

**Pennington Borough Council
Regular Meeting – September 14, 2009**

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 Borough Administrator, Eugene Dunworth, Public Works Superintendent Jeff Wittkop, and Borough Attorney, Walter Bliss. Public Safety Director Bill Meytrott arrived at 8:35pm during the Public Comment period.

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 and on the Borough Website according to the regulations of the Open Public Meetings Act.

Flag Salute

Mayor Persichilli asked everyone to stand for the Flag Salute.

Approval of Minutes

Council Member Chandler made a motion to approve the minutes of the Regular Meeting of August 3, 2009, second by Council Member Ogren with all members present voting in favor.

Open to the Public – Agenda Items Only

Mayor Persichilli read the following statement:

The meeting is now 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 on agenda items.

Mayor's Business

Mayor Persichilli announced the resignation of Mr. David Haines from the Library Board of Trustees.

Appointments (w/Council Approval)

Mayor Persichilli recommended the appointment of Mr. Bill Ducharme to the Library Board of Trustees to fill the unexpired term of Mr. Haines to December 31, 2011. Council Member Heinzl made a motion to approve the appointment, second by Council Member Tucker with all members present voting in favor.

Presentations

Mayor Persichilli stated that Tom Adelman was scheduled to appear to speak about the Pennington Farmers Market and he was unable to attend the meeting. Mayor Persichilli invited Council Member Heinzl to speak about the Farmers Market. Ms. Heinzl stated that she has also been helping out with the Farmers Market and Mr. Adelman asked that she speak to Council in his absence. Ms. Heinzl stated that the first and most important item to bring up is that the Farmers Market really could not have gotten off the ground without the help of Pennington Day and a grant award in the amount of \$5,000.00. Ms. Heinzl stated that without that grant there would be no Pennington Farmers Market. Ms. Heinzl stated that the Pennington Farmers Market has been very successful. Ms. Heinzl stated that the Pennington Market has been a great host and they have made a great commitment to the Farmers Market. Ms. Heinzl stated that to celebrate how well the Farmers Market has gone there will be a special event, Larapaloosa. Ms. Heinzl stated that Larapaloosa is a reference to Lara Ingalls Wilder who wrote the Little House on the Prairie series. Ms. Heinzl stated that the idea of the Larapaloosa is to celebrate homesteading and the old fashioned way of living which is residents eat locally and have their own gardens. Ms. Heinzl stated that the event will have many featured events including a presentation on homestyle cooking from Hearth to Heart Cooking, quilters, knitters, a demonstration on canning, handmade crafts for sale and a fiddler who will be playing during the event. Ms. Heinzl invited everyone who is able to come out and attend the event to celebrate how well the Farmers Market has done. Ms. Heinzl stated that event will be held September 26th from 10 to 3.

Mayor Persichilli invited Mr. Eric Holterman to come forward to speak about Historic Preservation. Mr. Holterman of 45 North Main Street stated that about six months ago he came before Council to bring to their attention that there was grant funding available for pursuing a revision to the Master Plan to include a Historic Preservation element. Mr. Holterman stated that since that time working with Ms. Chandler a group of about twelve people was formed. Mr. Holterman stated that in addition to himself, an architect, the group includes members of the Planning Board, people with experience with the previous process for an historic preservation ordinance and people with experience with this process in other towns and some historians. Mr. Holterman stated that the first bit of news is that immediately after Council authorized Mr. Holterman to proceed, he spoke to Preservation New Jersey and was informed that the funding had run out. Mr. Holterman stated that Preservation New Jersey stated however that they would continue to help

Pennington with whatever was being done. Mr. Holterman stated that Preservation New Jersey agreed and has shared a great deal of information from other projects. Mr. Holterman stated that as a group, they have reviewed all of the previous work that was done many years ago for a Historic Preservation Ordinance in Pennington. Mr. Holterman stated they have also looked at many other Master Plan Elements from other towns, including Lawrence and Hopewell Townships, Hopewell Borough and Red Bank to name a few. Mr. Holterman stated that ultimately what the group has come to is that they have prepared a draft update of the Master Plan Element. Mr. Holterman stated that this draft update tightens up, adds information and simplifies what was already there in the original proposal. Mr. Holterman stated that like the old Master Plan Element, the revised document would also recommend a Historic Preservation Commission, an Historic Preservation Ordinance and ultimately a Historic District in the Borough. Mr. Holterman stated that one of the key differences is that the make up of the commission and the make up of the district are quite a bit simplified from the previous proposal. Mr. Holterman stated that they will recommend a district that is smaller but still has the focus on the historic crossroads. Mr. Holterman stated that they are recommending that the Historic Preservation Commission be five to seven members comprised of professionals and lay persons. Mr. Holterman reviewed the process beginning with a presentation of the proposal as an amendment to the existing Master Plan to the Planning Board on October 14th, 2009 followed by a public hearing to be scheduled by the Planning Board. Mr. Holterman stated that during the process the documents would be available for the public to review. Mr. Holterman stated that following the public hearing, the Planning Board could adopt the revised Master Plan Element and begin to follow through with the recommendations, which would be establishment of a Historic Preservation Commission and Ordinance and ultimately a proposal and adoption of a Historic Preservation District. Mr. Holterman stated that once the district and commission are in place the Borough would have the structure to protect and monitor historic resources in Pennington and to look ahead for many years.

Mr. Bliss stated that the Governing Body would be charged with adoption of any ordinances relating to Historic Preservation.

Mayor Persichilli asked Mr. Holterman to elaborate on the details of what would be in the Historic Preservation Ordinance. Mr. Holterman stated that the group walked through town to evaluate and identify historic buildings and to outline an historic district which is significantly reduced from the previous proposal. Mr. Holterman stated that as part of the guidelines and recommendations they are proposing that this be an ordinance that does not tell residents what color they can paint their house etc. Mr. Holterman stated that the intent of the ordinance is to protect the most valuable historic resources in Pennington. Mr. Holterman stated that there will be three classification levels, non-contributing (a newer house built in the middle of the district), contributing (most of the older buildings) and key (buildings that could be individually listed because of their historic significance). Mr. Holterman stated that the Historic Preservation Commission can be regulatory or advisory and the intent is for the Commission to be regulatory and that the Commission will have a list of printed guidelines for renovations.

Ms. Heinzel asked for clarification on how the Commission becomes regulatory or advisory. Ms. Chandler stated that in the previous ordinance the commission and the district were locked in a single ordinance. Ms. Chandler stated that the new proposal breaks them up and the first goal is to establish a commission. Ms. Chandler explained that in most neighboring towns that have Historic Preservation Commissions the Commissions are set up as regulatory and not advisory.

Mayor Persichilli thanked Mr. Holterman for his work on this issue.

Ordinances for Introduction

Mayor Persichilli read Ordinance 2009-10 by title.

BOROUGH OF PENNINGTON ORDINANCE NO. 2009-10

AN ORDINANCE FURTHER REFINING INSURANCE REQUIREMENTS FOR SIDEWALK REPAIR AND AMENDING THE CODE OF THE BOROUGH OF PENNINGTON

WHEREAS, Section 177-24 of the Code of the Borough of Pennington requires permits for certain installation, repair and maintenance of sidewalks and driveways;

WHEREAS, the Code further provides as a requirement for such a permit that the applicant establish proof of insurance;

WHEREAS, experience under the ordinance has demonstrated that further refinement of the insurance language is required to facilitate implementation of the ordinance;

NOW, THEREFORE, BE IT ORDAINED, by the Borough Council of the Borough of Pennington, that subsection (d) of Section 177-24 of the Code, pertaining to insurance requirements for sidewalk and driveway permits, be amended as follows:

:

(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 proof of insurance establishing 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.¹

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

Council Member Lawver made a motion to introduce Ordinance 2009-10, second by Council Member Tucker. Mr. Ogren asked why this amendment was being done. Mr. Bliss stated that with this change the property owner will not have to get a special endorsement to their policy for the Borough of Pennington. Mr. Bliss stated that as long as the homeowner has the required \$300,000 worth of insurance then the homeowner can absorb the liability and any exposure. Mr. Bliss stated that the ordinance requires the property owner to hold harmless, which means if the Borough sought indemnification from the property owner they would have enough insurance to cover it. Upon a roll call vote all members present voted in favor.

Committee Reports

Planning & Zoning / Environmental Commission / Library – Ms. Heinzl reported that the Library Board did not meet in August but are scheduled to meet on September 22nd where new board member Bill Ducharme will be welcomed.

Ms. Heinzl reported that the Planning Board met on September 9th to hear an application from St. Matthews Church for amended site plan, variance and use variance. Ms. Heinzl stated that the focus of the application is the installation of a memorial garden at the back of the church. Ms. Heinzl stated that the memorial garden was part of their original plans presented in 1997 when they applied to build a parish hall. Ms. Heinzl stated that at that time there was not a specific plan for the memorial garden but there is a plan now. Ms. Heinzl stated that the application was approved by the Planning Board. Ms. Heinzl reviewed some specifics about the memorial garden. Ms. Heinzl explained that the memorial garden is essentially a cemetery and that pursuant to New Jersey Cemetery Regulations; municipal consent is required so St. Matthews Church will be appearing before Council shortly.

Ms. Heinzl reported that the Environmental Commission met over the summer to discuss upcoming events for the fall. Ms. Heinzl stated that Joanne Held of the Environmental Commission applied for a Local Government Greenhouse Gas Reduction Grant to help the Farmers Market with the idea that the Farmers Market encourages residents to eat locally and not travel out of town. Ms. Heinzl stated that the Farmers Market also encourage trip reduction since residents can combine their trips and visit the Pennington Market at the same time.

Ms. Heinzl stated that she and Mr. Tucker attended the Community Needs Assessment meeting and anyone wishing to view the survey can do so on the Hopewell Township website under Municipal Alliance. Ms. Heinzl reviewed the highlights from the meeting, which were first and foremost lower taxes, better transportation, a community center, more social services and more access to social services. Ms. Heinzl stated that people surveyed felt that they are not getting enough access to information. Ms. Heinzl stated that later on in the meeting under Council Discussion she would like to bring up the Borough website for discussion.

Public Works / Economic Development – Mr. Lawver reported that the Economic Development Commission did not meet over the summer. Mr. Lawver reported that two new shops have opened; the Pennington Barber Shop opened within the last two weeks and Transform Crossfit opened in July. Mr. Lawver stated that with the good comes the bad and Queenstown Gallery has closed as well as the latest incarnation of the Pennington deli, Pennington Express. Mr. Lawver stated that Pennington continues to struggle with attracting and keeping viable businesses.

Mr. Lawver reported that the Public Works Committee did not meet, although they will be meeting shortly.

Mr. Lawver gave the following report for trash and water for the month of August, 2009.

PENNINGTON BOROUGH PUBLIC WORKS

TO: Joseph Lawver, Chairman
Public Works Committee

FROM: Jeff Wittkop, Superintendent

DATE: September 1, 2009

RE: **COUNCIL REPORT FOR THE MONTH OF AUGUST 2009**

WATER

Water pumped for the month of August 2009-	7,921,000
Daily-	255,500
Water pumped for the month of August 2008-	9,522,000
Daily-	307,100

For the month of August 2009 we averaged 52,000 gallons less per day than August 2008.

TRASH

86.83 tons of household trash for the month of August 2009 vs. 72.69 tons in August 2008

- Leaves should now be placed in bags without any other debris and left open.

Mr. Lawver reported that leaf season will kick off towards the end of October and residents should stay tuned next meeting to see when they will again be allowed to rake leaves to the curb.

Mr. Lawver stated that on August 22nd, Pennington experienced a significant rain event that resulted in some localized street flooding. Mr. Lawver stated that the stormwater system was overwhelmed and stated that it was not because of maintenance of the stormwater system it was just a function of the amount of rain that fell in a short time period. Mr. Lawver stated that Pennington's founding fathers could have engineered and built a stormwater system that would accommodate a seven to eight inch rainfall in a two hour period however if they had proposed it at the time everyone would have laughed because it would not have been cost effective. Mr. Lawver stated that this was just one of those things that can not be planned for and as a result there was significant flooding of streets and basements. Mr. Lawver stated the areas that were hit hard were Abey and Curlis, Sked Street Park area and the Main and Delaware intersection. Mr. Lawver stated that the good news is the damage was relatively minor for the Borough with not a lot of trees falling or debris in the streets making cleanup relatively quick. Mr. Lawver stated that all in all the stormwater system performed as it was designed. Mr. Lawver stated that you can't engineer for every type of unusual event.

Personnel – Mr. Ogren stated he had no report.

Community Services – Ms. Chandler stated that Pennington Parks and Recreation met on September 8th. Ms. Chandler stated that the bridge at Sked Street Park was dislodged during the big rain and though it does not fall under Parks and Recreation, it would be nice to have it put back. Mr. Ogren stated that he will be taking care of putting the bridge back. Mr. Lawver offered his assistance.

Ms. Chandler stated that on August 20th, Parks and Recreation hosted a movie/concert event with attendance at around 100 people and on Labor Day a concert was held which attracted about 200 people. Ms. Chandler stated that in the fall, Parks and Recreation will host two events; a movie night on October 11th, the movie will be Ghostbusters and a concert/Chili Cookoff on October 17th. Ms. Chandler stated that both events will take place at Howe Commons. Ms. Chandler stated that the Chili Cookoff will be on a much smaller scale than previous ones with the focus being on local vendors.

Public Safety – Mr. Tucker reported that school is back in session and five Crossing Guards have been put back in service. Mr. Tucker stated that on August 21st, the Pennington Police Department participated in a joint DUI roadblock with Hopewell Township Police at Route 31 and Ingleside Avenue. Mr. Tucker stated that it is anticipated that these joint ventures will continue in the future. Mr. Tucker stated that Mr. Ogren and Mr. Meytrott are working on acquisition of hybrid police vehicle.

Mr. Tucker gave the following statistics for the month of August 2009.

2	Thefts
1	Motor Vehicle Theft
1	Fraudulent Check
165	Motor Vehicle Stops
85	Warnings
7	Parking Summonses
1	DUI Summons
101	Motor Vehicle Summonses Issued
2	Adult Males Arrested
403	Calls for service

Finance – Mr. Griffiths reported that the Finance Committee did not meet.

New Business

Borough of Pennington Resolution #2009 – 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 \$ 1,359,410.11 from the following accounts:

Current	\$ 1,096,106.77
W/S Operating	\$ 241,956.29
Unemployment Trust Fund	\$ 44.35
Developers' Escrow	\$ 21,302.70
TOTAL	\$ 1,359,410.11

Record of Council Vote on Passage

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

Council Member Chandler made a motion to approve Resolution 2009-9.2, second by Council Member Griffiths with all members present voting in favor.

**Borough of Pennington
Resolution #2009-9.3**

**RESOLUTION ESTABLISHING THE HOPEWELL VALLEY
GREEN FUTURE TASK FORCE**

WHEREAS, the governing bodies of Hopewell Township, Hopewell Borough and Pennington Borough recognize a need to develop “green” initiatives to create and plan for a healthy economy, environment and society in the Hopewell Valley; and

WHEREAS, the governing bodies of Hopewell Township, Hopewell Borough and Pennington Borough desire to identify and support green, sustainable practices which benefit our residents and business partners that are easy to replicate and affordable to implement; and

WHEREAS, the Township of Hopewell, the Borough of Hopewell and the Borough of Pennington have each resolved to participate in **SUSTAINABLE JERSEY™**, a certification program for municipalities in New Jersey that want to go green, control costs and save money, and take steps to sustain their quality of life over the long term; and

WHEREAS, the governing bodies of Hopewell Township, Hopewell Borough and Pennington Borough have identified a need to work collaboratively to achieve **SUSTAINABLE JERSEY™** certification as the economical and environmental health of Hopewell Valley does not end at municipal borders; and

WHEREAS, the governing bodies of Hopewell Township, Hopewell Borough and Pennington Borough, in an attempt to focus attention on green issues and to further the primary goals of saving tax dollars, assuring clean air and water, improving working and living environments, and strengthening communities that are sustainable economically, environmentally and socially well into the future, wish to establish the “Hopewell Valley Green Future Task Force;” and

WHEREAS, the Hopewell Valley Green Future Task Force, with annually appointed members comprised of a minimum of four representatives of each Hopewell Valley municipality, including one governing body liaison, one municipal staff representative and at least two members of the public representing residents, businesses, congregations and other community groups, shall meet quarterly or as needed to develop and recommend programs and projects that seek to:

1. Improve public health and safety.
2. Identify alternative energy options
3. Encourage water and energy conservation
4. Reduce environmental pollution.
5. Promote recycling efforts.
6. Preserve natural resources.
7. Increase public awareness regarding green initiatives through the development of educational programs and resources dedicated to green initiatives.
8. Provide updates and recommendations to Hopewell Valley governing bodies, administrations, planning boards, environmental commissions, shade tree boards and other groups directly or indirectly responsible to environmental issues.

NOW, THEREFORE BE IT RESOLVED, by the Borough Council of the Borough of Pennington, that it hereby supports and does establish the Hopewell Valley Green Future Task Force, in cooperation with the Borough of Hopewell and the Township of Hopewell; and

BE IT FURTHER RESOLVED, that the Borough Council of the Borough of Pennington shall, within sixty days of the passage of this resolution, appoint its delegation to the Hopewell Valley Green Future Task Force and provide details of said appointments to the Municipal Clerk of the Borough of Hopewell and the Township of Hopewell.

Record of Council Vote on Passage

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

Council Member Heinzel made a motion to approve Resolution 2009-9.3, second by Council Member Chandler. Ms. Heinzel stated that Hopewell Borough has passed this Resolution and made their appointments to the Task Force. Ms. Heinzel stated that the Hopewell Valley Greenet is the group that has been meeting and is meeting tonight and they are anxious to get going. Upon a roll call vote, all members present voted in favor.

**Borough of Pennington
Resolution #2009 – 9.4**

**A RESOLUTION AUTHORIZING PAYMENT REQUEST NO. 1 TO
MECO, INC. FOR WORK COMPLETED ON THE BURD STREET RECONSTRUCTION
PROJECT**

WHEREAS, Meco, Inc. has completed certain work pursuant to the Burd Street Reconstruction Project (VNHA #38594-500-52) relating to reconstruction of Burd Street; 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 (138,297.49) less two percent (2%) retainage (\$2,765.95), the net due therefore amounting to \$135,531.54; and

WHEREAS, this is a partial payment under the contract;

WHEREAS, funds are available in account # G-02-44-939-000-250, NJ DOT – Burd Street;

NOW, THEREFORE BE IT RESOLVED, by the Borough Council of the Borough of Pennington, that payment to Meco, Inc. in the amount of \$135,531.54 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	X				Lawver	M			
Griffiths	X				Ogren	X			
Heinzel	X				Tucker	S			

Council Member Lawver made a motion to approve Resolution 2009-9.4, second by Council Member Tucker. Mr. Ogren stated that Borough Council did approve a change order at the August meeting which is not reflected in the backup paperwork. Ms. Sterling stated that the change order was approved pending DOT approval and as of today, we are still waiting for the approval from DOT. Upon a roll call vote all members present voted in favor.

**Borough of Pennington
Resolution #2009 – 9.5**

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	M				Lawver	X			
Griffiths	X				Ogren	X			
Heinzel	X				Tucker	S			

Council Member Chandler made a motion to approve Resolution 2009-9.5, second by Council Member Tucker. Mr. Ogren asked if there were any changes from prior cash management plans. Ms. Sterling stated there were no significant changes and this is something that is done each year. Upon a roll call vote all members present voted in favor.

**Borough of Pennington
Resolution #2009-9.6**

**RESOLUTION AUTHORIZING THE SALE OF
BOROUGH EQUIPMENT AND PERSONAL
PROPERTY NO LONGER NEEDED FOR PUBLIC USE**

WHEREAS, the Borough is in possession of certain equipment and personal property no longer needed for public use; and

WHEREAS, it is the desire of the Mayor and Council to sell these items at public auction;

NOW THEREFORE, BE IT RESOLVED, by the Mayor and Council of the Borough of Pennington that the Borough is hereby authorized to sell certain equipment and personal property no longer needed for public use at a public auction to be held on October 24th, 2009 at the Public Works Facility located on Delaware Avenue in Pennington and the Borough Clerk is hereby authorized and directed to advertise same in accordance with the requirements of N.J.S.A. 40A:11-36(3).

Record of Council Vote on Passage

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

Council Member Ogren made a motion to approve Resolution 2009-9.6, second by Council Member Tucker. Ms. Chandler inquired as to who approves what items are sold. Mayor Persichilli stated that each department provides a list of items. Upon a roll call vote all members present voted in favor.

**Borough of Pennington
Resolution #2009 – 9.7**

**A RESOLUTION AUTHORIZING FINAL PAYMENT TO TOP LINE CONSTRUCTION CORP.
ON THE HALE STREET RECONSTRUCTION PROJECT – PHASE II**

WHEREAS, Top Line Construction Corp. has completed all work pursuant to its contract with the Borough of Pennington for the project known as Hale Street Reconstruction - Phase II; and

WHEREAS, Van Note Harvey Associates, P.C. has reviewed and inspected the improvements that have been constructed and has confirmed that 100 percent of the work under the contract has been completed and is satisfactory; and

WHEREAS, Van Note Harvey Associates has further recommended payment to Top Line Construction Corp. in the amount of \$1,679.41 representing all remaining retainage, which is no longer required; and

WHEREAS, this is the final payment under the contract;

WHEREAS, Top Line Construction Corp. has posted a Maintenance Bond in the amount of \$ 83,983.41 as required by the contract, in a form acceptable to the Borough Attorney; and

WHEREAS, funds are available in account G-02-44-933-000-255 – NJDOT – Hale Street II;

NOW, THEREFORE BE IT RESOLVED, by the Borough Council of the Borough of Pennington, that final payment to Top Line Construction Corp. in the amount of \$1,679.41, representing all remaining retainage, is hereby authorized.

Mr. Lawver asked that this Resolution be pulled from the agenda as there is a drainage issue that needs to be addressed.

For Discussion But Subject to Action

Resolution 2009-8.3 – License Agreement for Plantings in the Right of Way – Mayor Persichilli stated that this Resolution was tabled at the August meeting. Ms. Heinzl stated that she brought this issue back to the Planning Board at their meeting. Ms. Heinzl stated that Mr. Ogren brought up some issues with regard to safety at the last meeting. Ms. Heinzl stated that according to Mr. Ogren's sketch, cars approaching the stop sign would have to come into the crosswalk in order to see to make a turn. Ms. Heinzl stated that since the last meeting she has talked with the Planning Board and looked at the license agreement and it seems that there are two issues. Ms. Heinzl stated that the first is the sight triangle issue, which the Planning Board approved. Ms. Heinzl stated that having the bushes in the sight triangle would still require vehicles to proceed into the crosswalk in order to see. Mr. Ogren stated that it is possible to have the bushes within the sight triangle and still have sufficient view of Burd Street, however where the bushes are now, so close to the street makes it impossible to see. Ms. Heinzl stated that the point that she would like to make and which the Planning Board had expressed some confusion is that the traffic consultant who looked at this issue for the Borough and another traffic consultant for the applicant agreed that if the yield sign was replaced with a stop sign that it would be a safe intersection. Ms. Heinzl stated that the issue that remains is that the bushes are in the public right of way. Ms. Heinzl stated that going back to the Planning Board decision, if the Planning Board had not requested a license agreement as part of the approval then Borough Council would not even be looking at this issue. Ms. Heinzl stated that this license agreement is just a statement of what the appropriate rights and responsibilities of the parties are. Ms. Heinzl stated that other residents in town have plants within the right of way, still have the responsibility of maintaining their plants and the Borough would still be able to require trimming if they were to become a safety issue with respect to sidewalks or visibility. Ms. Heinzl stated that in this situation that still is true, but the license agreement is merely a statement of all that. Ms. Heinzl stated that in the Planning Board's thinking, having this license agreement was actually an extra step to protect the Borough and it seems that if Council does not agree to the license agreement it would be unfair to the homeowner because they would have to move their plants out of the public right of way while other homeowners in town are not required to move their plantings. Mr. Ogren did not agree that it would be unfair and stated that not only should Borough Council not approve the license agreement, but that the property owner should be required to relocate the shrubs farther back on the property. Ms. Heinzl stated that this issue should be addressed as a whole, however in this instance, given that the Planning Board has approved the plantings and two traffic engineers have looked at this situation and said that it would be alright, then this homeowner is being unfairly penalized for coming to the Planning Board with an application for approval. Ms. Heinzl stated that if anyone else in town with this same issue is not being asked to move their bushes, then it is unfair. Ms. Heinzl stated that if Council does not want residents planting hedgerows and bushes in the public right of way, then that is a different issue. Ms. Heinzl stated that there are many places in town where this is an issue. Mr. Ogren disagreed and stated that this issue is a little bit different because this is an important crosswalk where school children cross to get to Delaware and also to get to the Pennington School. Mr. Ogren also stated that this is a recent planting and maybe Council should look at other situations to determine if there are safety concerns. Mr. Ogren stated that Council's job is to protect the public safety and he does not think that allowing these shrubs to remain is in the best interest of public safety. Mr. Griffiths stated that this license agreement grants rights to the homeowner and it will take another public action to revoke that right. Mr. Griffiths stated that he did not think there was anything unfair about enforcing the law even when that law has not been enforced uniformly. Mr. Griffiths stated that what is unfair is that it has not been enforced uniformly and that theoretically it should be enforced retroactively. Mr. Griffiths stated that if that means that the police go out and evaluate each intersection there might be justification for having all hedges in the right of way removed. Mr. Griffiths stated that these shrubs are definitely an obstruction. Further discussion took place regarding the issue and also regarding other intersections in town where there are obstructions causing vehicles to creep into the crosswalk in order to see. Mr. Bliss pointed out as a practical matter that if there is ever an automobile accident in which the injured party alleges there was an obstruction and it turns out that this obstruction is in the public right of way, the Borough could be sued and to the extent the case could be proved, the Borough would be liable. Mr. Bliss stated that this would be true anywhere and not just with this instance. Mr. Ogren stated in this case, Borough Council knows exactly what the problem is and other intersections have not been evaluated yet. Mr. Lawver stated that he is not sure which is the greater obstruction at Burd Street and Academy, the bushes or the parked cars and his inclination would be to create a standard for intersections and hold that standard to all intersections. Mr. Lawver stated that he would be inclined to let this one go until the standard is developed and if these shrubs are in violation that the rights be rescinded at that point. Mr. Lawver suggested that the Police Department evaluate each intersection and once a standard is developed, implement a plan. Ms. Chandler stated that she has a problem with the inconsistency in enforcing ordinances and she would like to see ordinances enforced uniformly. Mayor Persichilli stated that there is a problem with the Borough's sight triangle ordinance and the ordinance should conform to the ASHTO regulations, which it presently does not. Mayor Persichilli stated that once that is done there are residences that have shrubs within the sight triangle that would not comply with the ordinance. Ms. Heinzl stated that in the interest of consistency and fairness and given that the Planning Board and two traffic engineers felt that these particular shrubs would not cause a problem that this license agreement should be granted. Mr. Griffiths stated that approving the license agreement would subordinate public safety for fairness. Mr. Griffiths stated that the sight triangle was created for a reason and it does not take a professional to look at the intersection and see that you cannot see traffic coming from the left for two reasons; cars parked along Burd Street and the shrubs. Mr. Griffiths also stated that there is a Borough owned tree that further obstructs the view. Mr. Griffiths stated that when a vehicle pulls out far enough into the intersection, that is compounding these safety issues and he would not be in favor of agreeing to this license agreement. Mr. Griffiths stated that he would take this retroactively and say to be fair the sight triangle should be enforced at all intersections no matter how much time and effort has to be put into the process. Mr. Griffiths stated that this issue has raised awareness and brought this to the attention of the Council and now that Council is aware of the problem the obligation is to act consistent with the ordinance and in the interest of public safety. Further discussion took place with regard to whether the shrubs could

be moved to a location that was still within the sight triangle, which would be a decision for the Planning Board. Discussion took place as to whether the Borough would be liable if trees or shrubs were allowed in the sight triangle. Mr. Bliss stated that one of the problems is that the sight triangle is not defined by the public right of way; it is nothing more than that corner of the property defined by the private homeowner's property line. Mr. Griffiths stated that fairness works two ways and the other side of this issue is fairness to drivers and pedestrians. Ms. Heinzl suggested that this discussion continue when Mr. Meytrott could be available for input on how to proceed with identifying properties and developing a plan for getting those residences in compliance.

Council Discussion

Block Party – East Welling Avenue – Mr. Dunworth stated that once again, the residents of East Welling Avenue would like to have their street closed for a block party to be held on September 19th, 2009 (rain date September 20th) beginning at 3:00 pm. Ms. Julie Slattery of 28 East Welling Avenue stated that they are doing the same event that they have done for the past couple of years only it will be on a smaller scale. Council Member Lawver made a motion to allow the closing of West Welling Ave for the block party, second by Council Member Heinzl. Upon a voice vote, the motion passed.

Social Affairs Permits – Ms. Sterling stated that she has received two applications for social affairs permits, one from Trenton Cyros #5 Lodge and the other from The Pennington School Parents Association. Ms. Sterling stated that these applications will be submitted to the Division of Alcoholic Beverage Control for approval. Ms. Sterling stated that she and Public Safety Director Meytrott need Council's approval to sign off on the applications. Council Member Tucker made a motion to approve the applications, second by Council Member Heinzl. Upon a voice vote, the motion passed.

Administrator's Report

Mr. Dunworth stated that Mr. Meytrott asked him to mention that the Hopewell Valley High School will be holding their annual Homecoming Parade on October 10th beginning at the Tollgate School at 4:00pm. Mr. Dunworth stated that Main Street and Delaware will be closed for the parade for about a half hour and Route 31 will be closed as the parade crosses.

Professional Reports

Mr. Bliss requested a closed session. There were no further reports from professionals.

Public Comment Period

Mayor Persichilli asked anyone wishing to speak to come forward and state their name and address for the record and to limit comments to a maximum of five minutes.

Mr. Norman Thornton of 30 West Delaware Avenue inquired as to why the public was not invited for discussions related to historic preservation. Mayor Persichilli stated that the discussions will be public. Mayor Persichilli explained that a request was made to form a group to make some proposals and there will be a process with announcements so the public can attend. Mayor Persichilli explained that this group has been looking at what was proposed fifteen years ago and will be making a proposal on how to proceed.

Mr. Thornton inquired as to how Council could discuss having to enter the crosswalk to see on Burd Street, when the crosswalk has not been painted yet. Mr. Lawver stated that the lines have not been painted yet because the project is going to continue up Burd Street. Mr. Thornton stated that until the Pennington School began parking twenty or more cars on Burd Street, he had no problem seeing what was coming, but now he does. Mayor Persichilli stated that Council is aware of the parking problem and will be discussing how to proceed.

Mr. Richard Lafferty of 14 Abey Drive came forward to address an issue with drainage on Abey Drive. Mr. Lafferty referred to the rain storm of August 22nd and showed Council several pictures from the storm. Mr. Lafferty stated that rain fell persistently for about two hours and caused quite a bit of flooding. Mr. Lafferty stated that subsequently he has gone out and looked at the culverts and the drains and the pipes and there is a problem. Mr. Lafferty explained how the drainage is fed to a 31' pipe that is designed to take water out of Pennington. Mr. Lafferty stated that the problem is with three pipes that feed to where water collides and backs up and ends up back in the street. Mr. Lafferty stated that years ago this system may have been adequate, but today it is not because of all the uphill impervious surfaces that have been added. Mr. Lafferty asked that the culvert be opened up somehow and the pipes be redirected so that there is no obstruction. Mr. Lafferty stated that when the lowest pipes are the smallest pipes, the system won't work properly. Mayor Persichilli asked Mr. Wittkop if he looked at this problem during the storm. Mr. Wittkop stated that he has looked at this since the storm on Friday when it rained fairly hard here and there does seem to be some conflicting with the pipes. Mr. Wittkop stated that this situation is not uncommon where there is a catch basin and there may very well be two or three pipes coming in at the same time. Mr. Wittkop stated that the problem in this situation is that the one pipe that goes past the Lafferty residence carries the majority of the water and with three catch basins flowing into one it does fill up. Mr. Wittkop stated that from the pictures you can see that the catch basin was working because a swirl was created. Pam Lafferty came forward and stated that they have lived in the house for 25 years and have seen this happen at least once per year where these drains back up and water comes back out. Mrs. Lafferty stated that they understand that this was an exceptional storm; however the system should be better able to handle the water so that it does not collide and back everything else up. Mr. Lafferty explained that they are addressing their landscaping to hopefully direct the water to the street, but then there needs to be a means to

get the water out of the street more efficiently. Mr. Lawver stated that the Borough Engineers have been out to look at the situation and will look at it again to see if there is something that can be done.

Mrs. Lafferty stated that with regard to the trees in the right of way, on Abey Drive, the Police Department has come to residences and asked that trees and bushes be cut back. Mrs. Lafferty stated that her daughter and mother saved a child who would have been harmed due to trees and shrubs coming out over the sidewalk. Mrs. Lafferty stated that she is not against the homeowner; she is in support of safety first.

Public Safety Director Meytrott arrived at 8:35pm during the Public Comment Period.

Council Member Heinzl asked for an update on whether any progress has been made regarding redoing the website. Ms. Heinzl stated that Mr. Griffiths had done a lot of work on developing a wish list for the website. Mr. Heinzl asked if we should approach the current website provider with the wish list and ask what he could do within the Borough's budget. Mr. Griffiths stated that he would like to put out a request for proposals and see what comes in.

Closed Session

Mayor Persichilli read the following resolution to convene in Closed Session.

AT, 8:40 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:

Contract Negotiations – Interlocal Agreement
Contract Negotiations – Personnel

AT, 9:30 PM, Mayor and Council returned to open session.

Council Member Tucker made a motion to approve the minutes of the August 3rd, 2009 Closed Session for content, but not for release, second by Council Member Chandler with all members present voting in favor.

Mr. Bliss asked for a motion that would authorize the filing of a notice of appeal in the Presbyterian Homes Tax Appeal if before the next meeting the time limit for filing the notice of appeal becomes due. Council Member Griffiths made a motion, second by Council Member Chandler with all members present voting in favor with the exception of Mr. Ogren who voted no.

At, 9:40 PM, Council Member Tucker made a motion to adjourn the meeting, second by Council Member Lawver.

Respectfully submitted,

Elizabeth Sterling
Borough Clerk