

**Pennington Borough Council  
Regular Meeting – October 5, 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, Public Safety Director Bill Meytrott, Borough Attorney, Walter Bliss and Borough Auditor, Bob Morrison.

Mayor Persichilli announced that notice of this meeting has been given to the Pennington Post, Hopewell Valley News, The Times of Trenton and The Trentonian and was posted on the bulletin board in Borough Hall 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 Tucker made a motion to approve the minutes of the September 1, 2009, Special Meeting, second by Council Member Griffiths with all members present voting in favor with the exception of Council Members Heinzl and Lawver who abstained.

Council Member Chandler made a motion to approve the minutes of the September 14, 2009, Regular Meeting, second by Council Member Heinzl 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 asked Ms. Heinzl to speak on appointments to the Hopewell Valley Green Future Task Force. Ms. Heinzl stated that the Hopewell Valley Green Future Task Force was approved by Resolution at the last meeting and will include representation from Hopewell Borough, Hopewell Township and Pennington Borough. Ms. Heinzl recommended the appointment of Joanne Held and James Davy as citizen representatives on the task force.

**Mayor's Appointments**

Mayor Persichilli announced the appointment of Art Firestone as the second alternate to the Environmental Commission for a term ending December 31, 2011.

**Presentations**

Mayor Persichilli asked Borough Auditor, Bob Morrison to come forward to report on the 2008 Audit. Mr. Morrison stated that all members of Council should have received copies of the Audit Report. Mr. Morrison stated that the audit is done to determine first, that the Borough is following the accounting rules set by the State of New Jersey by keeping books and records and presenting financial statements and second, that the financial statements are a fair presentation showing that the records are materially correct year to year. Mr. Morrison stated that on pages two and three of the audit is the Auditor's Report which says that the Borough is in compliance. Mr. Morrison stated that the report indicates a couple of qualifications; one that the Borough does not maintain a record of fixed assets in a form that is auditable. Mr. Morrison stated that this would cost the Borough money and he feels that it is not worth the cost, so no recommendation will be made to do it. Mr. Morrison stated that the second qualification has to do with the LOSAP program for volunteer First Aid members. Mr. Morrison stated that he is not required to audit the program. Mr. Morrison explained that the funds for this program are held by a broker or a funds manager that is selected by the volunteers. Mr. Morrison stated that what he does is make sure that the calculations are done annually to figure out how much each volunteer is entitled to have contributed and to make sure that the contribution is made and recorded on the books of the trustee. Mr. Morrison stated that they did that and everything was fine.

Mr. Morrison stated that the Borough's fund balance is down about \$175,000 from year to year. Mr. Morrison stated that unfortunately, every municipality in the State is seeing fund balance go down. Mr. Morrison stated that the Borough is limited in what it can do to increase surplus due to the spending cap law, which limits increases to 2.5 or 3.5 (with an ordinance) growth each year and the 4 percent levy cap. Mr. Morrison stated that when the tax levy only represents about 50 percent of the total budget in effect there would be 2 percent growth on the revenue side not including revenues from other sources. Mr.

Morrison presented a summary of changes over the past 10 years, which is the time that he has served as auditor for the Borough. Mr. Morrison stated that the total budget has gone from \$2,010,000 to \$3,333,000 over 10 years, a growth of 65.8 percent or roughly 6 percent per year. Mr. Morrison stated that the tax levy on the other hand, has grown from \$1,195,000 to \$2,178,000, an increase of 82 percent. Mr. Morrison stated that he then tried to figure out why taxes are increasing faster than the total budget. Mr. Morrison stated that first is that unrestricted State Aid has gone from \$260,000 to \$248,000, a decrease of \$12,000 and as a percentage of the total budget that represents a 42.5 percent drop. Mr. Morrison stated that if State Aid had remained at 13 percent of the budget, the tax levy would have grown much slower than the total growth in the budget. Mr. Morrison stated that essentially what has happened over the last 10 years is that there has been budget growth of somewhere around 6 percent per year, no increase in State Aid and the difference has had to come from property taxes. Mr. Morrison stated that Borough Council has been able to fund a significant piece of the growth in the budget by generating surpluses and aggressively investing, but the bottom line is that the Borough could not make up for the reduction in State Aid. Mr. Morrison stated that unfortunately State Aid will not be going up any time soon.

Mr. Morrison stated that a 6 percent increase per year is not bad considering that pension costs came back into the budget, health benefits increased and there are many State mandates that are unfunded. Mr. Morrison stated that in looking at the spending side of the budget, the largest growth occurred in debt service due to deferred maintenance and the need for a new public works building. Mr. Morrison stated that deferring maintenance projects is not a good practice because sooner or later they will have to be done.

Mr. Morrison stated that when it comes to the financial statements themselves, fund balance is down which is consistent with past year practices. Mr. Morrison stated that regeneration of surplus in these times is getting more and more difficult. Mr. Morrison explained the importance of submitting and collecting grant funds due for road projects. Mr. Morrison explained that funds were advanced from the current fund to the grant fund to pay for charges against grants. Mr. Morrison stated that clearing up these interfunds would help to increase the surplus in the current fund.

Mr. Morrison stated that as far as recommendations go, there are none. Mr. Morrison stated that going forward there is a new accounting requirement that will go into effect for the 2009 audit called GASB 45 which requires municipal governments to report on the estimated cost of post employment benefits. Mr. Morrison stated that the Borough provides post retirement health benefits based on meeting certain criteria. Mr. Morrison stated that larger towns have had to engage actuaries and have studies done to establish this liability. Mr. Morrison stated that for the Borough it would have to be reported as parts of the notes to the financial statements or they will have another qualification in their opinion. Mr. Morrison stated that qualifications in the opinion would not affect the Borough unless it were going for a bond rating. Mr. Morrison explained that there is an alternative to spending money on an actuary for municipalities with a total population of people in the plan including current employees who may become eligible for retired benefits, of less the one hundred. Mr. Morrison stated that there is a set of calculations that can be done internally to establish the amounts to be reported in the notes. Mr. Morrison explained that the concept behind the standard is that during the working life of an employee, amounts should be set aside each year so that there is a pot of money when an employee retires that is available to cover the costs for retiree benefits. Mr. Morrison stated that rather than pay for benefits after retirement, the Borough should be paying for benefits from the time an employee starts so that the funds are there. Mr. Morrison stated that New Jersey is not mandating this be done, but it is the concept behind the standard. Mayor Persichilli asked where the funds would be held. Mr. Morrison stated that municipalities are not expected to fund the liability; they are just required to calculate the number. Mr. Morrison stated that school districts and authorities on the other hand will be required to record the figure in their financial statements and if they don't budget for it, their fund balance will turn negative.

Mr. Morrison stated that internal controls are effective for an organization of this size. Mr. Morrison stated that there are enough internal controls and redundancy that if a mistake is made it is likely to get caught. Mr. Morrison encouraged the governing body to continue to review documents that come out of the administrative offices. Mr. Morrison stated that one thing that they noticed in 2008 is that there was a slight decrease in the Property Tax Collection Rate and though the rate is above 98 percent it dropped from a high 98 percent to a low 98 percent. Mr. Morrison recommended keeping a close eye on the collection rate because if it drops it would cause problems with the next budget cycle.

Council thanked Mr. Morrison for his report.

### **Ordinances for Introduction**

Mayor Persichilli read Ordinance 2009-11 by title.

#### **Borough of Pennington Ordinance #2009-11**

#### **AN ORDINANCE REVISING REGULATIONS PERTAINING TO YARD WASTE AND AMENDING CHAPTER 172 OF THE CODE OF THE BOROUGH OF PENNINGTON**

**WHEREAS**, Borough Council of the Borough of Pennington, on the recommendation of the Public Works Committee, seeks to revise and supplement provisions of Chapter 172, Article III of the Code of the Borough of Pennington, concerning Yard Waste;

**NOW, THEREFORE, BE IT ORDAINED**, by the Borough Council of the Borough of Pennington, that Chapter 172, Article III, of the Code of the Borough of Pennington, is amended as follows:

1. Section 172-18 of the Code, concerning definitions, is hereby amended to include in proper alphabetic order a definition of "CONTRACTOR" as follows:

BRUSH – Branches and shrubs suitable for disposal in a chipper. Brush does not include grass clippings, leaves, cuttings, twigs or miscellaneous organic matter.

CONTAINERIZED – The placement of yard waste in a trash can, bucket, bag or other container sufficient to prevent the yard waste from spilling or blowing into the street.

**CONTRACTOR – Any person, persons, company or other entity hired for the purpose of altering, cleaning, clearing, removing, pruning, maintaining or modifying the lawn, trees, shrubs, plantings or other natural materials on a property.**

CUTTINGS AND TWIGS – Small diameter branches collected from yards or pruned from trees or shrubs. Cuttings and twigs are too small for disposal in a chipper.

LEAVES – Leaves collected from yard areas exclusive of grass clippings, cuttings, twigs, brush or other organic matter.

PERSON – Any individual, corporation, company, partnership, firm, association, or political subdivision of this State subject to municipal jurisdiction.

STREET - Any street, avenue, boulevard, road, parkway, viaduct, drive, or other way, which is an existing State, county, or municipal roadway, and includes the land between the street lines, whether improved or unimproved, and may include pavement, shoulders, gutters, curbs, sidewalks, parking areas, and other areas within the street lines.

YARD WASTE – Brush, cuttings and twigs, leaves, grass clippings and miscellaneous organic material resulting from yard maintenance.

2. Section 172-21 of the Code, concerning collection of yard waste, is amended and supplemented as follows:

A. Leaves may be placed in a Borough-owned street for collection by the Borough no more than seven days immediately prior to a scheduled collection. Leaves will be scheduled for collection by the Borough on an ongoing basis, as often as practicable, during the period from October 1 to January 1 and from April 1 to June 1. Scheduled collections will be announced through local newspapers and by notices posted in the municipal building. Leaves placed in the street in anticipation of collections during the period from October 1 to January 1 need not be containerized. Leaves placed in a Borough-owned street in anticipation of collections during the period April 1 to June 1 must be containerized. When containerized, the leaves must be contained in bags which when full shall not weigh more than 45 pounds per bag. Whether or not containerized, leaves placed in the street for collection shall not include grass clippings or other yard waste.

**B. The placement of uncontainerized leaves in a street owned by the County or State shall be subject to regulation by them. However, containerized leaves may be placed in a State or County street for collection by the Borough during the period from April 1 to June 1, subject to the weight limitations set forth above.**

C. Other yard waste, exclusive of grass clippings, may be placed in any street during the day immediately prior to a collection scheduled by the Borough for that type of yard waste and at no other time. All such yard waste shall be containerized, except brush must be stacked neatly with the large end of the trunk or stem facing the street and need not be tied or containerized. **Tree trunks and limbs in excess of six inches (6") in diameter will not be collected.** Grass clippings may not be included or mixed with this waste. Placing grass clippings in the street, whether or not containerized, is prohibited at all times.

D. Weekly collections shall be scheduled as follows:

(1) Collection of cuttings and twigs and yard waste other than brush, leaves and grass clippings, shall be scheduled for every Monday, exclusive of holidays, throughout the year.

(2) Collection of brush shall be scheduled for every Tuesday, exclusive of holidays, throughout the year.

E. [Any person who violates or neglects to comply with any provision of this article shall, upon conviction, be subject to a fine not to exceed \$1,000, imprisonment for a period not to exceed 90 days, or a period of community service not to exceed 90 days, or any combination thereof; except a person who has received notice from the Borough to remove yard waste unlawfully placed in a street and fails to do so within seven days from receipt of the notice shall be subject to a mandatory minimum fine of \$100 for each day the violation continues after the seventh day. Each day the violation so continues shall be deemed a separate offense. . In addition, any person who violates this chapter shall be liable to the Borough for expense, loss or damage incurred by the Borough as a result of the violation.] **No more than 20 bags or containers may be placed at the curb for collection at any one time. If yard waste is not containerized, the pile can be no larger than 4 feet wide by 4 feet high by 15 feet long. Each property is limited to one pile per per week.**

**F. (new) All yard waste generated by a Contractor, with the exception of leaves, must be removed from the property by the Contractor and may not be left at the curb. Leaves shall be left at the curb in compliance with subsection A of this section.**

3. Section 172-22 of the Code, concerning violations and penalties, is amended as follows:

Any person who violates or neglects to comply with any provision of this article **or any regulation promulgated pursuant thereto** shall [, upon conviction] **receive at least one warning before an enforcement action is brought but thereafter shall** be subject to a fine not to exceed \$[1,000] **500** [, imprisonment for a period not to exceed 90 days, or a period of community service not to exceed 90 days, or any combination thereof; except a person who has received notice from the Borough to remove yard waste unlawfully placed in a street and fails to do so within seven days from receipt of the notice shall be subject to a mandatory minimum fine of \$100 for each day the violation continues after the seventh day]. Each day the violation [so] continues shall constitute [be deemed] a separate offense. [In addition, any person who violates this chapter shall be liable to the Borough for expense, loss or damage incurred by the Borough as a result of the violation.]

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

Council Member Lawver made a motion to introduce Ordinance 2009-11, second by Council Member Tucker. Mr. Lawver explained that this Ordinance will close a loophole in the original Ordinance by making the Ordinance comply with the practice in town. Mr. Lawver stated that presently if a resident hires a landscape contractor, that contractor is responsible for removal of all debris generated by the work. Mr. Lawver stated that this excludes leaves which still may be blown to the curb. Mr. Lawver stated that the second thing this Ordinance does is to put a cap on how much debris can be left at the curb during any given week. Mr. Lawver stated that the majority of the time the amount of debris placed at the curb is manageable; however there are occasions where homeowners have put out whole trees and stacked them end to end and six feet high at the curb and the Borough is not built to handle that level of debris. Mr. Lawver stated that there will be no restrictions on leaves. Mr. Ogren recommended that leaves be removed from the definition of yard waste. Discussion followed as to how to revise the proposed ordinance after which, Mr. Lawver stated that he would rework the ordinance for next meeting. The motion and second for introduction of the ordinance were rescinded.

**Ordinances for Public Hearing and Adoption**

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.<sup>1</sup>

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

Council Member Tucker made a motion to open the Public Hearing on Ordinance 2009-10, second by Council Member Heinzl. There were no comments from the public. Council Member Tucker made a motion to close the Public Hearing, second by Council Member Heinzl with all members present voting in favor. Council Member Lawver made a motion to adopt Ordinance 2009-10, second by Council Member Tucker with all members present voting in favor.

## Committee Reports

**Planning & Zoning / Environmental Commission / Library** – Ms. Heinzel reported that the Planning Board will meet on October 14<sup>th</sup>. Ms. Heinzel reported that the Environmental Commission met in October with the focus being on education outreach. Ms. Heinzel stated that the Environmental Commission will be purchasing materials to further education on specific areas such as household chemical waste disposal and composting. Ms. Heinzel stated that last month she mentioned the Greenhouse Gas Reduction Grant Program. Ms. Heinzel stated that Joanne Held has filed a grant pre-application on behalf of the Pennington Farmers Market.

Ms. Heinzel reported that the Library Board met and agreed to purchase an additional computer for the circulation desk. Ms. Heinzel stated that of the nine computers in the library, three have been replaced with donated funds. Ms. Heinzel stated that air duct cleaning is scheduled for October 17<sup>th</sup> and the Library will be closed that day. Ms. Heinzel stated that the old computers from the Library will be sold at the Borough auction on October 24<sup>th</sup>. Ms. Heinzel reported an increase in patrons coming to the Library and an increase in circulation of books which is largely due to the recession. Ms. Heinzel reported that Tollgate Elementary School third graders visited Borough Hall to participate in a mock council meeting. Ms. Heinzel stated that fall story times have resumed. Ms. Heinzel reported that the Friends of the Public Library will host an Open House on Thursday, November 12<sup>th</sup> from 7 to 9pm.

**Public Works / Economic Development** – Mr. Lawver reported that the Economic Development Commission met and reviewed a report on the Pennington Farmers Market. Mr. Lawver stated that the Farmers Market is bringing in a large crowd each week; however there is little evidence of this from the local businesses. Mr. Lawver stated that the Economic Development Commission is planning for the next Businessperson of the Year Award and is seeking nominees. Mr. Lawver stated that the Economic Development Commission is endorsing efforts to upgrade the website and also supports any efforts to increase parking in the Borough lot.

Mr. Lawver reported that the Public Works Committee met, some topics discussed were construction on Burd Street which has started up again and large meter replacement which continues to be a struggle with the three remaining accounts. Mr. Lawver stated that the next step will be to proceed to the enforcement stage in the very near future. Mr. Lawver reported that the NJ DEP has approved the permit for a stripper at Well 8 to remove volatile organic compounds. Mr. Lawver stated that Well 8 has been off line for two years; work will begin very shortly and should be completed by year end. Mr. Lawver stated that Van Note Harvey has been authorized to proceed with the design work for the Safe Routes to Schools project and for the Lower King George Road project. Mr. Lawver stated that the Borough will be implementing a fix for the Abey Drive storm drain system to attempt to mitigate the flooding issues and that drainage at the Senior Center will also be addressed.

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

### **PENNINGTON BOROUGH PUBLIC WORKS**

**TO:** Joseph Lawver, Chairman  
Public Works Committee

**FROM:** Jeff Wittkop, Superintendent

**DATE:** October 1, 2009

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

#### WATER

Water pumped for the month of September 2009-	7,925,000
Daily-	264,100
Water pumped for the month of September 2008-	9,002,000
Daily-	300,000

For the month of September 2009 we averaged 35,900 gallons less per day than September 2008.

#### TRASH

102.63 tons of household trash for the month of September 2009 vs. 83.79 tons in September 2008

Leaf pick-up has started. Leaves should be blown or raked to the curb and should be placed at least 20 feet from stormwater inlets. Leaves may be raked or blown to the street in long windrows and should be free of any debris such as sticks, branches or other debris.

Borough Auction will take place October 24<sup>th</sup> at the old landfill.

**Personnel/Shade Tree** - Mr. Ogren had no report for Personnel. Mr. Ogren reported that the Shade Tree Commission has been discussing planting of shade trees in the island on South Main Street and also a proposal to request more tree planting from Mercer County on South Main in the downtown area. Mr. Ogren reported that as far as tree removal, there are still concerns about bacterial leaf scorch which is attacking Pin Oak Trees throughout town.

**Community Services** – Ms. Chandler reported that the Pennington Parks and Recreation Commission met on September 8<sup>th</sup>. Ms. Chandler reported that there are two upcoming events; October 11<sup>th</sup> is movie night featuring Ghostbusters and October 17<sup>th</sup> will be the Chili Cookoff featuring a concert by Citizen Band Radio. Ms. Chandler stated that the last event for the year will be the annual Carol Sing on December 20<sup>th</sup> at Howe Commons at 6:30 pm. Ms. Chandler thanked the Public Works Department for removing the flags on Main Street to get ready for the holiday snowflakes. Ms. Chandler stated that the Adopt-a-Flag program is ongoing for anyone interested in adopting a flag in honor or in memory of someone.

**Public Safety** – Mr. Tucker reported the arrest of a Pennington resident on child pornography charges following an investigation by the Mercer County Prosecutors office. Mr. Tucker reported that schools opened on September 9<sup>th</sup> with no requests for additional police services and with all crossing guards reporting for duty.

Mr. Tucker stated that several inspections have been made of the intersection of Burd Street and Academy by Director Meytrott and this matter will be discussed later this evening. Mr. Tucker reported on the closing of sections of Delaware Avenue for removal of trees by the Mercer County Shade Tree Commission.

Mr. Tucker stated that on Monday, September 21<sup>st</sup> a power failure occurred affecting a large portion of the Southern section of the Borough, both traffic signals were out and Police Officers on duty manually directed traffic at Route 31 and Delaware Avenue. Mr. Tucker stated that PSE&G reported a tree limb had fallen and blew out a transformer; power was restored after about an hour and a half.

Mr. Tucker reported that Director Meytrott attended a meeting to discuss the upcoming Homecoming Parade to be held on Saturday, October 10<sup>th</sup> beginning at 5 pm and lasting about one hour. Mr. Tucker stated that portions of South Main Street, Curlis Avenue, West Delaware Avenue, Burd Street, Academy Street and Route 31 (while the parade is crossing) will be closed between the hours of 4:30 and 6:30 pm.

Mr. Tucker gave the following statistics for the month of September 2009:

- 1 Simple Assault
- 2 Criminal Mischief
- 151 Motor Vehicle Stops
- 67 Warnings Issued
- 1 DUI Summons
- 1 Adult Male Arrest
- 1 Adult Female Arrest
- 1 Juvenile Male Arrest
- 16 First Aid Call responses

**Finance** – Mr. Griffiths reported that the Finance Committee did not meet in September. Mr. Griffiths stated that the Borough received a letter from Hopewell Township indicating that they are seeking to double the cost of Shared Services. Mr. Griffiths stated that exploration of other options has begun with Mr. Meytrott seeking alternatives for Dispatch Services. Mr. Griffiths stated that options will be explored for providing services for Health and Animal Control Services. Mr. Griffiths stated that a meeting was held with the Teamsters to discuss the Public Works contract, negotiations are at an impasse. Mr. Griffiths stated that negotiations will begin soon with the Police for their contract.

**New Business**

**Borough of Pennington  
Resolution #2009-10.1**

**RESOLUTION AUTHORIZING REFUNDS**

**BE IT RESOLVED**, that a refund be issued to Cricket Communications, Inc., c/o Mark Garland, Treasury Operations Manager, 10307 Pacific Center Court, San Diego, CA 92121, for balance of escrow account regarding, Planning Board application P08-008 for property on 120 Broemel Place, Block 206, Lot 8, in the amount of \$ 448.00.

**Record of Council Vote on Passage**

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

Council Member Tucker made a motion to approve Resolution 2009-10.1, second by Council Member Ogren with all members present voting in favor.

**Borough of Pennington  
Resolution #2009 – 10.2**

**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 \$ 783,686.91 from the following accounts:

Current	\$ 608,324.36
W/S Operating	\$ 29,581.55
General Capital	\$ 652.46
Grant Fund	\$ 138,027.52
Developers' Escrow	\$ 3,708.50
Water/Sewer Capital	\$ 2,629.92
COAH Trust Fund	\$ 350.00
Animal Control Fund	\$ 412.60
<b>TOTAL</b>	<b>\$ 783,686.91</b>

**Record of Council Vote on Passage**

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

Council Member Tucker made a motion to approve Resolution 2009-10.2, second by Council Member Chandler with all members present voting in favor.

**Borough of Pennington  
Resolution #2009-10.3**

**RESOLUTION CERTIFYING THAT ALL MEMBERS OF THE BOROUGH COUNCIL OF THE BOROUGH OF PENNINGTON HAVE REVIEWED THE SECTIONS OF THE 2008 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 2008 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 and 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 and 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	X				Ogren	X			
Heinzel	S				Tucker	M			

Council Member Tucker made a motion to approve Resolution 2009-10.3, second by Council Member Heinzel with all members present voting in favor.

**Borough of Pennington  
Resolution #2009 – 10.4**

**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.

**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 2009-10.4, second by Council Member Tucker with all members present voting in favor.

**Borough of Pennington  
Resolution No. 2009-10.5**

**RESOLUTION MAKING APPOINTMENTS  
TO THE JOINT EMERGENCY MANAGEMENT COUNCIL**

**WHEREAS**, with permission of the State of New Jersey Office of Emergency Management, Pennington Borough has entered into a joint agreement with the Township of Hopewell and the Borough of Hopewell creating a Joint Emergency Management Council, to ensure a common plan of action in the event of disasters and emergencies;

**WHEREAS**, Borough Council of the Borough of Pennington seeks to ensure the continued operation of the Council by joining in the appointment of the Executive Coordinator of the Council as well as reappointing Pennington’s Emergency Management Coordinator;

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

1. George Meyers, Chief of Police of the Hopewell Township Police Department, is hereby appointed to serve as the Executive Coordinator of the aforesaid Joint Emergency Management Council to serve indefinitely until his successor is appointed and qualified.
2. Borough resident Mark Reading is hereby appointed Emergency Management Coordinator of the Borough of Pennington to represent the Borough on the Joint Emergency Management Council and to perform such other duties as set forth in the joint agreement, for a term of three (3) years effective immediately and continuing thereafter until his successor is appointed and qualified.
3. That the Borough Clerk shall forward a copy of this resolution to the State of New Jersey Office of Emergency Management.

**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 2009-10.5, second by Council Member Tucker with all members present voting in favor.

**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 and discussed at the September meeting and he would like to continue the discussion. Mr. Tucker stated that as everyone is aware there is a sight obstruction problem at the intersection of Burd Street and Academy Avenue. Mr. Tucker stated that shrubs planted by the Slovers are obstructing the view at the intersection. Mr. Tucker stated that in addition cars that are parked along Burd Street and a large Borough owned tree are contributing to the problem. Ms. Heinzel stated that the homeowners planted the trees, then made application to the Planning Board for a shed and during the application review, it was pointed out that some of the trees that were planted are actually in violation of the existing sight line ordinance. Ms. Heinzel stated that the homeowners then sought a variance to keep the trees where they are. Ms. Heinzel stated that traffic consultants were retained by both the homeowner and the Borough. Ms. Heinzel stated that the homeowner’s traffic engineer reported that the Borough Ordinance did not make much sense and they felt that the ASHTO standard would be the preferable standard to follow. Ms. Heinzel stated that the Planning Board hired Orth Rodgers to look at the situation and they agreed that under the current ordinance the trees are in the sightline however, they too felt that the ASHTO standards would be better. Ms. Heinzel stated that it was their recommendation that with a stop sign at the intersection and following the sight triangle of ASHTO which would be 30 feet, that the trees would not obstruct the sight line. Ms. Heinzel stated that the Planning Board took all of this under advisement and agreed to grant the variance. Ms. Heinzel stated that as a condition of the approval, the Planning Board requested that the homeowners obtain a license agreement for the trees that are in the public right-of-way. Ms. Heinzel stated that is how the issue came to be before Borough Council. Ms. Heinzel stated that when this was discussed it was brought up that perhaps looking at the sight triangle is the wrong way to look at this. Ms. Heinzel stated that the discussion was that vehicles would have to pull into the crosswalk to get a clear view down the street. Ms. Heinzel stated that Mr. Meytrott was not in attendance for the discussion at the last meeting and Council agreed to continue to table the discussion to hear from Mr. Meytrott. Discussion took place with regard to the issue of cars parked along Burd Street and whether to restrict parking along Burd Street. Mayor Persichilli asked Mr. Meytrott for his comments on the intersection. Mr. Meytrott stated that the major problem with the view of the intersection is caused by parked cars. Mr. Meytrott stated that a secondary problem is the trees as they exist today. Mr. Meytrott stated that the stop sign on Academy is placed in the right location and the stop bar painted on the road is also done properly. Mr. Meytrott stated that he and Mr. Wittkop have come up with a plan for restricting parking from Academy Street , 147 feet South on Burd Street. Mr. Meytrott stated that this would result in elimination of about eight parking spaces. Mr. Meytrott stated that the parking ordinance would have to be amended to allow enforcement. Mr. Meytrott stated that the second issue with the intersection is Academy Street. Mr. Meytrott stated that parking should also be eliminated on Academy from the stop sign back 39 feet, which would remove one car from Academy Street. Mr. Meytrott stated that elimination of these parking spaces would allow vehicles better visibility from both directions. Mr. Meytrott stated that Title 39 says the vehicles must stop as practically as possible to the stop bar or stop sign (if there is no stop bar on the street) and then proceed if safe. Mr. Meytrott stated that Mr. Tucker did a survey of intersections in town and this type of issue exists at many of the intersections throughout Pennington. Mr. Meytrott stated that with respect to the Slovers trees, he would be much happier if the trees were trimmed down 6 inches to a foot. Mr. Meytrott stated that if the trees remain, they will slightly impair the visibility and if they were removed it would improve the situation greatly.

Mr. Tucker stated that he rode around town and found that to varying degrees there are about 25 intersections where there is some obstruction causing vehicles to creep out into the crosswalk to see. Mr. Meytrott stated that every intersection is different and would have to be reviewed individually.

Ms. Heinzl stated to clarify the Slover issue there are trees that are in the sight triangle under the existing ordinance and then there are the trees that are in the right-of-way, so there are two different issues. Ms. Chandler stated that there is a violation of the ordinance which asks residents not to plant things in the right-of-way. Discussion followed as to obstructions in the right-of-way throughout town. Mr. Wittkop stated that is not uncommon for residents to put things in the right of way and the ordinance exists so the Borough has the ability to remove these encroachments if need be. Mr. Griffiths stated that he remains unsympathetic to the Slovers and he feels that they should not have planted these trees in the right of way and then come and ask for permission to leave them there. Mr. Griffiths stated that the license agreement does not contain indemnification for the Borough and as Mr. Bliss has pointed out if there is an accident and it is attributed to obstructed vision, the Borough could be held liable. Discussion followed with regard to liability in the event of an incident. Further discussion followed with regard to plantings in the right of way. Mayor Persichilli called for action on Resolution 2008-8.3.

**BOROUGH OF PENNINGTON  
RESOLUTION #2009 – 8.3**

**A RESOLUTION AUTHORIZING LICENSE AGREEMENT PERMITTING CERTAIN  
PLANTINGS IN THE PUBLIC RIGHT OF WAY**

**WHEREAS**, William A. and Maria Burke Slover (“the Slovers”) are the owners of the residential property known as 1 Academy Street in Pennington Borough, also known as Block 504, Lot 1 on the Pennington Borough Tax Map;

**WHEREAS**, the Slovers’ property is bounded by Academy Street, Burd Street and Crawley Avenue and, as a result, has three front yards;

**WHEREAS**, the Slovers have been granted variances by the Pennington Borough Planning Board permitting construction of a shed within a front yard and the planting of shrubbery within a sight triangle on their property;

**WHEREAS**, the Slovers have installed arborvitae plantings at a height of approximately six feet within the right-of-way immediately adjacent to Academy and Burd Street;

**WHEREAS**, the Planning Board determined that allowing the arborvitae to remain at the present location is appropriate and still provides for safe sight distance at the intersection as presently configured and will not diminish sight distances once the intersection is reconfigured with a stop sign replacing the present yield sign as planned by the Borough;

**WHEREAS**, if the Borough does not replace the yield sign with a stop sign for vehicles approaching Burd Street on Academy Street within one (1) year from the date of the Board’s approval, the Slovers (or their successors) must return to the Board to revisit the variance for the sight triangle;

**WHEREAS**, as a further condition of the Board’s approval of the sight-triangle variance, the Slovers are required to enter into a license agreement with the Borough to allow the existing arborvitae to remain in the Borough’s right-of-way;

**WHEREAS**, the proposed license agreement is attached providing, *inter alia*, that it shall be effective for only as long as the sight-triangle variance is effective;

**NOW, THEREFORE, BE IT RESOLVED**, by the Borough Council of the Borough of Pennington, that the Mayor of the Borough, with the attestation of the Borough Clerk, is hereby authorized to enter into and execute on behalf of the Borough the annexed License Agreement subject to such changes in further protection of the Borough as may be approved by the Borough Attorney and Borough Administrator.

**Record of Council Vote on Passage**

<b>COUNCILMAN</b>	<b>AYE</b>	<b>NAY</b>	<b>N.V.</b>	<b>A.B.</b>	<b>COUNCILMAN</b>	<b>AYE</b>	<b>NAY</b>	<b>N.V.</b>	<b>A.B.</b>
Chandler		X			Lawver	X			
Griffiths		X			Ogren		X		
Heinzl	M				Tucker	S			

Council Member Heinzl made a motion to approve Resolution 2009-8.3, second by Council Member Tucker with Council Members Heinzl, Lawver and Tucker voting yes and Council Members Chandler, Griffiths and Ogren voting no. As the vote resulted in a tie, Mayor Persichilli voted no. Mayor Persichilli explained that the public safety argument can not be ignored and though there are other intersections in town that need to be addressed, this is one that can be dealt with now. Mr. Lawver asked that Council take a good look at the 25 intersections on Mr. Tucker’s list and come up with an approach to get them resolved.

Mr. Dunworth asked who would be enforcing the action taken this evening. Ms. Heinzl stated that essentially since Borough Council has said no to the license agreement she will bring this back to the Planning Board because the agreement was a condition of their approval. Mayor Persichilli stated that this should go back to the Planning Board at their next meeting to see who should write a letter to the Slovers advising them of this decision.

**Council Discussion**

There were no further items for Council Discussion.

## **Administrator's Report**

**Operation Medicine Cabinet** – Mr. Dunworth stated that Operation Medicine Cabinet is a US Department of Justice program that will be held on Saturday, November 14<sup>th</sup> from 10am to 2pm at the Mercer County Library. Mr. Dunworth explained that the purpose of this program is to help residents dispose of old medications that could be potentially hazardous.

**Communities of Light** – Mr. Dunworth stated that again this year Womenspace will sponsor the Communities of Light event on December 13<sup>th</sup>. Mr. Dunworth stated that Womenspace puts luminaries at area municipal buildings and libraries and they are looking for support from Borough Council. Ms. Heinzl stated that this is a worthwhile event and we have supported it in the past and should continue to do so. Ms. Heinzl stated that this event usually coincides with Parks and Receptions Carol Sing event. Ms. Chandler stated that Parks and Recreation is meeting tomorrow night and she will make a suggestion that the Carol Sing event be changed to December 13 to coincide with the lighting of the luminaries.

## **Professional Reports**

Ms. Sterling announced that the Borough has received a new four drawer filing cabinet from Mercer County as part of the Paris Grant Program. Ms. Sterling stated that this will be used to store older records that are presently stored in boxes.

## **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.

There were no comments from the public.

## **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 Agreements

AT, 9:27 PM, Mayor and Council returned to open session.

Council Member Ogren made a motion to approve the minutes of the September 1, 2009 Closed Session for content, but not for release, second by Council Member Griffiths with all members present voting in favor with the exception of Council Members Heinzl and Lawver who abstained.

Council Member Heinzl made a motion to approve the minutes of the September 14, 2009 Closed Session for content, but not for release, second by Council Member Griffiths with all members present voting in favor.

At, 9:30 PM, Council Member Tucker made a motion to adjourn the meeting, second by Council Member Griffiths.

Respectfully submitted,

Elizabeth Sterling  
Borough Clerk