development fees is predicated on the Borough of Pennington's participation in COAH's substantive certification process.
- B. The Borough of Pennington shall obtain COAH approval of a plan for spending such fees in conformance with N.J.A.C. 5:97-8.10 and N.J.A.C. 6:96-5.3.
- C. This ordinance shall not be effective until COAH has approved and the Borough has adopted the ordinance pursuant to N.J.A.C. 5:96-5.1.
- D. The meaning of any word or term, when used in this ordinance, shall be consistent with the definitions set forth in N.J.A.C. 5:96-1.3, N.J.A.C. 5:97-1.4, and P.L.2008, c.46 (C.40:55D-8.1 through C.40:55D-8.7).

98-3. Residential Development.

- A. In accordance with N.J.A.C. 5:97-8.3 (c) of COAH's "Substantive Rules", all new development of principal and accessory residential buildings within the Borough of Pennington, not exempt from the collection of development fees in accordance with the provisions specified in Section 98-5 of this ordinance hereinbelow, shall pay a fee to Pennington Borough equal to one and one-half percent (1.5%) of the equalized assessed value of the residential construction, provided no increased density is permitted.
- B. Notwithstanding the provisions of Subsection 98-3.A. hereinabove, if a "d" variance is granted pursuant to N.J.S.A. 40:55D-70 d.(5) for more residential units than otherwise permitted by right under the existing zoning, then the additional residential units realized as a result of the "d" variance approval shall pay a bonus development fee to Pennington Borough equal to six percent (6.0%) of the equalized assessed value of the residential development, rather than the one and one-half percent (1.5%) development fee otherwise required for the residential units permitted by right.
 - (1) However, if the zoning of a site has changed during the immediate two (2) years prior to the filing of the "d" variance application, then the base density for the purposes of calculating the bonus development fee shall be the highest density permitted by right during the two (2) year time period.
 - (2) In any case, these fees shall not apply to developments exempt from the collection of development fees in accordance with the provisions specified in Section 98-5 of this ordinance, hereinbelow.

98-4. Nonresidential Development.

- A. In accordance with P.L.2008, c.46, all new nonresidential development within the Borough of Pennington, not exempt from the collection of development fees in accordance with the provisions specified in Section 98-5 of this ordinance hereinbelow, shall pay a fee to Pennington Borough equal to two and one-half percent (2.5%) of the equalized assessed value of the land and improvements for

all new nonresidential construction on an unimproved lot(s) or of additions to existing structures to be used for non-residential purposes.

- B. Notwithstanding the provisions of Subsection 98-4.A. hereinabove, if a "d" variance is granted pursuant to N.J.S.A. 40:55D-70 d.(4) for additional floor area than otherwise permitted by right under the existing zoning, then the additional floor area realized as a result of the "d" variance approval shall pay a bonus development fee to Pennington Borough equal to six percent (6.0%) of the equalized assessed value of the nonresidential development, rather than the two and one-half percent (2.5%) development fee otherwise required for the nonresidential floor area permitted by right.
- (1) However, if the zoning of a site has changed during the immediate two (2) years prior to the filing of the "d" variance application, then the base floor area for the purposes of calculating the bonus development fee shall be the highest floor area permitted by right during the two (2) year time period.
 - (2) In any case, these fees shall not apply to developments exempt from the collection of development fees in accordance with the provisions specified in Section 98-5 of this ordinance, hereinbelow.

98-5. Eligible Exactions, Ineligible Exactions And Exemptions.

- A. All affordable housing developments and developments where the developer has made a payment in lieu of constructing affordable units shall be exempt from paying development fees. All other forms of new construction shall be subject to development fees, except for developments that are subject to and comply with any "Growth Share Affordable Housing Requirements" provisions of the ordinance.
- B. Development fees shall be imposed and collected for the construction of new development, for the construction of additions, expansions and alterations to existing development, for the change of an existing building to accommodate a more intense use, and/or for the demolition and replacement of an existing development, provided that:
- (1) The development fee to be imposed and collected for new construction on an unimproved lot(s) shall be based on the equalized assessed value of land and improvements. The development fee to be imposed and collected for additions, expansions, alterations, and change in use shall be calculated on the increase in the equalized assessed value.
 - (2) For residential development only, no development fee shall be collected for the construction of an addition or alteration to an existing development that is not a building, or part thereof, except that a development fee shall be collected for the addition of an in-ground swimming pool. Moreover, no development fee shall be collected for a demolition of a residential building resulting from a natural disaster.
 - (3) Whenever non-residential development is situated on real property that has been previously developed with a building, structure, or other improvement, the non-residential development fee shall be equal to two and a half (2.5) percent of the equalized assessed value of the land and improvements on the property where the non-residential development is situated at the time the final Certificate of Occupancy is issued, less the equalized assessed value of the land and improvements on the property where the non-residential development is situated, as determined by the Borough Tax Assessor at the time the developer or owner, including any previous owners, first sought approval for a construction permit, including, but not limited to, demolition permits, pursuant to the State Uniform Construction Code, or approval under the "Municipal Land Use Law," P.L.1975, c.291 (C.40:55D-1 et seq.). If the calculation required results in a negative number, the non-residential development fee shall be zero.
- C. Developments that have received preliminary or final site plan approval prior to the adoption of the Borough's development fee ordinance shall be exempt from development fees, unless the developer seeks a substantial change in the

approval. Where a site plan approval does not apply, a zoning and/or construction permit shall be synonymous with preliminary or final site plan approval for this purpose. The fee percentage shall be vested on the date that building permits are issued.

- D. Where a developer of a non-residential development has made or committed itself to make a financial or other contribution relating to the provision of housing affordable to low and moderate income households prior to the enactment of P.L.2008, c.46, the non-residential development fee shall be reduced by the amount of the financial contribution made or committed to be made by the developer. A developer is considered to have made or committed itself to make a financial or other contribution, if and only if: (1) the contribution has been transferred, including but not limited to when the funds have already been received by the Borough; (2) the developer has obligated itself to make a contribution as set forth in a written agreement with the Borough, such as a developer's agreement; or (3) the developer's obligation to make a contribution is set forth as a condition in a land use approval issued by a municipal land use agency pursuant to the "Municipal Land Use Law," P.L.1975, c.291 (C.40:55D-1 et seq.).
- E. The following non-residential developments shall be exempt from non-residential development fees:
- (1) Non-residential property for which a Certificate of Occupancy has been issued prior to the effective date of P.L.2008, c.46;
 - (2) All non-residential construction of buildings or structures on property used by houses of worship, and property used for educational purposes which is tax-exempt pursuant to R.S.54:4-3.6, provided that the property continues to maintain its tax exempt status under that statute for a period of at least three (3) years from the date of the Certificate of Occupancy;
 - (3) Parking lot and parking structures, regardless of whether the parking lot or parking structure is constructed in conjunction with a non-residential development or as a stand-alone development;
 - (4) Any non-residential development which is an amenity to be made available to the public, including, but not limited to, recreational facilities, community centers and senior centers, which are developed in conjunction with or funded by a non-residential developer;
 - (5) Non-residential construction resulting from a relocation of or an on-site improvement to a nonprofit hospital or a nursing home facility;
 - (6) Non-residential projects that have received a general development plan approval or have entered into a developer's agreement or a redevelopment agreement prior to the effective date of P.L. 2008, c.46, provided that an affordable housing fee of at least 1% of the equalized assessed value of the improvements is included in the development plan, developer's agreement or redevelopment agreement;
 - (7) Projects that are located within a specifically delineated urban transit hub, as defined pursuant to section 2 of P.L.2007, c.346 (C.34:1B-208);
 - (8) Projects that are located within an eligible municipality, as defined under section 2 of P.L.2007, c.346 (C.34:1B-208), when a majority of the project is located within a one-half mile radius of the midpoint of a platform area for a light rail system;
 - (9) Projects determined by the New Jersey Transit Corporation to be consistent with a transit village plan developed by a transit village designated by the New Jersey State Department of Transportation; and
 - (10) Any public library, governmental facility, or public utility.
- F. A developer of a non-residential development exempted from the non-residential development fee above shall be subject to it at such time the basis for the exemption set forth in this subsection no longer applies, and shall make the payment of the non-residential development fee, in that event, within three years

after that event or after the issuance of the final Certificate of Occupancy of the non-residential development, whichever is later.

- G. If a property which was exempted from the collection of a non-residential development fee thereafter ceases to be exempt from property taxation, the owner of the property shall remit the fees required pursuant to this section within 45 days of the termination of the property tax exemption. Unpaid non-residential development fees under these circumstances may be enforceable by the Borough of Franklin as a lien against the real property of the owner.

98-6. Collection Of Fees.

The Pennington Borough shall collect fees in accordance with the following:

- A. Developers shall pay fifty percent (50%) of the required development fee to Pennington Borough at the time of the issuance of the Construction Permit therefore. The development fee shall be estimated by the Borough Tax Assessor prior to the issuance of building permits, with the understanding that the estimate of the equalized assessed value is not intended to establish the equalized assessed value for tax purposes.
- B. Developers shall pay the remainder of the development fee to Pennington Borough at the time of the issuance of a Certificate of Occupancy. The Borough Tax Assessor shall re-estimate the equalized assessed value and the required development fee at the time of the issuance of the Certificate of Occupancy. The developer shall be responsible for paying the difference between the development fee calculated at the time of the issuance of the Certificate of Occupancy and the amount paid at the time of the issuance of the Construction Permit.
- C. For non-residential developments, the developer shall obtain a Form N-RDF "State of New Jersey Non-Residential Development Certification/Exemption" and complete as per the instructions provided. The Borough Construction Official shall verify the information submitted by the non-residential developer as per the instructions provided in the Form N-RDF. The Borough Tax Assessor shall verify exemptions and prepare estimated and final assessments as per the instructions provided in Form N-RDF.
- (1) The Borough Construction Official responsible for the issuance of a building permit shall notify the Borough Tax Assessor of the issuance of the first building permit for a development which is subject to a non-residential development fee.
 - (2) Within 90 days of receipt of that notice, the Borough Tax Assessor, based on the plans filed, shall provide an estimate of the equalized assessed value of the non-residential development.
 - (3) The Borough Construction Official responsible for the issuance of a final Certificate of Occupancy notifies the Borough Tax Assessor of any and all requests for the scheduling of a final inspection on property which is subject to a non-residential development fee.
 - (4) Within 10 business days of a request for the scheduling of a final inspection, the Borough Tax Assessor shall confirm or modify the previously estimated equalized assessed value of the improvements of the non-residential development; calculate the non-residential development fee; and thereafter notify the developer of the amount of the fee.
 - (5) Should the Borough fail to determine or notify the developer of the amount of the non-residential development fee within 10 business days of the request for final inspection, the developer may estimate the amount due and pay that estimated amount consistent with the dispute process set forth in Subsection 98-6.G. hereinbelow.
 - (6) Upon tender of the estimated non-residential development fee, provided the developer is in full compliance with all other applicable laws, the Borough shall issue a final Certificate of Occupancy for the subject property.
- D. Thereafter, when the final equalized value is determined by the Borough Tax Assessor for tax purposes, the developer shall be so noticed by the Borough and shall, within ten (10) days from receipt of the notice, pay to the Borough any

additional development fee as may be required; i.e., the difference between the development fee as previously calculated based upon the estimates of the equalized value and the development fee as calculated based upon the equalized assessed value as finally determined.

- (1) The failure of the developer to make timely payment of any required additional development fee shall entitle the Borough to file, without further notice to the developer, a lien against the subject development; and
 - (2) In the event the Borough shall file such a lien, the Borough may add to the aforesaid additional development fee amount reasonable attorney fees necessary to file and discharge said lien, together with any and all costs incurred to file and discharge said lien.
- E. Regardless of the time of collection of the development fee, the fee shall be based upon the percentage that applies on the date that the Construction permit is issued.
- F. The Construction Code Official shall forward all collected development fees to Pennington Borough's Chief Financial Officer who shall deposit such fees into the established "Housing Trust Fund".
- G. A developer may challenge the development fees imposed by filing a challenge with the Director of the Division of Taxation for non-residential development and with the County Board of Taxation for residential development.
- (1) Pending a review and determination by the Director or Board, as the case may be, which shall be made within 45 days of receipt of the challenge, collected fees shall be placed in an interest bearing escrow account by the Borough.
 - (2) Appeals from a determination of the Director or Board, as the case may be, may be made to the tax court in accordance with the provisions of the State Tax Uniform Procedure Law, R.S.54:48-1 et seq., within 90 days after the date of such determination.
 - (3) Accrued interest earned on escrowed amounts to be returned shall also be returned to the developer.

98-7. Housing Trust Fund.

All collected development fees and any proceeds from the sale of units with extinguished controls shall be deposited by the Chief Financial Officer of the Borough of Pennington into a separate designated interest-bearing "Housing Trust Fund".

- A. No money shall be expended from the "Housing Trust Fund" unless the expenditure conforms to the "Spending Plan" which has been approved by COAH;
- B. The development fees placed in the "Housing Trust Fund" shall be deemed "dedicated revenues" as such term is defined in N.J.S.A. 40A:4-36; and
- C. In establishing the "Housing Trust Fund", the Borough Council shall provide COAH with written authorization in the form of a three-party escrow agreement between the Borough, COAH and the bank in order to permit COAH to direct the disbursement of development fee funds as provided in N.J.A.C. 5:97-8.13(b) of the "Substantive Rules" of COAH. This authorization shall be submitted to COAH within seven (7) days from the opening of the "Housing Trust Fund".
- D. Additionally, the following sources of funding shall be deposited in the "Housing Trust Fund" and shall at all times be identifiable by source and amount:
 - (1) Recapture funds;
 - (2) Proceeds from the sale of affordable units;
 - (3) Rental income from municipally operated units;
 - (4) Payments in lieu of on-site construction of affordable units;
 - (5) Enforcement fines and application fees;
 - (6) Developer contributed funds for barrier free affordable housing pursuant to N.J.A.C. 5:97-8.5;
 - (7) Repayments from affordable housing program loans; and
 - (8) Any other funds collected in connection with the Borough's affordable housing program.

- E. All interest accrued in the "Housing Trust Fund" shall only be used on eligible affordable housing activities approved by COAH.
- F. If COAH determines that the Borough of Pennington is not in conformance with COAH's rules on development fees, COAH is authorized to direct the manner in which all development fees collected pursuant to this article shall be expended. Such authorization is pursuant to this article, COAH's rules on development fees, and the written authorization from the governing body to the bank in which the housing trust fund is located.

98-8. Use Of Funds.

- A. Funds deposited in the "Housing Trust Fund" may be used for any housing activity as itemized in the spending plan and approved by COAH to address the municipal fair share. Such activities include, but are not limited to:
 - (1) A rehabilitation program;
 - (2) New construction of affordable housing units and related development costs; in the case of inclusionary developments, eligible costs shall be pro-rated based on the proportion of affordable housing units included in the development;
 - (3) A "Regional Contribution Agreement" (RCA), except that payments in lieu of construction collected from residential and mixed-use development may not be used for this purpose;
 - (4) ECHO housing and related repair or unit relocation costs;
 - (5) Accessory apartment, market to affordable, or affordable housing partnership programs;
 - (6) Acquisition and/or improvement of land to be used for affordable housing;
 - (7) Purchase of existing market rate or affordable housing for the purpose of maintaining or implementing affordability controls, such as in the event of a foreclosure;
 - (8) Extensions or improvements of roads and infrastructure directly serving affordable housing sites; in the case of inclusionary developments, costs shall be pro-rated based on the proportion of affordable housing units included in the development;
 - (9) Green building strategies designed to be cost-saving for low and moderate income households, either for new construction that is not funded by other sources, or as part of necessary maintenance or repair of existing units, in accordance with accepted Federal or State standards or such guidance as may be provided by the New Jersey State Department of Community Affairs or the New Jersey Housing and Mortgage Finance Agency;
 - (10) Maintenance and repair of affordable housing units;
 - (11) Repayment of municipal bonds issued to finance low and moderate income housing activity;
 - (12) To defray the costs of structural parking; in the case of inclusionary developments, eligible costs shall be pro-rated based on the proportion of affordable housing units included in the development; and
 - (13) Any other activity as specified in the approved spending plan.
- B. The Borough also may request authorization for expenditure of "Housing Trust Funds" on emergent affordable housing mechanisms not included in the Borough's Fair Share Plan in the form of an amendment to the spending plan. In addition to the amendment to the spending plan, the Borough shall submit the following:
 - (1) A resolution to COAH that includes a certification that the affordable housing opportunity addresses COAH's criteria set forth in N.J.A.C. 5:97-6 and information regarding the proposed mechanism in a format to be provided by COAH; and

- (2) An amendment to its Fair Share Plan to include the mechanism at the earlier of two (2) years after COAH's approval of the spending plan amendment or the next planned amendment to the Fair Share Plan resulting from the plan evaluation review pursuant to N.J.A.C. 5:96-10.
- C. Funds shall not be expended to reimburse the Borough of Pennington for past housing activities.
 - D. Payments in lieu of constructing affordable housing units on residential and mixed-use sites shall only be used to fund eligible affordable housing activities within the Borough. However, payments in lieu of construction from non-residential sites where residential development is not a permitted use may be used for funding regional compliance mechanisms.
 - E. At least thirty percent (30%) of all development fees collected and interest earned shall be devoted to provide affordability assistance to low and moderate income households in affordable units included in the Housing Element and Fair Share Plan, provided and in accordance with the following:
 - (1) One-third of the affordability assistance portion of development fees collected shall be used to provide affordability assistance to very low income households.
 - (2) Affordability assistance programs may include down payment assistance, security deposit assistance, low interest loans, rental assistance, assistance with homeowners association or condominium fees and special assessments, and assistance with emergency repairs.
 - (3) Affordability assistance for very low income households may include offering a subsidy to developers of inclusionary or 100 percent affordable developments or buying down the cost of low or moderate income units in the third round municipal Fair Share Plan to make them affordable to very low income households.
 - (4) If the Borough of Pennington demonstrates to COAH's satisfaction that there are no units for which affordability assistance programs can be offered, this requirement may be waived.
 - (5) The Borough of Pennington may contract with a private or public entity to administer any part of its Housing Plan Element and Fair Share Plan, including the requirement for affordability assistance, in accordance with N.J.A.C. 5:96-18, subject to COAH's approval.
 - F. No more than twenty percent (20%) of development fee revenues collected in any given year from the development fees, exclusive of the fees used to fund an RCA, shall be expended on administration, including, but not limited to, the salaries and benefits for Pennington Borough employees or consultant fees necessary to develop or implement a new affordable housing program, a Housing Element and Fair Share Plan, and/or an affirmative marketing program.
 - (1) Administrative funds may be used for income qualification of households, monitoring the turnover of sale and rental units, preserving existing affordable housing, and compliance with COAH's monitoring requirements.
 - (2) Legal or other fees related to litigation opposing affordable housing sites or objecting to COAH's regulations and/or action are not eligible uses of the "Housing Trust Fund".

98-9. Monitoring.

The Pennington Borough "Municipal Housing Liaison" shall coordinate with the appropriate municipal officials the completion and return to COAH of all monitoring forms included in the annual monitoring report related to the collection of development fees from residential and non-residential developers, payments in lieu of constructing affordable units on site, funds from the sale of units with extinguished controls, barrier free escrow funds, recapture funds, proceeds from the sale of affordable units, rental income, repayments from affordable housing program loans, enforcement fines and application fees, and any other funds collected in connection with the Borough's housing program, and the expenditure of revenues and implementation of the plan certified by COAH.

- A. At minimum, the monitoring shall include an accounting of any "Housing Trust Fund" activity, identifying the source and amount of funds collected, the amount and purpose for which any funds have been expended, and the status of the spending plan regarding the remaining balance pursuant to N.J.A.C. 5:97-8.10(a)8.
- B. All monitoring reports shall be completed on forms designed by COAH.

98-9.1. Enforcement.

- A. In the event that any of the conditions set forth in Subsection 98-9.1.B. hereinbelow occur, COAH shall direct the Borough to remedy the condition.
 - (1) If the Borough does not remedy the condition within the time period specified by the COAH, the Borough shall cease imposition, collection and expenditure of the "Housing Trust Funds".
 - (2) COAH shall be authorized, on behalf of the Borough once notice has been given to the bank in accordance with the escrow agreement pursuant to N.J.A.C. 5:97-8.2, to direct the manner in which all development fees collected in the "Housing Trust Fund" pursuant to this ordinance shall be expended.
 - (3) Should any such condition occur, such revenues shall immediately become available for expenditure at the direction of COAH upon the Borough Clerk's receipt of written notification from COAH that such a condition has occurred.
 - (4) Any remaining forfeited funds in the "Housing Trust Fund" shall be deposited into the New Jersey Affordable Housing Trust Fund established pursuant to section 20 of P.L.1985, c.222 as amended by section 17 of P.L.2008, c.46 (C.52:27D-320).
- B. Occurrence of the following may result in COAH taking an action pursuant to N.J.A.C. 5:97-8.13(b):
 - (1) Failure to meet deadlines for information required by COAH in its review of the Borough's Housing Element and Fair Share Plan, development fee ordinance or plan for spending fees;
 - (2) Failure to address COAH's conditions for approval of a plan to spend funds within the deadlines imposed by COAH;
 - (3) Failure to address COAH's conditions for substantive certification within the deadlines imposed by COAH;
 - (4) Failure to submit accurate monitoring reports pursuant to N.J.A.C. 5:97-8.12 within the time limits imposed by COAH;
 - (5) Failure to implement the spending plan and expend the funds within the time schedules specified in the spending plan, including the requirement to spend the remaining trust fund balance pursuant to N.J.A.C. 5:97-8.10(a)8;
 - (6) Expenditure of development fee funds on activities not approved by COAH;
 - (7) Revocation of "Substantive Certification"; and
 - (8) Other good cause demonstrating that the revenues are not being used for the approved purpose.
- C. If COAH revokes the development fee ordinance approval for failure to comply with the requirements of N.J.A.C. 5:97-8, the Borough shall not impose or collect development fees for the remainder of the "Substantive Certification" period, except in concert with the Statewide Non-Residential Development Fee Act (Sections 32-38 of P.L.2008, c.46).
- D. Neither loss of funds from the "Housing Trust Fund" nor loss of the Borough's ability to impose and collect development fees shall alter the Borough of Pennington's responsibilities pursuant to its "Substantive Certification" or a court ordered judgment of compliance.

98-9.2. Expiration Of Ordinance.

The ability for the Borough of Pennington to impose, collect and expend development fees shall expire with its "Substantive Certification" unless Pennington Borough has filed an adopted Housing Element and Fair Share Plan with COAH, has petitioned for

"Substantive Certification", and has received COAH's approval of its development fee ordinance.

- A. If the Borough of Pennington fails to renew its ability to impose and collect development fees prior to the date of expiration of "Substantive Certification", it may resume the imposition and collection of development fees only by complying with the requirements of N.J.A.C. 5:97-8 and N.J.A.C. 5:96:5.
- B. The Borough of Pennington shall not impose a development fee on a development that receives preliminary or final site plan approval after the expiration of its "Substantive Certification", nor shall the Borough of Pennington retroactively impose a development fee on such a development.
- C. The Borough of Pennington shall not expend development fees after the expiration of its "Substantive Certification" or judgment of compliance."

SECTION 2. If any section, paragraph, subsection, clause or provision of this Ordinance shall be adjudged by the Courts to be invalid, such adjudication shall apply only to that subsection, clause or provision so adjudged and the remainder of this Ordinance shall be deemed valid and effective.

SECTION 3. This Ordinance shall take effect immediately upon final adoption, publication and the filing of a copy of said Ordinance with the Mercer County Planning Board, all in accordance with the law.

Ordinances for Public Hearing and Adoption

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]each 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.

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

Council Member Tucker made a motion to open the public hearing on Ordinance 2008 – 9, second by Council Member Heinzel. Mayor Persichilli asked for comments from the public, there were none. Council Member Tucker made a motion to close the public hearing on Ordinance 2008-9, second by Council Member Ogren with all members present voting in favor. Council Member Tucker made a motion to adopt Ordinance 2008-9, second by Council Member Heinzel. Some discussion took place with regard to sidewalks and tree work. Mr. Lawver stated that in the spirit of making this process as simple as possible, the insurance requirements should also be amended. Mr. Lawver stated that the requirement that the Borough and the Borough Engineer be named as additional insureds is making the permit process more complicated for residents. Mr. Bliss will prepare an ordinance for introduction at the October meeting. Upon a roll call vote all members present voted in favor of adoption of Ordinance 2008-9.

Mr. Bliss read the following resolution to be ratified at the October meeting.

Resolved by the Borough Council of the Borough of Pennington that Section 177-24(d) of the Code of the Borough of Pennington be amended by deleting from Section 177-24(d) the requirement that the Borough and the Borough Engineer be included as additional insureds on the insurance policies of applicants for sidewalk repair permits; and

Be It Further Resolved that Section 177-24(d) be further amended by substituting for the requirement of “certificate of insurance” the requirement of “proof of insurance”; and

Be It Further Resolved that pending adoption of the aforesaid amendatory ordinance the Borough of Pennington shall not require that applicants for sidewalk repair permits comply with standards which exceed those contained in the contemplated amendatory ordinance.

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

Committee Reports

Planning/Zoning and Library – Ms. Heinzel stated that the Library Board, the Planning Board and the Environmental Commission did not meet during the month of August.

Public Works/Economic Development – Mr. Lawver reported that the Public Works Committee did meet with regard to several issues. Mr. Lawver stated that the Brookside Avenue project has some complications due to Penn Bower being slow to repair a water leak which is holding up the final top coat paving. Mr. Lawver stated that hopefully by the end of next week the leak will be fixed. Mr. Lawver stated that a gas leak has been discovered at the Public Works building and conversations are taking place with the Gas Company and Valley Contracting to locate and repair the leak. Mr. Lawver stated that after a summer of unexpected illnesses, the Public Works Department is now back to being fully staffed. Mr. Lawver commended the Public Works Department for pulling together and covering during illnesses. 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: September 8, 2008

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

WATER

Water pumped for the month of August 2008- 9,522,000
Daily- 307,100

Water pumped for the month of August 2007- 8,932,000
Daily- 288,100

For the month of August 2008 we averaged 19,000 gallons more per day than 2007.

TRASH

72.69 tons of household trash for the month of August 2008 vs. 88.79 tons in August 2007

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

Leaves must be bagged at this time of the year.

Personnel – Mr. Ogren reported that the Personnel Committee did meet in August and on the advise of the Borough Attorney he would like to request a closed session discussion.

Community Services – Ms. Chandler reported that Pennington Parks and Recreation did not meet in August, however the Labor Day concert was well attended.

Public Safety – Mr. Tucker reported that there has been a lot of activity in the Police Department. Mr. Tucker reported that Sergeant DeLorenzo has indicated that he will be leaving to pursue other interests. Mr. Tucker welcomed Mark Offermann who was sworn in earlier in the meeting. Mr. Tucker stated that background investigations are ongoing for applicants seeking employment in the Police Department. Mr. Tucker stated that a veteran officer has also indicated that he will be retiring later in the year. Mr. Tucker stated that due to these changes, Officer Novin Thomas will be assigned the responsibility of tracking and submitting the uniform crime reports to the State of New Jersey and Officer Douglas Pinelli will be assigned the task of completing press reports and has been designated the immediate contact officer. Mr. Tucker stated that Officer Steve Friedman will be designated as the evidence/property officer. Mr. Tucker reported the following statistics for the month of August 2008:

| | |
|-----|-------------------------|
| 110 | Motor Vehicle Stops |
| 46 | Motor Vehicle Summonses |
| 6 | Parking Summonses |
| 2 | DUI Summonses |
| 59 | Warnings |
| 7 | Adult Male Arrests |
| 1 | Adult Female Arrest |

Finance – Mr. Griffiths reported that the Finance Committee did not meet in August. Mr. Griffiths reported that spending seems to be on track with no accounts out of proportion for this point in the year. Mr. Griffiths stated that interest rates are inching back up giving the Borough a greater return on funds.

New Business

**Borough of Pennington
Resolution #2008 – 9.2**

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 \$ 1,486,764.43 from the following accounts:

| | |
|---------------------|------------------------|
| Current | \$ 1,360,101.00 |
| W/S Operating | \$ 82,203.80 |
| Developers Escrow | \$ 7,987.89 |
| Grant Fund | \$ 34,503.51 |
| Water/Sewer Capital | \$ 614.17 |
| Animal Control Fund | \$ 770.00 |
| General Capital | \$ 539.33 |
| Unemployment | \$ 44.73 |
| TOTAL | \$ 1,486,764.43 |

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 | X | | | | Tucker | S | | | |

Council Member Griffiths made a motion to approve Resolution 2008-9.2, second by Council Member Tucker. Council Members raised questions on several bills on the bill list. Upon a roll call vote all members present voted in favor of Resolution 2008-9.2.

**Borough of Pennington
Resolution #2008-9.3**

**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**

WHEREAS, N.J.S.A. 40A:5-4 requires the governing body of every local unit to have made an annual audit of its books, accounts and financial transactions, and

WHEREAS, The Annual Report of Audit for the year 2007 has been filed by a Registered Municipal Accountant with the Borough Clerk as per the requirements of N.J.S.A. 40A:5-6, and a copy has been received by each member of the governing body, and

WHEREAS, the Local Finance Board of the State of New Jersey is authorized to prescribe reports pertaining to the local fiscal affairs as per R.S. 52:27BB-34, and

WHEREAS, The Local Finance Board has promulgated a regulation requiring that the governing body of each municipality shall by resolution certify to the Local Finance Board that all members of the governing body have reviewed, as a minimum, the sections of the annual audit entitled:

General Comments
Recommendations

And,

WHEREAS, the members of the governing body have personally reviewed as a minimum the Annual Report of Audit, and specifically the sections of the Annual Audit entitled:

General Comments
Recommendations

as evidenced by the group affidavit form of the governing body, and

WHEREAS, such resolution of certification shall be adopted by the governing body no later than forty-five days after the receipt of the annual audit as per the regulations of the Local Finance Board, and

WHEREAS, all members of the governing body have received and have familiarized themselves with, at least, the minimum requirements of the Local Finance Board of the State of New Jersey, as stated aforesaid and have subscribed to the affidavit, as provided by the Local Finance Board, and

WHEREAS, failure to comply with the promulgations of the Local Finance board of the State of New Jersey may subject the members of the local governing body to the penalty provisions of R.S. 52:27BB-52 – to wit:

R.S. 52:27BB-52 – “A local officer or member of a local governing body who, after a date fixed for compliance, fails or refuses to obey an order of the Director (Director Local Government Services), under the provisions of this Article, shall be guilty of a misdemeanor and, upon conviction, may be fined not more than one thousand dollars (\$1,000.00) or imprisoned for not more than one year, or both, and in addition shall forfeit his office.”

NOW THEREFORE BE IT RESOLVED, that the Borough Council of the Borough of Pennington, hereby states that it has complied with the promulgation of the Local Finance Board of the State of New Jersey and does hereby submit a certified copy of this resolution and the required affidavit to said board to show evidence of said compliance.

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 2008-9.3, second by Council Member Heinzel with all members present voting in favor.

**BOROUGH OF PENNINGTON
RESOLUTION 2008-9.4**

**RESOLUTION AUTHORIZING RELEASE
OF REMAINING PERFORMANCE GUARANTEE FOR THE SHOPPES
AT PENNINGTON BASED ON FINAL COMPLETION OF PROJECT**

WHEREAS, the developer of The Shoppes at Pennington (VNHA #35738-510-52) has posted a Performance Guarantee which has been reduced over time based on satisfactory partial completion of the project;

WHEREAS, the developer has advised that all remaining site work on the project has been completed and has requested release of the remaining Performance Guarantee of \$12,000;

WHEREAS, the Borough Engineer has inspected the site work, in particular that required by an "Amended Site Plan" dated January 23, 2007, last revised August 1, 2007, and determined that all the required landscaping improvements have been satisfactorily completed;

WHEREAS, the Borough Engineer has further reported that all other requirements of the plans, specifications and approval resolution for this project have been met by the developer;

WHEREAS, the Borough Engineer recommends release of the remaining \$12,000. Performance Guarantee to the developer;

NOW, THEREFORE, BE IT RESOLVED, by the Borough Council of the Borough of Pennington that the remaining Performance Guarantee for The Shoppes at Pennington (VNHA #35738-510-52) in the amount of 12,000. plus accumulated interest be returned to the developer.

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 | S | | | |
| Heinzel | X | | | | Tucker | X | | | |

Council Member Lawver made a motion to approve Resolution 2008-9.4, second by Council Member Ogren with all members present voting in favor.

**Borough of Pennington
Resolution #2008 – 9.5**

**A RESOLUTION AUTHORIZING CHANGE ORDER NO. 2 UNDER THE BALDWIN STREET
RECONSTRUCTION CONTRACT WITH GRES PAVING COMPANY, INC.**

WHEREAS, the Borough of Pennington has entered into a contract with Gres Paving Company, Inc. known as the Baldwin Street Reconstruction Contract (VNHA #36710-500-52); and

WHEREAS, the Borough Engineer, Van Note Harvey Associates, P.C. has recommended a change order, designated change order no. 2, under this contract; and

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

WHEREAS, the proposed change order would increase the contract price by \$14,167.54 to adjust the contract quantities to match the as-built quantities; would decrease the contract price by \$9,239.90 to further adjust contract quantities to match as-built quantities; and create a supplemental payment of \$399.96 for necessary work not part of the original contract, the net change in contract price being an increase of \$5,327.60; and

WHEREAS, further detail on this change order is available for inspection in the Office of the Borough Clerk;

NOW, THEREFORE, BE IT RESOLVED, by the Borough Council of the Borough of Pennington, that the aforesaid change order no. 2, increasing the contract price by a net amount of \$5,327.60 under the Baldwin Street Reconstruction Contract, is hereby approved.

Record of Council Vote on Passage

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

Council Member Lawver made a motion to approve Resolution 2008-9.5, second by Council Member Tucker with all members present voting in favor.

**BOROUGH OF PENNINGTON
Resolution No. 2008-9.6**

**RESOLUTION AUTHORIZING CONTRACT FOR
PROFESSIONAL SERVICES FOR PREPARATION
OF REVISED HOUSING PLAN ELEMENT AND
FAIR SHARE PLAN IN COMPLIANCE WITH
THIRD-ROUND COAH RULES**

WHEREAS, the Borough of Pennington seeks to enter into a professional services agreement with Coppola & Coppola Associates, PC, LPP, for the preparation of a revised Housing Plan Element and Fair Share Plan and the related services necessary to obtain Substantive Certification from the New Jersey Council on Affordable Housing (“COAH”) in compliance with new Third Round Substantive Rules;

WHEREAS, the cost of the proposed services, including any fixed fees and hourly fees and reimbursement for out-of-pocket costs, shall not exceed \$35,000;

WHEREAS, the Chief Financial Officer of the Borough has certified that funds are available for this purpose in the Borough’s Affordable Housing trust fund, as authorized by law;

WHEREAS, approval of such a contract complies with the Local Pay-To-Play Law, N.J.S.A. 19:44A-20.5, effective January 1, 2006, as well as related Pay-to-Play restrictions imposed by the Code of the Borough of Pennington;

WHEREAS, such contract is being awarded as a professional services contract, without advertising for proposals or competitive bidding, in compliance with the Local Public Contracts Law, N.J.S.A. 40A:11-1, et seq.;

WHEREAS, the Local Public Contracts Law requires that a resolution authorizing an award of contract for professional services without competitive bid be publicly advertised following adoption;

WHEREAS, award of this contract is subject to negotiation of the terms of the contract as to tasks to be performed, the method of billing, and total costs to be incurred;

NOW, THEREFORE, BE IT RESOLVED, by the Borough Council of the Borough of Pennington that the Mayor, with the attestation of the Borough Clerk, is hereby authorized to enter into a Professional Services Agreement with Coppola & Coppola Associates subject to such form and terms as may be negotiated by the Borough Administrator and a special committee of Council designated by the Mayor.

Record of Council Vote on Passage

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

Mayor Persichilli stated at the last meeting Council discussed COAH and agreed to not proceed with a new Third Round report and to just re-submit the report that was done last year. Mayor Persichilli stated that subsequent to the last meeting he has talked to some people involved with COAH and two things came up that made him change his mind. Mayor Persichilli stated that he has had preliminary discussions with a group in town and there may be a large parcel of property for sale and if the Borough does not participate in COAH, then the Borough would have no control over what is built on a particular piece of property. Mayor Persichilli stated that in addition was the cost of the new report and the fact that there was nothing budgeted in the budget. Mayor Persichilli stated that the new Third Round Regulations permit use of a percentage of COAH funds collected for administrative costs. Mr. Lawver stated that the contract submitted by Coppola and Coppola calls for twenty-three days of work to prepare and resubmit a Third Road report that will sit for two years and ultimately be thrown out. Mr. Lawver stated that he does not support a \$25,000 redo of the round three report. Mr. Lawver stated that there has to be a middle road compromise. Discussion took place with regard to the billing terms as indicated in the agreement. Mr. Griffiths suggested rather than a flat rate billing that the bills be submitted with time and task completed. Mayor Persichilli suggested having Cindy Coppola attend the October Council Meeting to give an overview of what needs to be done and answer questions from Council members. Mr. Bliss stated that he would like to authorize the contract tonight and then further authorize a sub-committee to meet with Cindy Coppola to come up with a contract that meets Council objectives. Mr. Bliss stated that Resolution 2008-9.6 could be amended to authorize a contract not to exceed \$35,000 which would also not hold up action on Resolution 2008-9.10, which is the commitment to COAH that the Borough is proceeding with the Third Round work. Mr. Bliss stressed the importance of not delaying action on this Resolution and Resolution 2008-9.10 as Cindy Coppola needs to begin work to meet the COAH deadlines and if action is not taken tonight she will not be able to begin work until after the October meeting and that may not allow enough time. Mr. Bliss recommended award of the contract not to exceed \$35,000 with the terms to be determined. Mr. Bliss verbally amended the Resolution to reflect the changes discussed. After some further discussion, it was decided that Mayor Persichilli would form a committee to negotiate the contract details. Council Member Griffiths made a motion to approve the Resolution as amended, second by Council Member Heinzel with Council Members Griffiths, Heinzel, Ogren and Tucker voting in favor and Council Members Chandler and Lawver voting no.

**Borough of Pennington
Resolution #2008 – 9.7**

**A RESOLUTION AUTHORIZING PAYMENT REQUEST NO. 4
TO GRES PAVING COMPANY, INC., FOR WORK COMPLETED
ON THE BALDWIN STREET RECONSTRUCTION PROJECT**

WHEREAS, Gres Paving Company, Inc. has completed certain work pursuant to the Baldwin Street Reconstruction Project (VNHA #36710-500-52) as described in the attached documents; 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. 4 (\$17,079.01) less two percent (2%) retainage (\$341.58), the net due therefore amounting to \$16,737.42; and

WHEREAS, this is a partial payment under the contract;

WHEREAS, funds are available in account #G-02-44-929-000-250-NJDOT 2005;

NOW, THEREFORE, BE IT RESOLVED, by the Borough Council of the Borough of Pennington, that payment to Gres Paving Company, Inc. in the amount of \$16,737.42 pursuant to payment request No. 4 is hereby authorized.

Record of Council Vote on Passage

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

Council Member Heinzel made a motion to approve Resolution 2008-9.7, second by Council Member Tucker with all members present voting in favor.

**Borough of Pennington
Resolution #2008 – 9.8**

**A RESOLUTION IN SUPPORT OF “RECOGNITION DAY” FOR ALL FIRST CALL
RESPONDERS AND COMMUNITY VOLUNTEERS**

WHEREAS, the terrorist attack on the United States, September 11, 2001, claimed the lives of hundreds of fire fighters, law enforcement officers and EMS personnel; and

WHEREAS, countless community organizations and Borough residents have volunteered their time and raised significant donations to assist in relieving the devastation caused by natural and man-made disasters at home and abroad; and

WHEREAS, First Call Responders, Borough community service organizations and resident volunteers continue to provide a high level of public service to our community as well as to communities across the nation and across the globe; and

WHEREAS, these unsung heroes deserve recognition for their commitment and personal sacrifice, and for preserving the peace and well being of all humanity;

NOW, THEREFORE, BE IT RESOLVED, by the Borough Council of the Borough of Pennington, that September 11th, 2008 is known as “Recognition Day” in honor of our brave men and women who daily put their lives on the line as First Call Responders; and

BE IT FURTHER RESOLVED, that September 11th is known as “Recognition Day” to honor all our citizen volunteers and organizations who dedicate without hesitation their time and efforts in alleviating the suffering and improving the condition of their fellow citizens at home and abroad; and

BE IT FURTHER RESOLVED, that the Borough Council commends the invaluable work of every First Responder and volunteer, and thanks them for their continued sacrifice in preserving our health and well-being.

Record of Council Vote on Passage

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

Council Member Tucker made a motion to approve Resolution 2008-9.8, second by Council Member Heinzel with all members present voting in favor.

**Borough of Pennington
Resolution #2008 – 9.9**

**A RESOLUTION AUTHORIZING PAYMENT REQUEST NO. 2
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. 2 (\$59,792.01) less two percent (2%) retainage (\$1,195.84), the net due therefore amounting to \$58,596.17; 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 \$58,596.17, pursuant to payment request No. 2, is hereby authorized.

Record of Council Vote on Passage

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

Council Member Heinzel made a motion to approve Resolution 2008-9.9, second by Council Member Tucker with all members present voting in favor.

**Borough of Pennington
Resolution #2008 – 9.10**

**A RESOLUTION COMMITTING TO PETITION WITH A THIRD ROUND AFFORDABLE
HOUSING PLAN AND TO EXPEND AFFORDABLE HOUSING TRUST FUND MONIES ON
THE DEVELOPMENT OF A HOUSING ELEMENT AND FAIR SHARE PLAN FOR THE
BOROUGH OF PENNINGTON**

WHEREAS, on December 17, 2007, COAH proposed revised third round regulations that require municipalities with pending petitions to adopt a revised Housing Element and Fair Share Plan in conformance with the revised third round regulations and petition in accordance with the deadlines prescribed in the proposed procedural rules; and

WHEREAS, COAH's current regulations at N.J.A.C. 5:94-6.12(e), allow 20 percent of monies deposited in a municipal housing trust fund account to be expended on administrative costs, which includes, but is not limited to, consultant fees necessary to develop or implement a Housing Element and Fair Share Plan in accordance with COAH's proposed third round; and

WHEREAS, Pennington Borough petitioned the Council on Affordable Housing (the Council) for substantive certification of a third round Housing Element and Fair Share Plan on May 9, 2007; and

WHEREAS, pursuant to N.J.A.C. 5:94-6.2(c), a municipality under the Council's jurisdiction shall not spend development fees unless the Council has approved a plan for spending such fees and until the municipality has received substantive certification or a judgment of compliance; and

WHEREAS, on March 25, 2008 the COAH issued a blanket waiver from N.J.A.C. 5:94-6.2(c) for municipalities with COAH approved development fee ordinances and an established housing trust fund account to allow the expenditure of up to 20 percent of housing trust funds prior to the grant of certification and/or approval of a spending plan, on the cost of developing a revised Housing Element and Fair Share Plan in accordance with COAH's new third round rules; and

WHEREAS, the waiver issued by the Council required that Pennington Borough shall pass a resolution stating that based on the current balance in the municipal housing trust fund account and the amount proposed to be spent on developing a Housing Element and Fair Share Plan in accordance with COAH's proposed third round rules, the latter amount shall not exceed 20 percent allowed for administrative costs.

NOW, THEREFORE, BE IT RESOLVED, by the Borough Council of the Borough of Pennington, in the County of Mercer, State of New Jersey, that the Borough of Pennington commits to petition COAH for substantive certification of a newly adopted Housing Element and Fair Share Plan in accordance with COAH's new third round regulations; and

BE IT FURTHER RESOLVED, that based on the Borough of Pennington’s current balance in the municipal housing trust fund account, which is presently no less than \$334,435.52, the amount proposed to be spent on developing a Housing Element and Fair Share Plan in accordance with COAH’s proposed third round rules, up to \$35,000.00, shall not exceed the 20 percent allowed for administrative costs; and

BE IT FURTHER RESOLVED, that this resolution shall be submitted to COAH within seven days of the municipal governing body action.

Record of Council Vote on Passage

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

Council Member Heinzel made a motion to approve Resolution 2008-9.10, second by Council Member Griffiths. Mr. Bliss made a correction to the Resolution. Upon a roll call vote, all members present voted in favor of the Resolution as amended with the exception of Council Members Chandler and Lawver who voted no.

**BOROUGH OF PENNINGTON
Resolution 2008-9.11**

RESOLUTION CONCERNING AMENDMENT OF “AFFORDABLE HOUSING DEVELOPMENT FEES” ORDINANCE OF THE BOROUGH OF PENNINGTON

This resolution was pulled from the agenda.

**Borough of Pennington
Resolution #2008 – 9.12**

RESOLUTION ADOPTING A CASH MANAGEMENT PLAN

WHEREAS, the State of New Jersey amended the State laws concerning investment of local government funds with the adoption of Chapter 148, P.L. 1997, and

WHEREAS, these new laws expand the responsibility of the Governing Body and the role of the Chief Financial Officer in cash management, and

WHEREAS, these new laws require the adoption of a Cash Management Plan, and

WHEREAS, the Chief Financial Officer has reviewed the new laws and drafted a Cash Management Plan to conform to those laws and to the current banking and investment practices of the Borough,

NOW, THEREFORE BE IT RESOLVED, by the Borough Council of the Borough of Pennington, County of Mercer, State of New Jersey that the attached Cash Management Plan is hereby adopted, and

BE IT FURTHER RESOLVED, that the Chief Financial Officer is hereby directed to present this resolution and adopted Cash Management Plan to the State of New Jersey and to all designated depositories and asset managers in accordance with the requirements of the applicable State laws.

Record of Council Vote on Passage

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

Council Member Tucker made a motion to approve Resolution 2008-9.12, second by Council Member Heinzel with all members present voting in favor.

Council Discussion

Council briefly discussed redevelopment of the Borough website.

Administrator's Report

Mr. Dunworth stated that he received a letter regarding a block party on East Welling Avenue on October 4th and requesting that the road be closed from 3:00 p.m. until ????. After some discussion concerning the time frame of the party, Council agreed to allow the road closing from 3:00 pm to 10:00 pm. A voice vote found all members to be in favor of the request.

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, 9:05 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 – Education Benefits

AT, 9:40 PM, Mayor and Council returned to open session.

Council Member Tucker made a motion to approve the minutes of the August 4th, 2008 Closed Session, for content, but not release, second by Council Member Griffiths with all members present voting in favor.

Mr. Bliss read the following into the record:

Be it resolved that Borough Council authorizes the expenditure of funds to finance the training of Wayne Blauth as potential future Tax Collector pursuant to a plan that will reimburse him fifty percent of the cost of each course upon satisfactory completion of the course and at such point as he becomes certified as a Tax Collector, reimburse him for the remaining fifty percent of the cost of these courses and that Council does this with the understanding that any appropriation of funds in 2009 are subject to reappropriation by Council and that if and when Borough Council advertises for a vacancy in the position of Tax Collector, that Mr. Blauth be considered, but without any commitment for his hiring, and that this be spelled out in a letter him by Mr. Dunworth. The letter will spell out the terms as recited and the fact that there is no guarantee of future employment. Council Member Ogren made a motion to approve the resolution, second by Council Member Tucker with all members present voting in favor.

At 9:45 PM, Council Member Tucker 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