

**Pennington Borough Council
Regular Meeting – November 3, 2008**

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

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

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

Open to the Public – Agenda Items Only

Mayor Persichilli read the following statement:

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

There were no comments from the public.

Approval of Minutes

Council Member Tucker made a motion to approve the minutes of the October 6, 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

Mayor Persichilli stated that Tom Adelman was going to come to report on the Green Market. Ms. Heinzl stated that Mr. Adelman called and he was running late.

Mayor Persichilli reported that he attended a meeting at the Appellate Court Division with Council Members Heinzl and Ogren. Mayor Persichilli stated that Mr. Bliss was representing the Borough in a case against Presbyterian Homes and he wanted to congratulate Mr. Bliss for a tremendous presentation on behalf of the Borough. Mayor Persichilli stated that he is very confident with Mr. Bliss' representation in the case. Mr. Ogren and Ms. Heinzl agreed with Mayor Persichilli.

Ordinances for Introduction

Mayor Persichilli read Ordinance 2008-10 by title.

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

**AN ORDINANCE AMENDING AND SUPPLEMENTING
CHAPTER 98, ENTITLED "FEES", OF THE CODE
OF THE BOROUGH OF PENNINGTON,
COUNTY OF MERCER, STATE OF NEW JERSEY
AND SPECIFICALLY BY AMENDING ARTICLE I, ENTITLED
"AFFORDABLE HOUSING DEVELOPMENT FEES"
IN ACCORDANCE WITH THE REQUIREMENTS OF THE
NEW JERSEY COUNCIL ON AFFORDABLE HOUSING (COAH)**

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

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

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

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

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

WHEREAS the Borough of Pennington now desires to further modify Article I, entitled "Affordable Housing Development Fees", in Chapter 98, entitled "Fees", to comply with COAH's recently adopted "Third Round Substantive Rules" (N.J.A.C. 5:97 et seq.), amendments to the "Third Round Substantive Rules" as adopted by COAH on September 22, 2008, recent amendments to P.L.2008, c.46, and the "Statewide Non-Residential Development Fee Act" [Sections 32 through 38 of P.L.2008, c.46 (C.40:55D-8.1 through C.40:55D-8.7)];

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

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

**ARTICLE I
AFFORDABLE HOUSING DEVELOPMENT FEES**

98-1. Purpose.

- A. In Holmdel Builder's Ass'n v. Holmdel Borough, 121 N.J. 550 (1990), the New Jersey Supreme Court determined that mandatory development fees are authorized by the Fair Housing Act of 1985, N.J.S.A. 52:27D-301 et seq., and the State Constitution, subject to the Council On Affordable Housing's (COAH) adoption of rules.
- B. **Pursuant to P.L.2008, c.46 section 8 (C. 52:27D-329.2) and the Statewide Non-Residential Development Fee Act (C. 40:55D-8.1 through 8.7), COAH is authorized to adopt and promulgate regulations necessary for the establishment, implementation, review, monitoring and enforcement of municipal affordable housing trust funds and corresponding spending plans. Municipalities that are under the jurisdiction of the Council or court of competent jurisdiction and have a COAH-approved spending plan may retain fees collected from non-residential development.**
- C. The purpose of this ordinance is to establish standards for the collection, maintenance and expenditure of development fees pursuant to COAH's rules and in accordance with P.L.2008, c.46, Sections 8 and 32-38. Fees collected pursuant to this ordinance shall be used for the sole purpose of providing "low" and "moderate" income housing. This ordinance shall be interpreted within the framework of COAH's rules on development fees, codified at N.J.A.C. 5:97-8.

98-2. Basic Requirements.

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

98-3. Residential Development.

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

- (1) However, if the zoning of a site has changed during the immediate two (2) years prior to the filing of the "d" variance application, then the base density for the purposes of calculating the bonus development fee shall be the highest density permitted by right during the two (2) year time period.
- (2) In any case, these fees shall not apply to developments exempt from the collection of development fees in accordance with the provisions specified in Section 98-3.C. of this ordinance, hereinbelow.

C. Eligible exactions, ineligible exactions and exemptions for residential development.

- (1) All affordable housing developments and developments where the developer has made a payment in lieu of constructing affordable units shall be exempt from paying development fees. All other forms of new construction shall be subject to development fees, except for developments that are subject to and comply with any "Growth Share Affordable Housing Requirements" provisions of the code of Pennington Borough.
- (2) Developments that have received preliminary or final site plan approval prior to August 5, 1998 shall be exempt from development fees, unless the developer seeks a substantial change in the approval. Where a site plan approval does not apply, a zoning and/or construction permit shall be synonymous with preliminary or final site plan approval for this purpose. The fee percentage shall be vested on the date that building permits are issued.
- (3) In addition to the construction of new principal and/or accessory buildings, development fees shall be imposed and collected for the construction of additions or expansions to existing buildings, for the change or conversion of an existing building to accommodate a more intense use, and/or for the demolition and replacement of an existing building, provided that:
 - (a) The development fee shall be calculated on the increase in the equalized assessed value of the improved building.
 - (b) No development fee shall be collected for a demolition and replacement of a residential building resulting from a natural disaster.
 - (c) No development fee shall be collected for the construction of an "accessory structure" which is not a "building" as these terms are defined in the Pennington Borough "Zoning Ordinance".

98-4. Nonresidential Development.

- A. All new non-residential development within the Borough of Pennington, not exempt from the collection of development fees in accordance with the provisions specified in Subsection 98-4.C. of this ordinance hereinbelow, shall pay a fee to Pennington Borough equal to two and one-half percent (2.5%) of the equalized assessed value of the land and improvements for all new non-residential construction on an unimproved lot(s) or equal to two and one-half percent (2.5%) of the increase in equalized assessed value resulting from any additions to existing structures to be used for non-residential purposes.
- B. Development fees also shall be imposed and collected when an existing structure is demolished and replaced. The development fee of two and a half percent (2.5%) shall be calculated on the difference between the equalized assessed value of the pre-existing land and improvement and the equalized assessed value of the newly improved structure, i.e. land and improvement, at the time final Certificate of Occupancy is issued. If the calculation required under this section results in a negative number, the non-residential development fee shall be zero (0).
- C. Eligible exactions, ineligible exactions and exemptions for non-residential development.
 - (1) The non-residential portion of a mixed-use inclusionary or market rate development shall be subject to the two and one-half percent (2.5%) development fee, unless otherwise exempted below.
 - (2) The two and one-half percent (2.5%) fee shall not apply to an increase in equalized assessed value resulting from alterations, change in use within existing footprint, reconstruction, renovations and repairs.
 - (3) Non-residential projects that have received a Certificate of Occupancy or general development plan approval or have entered into a developer's agreement or a redevelopment agreement, all prior to July 17, 2008 (the effective date of P.L. 2008, c.46), shall be exempt from the payment of non-residential development fees, provided that an affordable housing fee of at least 1% of the

equalized assessed value of the improvements is included in the development plan, developer's agreement or redevelopment agreement.

- (4) Non-residential developments shall be exempt from the payment of non-residential development fees in accordance with the exemptions required pursuant to P.L.2008, c.46, as specified in the Form N-RDF "State of New Jersey Non-Residential Development Certification/Exemption" Form and listed below. Any exemption claimed by a developer shall be substantiated by that developer.
- (a) All non-residential construction of buildings or structures on property used by houses of worship, and property used for educational purposes which is tax-exempt pursuant to R.S.54:4-3.6, provided that the property continues to maintain its tax exempt status under that statute for a period of at least three (3) years from the date of the Certificate of Occupancy;
 - (b) Parking lots and parking structures, regardless of whether the parking lot or parking structure is constructed in conjunction with a non-residential development or as a stand-alone non-residential development;
 - (c) Any non-residential development which is an amenity to be made available to the public, including, but not limited to, recreational facilities, community centers and senior centers as defined in section 35 of P.L.2008, c.46 (C.40:55D-8.4) , which are developed in conjunction with or funded by a non-residential developer;
 - (d) Non-residential construction resulting from a relocation of or an on-site improvement to a nonprofit hospital or a nursing home facility;
 - (e) Projects that are located within a specifically delineated urban transit hub, as defined pursuant to section 2 of P.L.2007, c.346 (C.34:1B-208);
 - (f) Projects that are located within an eligible municipality, as defined under section 2 of P.L.2007, c.346 (C.34:1B-208), when a majority of the project is located within a one-half mile radius of the midpoint of a platform area for a light rail system;
 - (g) Projects determined by the New Jersey Transit Corporation to be consistent with a transit village plan developed by a transit village designated by the New Jersey State Department of Transportation; and
 - (h) Commercial farms and Use Group "U" buildings and structures.
- (5) A developer of a non-residential development exempted from the non-residential development fee above shall be subject to it at such time the basis for the exemption set forth in this subsection no longer applies, and shall make the payment of the non-residential development fee, in that event, within three (3) years after that event or after the issuance of the final Certificate of Occupancy of the non-residential development, whichever is later.
- (6) If a property which was exempted from the collection of a non-residential development fee thereafter ceases to be exempt from property taxation, the owner of the property shall remit the fees required pursuant to this section within forty-five (45) days of the termination of the property tax exemption. Unpaid non-residential development fees under these circumstances may be enforceable by the Borough of Pennington as a lien against the real property of the owner.

98-6. Collection Of Fees.

The Pennington Borough shall collect development fees for affordable housing in accordance with the following:

- A. The Planning Board Secretary of Pennington Borough shall notify the Pennington Borough Construction Code Official whenever either a preliminary or final approval is granted to any development which is subject to the collection of a development fee.
- B. For non-residential developments only, the developer shall also be provided with a copy of Form N-RDF "State of New Jersey Non-Residential Development

Certification/Exemption", which is to be completed by the developer as per the instructions provided.

- (1) The Borough Construction Official shall verify the information submitted by the non-residential developer as per the instructions provided in the Form N-RDF.
 - (2) The Borough Tax Assessor shall verify exemptions and prepare estimated and final assessments as per the instructions provided in Form N-RDF.
- C. The Borough Construction Official responsible for the issuance of a building permit shall notify the Borough Tax Assessor of the issuance of the first building permit for a development which is subject to a development fee.
- D. Within ninety (90) days of receipt of that notice, the Borough Tax Assessor, based on the plans filed, shall provide an estimate of the equalized assessed value of the development. The equalized assessed value and the required development fee shall be estimated by the Borough Tax Assessor prior to the issuance of the construction permit, with the understanding that the estimate of the equalized assessed value is not intended to establish the equalized assessed value for tax purposes.
- E. Developers shall pay fifty percent (50%) of the required development fee to Pennington Borough at the time of the issuance of the construction permit.
- F. Developers shall pay the remainder of the development fee to Pennington Borough at the time of the issuance of a Certificate of Occupancy.
- (1) The Borough Construction Official responsible for the issuance of a final Certificate of Occupancy notifies the Borough Tax Assessor of any and all requests for the scheduling of a final inspection on property which is subject to a development fee.
 - (2) Within ten (10) business days of a request for the scheduling of a final inspection, the Borough Tax Assessor shall confirm or modify the previously estimated equalized assessed value of the improvements of the development; calculate the development fee; and thereafter notify the developer of the amount of the fee.
 - (3) The equalized assessed value and the required development fee shall be re-estimated by the Borough Tax Assessor prior to the issuance of the Certificate of Occupancy, again with the understanding that the estimate of the equalized assessed value is not intended to establish the equalized assessed value for tax purposes. The developer shall be responsible for paying the difference between the development fee calculated at the time of the issuance of the Certificate of Occupancy and the amount paid at the time of the issuance of the construction permit.
 - (4) Should the Borough fail to determine or notify the developer of the amount of the development fee within ten (10) business days of the request for final inspection, the developer may estimate the amount due and pay that estimated amount consistent with the dispute process set forth in subsection b. of section 37 of P.L.2008, c.46 (C.40:55D-8.6).
 - (5) Upon tender of the remaining development fee, provided the developer is in full compliance with all other applicable laws, the Borough shall issue a final Certificate of Occupancy for the subject property.
- G. Regardless of the time of collection of the development fee, the fee shall be based upon the percentage that applies on the date that the construction permit is issued.
- H. The Construction Code Official shall forward all collected development fees to Pennington Borough's Chief Financial Officer who shall deposit such fees into the established "Housing Trust Fund".
- I. A developer may challenge the development fees imposed by filing a challenge with the Director of the Division of Taxation for non-residential development and with the County Board of Taxation for residential development.
- (1) Pending a review and determination by the Director or Board, as the case may be, which shall be made within forty-five (45) days of receipt of the challenge, collected fees shall be placed in an interest bearing escrow account by the Borough.
 - (2) Appeals from a determination of the Director or Board, as the case may be, may be made to the tax court in accordance with the provisions of the State Tax Uniform Procedure Law, R.S.54:48-1 et seq., within ninety (90) days after the date of such determination.

- (3) Accrued interest earned on escrowed amounts to be returned shall also be returned to the developer.

98-7. Affordable Housing Trust Fund.

- A. All collected development fees and any proceeds from the sale of units with extinguished controls shall be deposited by the Chief Financial Officer of the Borough of Pennington into a separate designated interest-bearing "Housing Trust Fund", which shall be maintained by the Borough Chief Financial Officer.
 - (1) No money shall be expended from the "Housing Trust Fund" unless the expenditure conforms to the "Spending Plan" which has been approved by COAH; and
 - (2) In establishing the "Housing Trust Fund", the Borough Council shall provide COAH with written authorization in the form of a three-party escrow agreement between the Borough, COAH and the bank in order to permit COAH to direct the disbursement of development fee funds as provided in N.J.A.C. 5:97-8.13(b) of the "Substantive Rules" of COAH. This authorization shall be submitted to COAH within seven (7) days from the opening of the "Housing Trust Fund".
- B. Additionally, the following sources of funding shall be deposited in the "Housing Trust Fund" and shall at all times be identifiable by source and amount:
 - (1) Recapture funds;
 - (2) Proceeds from the sale of affordable units;
 - (3) Rental income from municipally operated units;
 - (4) Payments in lieu of on-site construction of affordable units;
 - (5) Affordable housing enforcement fines and application fees;
 - (6) Developer contributed funds for barrier free affordable housing pursuant to N.J.A.C. 5:97-8.5;
 - (7) Repayments from affordable housing program loans; and
 - (8) Any other funds collected in connection with the Borough's affordable housing program.
- C. All interest accrued in the "Housing Trust Fund" shall only be used on eligible affordable housing activities approved by COAH.

98-8. Use Of Funds.

- A. Funds deposited in the "Housing Trust Fund" may be used for any housing activity as itemized in the spending plan and approved by COAH to address the Borough's fair share obligation and may be set up as a grant or revolving loan program. Such activities include, but are not limited to:
 - (1) A rehabilitation program;
 - (2) New construction of affordable housing units and related development costs; in the case of inclusionary developments, eligible costs shall be pro-rated based on the proportion of affordable housing units included in the development;
 - (3) Accessory apartment, market to affordable, or regional affordable housing partnership programs;
 - (4) Financial assistance designed to increase affordability;
 - (5) Conversion of existing non-residential buildings to create new affordable units;
 - (6) Acquisition and/or improvement of land to be used for affordable housing;
 - (7) Purchase of existing market rate or affordable housing for the purpose of maintaining or implementing affordability controls, such as in the event of a foreclosure;
 - (8) Extensions or improvements of roads and infrastructure directly serving affordable housing sites; in the case of inclusionary developments, costs shall be pro-rated based on the proportion of affordable housing units included in the development;
 - (9) Green building strategies designed to be cost-saving for low and moderate income households, either for new construction that is not funded by other sources, or as part of necessary maintenance or repair of existing units, in accordance with accepted Federal or State standards or such guidance as may be provided by the New Jersey State Department of Community Affairs or the New Jersey Housing and Mortgage Finance Agency;
 - (10) Maintenance and repair of affordable housing units;

- (11) Repayment of municipal bonds issued to finance low and moderate income housing activity;
 - (12) To defray the costs of structural parking; in the case of inclusionary developments, eligible costs shall be pro-rated based on the proportion of affordable housing units included in the development;
 - (13) Administration necessary for implementation of the Housing Plan Element and Fair Share Plan, in accordance with Subsection 98-8.G. below; and
 - (14) Any other activity as specified in the approved spending plan and as permitted pursuant to N.J.A.C. 5:97-8.7 through 8.9.
- B. The Borough also may request authorization for expenditure of "Housing Trust Funds" on emergent affordable housing mechanisms not included in the Borough's Fair Share Plan in the form of an amendment to the spending plan. In addition to the amendment to the spending plan, the Borough shall submit the following:
- (1) A resolution to COAH that includes a certification that the affordable housing opportunity addresses COAH's criteria set forth in N.J.A.C. 5:97-6 and information regarding the proposed mechanism in a format to be provided by COAH; and
 - (2) An amendment to its Fair Share Plan to include the mechanism at the earlier of two (2) years after COAH's approval of the spending plan amendment or the next planned amendment to the Fair Share Plan resulting from the plan evaluation review pursuant to N.J.A.C. 5:96-10.
- C. Funds shall not be expended to reimburse the Borough of Pennington for past housing activities.
- D. Payments in lieu of constructing affordable housing units on residential and mixed-use sites shall only be used to fund eligible affordable housing activities within the Borough.
- E. At least thirty percent (30%) of all development fees collected and interest earned shall be devoted to provide affordability assistance to low and moderate income households in affordable units included in the Housing Element and Fair Share Plan, provided and in accordance with the following:
- (1) One-third of the affordability assistance portion of development fees collected shall be used to provide affordability assistance to very low income households.
 - (2) Affordability assistance programs may include down payment assistance, security deposit assistance, low interest loans, rental assistance, assistance with homeowners association or condominium fees and special assessments, and assistance with emergency repairs.
 - (3) Affordability assistance for very low income households may include buying down the cost of low or moderate income units in the third round Borough's Fair Share Plan to make them affordable to very low income households (earning thirty percent [30%] or less of median income). The use of development fees in this manner may entitle the Borough to bonus credits pursuant to N.J.A.C. 5:97-3.7.
 - (4) Payments in lieu of constructing affordable units on site and funds from the sale of units with extinguished controls shall be exempt from the affordability assistance requirement.
- F. The Borough of Pennington may contract with a private or public entity to administer any part of its Housing Plan Element and Fair Share Plan, including the requirement for affordability assistance, in accordance with N.J.A.C. 5:96-18, subject to COAH's approval.
- G. No more than twenty percent (20%) of development fee revenues collected in any given year from the development fees may be expended on administration, including, but not limited to, the salaries and benefits for Pennington Borough employees or consultant fees necessary to develop or implement a new affordable housing program, a Housing Element and Fair Share Plan, and/or an affirmative marketing program.
- (1) In the case of a rehabilitation program, no more than twenty percent (20%) of the revenues collected from development fees shall be expended for such administrative expenses.
 - (2) Administrative funds may be used for income qualification of households, monitoring the turnover of sale and rental units, preserving existing affordable housing, and compliance with COAH's monitoring requirements.

- (3) Legal or other fees related to litigation opposing affordable housing sites or objecting to COAH's regulations and/or action are not eligible uses of the "Housing Trust Fund".

98-9. Monitoring.

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

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

98-9.1. Ongoing Collection of Development Fees And Expiration Of Ordinance.

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

- A. If the Borough of Pennington fails to renew its ability to impose and collect development fees prior to the date of expiration of "Substantive Certification", it may be subject to forfeiture of any or all funds remaining within its municipal trust fund.
- B. Any funds so forfeited shall be deposited into the "New Jersey Affordable Housing Trust Fund" established pursuant to section 20 of P.L.1985, c.222 (C.52:27D-320).
- C. The Borough of Pennington shall not impose a residential development fee on a development that receives preliminary or final site plan approval after the expiration of its "Substantive Certification", nor shall the Borough of Pennington retroactively impose a development fee on such a development.
- D. The Borough of Pennington shall not expend development fees after the expiration of its "Substantive Certification" or judgment of compliance.

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

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

Council Member Heinzl made a motion to introduce Ordinance 2008-10, second by Council Member Ogren. Mr. Ogren stated that when this ordinance came up at a previous meeting he asked that the ordinance be tabled, since then Council has received a revised and much improved ordinance that is before Council tonight. Mr. Ogren stated that one thing that he would like to bring to the attention of Borough Council is that the fee will apply to a wider range of construction activity in residential areas than the existing ordinance. Mr. Ogren stated that the existing ordinance pertains to construction of new dwelling units and this ordinance would widen the scope to include additions and expansions. Mr. Ogren stated that additions to principal buildings as well as accessory buildings which would include garages, tool sheds and gazebos would be subject to a COAH fee. Mr. Ogren stated that he has checked the third round rules and the Borough has some flexibility with regard to what the fee can be applied to and he would like to see accessory structures deleted. Mr. Ogren asked for Council input on his suggestion. Ms. Heinzl stated that the idea is to maximize the revenue collected for COAH. Mr. Ogren stated that the fees collected on accessory structures would be minimal and is it really worth it to include them. Council discussed making a change to the ordinance to exclude accessory structures. Ms. Heinzl stated that a point was made at one of the meetings she attended that towns that are built out tend to include additions in the fee schedule because the revenue is needed to comply with COAH rules. Discussion took place with regard to what constitutes an accessory building. Mr. Griffiths stated that the amount of money that COAH expects the Borough to spend is so large that collecting fees on accessory buildings is inconsequential. Mr. Griffiths stated that in principal it makes sense but in reality it would not make a lot of difference in the Borough. Mayor Persichilli stated that his sense from the discussion is that Council has questions that need to be answered and maybe we should go back to Cindy Coppola for answers before proceeding with introduction

of the ordinance. Ms. Heinzl stated that the sooner the ordinance is introduced, the sooner the Borough can begin collecting the higher fees. Mr. Lawver stated that he would like clarification as to why parking lots and parking structures are excluded as that seems like a large portion of the value of a non-residential development.

Mayor Persichilli suggested that Council Members put their questions and comments in writing and he will contact Cindy Coppola for clarification.

Mr. Bliss stated that he questions the timing of this ordinance, as he understood that the idea was to introduce the ordinance on first reading tonight so that it can be referred to COAH for approval. Mr. Bliss stated that he is concerned that if Council does not introduce the ordinance now there won't be enough time to have it adopted before year end. Mayor Persichilli asked if the ordinance could be introduced as is and then changes discussed at the December meeting. Mr. Bliss stated that the version of the ordinance that is introduced tonight is the one that will be sent to COAH for approval.

Mr. Ogren stated that he prepared some language changes to the ordinance that could be done tonight so that the ordinance would be sent to COAH for approval. Mr. Griffiths stated that he did not see the hurry in introducing the ordinance tonight and maybe it would be better to hold off until concerns could be addressed. Mayor Persichilli stated that in a meeting with Cindy Coppola on COAH there was some discussion of a special meeting to deal with COAH items and maybe this ordinance could be on that agenda.

Council Members Heinzl and Ogren withdrew their motion and second to introduce Ordinance 2008-10.

Mr. Bliss reviewed the definition of Structure as defined in the Borough Code. Ms. Heinzl stated that given the time element she would be comfortable with introduction of the ordinance with Mr. Ogren's language changes so that the ordinance can be submitted to COAH. Mr. Lawver stated that he does not think that swimming pools should be exempted. Mr. Lawver stated that swimming pools are a drain on the water system and in the future the Borough may be looking to ban swimming pools. Following some discussion, Council did not feel that swimming pools should be exempted.

Mr. Bliss reviewed the definitions for Building and Accessory Building as defined in the Borough Code. Mr. Ogren reviewed changes to the ordinance that he is proposing. Mr. Bliss cautioned Borough Council and asked if the gain would be worth possibly creating definitional problems with regard to what is considered an accessory building. Mr. Ogren agreed and stated that the word accessory should be removed. Discussion took place with regard to how assessed value is calculated and how comparable assessments are used.

Mayor Persichilli stated that more work needs to be done on this ordinance and if needed Council may have to have a special meeting to introduce the ordinance. Mayor Persichilli stated that he would contact Cindy Coppola. Discussion followed regarding timing for a special meeting and the need for advertising etc. Mayor Persichilli asked if the ordinance could be introduced tonight and amended at another time to which Mr. Bliss responded yes.

Council Member Heinzl made a motion to introduce Ordinance 2008-10 as amended by Mr. Ogren, second by Council Member Tucker. Mr. Lawver stated that he had additional concerns with the non-residential development section of the ordinance that had not even been discussed yet. Mr. Ogren stated that the non-residential portion of the proposed ordinance follows closely the model ordinance prepared by COAH and the Borough would be on safer ground keeping the language the way it is. Mr. Griffiths stated that it would make more sense to address Council concerns and make changes to the ordinance before introduction.

Council Members Heinzl and Tucker withdrew their motion and second. Mayor Persichilli stated that he would contact Cindy Coppola with the concerns expressed by Council Members.

Mayor Persichilli asked Mr. Tom Adelman to come forward to report on the Green Market. Mr. Adelman stated that the Green Market held on October 18th was a huge success. Mr. Adelman thanked Borough Council and Borough employees who participated or helped with the event.

Mr. Adelman stated that on November 15th from 11 to 4, the Hopewell Township Environmental Commission will be running a Green House Tour in connection with Princeton Township. Mr. Adelman encouraged everyone to support this event.

Ms. Heinzl thanked Mr. Adelman and also Joanne Held for their hard work in making the Green Market a success.

Mr. Adelman stated that the event will be held again next year and also he will be doing another one for Hopewell Borough in April 2009.

Mayor Persichilli read Ordinance 2008-12 by title.

**BOROUGH OF PENNINGTON
ORDINANCE NO. 2008-12**

AN ORDINANCE REVISING THE DEFINITION OF “TECHNICAL TRAINING CENTER” IN CHAPTER 215 OF THE CODE OF THE BOROUGH OF PENNINGTON, PERTAINING TO ZONING

WHEREAS, the Borough of Pennington, on the recommendation of the Borough Planning Board, seeks to amend its zoning ordinance to include in the definition of “technical training center” establishments which provide training in fitness/physical therapy, martial arts, personal fitness, dance and similar activity;

WHEREAS, the Planning Board advises that the proposed change in definition is consistent with the provisions of the Pennington Borough Master Plan;

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

Chapter 215 of the Code of the Borough of Pennington, concerning Zoning, is hereby amended by the following additions and deletions to the definition of “Technical Training Center” as used therein:¹

TECHNICAL TRAINING CENTER – An establishment which conducts technical training and instruction [for adults] in a technical subject or trade and which training either: (1) leads to a job-specific certification or skill, including but not limited to, secretarial training, court reporting training, computer training in computer programming, software packages, computerized business systems, computer electronics technology, computer operations, [or] local area network management, or fitness/physical therapy; or (2) leads to a physical arts skill or proficiency in the field of martial arts, personal fitness, dance or other similar activity, provided that the building space devoted to a technical training center for a physical arts skill shall not exceed 4,000 square feet in area. For the purposes of this chapter, such training does not involve any machine or equipment repair or require any specialized permanent facilities for such training.

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

Council Member Lawver made a motion to introduce Ordinance 2008-12, second by Council Member Heinzl. Ms. Heinzl briefly explained the need for this Ordinance. Upon a roll call vote all members present voted in favor.

Ordinances for Public Hearing and Adoption

Mayor Persichilli read Ordinance 2008-11 by title. Mr. Bliss stated that advertisement for the Public Hearing on this Ordinance was not published in time and will have to be re-advertised for the next meeting.

**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;

¹Brackets [] indicate language to be deleted; underlining (_____) indicates new language.

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:

²

§ 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.

²Brackets [] 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.

Committee Reports

Planning/Zoning and Library – Ms. Heinzel reported that the Planning Board met on October 8th, an application submitted by Gary Mertz was carried to the November meeting, the second application submitted by the Jablonskis for 413 Sked Street was discussed at length and approved with conditions. Ms. Heinzel stated that the remainder of the meeting focused around a report on COAH presented by Cindy Coppola. Ms. Heinzel stated that Mr. Schmierer reported that at a recent COAH meeting that he attended, COAH expressed a willingness to talk with towns like Pennington that have small land and big COAH obligations to comply with COAH. Ms. Heinzel stated that Mr. Schmierer reported that if the Borough is working hard to come up with a plan that shows a good faith effort, given our constraints that COAH would be willing to work with the Borough. Mr. Griffiths stated that a conservative approach is being taken with the plan that is being submitted to COAH. Mr. Griffiths stated that two parcels of land are being discussed, one being the landfill and the other being the lot on Broemel Place. Some discussion took place with regard to a turtle habitat and other DEP issues at the Broemel Place site.

Ms. Heinzel reported that the Environmental Commission met on October 20, 2008 to discuss the Green Market, recycling, the solar array, PSE&G loan program and Federal Loan programs. Ms. Heinzel stated that Joanne Held will begin working with a group of students from the Pennington School on tracking the Borough's carbon emissions in the near future.

Ms. Heinzel reported that the Library Board met October 23, 2008. Ms. Heinzel reported that plans are underway for a Children's program to be held in connection with the Holiday Walk on December 5th. Ms. Heinzel stated that a technology replacement plan is being discussed to replace the Library computers which are very outdated. Ms. Heinzel stated that the Library web page continues to be a work in progress and a meeting will be held later in the week to discuss how to proceed.

Public Works/Economic Development – Mr. Lawver gave the following report for water and trash for the month of October:

PENNINGTON BOROUGH PUBLIC WORKS

TO: Joseph Lawver, Chairman
Public Works Committee

FROM: Jeff Wittkop, Superintendent

DATE: November 3, 2008

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

WATER

Water pumped for the month of October 2008-	8,460,00
Daily-	272,900

Water pumped for the month of October 2007-	8,741,000
Daily -	281,000

For the month of October 2008 we averaged 8,100 gallons less per day than 2007.

TRASH

80.46 tons of household trash for the month of October 2008 vs. 88.70 tons in October 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 – Borough Offices are closed Thanksgiving Day November 27th and the following day November 28th. Trash will be picked up December 1st and is the Mayor’s Special Day and four (4) trash cans are allowed.

Mr. Lawver reported that the Public Works Committee met to continue ongoing discussions of water related issues which will be reported on later in the meeting. Mr. Lawver stated that Van Note Harvey has been asked to prepare a Request for Proposal for Emergency Services to replace the Maintenance and Repair Contract with Penn Bower Inc. Mr. Lawver stated that the project to replace large water meters is ongoing, large meter owners have been contacted and plans are underway to replace the meters.

Mr. Lawver reported that the Economic Development Commission met on October 27th. Mr. Lawver reported that the initiative for a Business Persons Award has drawn a number of applications; a winner will be announced in January 2009. Mr. Lawver stated that a “Guide to Doing Business in Pennington” has been posted on the Borough website and copies are available in Borough Hall.

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

Community Services – Ms. Chandler stated that Pennington Parks and Recreation met on October 14. Ms. Chandler stated that the last scheduled event, Christmas Caroling, will be held on December 14th at Howe Commons. Ms. Chandler stated that there was a lot of discussion at the meeting on the budget for 2009 and the possibility of exploring external funding options to assist with the cost of events.

Public Safety – Mr. Tucker reported that the hiring process for the vacancy in the Police Department has been completed and further discussion will take place in Closed Session. Mr. Tucker reported on various events that were held throughout the Borough during the month of October. No incidents were reported.

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

118	Motor Vehicle Stops
59	Motor Vehicle Summonses
2	DUI
57	Warnings
8	Motor Vehicle Accident Reports
4	Adult Male Arrests
2	Juvenile Males

Finance – Mr. Griffiths reported that that Finance Committee did not meet in October. Mr. Griffiths stated that he met with Mr. Dunworth, Sandy Webb and Betty Sterling to start looking at the 2009 budget process.

New Business

**Borough of Pennington
Resolution #2008 – 11.2**

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 \$914,726.82 from the following accounts:

Current	\$ 647,839.34
Current – PNC	\$ 1,423.43
W/S Operating	\$ 120,444.25
W/S Operating – PNC	\$ 4,268.46
Developers Escrow	\$ 15,117.59
Grant Fund	\$ 74,463.26

Water/Sewer Capital	\$	1,388.74
Trust Other	\$	600.00
Unemployment Trust	\$	443.50
Animal Control	\$	72.00
General Capital	\$	40,000.00
COAH Trust Fund	\$	8,666.25
TOTAL	\$	914,726.82

Record of Council Vote on Passage

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

Council Member Griffiths made a motion to approve Resolution 2008-11.2, second by Council Member Tucker. Council Members raised questions on specific bills on the bill list and upon a roll call vote, all members present voted in favor of the Resolution.

**Borough of Pennington
Resolution #2008-11.3**

RESOLUTION AUTHORIZING BUDGET TRANSFERS

WHEREAS, N.J.S.A. 40A:4-58 provides that during the last two months of the fiscal year, should it become necessary to expend funds for any purposes specified in the budget an amount in excess of the respective sums appropriated therefore and there shall be an excess in any appropriations over and above the amount deemed to be necessary to fulfill the purpose of such appropriations transfers may be made; and

WHEREAS, transfers may not be permitted to appropriations for contingent expenses or deferred charges; and

WHEREAS, transfers may not be permitted from appropriations for contingent expenses, deferred charges, cash deficit of the preceding year, reserve for uncollected taxes, down payments, and capital improvement fund or interest and redemption charges;

NOW, THEREFORE, BE IT RESOLVED, by the Borough Council of the Borough of Pennington that transfers be made between the following year 2008 budget appropriations:

<u>Appropriations:</u>	<u>To:</u>	<u>From:</u>
Elections – Other Expense	\$ 2,000.00	
Tax Map Maintenance – Other Expense	\$ 1,000.00	
Borough Property – Salaries	\$ 2,000.00	
Streets – Other Expense		\$ 5,000.00
Total Current Fund	\$ 5,000.00	\$ 5,000.00

Record of Council Vote on Passage

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

Council Member Heinzel made a motion to approve Resolution 2008-11.3, second by Council Member Tucker with all members present voting in favor.

**BOROUGH OF PENNINGTON
Resolution 2008 - 11.4**

**RESOLUTION AUTHORIZING CONTRACT WITH
CONSULTING GEOLOGIST TO CONDUCT HYDRO-
GEOLOGIC EVALUATION**

WHEREAS, the Borough of Pennington seeks to retain a consulting geologist to review current and future water needs of the Borough, evaluate existing wells and potential for increased yield, study potential new well locations and make a related report of findings and recommendations;

WHEREAS, the Borough has identified Penelope Althoff, PhD, a licensed professional geologist, who is familiar with the Borough well system and aquifer and has been of substantial assistance to the Borough over the years in this work;

WHEREAS, the Borough seeks to enter into a professional services agreement with Dr. Althoff for the work described in her annexed Proposal for Hydrogeologic Evaluation;

WHEREAS, the proposed agreement does not require competitive bidding because it is a professional services agreement and is for the lump sum amount of \$5,000;

NOW, THEREFORE, BE IT RESOLVED, by the Borough Council of the Borough of Pennington, that the Mayor, with the attestation of the Clerk, is hereby authorized to enter into an agreement with Penelope Althoff, PhD, for the work described in the attached Proposal for Hydrogeologic Evaluation, for the lump sum contract price of \$5,000.. The form of the agreement shall be approved by the Borough Attorney.

Record of Council Vote on Passage

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

Council Member Lawver made a motion to approve Resolution 2008-11.4, second by Council Member Tucker. Mr. Lawver explained that this evaluation will explore ways to enhance production at the Borough's existing wells and source a new well for some time in the future. Upon a roll call vote, all members present voted in favor.

**BOROUGH OF PENNINGTON
Resolution 2008- 11.5**

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

This Resolution was pulled from the agenda as the Ordinance was not introduced.

**Borough of Pennington
Resolution #2008-11.6**

RESOLUTION AUTHORIZING ADVERTISEMENT FOR PUBLIC BIDS FOR FURNISHING REFUSE COLLECTION TRUCK

WHEREAS, the Borough of Pennington has a need for a current model year Refuse Collection Truck, complete with certain equipment, for use by the Department of Public Works;

WHEREAS, the needed refuse collection truck shall comply with specifications approved by the Borough Administrator;

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

(1) the Borough Administrator is hereby authorized to prepare all specifications and other documents required for acquisition of the aforesaid refuse collection truck;

(2) the Borough Administrator, upon identification of necessary funding for acquisition of the subject truck, is hereby authorized to advertise publicly for bids for acquisition of the refuse collection truck, in compliance with the Local Public Contracts Law.

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	S				Ogren	X			
Heinzel	X				Tucker	X			

Council Member Lawver made a motion to approve Resolution 2008-11.6, second by Council Member Griffiths. Mr. Dunworth requested a language change with regard to funding for the purchase of the garbage truck. Upon a roll call vote, all members present voted in favor of the Resolution as amended.

**Borough of Pennington
Resolution 2008-11.7**

**RESOLUTION AUTHORIZING RELEASE OF PERFORMANCE
GUARANTEE RELATING TO STRAUBE CENTER – MULTI-PURPOSE
BUILDING (PO7-005) (VNHA #38548-500-52)**

WHEREAS, the Straube Center has posted a certain performance guarantee for the completion of improvements required by the Borough Planning Board in connection with the Center’s Multi-Purpose Building (Application No. P07-005; VNHA #38548-500-52)

WHEREAS, the aforesaid performance guarantee consists of part letter of credit (\$35,888.40, drawn on the Hopewell Valley Community Bank) and part cash (\$3,987.60) totaling \$39,876.00 plus interest earned to date (hereafter “Performance Guarantee”);

WHEREAS, the aforesaid improvements were completed, inspected and approved as satisfactory by the Borough Engineer prior to October 22, 2008, the date of expiration of the letter of credit;

WHEREAS, the Borough Engineer recommended prior to that date that the Performance Guarantee be released to the Straube Center together with all interest earned thereon to date;

WHEREAS, based on the recommendation of the Borough Engineer that the Performance Guarantee be released, and the approval of the Borough Attorney, the Borough did not require the Straube Center to renew its letter of credit pending action by Borough Council, with the understanding that it would nonetheless have to be replaced if Council did not approve the release by formal action;

NOW, THEREFORE, BE IT RESOLVED, by the Borough Council of the Borough of Pennington, that release of the aforesaid Performance Guarantee, including all interest earned to date, is hereby authorized and ratified.

Record of Council Vote on Passage

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

Council Member Ogren made a motion to approve Resolution 2008-11.7, second by Council Member Heinzel with all members present voting in favor.

**Borough of Pennington
Resolution #2008 – 11.8**

**A RESOLUTION AUTHORIZING PAYMENT REQUEST NO. 5
TO GRES PAVING COMPANY, INC. FOR WORK COMPLETED
ON THE BALDWIN STREET RECONSTRUCTION PROJECT**

WHEREAS, Gres Paving Company, Inc. has completed certain work pursuant to the Baldwin Street Reconstruction Project (VNHA #36710-500-52) as described in the attached documents; and

WHEREAS, Van Note Harvey Associates, P.C. has reviewed and inspected the improvements that have been constructed and has approved payment for same pursuant to the Contractor’s Request for Payment No. 5 in the total amount of \$8,983.97, including (a) \$4,600 for topsoil and seeding work to close out the job, and (b) \$4,383.97, the retainage withheld from previous progress payments (nos. 1-4), now approved for release; and

WHEREAS, this is a final payment under the contract;

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

NOW, THEREFORE, BE IT RESOLVED, by the Borough Council of the Borough of Pennington, that final payment to Gres Paving Company, Inc. in the amount of \$8,983.97 pursuant to payment request No. 5 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	S				Ogren	X			
Heinzel	X				Tucker	X			

Council Member Lawver made a motion to approve Resolution 2008-11.8, second by Council Member Griffiths with all members present voting in favor.

Council Discussion

Report on Water Needs - Mr. Lawver referred to a handout that Council Members received and that was given to Hopewell Township and Hopewell Borough officials outlining where the Borough is in regards to the need to develop new sources of water and the need to address water storage. Mr. Lawver explained for Council the need to move forward in exploring these issues. Mr. Lawver explained that the Public Works Committee has been wrestling with these issues over the past year. Mr. Lawver explained that rehabbing wells 5 and 6 and bringing well 8 back on line by installing a filtration system are some low cost ways to increase water capacity. Mr. Lawver stated that awarding the contract to Penny Althoff to explore new well development is another step.

Mr. Lawver stated that the second issue that needs to be addressed is storage capacity. Mr. Lawver explained that of the 636,000 gallons stored in the water tank about 180,000 is available for use; the balance is used to maintain system pressure. Mr. Lawver explained that currently there is a shortfall of at least 212,000 gallons. Mr. Lawver stated that the handout highlights the need to develop new water storage solutions in the very near future.

Mr. Lawver answered questions from Council and stated that a more in depth discussion will take place in the near future, possibly as soon as early next year.

Response to Traffic Calming Initiative – Mr. Lawver stated that he distributed to Council a letter in response to the Traffic Calming Initiative's report to Council. Mr. Lawver stated that the Public Works Committee went through the Traffic Calming Report with Don Fetzer and Jeff Wittkop item by item. Mr. Lawver stated that the Public Works Committee is recommending that the Borough move forward with the majority of the recommendations with the one exception being that more significant, infrastructure intensive recommendations such as speed bumps/speed tables be deferred until other means are tried. Mr. Lawver stated that after that if there is still a problem the Public Works Committee will go back and reevaluate speed bumps and speed tables and their locations.

DCRP Ordinance – Mr. Bliss stated that he prepared a draft ordinance for introduction at the first meeting in December and adoption at the second meeting in December. Mr. Bliss stated that the State is attempting to create a separate retirement avenue for part time employees trying to rule out accumulation of service time in the Public Employees Retirement System and then obtain a disproportionately large pension payment. Mr. Bliss stated that the Defined Contribution Retirement Program provides that certain employees have to pay in 5.5 percent of income earned and the municipality would contribute and additional 3 percent and whatever is earned is there at retirement. Mr. Bliss stated that even though none of the Borough employees are affected at the moment the Borough is required to pass an ordinance identifying which titles among Borough Employees are subject to the DCRP program. Mr. Bliss stated that presently this would apply only to new hires after July 1, 2007. Mr. Bliss stated that after applying the criteria for eligible participants we have determined that only the Borough Administrator, Municipal Prosecutor, Municipal Court Judge and Municipal Court Administrator are subject to the program. Mr. Bliss stated that between now and the December meeting any lingering questions can be resolved so that this Ordinance can be introduced and adopted before year end.

Mayor Persichilli stated that he would like to clarify a statement regarding attendance at the NJ League of Municipalities convention. Mayor Persichilli stated that he did not intend to discourage anyone from going to get needed credits for certifications and if anyone has a reason for attendance they would not be denied. Mayor Persichilli stated that along those lines there has been an ethical question with regard to attendance at functions such as the Van Note Harvey dinner. Mayor Persichilli stated that the personnel manual prohibits acceptance of gifts including meals. Mayor Persichilli asked for Council input on attendance at these functions. Mr. Bliss stated that the current personnel policy prohibits attendance at dinners. Mr. Tucker asked if he opted to reimburse for the cost of the meal would that be permitted. Mr. Bliss stated that the easiest way to handle this is to have a hard and fast take nothing rule.

Professional Reports

There were no further reports from Professionals.

Administrator's Report

Police Shared Services Grant – Mr. Dunworth stated that he received a call from the DCA regarding a grant application that the Borough filed over a year ago. Mr. Dunworth stated that the grant was to fund a study for the possible merging of the police department with Hopewell Township. Mr. Dunworth stated that though we have not actually received the grant, he has been told that the application is just what the State is looking for. Mr. Dunworth stated that by the end of this year, December 31, 2008, if the Borough is not going to act on this grant, the application will be null and void. Mr. Dunworth stated that the application could be resubmitted at another time. Mr. Dunworth stated that the original RFP was done, the Borough received four or five responses and after Council discussion, the decision was not to proceed with the feasibility study. Mr. Dunworth stated that one of the changes that has taken place since then is that for towns under 10,000 population, there is no longer a 10 percent match. Mayor Persichilli stated that at the time this was originally discussed, Council thought that it was worth pursuing and if it made financial sense, if the quality of service was there Council would consider it. Mayor Persichilli stated that before making any kind of decision, Council would seek the public opinion by referendum. Mayor Persichilli asked Council for input on whether to proceed with this grant to study possible consolidation of the Police Department. Mr. Ogren stated that he felt that the Borough should pursue the study though he feels that the

decision should be made by referendum. Mr. Griffiths stated that a detailed study is what is needed before any decisions can be made. Mayor Persichilli asked Mr. Meytrott to comment on this issue. Mr. Meytrott stated that he has had discussion with Chief Myers of Hopewell Township and they feel that they are capable of providing a study and recommendations at no cost to the Borough. Mr. Meytrott stated that the timing on this issue is off because later on in the meeting Borough Council will be discussing hiring a new police officer. Mr. Meytrott stated that individuals that were interviewed are fully aware of the fact that the department is looking at possible consolidation in the future. Mr. Lawver stated that back before the turnover in the police department, the Borough approached Hopewell Township asking for specific proposals on service that could be provided during the transition and he does not recall the Township being very responsive. Mr. Lawver asked if Hopewell Township is on board with their 10 percent match for this grant? Mr. Dunworth stated that at the time of the application, the Township was aware of the match. Mr. Lawver stated that he is inclined to pursue getting as much information as possible and with all due respect to Mr. Meytrott would like to see the information come from a dispassionate party if Council were to move forward with this. Mr. Dunworth suggested reviewing all of the proposals at the December meeting to meet the December 31st deadline for the grant. Mr. Lawver asked that Mr. Dunworth make sure the Hopewell Township is still on board for the 10 percent match.

Public Comment Period

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

Mr. Dan Pace of 218 King George Road commented on the COAH ordinance and also on the hydro-geologic study.

AT, 9:10 PM, BE IT RESOLVED, that Mayor and Council shall hereby convene in closed session for the purposes of discussing a subject or subjects permitted to be discussed in closed session by the Open Public Meetings Act, to wit:

- Personnel – Police Department Vacancies

At, 9:40 PM, Council Member Heinzl made a motion to return to Open Session, second by Council Member Chandler with all members present voting in favor.

Council Member Tucker made a motion to approve the Closed Session minutes of October 6th, 2008 for content but not for release, second by Council Member Chandler with all members present voting in favor.

Mr. Meytrott recommended the hire of Mr. Daryl Burroughs to fill the vacancy created by the resignation of Sgt. Delorenzo effective November 19th, 2008 contingent upon successful completion of the psychological and physical examinations. Council Member Tucker made a motion to approve the recommendation, second by Council Member Chandler with all members present voting in favor.

At 9:45 pm, Council Member Lawver made a motion to adjourn the meeting, second by Council Member Chandler.

Respectfully submitted,

Elizabeth Sterling
Borough Clerk