

**Pennington Borough Council  
Regular Meeting – October 6, 2008**

Council President Edwin Tucker 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. Mayor Persichilli was absent.

Also present were Morris Fabian representing Public Works, Public Safety Director, Bill Meytrott, Borough Administrator, Eugene Dunworth, and Borough Attorney, Walter Bliss.

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

**Open to the Public – Agenda Items Only**

Mr. Tucker read the following statement:

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

Mr. Brit West came forward and asked for Council approval for the Pennington Business and Professional Association to hold its annual Holiday Walk on December 5<sup>th</sup> from 6 to 9 pm. Mr. West requested Police Paid Detail service for the night as Main Street will be closed. Mr. West also asked for a waiver of the administration fee. Mr. West gave an overview of the events planned for the evening.

**Approval of Minutes**

Council Member Ogren made a motion to approve the minutes of the September 8, 2008, Regular Council Meeting, second by Council Member Heinzl. Upon a roll call vote all members present voted in favor of approving the minutes.

**Mayor's Business**

Mr. Tucker announced the resignations of Robert DeLorenzo who resigned from the Police Department effective September 4<sup>th</sup> and Eric Wilkinson who resigned as Borough representative to the Stony Brook Regional Sewerage Authority. Mr. Tucker wished both well.

Mr. Tucker made the following appointments:

Michael Townsend to the Economic Development Commission for an unexpired term to 12/31/2008.

Tom Adelman to the Environmental Commission for an unexpired term to 12/31/2011.

Mr. Tucker stated that negotiations with the Teamsters Union will begin shortly. A negotiating committee has been formed consisting of Mayor Persichilli, Chairman of Public Works Committee, Joe Lawver, and Chairman of the Finance Committee, Glen Griffiths.

**Ordinances for Introduction**

Mr. Tucker read Ordinance 2008-11 by title.

**BOROUGH OF PENNINGTON  
ORDINANCE NO. 2008 - 11**

**AN ORDINANCE MODIFYING INSURANCE REQUIREMENTS FOR  
SIDEWALK REPAIR AND OTHERWISE AMENDING THE CODE OF THE  
BOROUGH OF PENNINGTON**

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

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

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

**WHEREAS**, requirements for obtaining a sidewalk repair permit have included the inclusion of the Borough and the borough Engineer as additional insureds on the applicant's insurance policy;

**WHEREAS**, Borough Council has determined that this requirement is not feasible for many landowners and that proof of insurance by the applicant landowner is sufficient to protect the Borough;

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

1. Section 177-24 of the Code of the Borough of Pennington, concerning permits for certain installation, repair and maintenance of sidewalks and driveways, is hereby amended by the deletion of the requirement that the Borough and the Borough Engineer be included as additional insureds on the applicant's insurance policy, and as further indicated below, the amended Section 177-24 thereafter to read in its entirety as follows:

§ 177-24.

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

(a) All repair and maintenance of sidewalks and driveways shall be the responsibility of the adjacent property owner [as required by law]. All installation, repair and maintenance of sidewalks and driveways in the public right-of-way, other than minor repairs as herein defined, shall require a permit from the Borough. Permits shall be obtained by application to the Borough. When a permit is required, no work shall commence until the permit has been issued and notice given to the Borough Engineer.

(b) Minor repairs not requiring a permit shall be limited to the filling of small holes or cracks which do not affect the gutter line or drainage along the municipal street and do not materially affect the appearance of the sidewalk or the driveway area within the public right-of-way.

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

(d) Prior to the issuance of any permit for the installation, repair or maintenance of any driveway or sidewalk within the Borough right-of-way, the applicant shall file with the Borough Clerk [certificate] proof of insurance [certifying] 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. [The Borough and the Borough Engineer shall be included as additional insureds on the applicant's insurance policy.]

(e) All installations, repairs and maintenance of driveways or sidewalks shall be made under the supervision of the Borough Engineer or Borough authorized agent and shall be subject to such periodic inspection as the Engineer may deem necessary. Except as further provided herein, each applicant for a permit shall pay a fee of fifty dollars (\$50) provided the work covered by the permit is proposed to affect not more than three square yards of driveway or sidewalk in the public right of way, and a fee of one hundred dollars (\$100) for work which will affect a larger area. The applicable fee shall cover the issuance of the permit, examination of drawings, supervision and inspection of work. However, no fees shall be required for any permit lawfully applied for during the one-year period beginning September 19, 2008.

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

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

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<sup>1</sup>Brackets [ ] denote deleted language; underlining \_\_\_\_ indicates new language.

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

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

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

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

Council Member Heinzl made a motion to introduce Ordinance 2008-11, second by Council Member Lawver with all members present voting in favor.

### **Committee Reports**

**Planning/Zoning and Library** – Ms. Heinzl reported that the Library Board met on September 25<sup>th</sup>. Ms. Heinzl reported that fall story times are underway on Tuesdays and Thursdays. Ms. Heinzl commended Cindy Persichilli on her work with the children’s programs. Ms. Heinzl stated that the children’s programs are being expanded to include children at the Tollgate School and area preschools. Ms. Heinzl stated that the Library is accepting donations of used children and adult DVD’s for their collection. Ms. Heinzl reported that the Library is in need of volunteers, anyone interested should contact Tara Russell at the Library for details. Ms. Heinzl stated that the Library has approved a change in their hours of operation to begin in January.

Ms. Heinzl reported that there were no applications before the Planning Board in September. Ms. Heinzl reported that the Planning Board will meet on Wednesday, October 8<sup>th</sup>.

Ms. Heinzl reported that Tom Adelman, Joanne Held and the Environmental Commission are hard at work on the Green Market to be held on the lawn of the Pennington School on October 18<sup>th</sup>. Ms. Heinzl stated that this will be the first annual Green Market. Ms. Heinzl encouraged everyone to attend.

Ms. Heinzl reported that the DOT continues to look at issues on Route 31, a workshop was held with respect to the traffic circle on Route 31. Ms. Heinzl stated that she along with Mayor Persichilli met with representatives from Hopewell Township, Mercer County and the State on various proposals for the circle. Ms. Heinzl stated that another meeting is scheduled for the end of this month and she will report back with more details on what DOT is thinking might work to improve the circle.

Ms. Heinzl stated that she attended a focus group that the school is conducting with respect to its search for a new superintendent for the district. Ms. Heinzl stated that the meeting went well. Ms. Heinzl stated that the ad hoc referendum committee continues to meet monthly to discuss long range projects that the school may want to put up for referendum next year or the year after.

**Public Works/Economic Development** – Mr. Lawver reported that the sidewalk meeting was held with around 30 to 35 residents in attendance. Mr. Lawver stated that everyone seemed to understand where the Borough was headed with sidewalks and there was not a significant push back or feeling of unfairness. Mr. Lawver stated that many questions were answered, primarily related to trees. Mr. Lawver stated that the Borough Engineer is in the process of modifying the sidewalk specifications to designate the use of pavers to deal with tree root problems. Mr. Lawver discussed the time table of one year and the steps that will be taken after the one year waiver of the permit fee. Some discussion took place with regard to using pavers for sidewalks and not just for around tree roots.

Mr. Lawver stated that the Public Works Committee will be meeting on October 15<sup>th</sup>. Mr. Lawver stated that Van Note Harvey has been given authorization to begin surveying and designing Burd Street. Mr. Lawver stated that work on Burd Street is scheduled to begin in July of 2009.

Mr. Lawver reported that the water leak on Brookside Avenue that was holding up the road work has been fixed, however additional curbing now needs to be replaced. Mr. Lawver stated that this project continues to drag on and at some point an analysis will need to be done to determine why the project went so wrong. Mr. Lawver stated that the contractor is within the 120 time frame; however there have been several instances where work has had to be redone and that has delayed completion of the project. Mr. Lawver stated that figuring out why these delays occurred will assist in ensuring that problems do not occur on future road projects.

Mr. Lawver gave the following report for water and trash.

**PENNINGTON BOROUGH PUBLIC WORKS**

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

**FROM:** Jeff Wittkop, Superintendent

**DATE:** October 1, 2008

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

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**WATER**

Water pumped for the month of September 2008-	9,002,000
Daily-	300,000
Water pumped for the month of September 2007-	8,903,000
Daily-	296,700

For the month of September 2008 we averaged 3,300 gallons more per day than 2007.

**TRASH**

83.79 tons of household trash for the month of September 2008 vs. 82.33 tons in September 2007

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

Leaf pick-up has started. Leaves should be blown or raked to the curb, but away from the 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 weeds.

Reminder: October 13<sup>th</sup>, Columbus Day, is a holiday and there will be no garbage collection. The collection will be Tuesday, October 14<sup>th</sup>.

Mr. Lawver reported that the Economic Development Commission did meet, Mike Townsend was welcomed as a new member. Mr. Lawver stated that the Economic Development quarterly newsletter is out. Mr. Lawver stated that the biggest initiative discussed in the newsletter is the Businessperson Award. Mr. Lawver stated that applications are being accepted and the award will be presented in January, 2009.

**Personnel** – Mr. Ogren reported that the Personnel Committee met on October 1<sup>st</sup>. Mr. Ogren asked for a closed session to discuss the subject of the Personnel Meeting which was additional carryover of vacation time.

**Community Services** – Ms. Chandler stated that the Parks and Recreation Commission met on September 9<sup>th</sup>. Ms. Chandler reported that the last concert of the year will be held on October 17<sup>th</sup>. Ms. Chandler reported that the flags along Main and Delaware will be removed to accommodate the snowflakes.

**Finance** – Mr. Griffiths reported that spending seems to be in line with the time of year. Mr. Griffiths stated that municipal lending is at a stand still at the moment in light of the current economic condition. Mr. Griffiths stated that this is a very good reason to maintain reserves should we ever have a cash flow problem.

Mr. Dunworth stated that budget forms will be going out very soon to begin the budget process for 2009.

**Public Safety** – Mr. Tucker reported the Sgt. DeLorenzo has resigned and is off to pursue other interests. Mr. Tucker stated that Mark Offermann continues to patrol in the field with Officer Friedman as his training officer. Mr. Tucker reported that the Police Department will be moving forward with finding a replacement for Sgt. DeLorenzo. Mr. Tucker reported that the Hopewell Valley Schools and the Pennington School opened on September 4<sup>th</sup> with no issues reported at this time. Mr. Tucker stated that the Borough has four crossing guards positioned throughout the Borough and a Police Officer continues to handle the crossing at Route 31 and Delaware Ave. Mr. Tucker stated that the Borough is seeking to hire substitute crossing guards to fill in as needed. Mr. Tucker reported that Mr. Meytrott has requested a stop sign at Burd and Ingleside Avenues. Mr. Tucker stated that Mercer County Transportation Department has investigated and approved the request which has been forwarded to the NJ Department of Transportation for approval.

Mr. Tucker gave the following statistics for the month of September 2008.

121	Motor Vehicle Stops
73	Motor Vehicle Summonses
10	Parking Summonses
68	Warnings
4	Adult Male Arrests
1	Adult Female Arrest

Mr. Tucker presented Morris Fabian of the Public Works Department with a plaque dedicating the new Public Works Facility to replace the paper sign that has been hanging for the past year.

**New Business**

**Borough of Pennington  
Resolution #2008-10-1**

**RESOLUTION AUTHORIZING REFUNDS**

**BE IT RESOLVED**, that a refund be made to Richard Kriegner, 11 N. Main Street, Apt. 3, Pennington, NJ 08534 for a Homestead Rebate for Block 401 Lot 7, in the amount of \$1,952.40.

**BE IT RESOLVED**, that a refund be made to Merrick Wilson, 1332 Moon Drive, Yardley, Pa 19067 for an overpayment of 2007 taxes for E. Delaware Avenue, Block 401 Lot 8 in the amount of \$45.42.

**BE IT RESOLVED**, that a refund be made to Lorraine Fauver, 12 Mallard Place for an engineering inspection escrow balance for Block 601, Lot 54 in the amount of \$155.50.

**Record of Council Vote on Passage**

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

Council Member Heinzel made a motion to approve Resolution 2008-10.1, second by Council Member Griffiths with all members present voting in favor.

**Borough of Pennington  
Resolution #2008 – 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 \$ 1,508,071.37 from the following accounts:

Current	\$ 1,088,557.86
W/S Operating	\$ 285,383.59
Developers Escrow	\$ 14,211.04
Grant Fund	\$ 75,234.75
Water/Sewer Capital	\$ 44,332.42
Trust Other – HVCB	\$ 37.69
Animal Control Fund - PNC	\$ 4.72
Animal Control	\$ 140.40
General Capital - HVCB	\$ 168.05
COAH – PNC	\$ .77
Open Space Fund – HVCB	\$ .08
<b>TOTAL</b>	<b>\$1,508,071.37</b>

**Record of Council Vote on Passage**

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

Council Member Griffiths made a motion to approve Resolution 2008-10.2, second by Council Member Heinzl. Mr. Tucker stated that he is on the Board for Pennington Point and that he would be recusing himself as there is a reimbursement to Pennington Point for snow removal on the bill list. Council Members had questions on specific bills on the bill list. Upon a roll call vote, all members present voted in favor of the resolution with the exception of Mr. Tucker who abstained.

**BOROUGH OF PENNINGTON  
RESOLUTION 2008-10.3**

**RESOLUTION AUTHORIZING PLEDGE OF CONTRIBUTION  
TO NEW JERSEY LEAGUE OF MUNICIPALITIES IN CONNECTION  
WITH A POSSIBLE CHALLENGE TO COAH REGULATIONS**

**WHEREAS**, the New Jersey League of Municipalities is seeking pledges from municipalities willing to contribute funds in the event the League decides to challenge certain COAH regulations that have recently been adopted; and

**WHEREAS**, adoption of these COAH regulations will result in substantial burdens to the Borough in attempting to comply with regulations that are fundamentally flawed and based on arbitrary growth projections and an invalid methodology; and

**WHEREAS**, in order to assist the New Jersey League of Municipalities in this challenge, Borough Council believes that it should make a pledge of certain monies for that purpose;

**NOW, THEREFORE, BE IT RESOLVED**, by the Borough Council of the Borough of Pennington, in the County of Mercer, that it hereby authorizes a pledge of \$500 to the New Jersey League of Municipalities; and

**BE IT FURTHER RESOLVED**, by the Borough Council, that it hereby further authorizes an additional pledge not to exceed an additional \$500 if the League in fact files a lawsuit challenging the validity of the COAH regulations; and

**BE IT FURTHER RESOLVED**, by the Borough Council, that a copy of this Resolution shall be forwarded to the New Jersey League of Municipalities as well as all municipalities in Mercer County.

**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		
Heinzl	S				Tucker	X			

Council Member Griffiths made a motion to approve Resolution 2008-10.3, second by Council Member Heinzl. Mr. Ogren recalled that Council had discussed this subject before and decided informally not to contribute. Mr. Ogren inquired as to why this Resolution is on the agenda and what changed. Mr. Griffiths stated that at the time, Council decided not to contribute based on Mr. Ogren's proposal that the economic basis for builders remedy in Pennington was not viable and therefore the Borough would not be vulnerable to a builders remedy. Mr. Griffiths stated that is no longer the case and really never was. Mr. Griffiths stated that a builder could come into Pennington and if the Borough is not in compliance with COAH, they would sue the Borough in court and statistically courts are finding in favor of COAH. Mr. Griffiths stated that if that were to happen it would invalidate the Borough's Master Plan and Zoning and allow the builder to propose COAH development irrespective of the current COAH ratios and the Borough would be vulnerable. Mr. Ogren stated that he does not dispute what Mr. Griffiths has said however the issue of the contribution to the lawsuit was a different matter as the funds would be coming out of the Borough budget. Mr. Ogren stated that all municipalities no matter what size are being asked to contribute the same amount and he frankly is not prepared to spend money on this. Ms. Heinzl stated that she would support this resolution because paying the \$500.00 gets Pennington Borough the opportunity to be part of this class action and to sit down and discuss these issues with the people who are making decisions. Ms. Heinzl stated that the \$500.00 gives Pennington Borough the opportunity to be heard and to be part of the decision. Mr. Griffiths stated that as of today 229 municipalities have joined the lawsuit which represents seventy-five percent of municipalities that are affected by COAH. Mr. Griffiths stated that the \$500.00 does not even come close to paying anyone's share of the litigation costs; the League of Municipalities is shouldering the burden. Mr. Griffiths stated that there are 24 separate lawsuits against COAH at this point and it is a freight train that is out of control. Mr. Griffiths stated the COAH rules that are in place stand to cost Pennington Borough a significant amount of money. Mr. Griffiths stated that the \$500.00 contribution goes towards development of rules that are not going cost municipalities significant amounts of money. Mr. Ogren stated that he is in favor of the lawsuit, but he has a problem with contributing tax dollars. Mr. Lawver stated that he has the same concerns as Mr. Ogren and also concerns that we are just continuing to feed the beast. Mr. Griffiths stated that he feels that enough is enough too, however he is truly concerned that the Borough is going to get stuck. Mr. Ogren stated that the doomsday picture that Mr. Griffiths has painted is unrealistic for the simple reason that the Borough does not have acres of land that would be exposed to a builders remedy. Mr. Griffiths disagreed and stated that the landfill property, the present school board building and the Senior Center site are all vulnerable. Ms. Chandler asked if Council could discuss COAH for 10 minutes under Council Discussion and simply discuss this resolution now. Upon a

roll call vote Council Members Chandler, Griffiths, Heinzl and Tucker voted in favor and Council Members Lawver and Ogren voted no.

Mr. Griffiths stated that he has drafted a press release which states the Borough's position as a Council Body. Mr. Griffiths distributed copies to Council Members for review and possible release to the newspapers. Mr. Griffiths asked Council to respond with comments in the next couple days to meet newspaper deadlines.

**Borough of Pennington  
Resolution #2008 – 10.4**

**RESOLUTION AUTHORIZING PAYMENT REQUEST NO.7  
TO PENN-BOWER, INC. FOR WORK COMPLETED  
UNDER THE 2007 PUBLIC WORKS MAINTENANCE AND EMERGENCY SERVICES  
CONTRACT**

**WHEREAS**, Penn-Bower, Inc. has completed certain work pursuant to the 2007 Public Works Maintenance and Emergency Services Contract (VNHA #37473-500-52) relating to King George Road sink hole repair; 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. 7 (\$1,417.08) net of two percent retainage (\$28.34), the net due therefore amounting to \$1,388.74; and

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

**WHEREAS**, funds are available in account # W-06-00-553-000-250;

**NOW, THEREFORE, BE IT RESOLVED**, by the Borough Council of the Borough of Pennington, that payment to Penn-Bower, Inc. in the amount of \$1,388.74, pursuant to Payment Request No. 7, 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			
Heinzl	S				Tucker	X			

Council Member Lawver made a motion to approve Resolution 2008-10.4, second by Council Member Heinzl with all members present voting in favor.

**Borough of Pennington  
Resolution #2008 – 10.5**

**A RESOLUTION AUTHORIZING PAYMENT REQUEST NO. 1  
TO TOP LINE CONSTRUCTION, INC. FOR WORK COMPLETED  
ON HALE STREET RECONSTRUCTION - PHASE II**

**WHEREAS**, Top Line Construction, Inc. has completed certain work pursuant to its contract with the Borough for the project known as the 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 approved payment for same pursuant to the contractor's Request for Payment No. 1 (\$73,696.43) net of two percent retainage (\$1,1473.93), the net due therefore amounting to \$72,222.50; and

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

**WHEREAS**, funds are available in account # G-02-44-933-000-255;

**NOW, THEREFORE, BE IT RESOLVED**, by the Borough Council of the Borough of Pennington, that payment to Top Line Construction, Inc. in the amount of \$72,222.50 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			
Heinzl	S				Tucker	X			

Council Member Lawver made a motion to approve Resolution 2008-10.5, second by Council Member Heinzl. Ms. Heinzl inquired about a discrepancy in the figures on the Van Note Harvey attachments.

Mr. Lawver asked that Ms. Sterling verify the figures with Van Note Harvey before making payment. Upon a roll call vote, all members present voted in favor.

**BOROUGH OF PENNINGTON  
RESOLUTION #2008 – 10.6**

**RESOLUTION AUTHORIZING REIMBURSEMENT OF CERTAIN EDUCATION EXPENSES  
REQUIRED FOR CERTIFICATION OF  
POTENTIAL FUTURE TAX COLLECTOR**

**WHEREAS**, the Borough of Pennington faces the likely need for part-time personnel in Tax Collection during the coming year;

**WHEREAS**, Borough Council recognizes that recruitment of part-time employees who are certified as tax collectors as required by law is very difficult;

**WHEREAS**, Wayne Blauth, a Borough employee presently working part-time has expressed an interest in becoming certified as a tax collector but needs assistance in financing the required training courses;

**WHEREAS**, Borough Council is prepared to assist Mr. Blauth with the expectation that he will apply for such vacancy as may arise in the coming year;

**WHEREAS**, Borough Council and Mr. Blauth recognize and agree that the Borough will consider Mr. Blauth for filling any such vacancy but the vacancy will be subject to advertising and the hiring of Mr. Blauth is not guaranteed;

**WHEREAS**, Borough Council at its meeting on September 8, 2008 authorized by voice vote a plan which would reimburse Mr. Blauth fifty percent of the cost of the required training upon satisfactory completion of each course, then reimburse him for the balance of fifty percent of the costs of the courses upon his timely certification as a tax collector, the terms of this arrangement to be spelled out in a letter from the Borough Administrator to Mr. Blauth;

**NOW, THEREFORE, BE IT RESOLVED**, by the Borough Council of the Borough of Pennington, that the aforesaid plan for reimbursing Wayne Blauth for the cost of training courses, subject to the terms set forth above, is hereby ratified and approved as memorialized herein.

**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	M			
Heinzel	S				Tucker	X			

Council Member Ogren made a motion to approve Resolution 2008-10.6, second by Council Member Heinzel. Council briefly discussed the resolution and upon a roll call vote, all members present voted in favor.

**BOROUGH OF PENNINGTON  
RESOLUTION 2008-10.7**

**RESOLUTION AUTHORIZING CANCELLATION OF OUTSTANDING CHECKS**

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

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

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

**Record of Council Vote on Passage**

<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	M			
Griffiths	X				Ogren	X			
Heinzel	S				Tucker	X			

Council Member Lawver made a motion to approve Resolution 2008-10.7, second by Council Member Heinzel with all members present voting in favor.

**Borough of Pennington  
Resolution 2008-10.8**

**RESOLUTION TO AMEND THE 2008 ADOPTED BUDGET (CHAPTER 159)  
SPECIAL ITEMS OF REVENUE AND APPROPRIATION FOR  
SOLID WASTE RECYCLING GRANT**

**WHEREAS**, NJSA 40A4-87 provides that the Director of the Division of Local Government Services may approve the insertion of any special item of revenue in the budget of any county or municipality when such item shall have been made available by law and the amount thereof was not determined at the time of the adoption of the budget, and

**WHEREAS**, said Director may also approve the insertion of an item of appropriation for an equal amount, and

**WHEREAS**, the Borough of Pennington has received \$3,708.60 from the Solid Waste Recycling Program and wishes to amend its 2008 Budget to include a portion of this amount as revenue;

**NOW THEREFORE BE IT RESOLVED**, that the Borough Council of the Borough of Pennington hereby requests the Director of the Division of Local Government Services to approve the insertion of a special item of revenue in the budget of the year 2008 in the sum of \$3,708.60, which is now available as revenue from:

Solid Waste Recycling Grant, and

**BE IT FURTHER RESOLVED** that a like sum of \$3,708.60 be and the same is hereby appropriated under the caption of:

Solid Waste Recycling Grant

**BE IT FURTHER RESOLVED** that the Borough Clerk forward two copies of this resolution to the Director of Local Government Services.

**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	S				Tucker	X			

Council Member Lawver made a motion to approve Resolution 2008-10.8, second by Council Member Heinzel with all members present voting in favor.

**BOROUGH OF PENNINGTON  
RESOLUTION 2008-10.9**

**RESOLUTION APPOINTING LEE H. ENGELMAN  
AS PUBLIC DEFENDER FOR THE YEAR 2008**

**WHEREAS**, Borough Council seeks to ratify its appointment of Lee H. Engelman, PA as Public Defender for the Borough of Pennington;

**WHEREAS**, Mr. Engelman shall be compensated at the rate of \$200 for each day he appears in Pennington Municipal Court on behalf of one or more qualifying clients;

**NOW, THEREFORE, BE IT RESOLVED**, by the Borough Council of the Borough of Pennington that the designation of Lee H. Engelman as Public Defender for Pennington Borough for the year 2008 is hereby ratified and approved effective January 1, 2008.

**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 2008-10.9, second by Council Member Chandler with all members present voting in favor.

## **Council Discussion**

**Hopewell – Lawrence Bikeway** – Mr. Ogren stated that several months ago he distributed a draft proposal for a County Route 546 bikeway and this draft was given to the Mercer County Bicycle and Pedestrian Task Force and also to the administrators of Hopewell and Lawrence Townships. Mr. Ogren explained where the trail would be located and explained that there would be a connection to Pennington Borough. Mr. Ogren stated that at a meeting of the Task Force last week the proposal was endorsed and approved for submission to the County Executive. Mr. Ogren explained that the governing bodies of the other affected towns will be discussing this same proposal. Mr. Ogren briefly explained where the proposed trail would run and how it would affect Pennington Borough. Mr. Ogren suggested that a letter be sent to Mercer County encouraging support of the proposal. Council Member Ogren made a motion in support of sending a letter to Mercer County, second by Council Member Heinzl with all members present voting in favor.

Ms. Chandler asked for a 10 minute discussion on COAH. Ms. Chandler stated that her understanding is that Borough Council voted to pledge \$500 to fight COAH and Council also approved funding for Cindy Coppola to send our next proposal to COAH. Mr. Ogren stated that he understood that a committee was going to be formed to negotiate with Cindy Coppola so that payment of the contract would be based on submission of hours spent on specific tasks. Mr. Bliss stated that as he understands, the committee as it existed has dealt with the issue and the contract is now cleared to be signed by the Mayor. Mr. Bliss stated that the contract does have a fixed amount with four installments to be paid over the next four months for the preparation of the proposed Housing Element and Fair Share Plan, together with supporting resolutions and notices required for adoption. Mr. Bliss stated that the contract also accounts for hourly charges for work over and above the contract work. Mr. Griffiths stated that he spoke with Cindy Coppola and also communicated with Mr. Lawver that Cindy is not going to revise her contract, amount or billing terms. Mr. Griffiths explained the Ms. Coppola stated that this is how she is operating with other municipalities and the fee is not hourly based, the fee reflects the number of hours that she has spent in trying to understand the moving goalposts of COAH and understand what the requirements are. Mr. Griffiths stated that included in the costs are formal seminars that Cindy has attended on her own time, conversations with other planners and the overall body of work that has accumulated over the first part of this year. Mr. Griffiths stated that Ms. Coppola does not have formula for allocating or prorating those hours to the municipalities that decide to use her services to draft a COAH plan. Mr. Griffiths stated that some issues are that this is not just another letter to COAH. Mr. Griffiths stated that COAH requires legally binding agreements with builders or development of the 67 COAH units that we have not yet developed or planned for. Mr. Griffiths stated that the legally binding mechanism is due December 31<sup>st</sup> and if not submitted by December 31<sup>st</sup>, there are two rounds of 45 days for revisions. Mr. Griffiths stated that after that the Borough is at risk of being not in compliance with COAH. Mr. Griffiths stated that the degree of complexity is significantly higher than it was a year ago and the additional hours on top of the flat fee would be for sitting with developers or builders to negotiate for COAH housing on sites such as the landfill, the senior center or the proposed YMCA site and to ensure compliance with COAH regulations.

Ms. Heinzl stated that Cindy gave a presentation at the Planning Board meeting which Mr. Griffiths attended. Ms. Heinzl and Mayor Persichilli were in attendance as members of the Planning Board. Ms. Heinzl stated that the presentation centered on a letter that Ms. Coppola sent out via e-mail outlining what is needed to comply with COAH regulations. Ms. Heinzl stated that the presentation was lengthy and detailed and maybe Ms. Coppola could come and make a presentation to Council. Ms. Heinzl stated that both she and Mr. Griffiths have tried to explain the requirements, but maybe Cindy Coppola is the one to be explaining and answering Council's questions.

Ms. Chandler asked if any houses or lots in Pennington have been identified for meeting the required COAH units. Ms. Heinzl stated that Ms. Coppola suggested a work group and to date that group has not met. Ms. Heinzl stated that the proposed work group consists of Mr. Lawver, Mr. Griffiths, Winn Thompson of the Planning Board and Cindy Coppola. Ms. Heinzl stated that the goal of the work group is to sit down and identify where the vacant land sites are, what can be done and how to move forward. Mr. Griffiths explained that there was a discussion of a work group and who might be interested in participating at the Planning Board, but no one was formally appointed. Mr. Griffiths stated that the discussion revolved around who might volunteer to take on this onerous task, which no one likes, to avoid losing control of what happens with development of the town.

Ms. Chandler stated that the Borough knows what their obligation is just not how to deal with it. Ms. Heinzl stated that according to Cindy Coppola the Borough's obligation is 87 units of affordable housing and the Borough has to submit a plan with agreements in place and documentation showing that the Borough has a plan and is beginning to implement the plan. Ms. Heinzl stated that the process is very complicated and borders on impossible, given the December 31<sup>st</sup> deadline. Mr. Dunworth stated that the League of Municipalities is in court now seeking an extension of the December 31<sup>st</sup> deadline.

Ms. Chandler stated that she keeps hearing Builders Remedy and the reason that the Borough is moving forward with the Third Round is to avoid a Builders Remedy. Ms. Chandler asked if any Builders have been contacted about whether or not it would be feasible to build 87 units? Mr. Griffiths stated that Builders would jump at the chance. Ms. Chandler asked why the Borough has not been approached. Ms. Heinzl stated that right now the Borough is under the protection of COAH. Mr. Griffiths stated that there are non-profit builders in the State of New Jersey who are dedicated to this type of building. Ms. Heinzl stated that what she understands from Cindy Coppola is that if a municipality is not under the protection of COAH and is hit with a builders remedy, the Borough stands to lose its Zoning Regulations and Master Plan.

Mr. Lawver stated that he feels that though there is a risk for a builders remedy, the risk is small. Mr. Lawver stated that the Borough controls most of the larger buildable sites, one of which is the landfill which would be very costly to develop, and the other is the Senior Center. Mr. Lawver stated that another issue in the Borough is the availability of water and sewer. Mr. Lawver stated that the next large parcel is the site of the School Board Administration building and that would be the highest risk property and development of that site would probably not take place in the next 5 to 7 years.

Mr. Griffiths stated that Mr. Lawver's argument is perfectly logical until the point of court intervention. Mr. Griffiths stated that at that point a builder could come into Pennington, build one huge home and one COAH unit somewhere else and the court would allow that. Mr. Griffiths stated at that time the Borough's Master Plan and Zoning Regulations and all of the COAH ratios are nullified if a builder prevails.

Mr. Ogren asked what the Borough is afraid of with a builders remedy suit? Mr. Griffiths explained that a builder could put up a six story high rise. Mr. Griffiths stated that he sat and listened to Cindy Coppola's presentation and he thinks there is a real threat to the Borough. Mr. Griffiths explained that he is voting the way he is voting based on the fact that there is a real issue around builders remedy and the economic arguments that the Borough has promulgated are no longer valid. Mr. Griffiths stated that Council Members may have a different interpretation, but he has read and listened to the facts.

Ms. Heinzl stated that her thinking on this is that there is a middle ground and the best that the Borough can do is to proceed with Cindy Coppola on the Third Round plan and continue to have the protection of COAH, ensuring that the Borough is not subject to a builders remedy.

Ms. Chandler asked why doesn't the Borough approach a builder and have them come up with a remedy for the 87 units that COAH is requiring. Ms. Heinzl stated that Cindy is coming up with the plan so that the Borough can then approach a builder with what the Borough wants. Ms. Chandler asked why involve Cindy in the process, why not go right to a builder. Mr. Ogren stated that if the Borough does not comply with COAH, we will lose the money that has been collected and it will revert back to the State. Ms. Heinzl stated that the Borough also would lose the right to collect any more funding.

Mr. Lawver stated that he is not in favor of paying out \$25,000 to file the next report because in a couple of years when the regulations change, Council will be right back arguing about another \$25,000 for the next COAH filing. Mr. Lawver stated that there has to be a way to find out what the other 300 plus municipalities that are not participating in COAH are doing to protect against builders remedy. Mr. Lawver stated that he does not think the Borough will ever reach 87 units, but use the money collected for COAH housing and not for complying with COAH regulations that are constantly changing. Mr. Lawver stated that a good faith effort would go a long way.

Mr. Griffiths stated that everyone is very emotional about the absurdity of the requirements being forced on the Borough. Mr. Griffiths stated that this is not Cindy Coppola's fault, it is the most absurd thing he has encountered and whether or not the court would throw out a builders remedy suit is speculation. Mr. Griffiths stated that the \$25,000 will minimize the risk to the Borough.

Ms. Chandler stated that she would like to see Pennington Borough available to every income level and she would like to be able to do that without spending funds that could be spent on affordable housing on complying with COAH regulations.

Mr. Griffiths stated that the discussion of a work group at the Planning Board did address the possibility of the work group sitting down with a builder and asking for ideas on how to proceed with meeting the required units.

### **Administrator's Report**

**Abey Drive – Block Party** – Mr. Dunworth stated that he received a request to close Mallard Drive including Abey Drive, Kings Court and Queens Court on Saturday October 11<sup>th</sup>, rain date Sunday October 12<sup>th</sup>. Council Member Chandler made a motion to grant the request, second by Council Member Heinzl with all members present voting in favor.

**Invasive Species Strike Team** – Mr. Dunworth stated that he received an e-mail from a consortium of the Friends of the Hopewell Valley Open Space, the D & R Greenway and the Upper Raritan Water Shed Association that there is a serious problem with invasive plants. Mr. Dunworth stated that this involves Pennington because of Kunkel Park. Mr. Ogren stated that invasive species have been around for a long time but what is new is the strike team formed to attack them. Mr. Ogren stated that on October 15<sup>th</sup> the task force will be visiting Kunkel Park and searching for invasive plants. Ms. Chandler stated that someone from Parks and Recreation does a walk through of Kunkel Park weekly and if a list of plants were provided this person could also check for invasive plants. Mr. Dunworth stated that he received an e-mail today regarding a workshop on October 14<sup>th</sup> at the Johnson Education Center in Princeton at 9:30 a.m.

Mr. Ogren stated that he is going to talk with the D & R Greenway about approving the entrance to a trail that starts at Kunkel Park called the Pennington Loop Trail. Mr. Ogren stated that he will forward his e-mail to anyone on Council who is interested.

### **Professional Reports**

There were no further reports from Professionals.

**Public Comment Period**

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

There were no comments from the public.

**AT, 8:50 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:

- Litigation – Presbyterian Homes
- Litigation – 2 Route 31 North (First States)
- Personnel – Vacation Carryover

Council Member Lawver made a motion to approve the resolution to convene in Closed Session, second by Council Member Griffiths with all members present voting in favor.

At, 9:50 PM, Council Member Heinzl made a motion to return to Open Session, second by Council Member Lawver with all members present voting in favor.

**BOROUGH OF PENNINGTON  
RESOLUTION #2008-10.10**

**RESOLUTION AUTHORIZING CARRY-OVER OF UNUSED  
VACATION TIME FOR PTL. STEVEN FRIEDMAN**

**WHEREAS**, Borough Patrolman Steven Friedman has requested of Borough Council that he be permitted to carry into the year 2009 any unused vacation time that he will not have used as of the end of this calendar year;

**WHEREAS**, the basis for this request is the shortage of personnel in the Borough Police Department during the summer months (June, July and August), a typical time for taking time off;

**WHEREAS**, Ptl. Friedman is the Field Training Officer for the two new officers in the Department and he is not able to take time off during the training period, mid-August through at least September;

**WHEREAS**, Ptl. Friedman currently has an unused balance of twenty (20) vacation days;

**WHEREAS**, the agreement between the Borough and the Pennington PBA provides in Article XXI, par. 4, that an officer may carry over up to one-half of one year's vacation allotment in a given year and no more;

**WHEREAS**, the Borough Personnel Manual also provides, in Article V, Section E, par.2, that up to one-half of vacation time earned in a particular year may be carried over to the subsequent year and no more, except the Personnel Manual provides further that exceptions may be made in extraordinary circumstances upon approval of the full authorized membership of Borough Council;

**WHEREAS**, Ptl. Friedman's request has been reviewed by the Personnel Committee of Borough Council and it advises that the exception permitted by the Personnel Manual is in the best interest of the Borough and ought to be granted in this case, subject to the following requirements:

1. that Ptl. Friedman exert his best efforts to use up as much of his vacation time as feasible before December 31, 2008;
2. that he use up all of the carried-over vacation by June 30, 2009 or forfeit the time;

**NOW, THEREFORE, BE IT RESOLVED**, by the Borough Council of the Borough of Pennington that Ptl. Steven Friedman is hereby authorized to carry-over into 2009 all of the unused vacation days he earned in 2008 provided he use up all such time on or before June 30, 2009 or forfeit the time, and provided he otherwise comply with the requirements set forth above.

**Record of Council Vote on Passage**

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

Council Member Ogren made a motion to approve Resolution 2008-10.10, second by Council Member Griffiths with all members present voting in favor.

Council Member Heinzl made a motion to approve the Closed Session minutes of September 8, 2008 for content but not for release, second by Council Member Lawver with all members present voting in favor.

At 9:51 pm, Council Member Lawver made a motion to adjourn the meeting, second by Council Member Chandler.

Respectfully submitted,

Elizabeth Sterling  
Borough Clerk