

**Pennington Borough Council
Regular Meeting – December 1, 2008**

Council President Edwin Tucker called the Regular Meeting of the Borough Council to order at 7:05 pm. Borough Clerk Betty Sterling called the roll with Council Members Griffiths, Heinzl, Lawver, Ogren, and Tucker in attendance. Council Member Chandler arrived shortly after the roll call.

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

Approval of Minutes

Council Member Ogren made a motion to approve the minutes of the November 3, 2008, Regular Council Meeting, second by Council Member Heinzl. A few corrections were made and upon a roll call vote all members present voted in favor of approving the minutes.

Oath of Office

Mr. Tucker asked Borough Attorney Walter Bliss to administer the Oath of Office to Patrol Officer Daryl Burroughs who began his employment with the Borough on November 19th, 2008.

Mayor's Business

Mr. Tucker announced the appointment of Mr. Joshua Levy as an alternate to the Planning Board for a term to expire on December 31, 2010. Mr. Tucker stated that Council Members have been provided copies of Mr. Levy's resume for review.

Ms. Heinzl stated that this is a much needed appointment as currently there are no alternates.

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.**

There were no comments from the public.

Ordinances for Introduction

Mr. Tucker read Ordinance 2008-8 by title.

**BOROUGH OF PENNINGTON
ORDINANCE 2008-8**

**AN ORDINANCE ADOPTING THE AMENDED MERCER COUNTY RECYCLING PLAN AND
AMENDING AND SUPPLEMENTING ARTICLE I OF CHAPTER 172 OF THE
CODE OF THE BOROUGH OF PENNINGTON.**

WHEREAS, the Borough of Pennington, in compliance with State law, has a Borough-wide recycling program based on the Mercer County Recycling Plan, as set forth in Chapter 172 of the Borough Code;

WHEREAS, the New Jersey Department of Environmental Protection has required counties to update county recycling plans to reflect the findings and recommendations of the current Statewide Solid Waste Management Plan;

WHEREAS, Mercer County has updated the Mercer County Recycling Plan and same has been approved by NJDEP;

WHEREAS, the amended Mercer County Recycling Plan requires each Mercer County municipality to adopt a new recycling ordinance or amend its current ordinance to incorporate the revised County recycling system as its municipal recycling program;

WHEREAS, this Ordinance is intended to amend and supplement the Borough recycling program to incorporate the revised Mercer County Recycling Plan;

NOW, THEREFORE, BE IT ORDAINED, by the Borough Council of the Borough of Pennington, that Chapter 172 of the Code of the Borough of Pennington is hereby amended and supplemented as follows:

1. Section 172-1 of the Code, concerning adoption of a Borough recycling plan, is amended to read:

The Borough of Pennington hereby adopts as its municipal recycling program, pursuant to the New Jersey Statewide Mandatory Source Separation and Recycling Act, ("Recycling Act"), the Mercer County Recycling System as set forth in Ordinance No. 2006-19, adopted by the Board of Chosen Freeholders of the County of Mercer, State of New Jersey on December 21, 2006, effective January 10, 2007 ("Mercer County Recycling Ordinance") and as more fully set forth in the amendment to the Mercer County Solid Waste Management Plan detailing its Recycling Plan, also incorporated into the Mercer County Recycling Ordinance.

2. There shall be added to Chapter 172 of the Borough Code a new Section 172-1.1, concerning definitions, which shall read:

As used in this ordinance, the following terms shall have the meanings indicated:

"Acceptable glass containers" include any clear, amber or green glass container of the type commonly used for beverage and food products. Excluded from this category are glass containers used for non-beverage or non-food products such as pesticides, herbicides, or other chemicals. Light bulbs, plate, safety and mirrored glass are also not considered acceptable glass.

"Acceptable metal containers" include metal containers (cans) of the type commonly used for beverage and food products only, and may include aluminum, tin plate steel, and bi-metal cans. Excluded from this category are cans utilized for the packaging of chemicals or other non-food and non-beverage products.

"Acceptable mixed paper" includes newspapers and associated inserts, periodical magazines, catalogues, card stock paper, office paper, and mailings.

"Acceptable plastic containers" include any polyethylene terephthalate (PET) and high-density polyethylene (HDPE) plastic container of the type commonly used for beverage and food containers only. Excluded from this category are PET or HDPE containers utilized for non-food and non-beverage items.

"Commercial establishment" means and includes a business which constitutes a wholesale, retail or service establishment, such as a restaurant, store, market, theater, hotel, warehouse or office.

"Industrial establishment" means and includes a business engaged in manufacturing, industrial or research and development activities.

"Institutional establishment" means and includes any organization or entity not considered a commercial or industrial establishment.

"Persons residing in residential premises," when used to assign responsibilities for recycling under this ordinance, shall mean and include the occupant of the residential premises in question and, if the occupant is other than the owner, the owner of the premises as well. In these circumstances, the owner and occupant shall be jointly and severally responsible for compliance with this ordinance.

3. Section 172-2 of the Code, concerning the responsibilities of the municipality, is amended to read:

A. The Borough of Pennington, in order to provide for recycling within its borders pursuant to the Recycling Act, hereby adopts the Mercer County Recycling Plan, as revised, as its official municipal recycling program.

B. All municipal contracts for solid waste collection and/or disposal within the Borough shall be consistent with this ordinance and the Mercer County Recycling Plan.

C. The Borough shall provide for a collection system for leaves generated by residential premises within these municipal boundaries. Persons residing in residential premises which generate

leaves shall source-separate leaves from solid waste generated on the premises, and unless they store or recycle the leaves for composting or mulching, place the leaves for collection in the manner provided for herein. Leaves collected by the Borough will be delivered for composting to the Honey Brook Organic Farm on Wargo Road in Hopewell Township, Mercer County, New Jersey, or to such other composting facility as may hereafter be approved by Borough Council upon notice to the Mercer County Improvement Authority.

D. The Borough of Pennington may deliver tires to the existing transfer station, or such other site as may be designated by the Mercer County Improvement Authority, for transfer to a tire recycler.

E. The Borough of Pennington, within thirty (30) days after the adoption of this ordinance and at least once every six (6) months thereafter, shall notify all persons occupying residential, commercial, and institutional premises within these municipal boundaries of recycling opportunities, the source separation requirements of this ordinance and the Mercer County Recycling Plan, and applicable collection schedules. In order to fulfill the notification requirements of this subsection, the Borough may, in its discretion, place an advertisement in a newspaper circulating in the municipality, post a notice on the Borough website and in other public places where public notices are customarily posted, include a notice with other official notifications periodically mailed to residential taxpayers, or use any combination of these notification measures.

F. The Borough shall, pursuant to N.J.S.A. 13:1E-99 .16 (c), within thirty (30) days of the effective date of this ordinance, and at least once every thirty-six (36) months thereafter, conduct a review and make necessary revisions to the Master Plan and development regulations adopted pursuant to P.L. 1975, c. 291 (C. 40:55D-1 et seq), which revisions shall reflect changes in State, County and Borough policies and objectives concerning the collection, disposition and recycling of designated recyclable materials.

G. The revised Master Plan shall include provisions for the collection, disposition and recycling of recyclable materials designated in this ordinance, and for the collection, disposition and recycling of designated recyclable materials within any development proposal for the construction of fifty (50) or more units of single-family residential housing or twenty-five (25) or more units of multi-family residential housing and any commercial or industrial development proposal for the utilization of one thousand (1,000) square feet or more of land.

4. Section 172-3 of the Code, concerning the responsibilities of residents, is amended to read:

A. Persons residing in residential premises in areas designated for recycling collection shall, in the manner prescribed by this ordinance, separate for curbside collection, on designated collection days and such additional days as may be designated by the Mercer County Improvement Authority, those materials designated in the Mercer County Recycling Plan as listed below in subsection B, items one through 6. [In addition,] residents shall be required to recycle all designated materials not collected as part of the Improvement Authority's curbside program in the manner designated by the Borough.

B. All such residents shall recycle, or cause to be recycled, for curbside collection as provided herein, [on days designated by the Mercer County Improvement Authority,] the following categories of recyclables:

1. Acceptable glass containers.
2. Acceptable metal containers.
3. Acceptable plastic containers.
4. Acceptable mixed paper.
5. Corrugated cardboard.
6. Office paper and other paper.
7. Tires.
8. White goods.
9. Leaves.

C. Private contractors serving multifamily complexes within the Borough of Pennington are required to collect for recycling, at a minimum, the same materials as collected through the Improvement Authority residential collection program.

D. All residents shall also recycle, or cause to be recycled, the following additional categories of recyclables:

1. Vehicle batteries.
2. Used motor oil.
3. Ferrous automotive scrap.

Items 1 and 2 will be collected by the Mercer County Improvement Authority at hazardous waste collection sites. These sites and the days for collection at these sites shall be designated by the Authority. Item 2 also may be taken to any automotive service station for recycling. Item 3 will be picked up at curbside by the Borough on days designated by the Borough.

E. Any and all persons found to have violated the provisions of the recycling program of the Borough of Pennington will be assessed warnings, penalties and fines pursuant to Section 172-6 concerning violations and penalties.

F. Recyclable materials designated for curb- or street-side collection by the Mercer County Improvement Authority shall be considered the sole property of the Improvement Authority upon placement of such materials at the curb or street. All such materials shall be considered a conscious contribution by that resident to the County Recycling System for collection by the Improvement Authority or its agent.

G. Multifamily complexes.

1. Materials collected from a multifamily complex by a private contractor shall be the property of the private contractor. On or before January 31 each year, all private contractors serving multifamily complexes shall report to the Improvement Authority in writing, in such format as may be prescribed by the Authority, the markets for individual materials and the tonnages recycled during the previous calendar year. The report shall be accompanied by documentation for those markets and tonnages.
2. At least once each year, the landlord, building owner, property manager and/or private association as appropriate shall inform both current and new residents of the manner, time and place for collection of recyclable materials.

H. Any Borough resident may donate or sell designated recyclable materials to any person, whether operating for profit or not-for-profit, provided that the receiving person may not perform curbside collection under any circumstances unless that person has registered with the Mercer County Improvement Authority as a private recycler.

5. Section 172-4 of the Code, concerning the responsibilities of commercial, industrial and institutional establishments, is amended to read:

A. All commercial, industrial, and institutional establishments located within the Borough of Pennington shall recycle, or cause to be recycled, at a minimum, the following categories of recyclables:

1. Acceptable glass containers.
2. Acceptable metal containers.
3. Acceptable plastic containers.
4. Acceptable mixed paper.
5. Corrugated cardboard.
6. Office paper and other paper.
7. Tires.
8. White goods.
9. Leaves.
10. Vehicle batteries.
11. Used motor oil.
12. Ferrous automotive scrap.

B. All commercial, industrial and institutional establishments located within the Borough of Pennington shall submit a source-separation recycling plan to the Mercer County Improvement Authority to meet the state recycling mandates identifying or incorporating the following:

1. All waste material generated, listed by type.
2. All volumes of these waste categories currently recycled.
3. Any agreement with any solid waste hauler or with a separate

entity for the recycling of source separated designated materials as defined in the Mercer County Recycling Plan.

4. A description of current or proposed recycling efforts for designated materials.

C. The schedule for submittal of these commercial, industrial and institutional recycling plans to the Mercer County Improvement Authority shall be as follows:

1. All commercial, industrial and institutional establishments whose waste is collected by private haulers and not serviced by municipal collection shall prepare the plan within four (4) months of enactment of this ordinance and shall implement same within (2) months following approval of the plan by the Mercer County Improvement Authority.

2. All commercial, industrial and institutional establishments whose waste is collected through a municipal collection system shall be part of the municipal collection system of recyclables.

D. All commercial, industrial and institutional establishments required to submit a recycling plan under this ordinance may, at their option, prepare a joint recycling plan with any other entity or entities designating a common hauler and/or collection point, for common pick-up. However, each such commercial, industrial and institutional establishments shall prepare an individual plan indicating that it is part of the joint plan and shall attach a copy of that joint plan, incorporating it by reference.

E. All recycling plans for commercial, industrial and institutional establishments shall be consistent with the terms, conditions and goals set forth in the Mercer County Recycling Plan and this ordinance. The failure to submit such a plan or to comply with same shall subject the establishment to penalties as set forth in this ordinance.

F. An extension of the time for plan preparation and/or plan implementation of up to ninety 90 days may be requested from the Mercer County Improvement Authority depending upon the size of the establishment. Justification for such a request shall be submitted to the Mercer County Improvement Authority in writing and shall be verified as necessary or justified.

G. Pursuant to the Mercer County Recycling Ordinance, upon failure of a commercial, industrial or institutional establishment to meet the source-separation recycling provisions of this ordinance and/or the source-separation and recycling provisions of the Recycling Act, if not exempted pursuant to subsection H below, the Mercer County Improvement Authority shall provide said recycling service, and all fees and costs for providing said recycling service shall be assessed at rates to be established by the Improvement Authority through the New Jersey Board of Public Utilities and Mercer County's Solid Waste Franchise; and penalties shall be assessed as provided for in this ordinance.

H. Pursuant to N.J.S.A. 13:1E-99.16 of the Recycling Act, the Improvement Authority shall have the right to exempt persons occupying commercial, industrial, and institutional premises within the municipal boundaries from the source-separation requirements of this ordinance if these persons have otherwise provided for the recycling of the recyclable materials designated in the Mercer County Recycling Plan from solid waste generated at those premises. To be eligible for an exemption pursuant to this subsection, a commercial, industrial or institutional sold-waste generator shall annually provide to the Mercer County Improvement Authority written documentation of the total number of tons recycled. Persons occupying commercial, industrial and institutional premises exempted under this subsection shall not be exempted from the deadlines for plan submission set forth in subsection C above.

6. There shall be added to Chapter 172 of the Code a new Section 172-4.1, concerning private recyclers, which shall read:

A. Any person or group of persons wishing to collect recyclable materials shall register with the Mercer County Improvement Authority as a "private recycler" and shall pay such fee as may be required by the Authority for such registration, unless an exemption has been granted by the Mercer County Improvement Authority pursuant to the Mercer County Recycling Ordinance.

B. No private recycler shall conduct recycling collection activities within the Borough of Pennington on designated County collection days.

C. Upon registration each private recycler shall receive an identification/ registration decal from the Mercer County Improvement Authority and shall prominently display same on recycling vehicles when collecting recyclables within the Borough.

D. As an ongoing condition for authorization to collect recyclables in the Borough, the private recycler shall submit to the Mercer County Improvement Authority certified weight tickets for all material sold, to quantify levels for State mandated recycling goals. Said tickets shall be submitted to the Mercer County Improvement Authority no later than 30 days following the date of sale of the subject material.

7. Section 172-5 of the Code, concerning enforcement, is amended to read:

A. The enforcement of the recycling program of the Borough of Pennington, as set forth in this ordinance, shall be provided jointly and severally as appropriate by the Borough and/or the Mercer County Improvement Authority and/or the New Jersey Department of Environmental Protection.

B. The Borough of Pennington hereby designates the Superintendent of Public Works as liaison to the Mercer County Improvement Authority for the enforcement of this ordinance.

8. Section 172-6 of the Borough Code, concerning violations and penalties, is amended to read:

A. The failure of a private recycler to register with the Mercer County Improvement Authority or to display the identification/registration decal on vehicles while collecting recyclables within the Borough of Pennington shall subject that recycler to a fine of \$250.00.

B. Any person or entity conducting recycling collection activities within the Borough on a designated County recycling collection day shall be assessed a penalty of \$250.00.

C. Any resident and/or property owner in the Borough of Pennington who violates the provisions of this ordinance shall be subject to the following procedures and penalties:

1. A Notice of Violation shall be issued describing the violation of the ordinance; and thereafter

2. collection of garbage from that household which contains recyclable materials shall cease; and/or

3. the responsible resident shall be fined up to \$500.00 for each day the garbage is found to contain recyclable material, depending upon the extent and circumstances of the violation, to be assessed by the Mercer County Improvement Authority pursuant to N.J.S.A. 13:1E-9, as hereby authorized.

D. Commercial, industrial and institutional establishments.

1. The failure of a commercial, industrial or institutional establishment to submit a plan or to have an approved plan in place as required by this ordinance shall subject the establishment to a fine of up to \$100.00 per day until such requirements are met.

2. Any commercial, industrial or institutional establishment located within Mercer County that is found to have violated its required recycling plan as submitted to the County pursuant to Section 172-4 of this ordinance shall be subject to the following procedures and penalties:

a. A warning on the first three occasions that said plan is violated; and thereafter

b. A fine up to \$1,000.00 per day for additional violations depending upon the extent and circumstances of the violation and the size of the violating establishment, to be assessed by the Mercer County Improvement Authority pursuant to N.J.S.A. 13:1E-9, as hereby authorized.

9. If any section, paragraph, subdivision, clause or provision of this ordinance shall be adjudged invalid, such adjudication shall apply only to the section, paragraph, subdivision, clause or provision so adjudged and the remainder of this ordinance shall be deemed valid and effective.

10. This ordinance shall constitute adoption and approval of the Mercer County Recycling Plan as set forth in the amendment to the Mercer County Solid Waste Management Plan.

11. This ordinance shall become effective upon adoption and publication thereof in accordance with law.

Council Member Lawver made a motion to introduce Ordinance 2008-8, second by Council Member Heinzel. Mr. Bliss made some modifications to Section 4 of the ordinance and upon a roll call vote all members present voted in favor of introduction of the ordinance.

Mr. Tucker 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 Griffiths with all members present voting in favor.

Mr. Tucker read Ordinance 2008-13 by title.

**Borough of Pennington
Ordinance 2008 - 13**

ORDINANCE DETERMINING POSITIONS ELIGIBLE FOR THE DEFINED CONTRIBUTION RETIREMENT PROGRAM, AS REQUIRED BY CHAPTER 92 OF THE LAWS OF 2007

WHEREAS, the State Legislature has adopted Chapter 92 of the Laws of 2007 (N.J.S. 43:15C-1, et seq.) to create the Defined Contribution Retirement Program ("DCRP") to provide retirement benefits to various county and municipal officials; and

WHEREAS, N.J.S. 43:15C-2 requires the governing body of each municipality to adopt an ordinance to identify the positions in that municipality which shall be eligible for participation and shall be required to participate in the DCRP pursuant to the criteria set forth in that statute and related guidelines issued by the Local Finance Board in the Department of Community Affairs;

WHEREAS, N.J.S. 43:15C-2 requires to participate in the DCRP any person who commences service on or after the effective date of the statute (July 1, 2007) in any employment, office or position or in any agency, board, commission, authority or instrumentality of the municipality pursuant to an appointment by an elected official or elected governing body that requires the specific consent or approval of the elected governing body of the municipality that is substantially similar in nature to the advice and consent of the Senate for appointments by the Governor of the State;

WHEREAS, explicitly excluded from the coverage of the statute, among others, are persons otherwise eligible for membership in the Police and Firemen's Retirement System, persons employed or appointed in the normal course pursuant to routine employment and appointment procedures, persons who hold a professional license or certificate to perform and are performing as a certified health officer, tax assessor, tax collector, municipal planner, chief financial officer, registered municipal clerk, construction code official, licensed uniform subcode inspector, qualified purchasing agent, or certified public works manager, persons with a base salary of less than \$1,500. per year, and persons receiving a benefit as a retiree from any other State or locally-administered pension fund or retirement system established in New Jersey;

WHEREAS, Borough Council of the Borough of Pennington has considered the statutory criteria and the guidelines issued by the Local Finance Board and same are the bases for its determinations herein:

NOW, THEREFORE, BE IT ORDAINED, by the Borough Council of the Borough of Pennington, that:

1. Pursuant to the criteria prescribed by law, the following positions are deemed to be eligible for and shall participate in the Defined Contribution Retirement Program:

- a. Borough Administrator;
- b. Municipal Prosecutor;
- c. Municipal Court Judge;
- d. Municipal Court Administrator.

2. Pursuant to the prescribed criteria, individuals serving in the following Borough positions are exempt from membership in the Defined Contribution Retirement Program:

- a. Tax Collector;

- b. Chief Financial Officer;
- c. Construction Code Official;
- d. Tax Assessor;
- e. Municipal Clerk;
- f. Uniform Subcode Inspectors;
- g. Superintendent of Public Works.

3. This ordinance shall be implemented, construed and subject to the aforesaid Chapter 92 of the Laws of 2007 (N.J.S. 43:15C-1, et seq.) as may be amended from time to time, and any regulations or guidelines issued by the Local Finance Board in the Department of Community Affairs or the Division of Pensions and Benefits in the Department of Treasury.

4. Should any part of this ordinance be held to be invalid by any court of competent jurisdiction, such invalidity shall only affect the part or parts of the ordinance held to be invalid and all other parts shall remain in effect.

5. A copy of this ordinance shall be filed with the Director of the Division of Pensions and Benefits of the New Jersey Department of Treasury.

6. This ordinance shall take effect upon its passage and publication as required by law.

Council Member Lawver made a motion to introduce Ordinance 2008-13, second by Council Member Heinzl. Mr. Bliss gave a brief overview of the ordinance and upon a roll call vote, all members present voted in favor.

Mr. Tucker read Ordinance 2008.14 by title.

**BOROUGH OF PENNINGTON
ORDINANCE 2008-14**

**ORDINANCE CONCERNING REQUIREMENTS FOR COLLECTION OF SOLID WASTE AND
AMENDING ARTICLE II OF CHAPTER 172 OF THE CODE OF THE BOROUGH OF
PENNINGTON**

WHEREAS, the Code of the Borough of Pennington pertaining to the collection of solid waste presently limits basic trash service to two approved trash containers from each property per collection day, with trash in excess of two approved containers having to be treated as bulk trash for which one or more bulk-trash collection stickers must be purchased from the Borough for each additional container based on weight;

WHEREAS, Borough Council seeks to amend these provisions of the Code to provide that property owners may supplement basic trash service by payment of an annual license fee for additional containers;

WHEREAS, Borough Code requirements pertaining to trash collection service provide that a person owning a residential property within both the Borough and Hopewell Township on which more than 41 percent of the dwelling on the property is located in Hopewell Township does not qualify for solid waste disposal by the Borough unless the owner requests the service and pays a fee equal to the difference between the Borough's annual cost of collection and the amount of real property taxes paid to the Borough by the property owner;

WHEREAS, Borough Council seeks to revise the formula for the fees charged to adjacent property owners for solid waste disposal service;

WHEREAS, Borough Council further seeks to amend Article II of Chapter 172 of the Code by deleting redundant references which overlap Article I of Chapter 172, pertaining to recycling;

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

1. Section 172-10 of the Code, concerning basic trash service, is hereby amended to read:

A. The Borough will collect, on days to be designated by the Public Works Department, nonrecyclable trash which has been placed at the curb in one or more [an] approved trash containers.

B. The basic trash service shall include the curbside collection [by the Borough] of up to two approved trash containers [placed] on [a] collection days from every [each] property [as set forth] on the Borough's tax records for which an individual tax bill is issued by the Borough as well as from every adjacent property owner which has requested the service and paid the required fee as

set forth in Section 172-13 herein. Property owners and adjacent property owners may supplement this basic service by the purchase of an annual license from the Borough authorizing use of one or more additional approved trash containers. The license shall be effective for one year beginning on July 1 and ending on June 30 of the following calendar year, regardless of the date of purchase. The fee for the license per container shall be determined by the Department of Public Works on an annual basis and approved by Borough Council as part of its budget process.

C. Approved trash containers shall be placed at the curb for collection no later than 7:00 a.m. on the collection day and removed from the curb no later than 9:00 p.m. on the day of collection. Approved trash containers shall not be placed at the curb prior to 5:00 p.m. on the day prior to the designated collection day.

D. If a designated collection day falls on a holiday recognized by the Borough, then the collection will be done on the next scheduled collection day.

[E. Trash which includes recyclable material will not be collected by the Borough.]

2. Section 172-13 of the Code, concerning adjacent property owners, is hereby amended to read:

A. The Borough shall, if requested by an adjacent property owner, provide the adjacent property owner with solid waste disposal under the provisions of this Section 172-13.

B. The adjacent property owner shall pay the Borough for the collection of his/her solid waste. The fee for said collection shall be [the difference between] the yearly cost per dwelling [to the Borough] for disposal of single-family dwelling solid waste as determined by the Public Works Department less an amount equal to the annual budget of the Borough devoted to trash collection services divided by the total operating budget of the Borough times the amount of yearly real property taxes paid to the Borough by the adjacent property owner.

C. The Borough shall calculate the fee and shall bill the adjacent property owner at the same time as it bills customers for water and sewer charges. The payment shall be due from the adjacent property owner within 30 days of the billing. If the bill to the adjacent property owner is not paid within 90 days of the date billed, the Borough may suspend the solid waste collection until the fee is paid.

3. Section 172-14 of the Code, concerning participation in mandatory recycling, is hereby amended to read:

[A.] All property owners and participating adjacent property owners shall [separate aluminum and bimetal cans, glass, newspapers, cardboard and plastic, plants, trees and branches, leaves and other yard waste, exclusive of grass clippings, from all other solid waste and shall] participate in the recycling program adopted [from time to time by the Borough] in Article I of this chapter.

[B. It shall be a violation of this article for any person unauthorized by the Borough to collect, pick up or cause to be collected or picked up any designated mandatory recycling material. Any collection of recycling material in violation of this article shall constitute a separate offense.]

4. Section 172-17 of the Code, concerning violations and penalties, shall be amended to read as follows:

Any person who violates or neglects to comply with any provisions of this article or any regulation promulgated pursuant thereto shall receive at least one warning before an enforcement action is brought but thereafter shall [,upon conviction thereof,] be subject to a fine not to exceed \$1,000, imprisonment for a period not to exceed 90 days or a period of community service not to exceed 90 days, or any combination thereof.

5. If any section, paragraph, subdivision, clause or provision of this ordinance shall be adjudged invalid, such adjudication shall apply only to the section, paragraph, subdivision, clause or provision so adjudged and the remainder of this ordinance shall be deemed valid and effective.

6. This ordinance shall become effective upon adoption and publication thereof as provided by law.

Council Member Lawver made a motion to introduce Ordinance 2008-14, second by Council Member Griffiths. Mr. Lawver gave an overview of the ordinance and after a lengthy discussion Council decided to hold off on introduction of the ordinance as there are some issues that need to be resolved. Mr. Lawver and Mr. Griffiths withdrew their motion and second.

Ordinances for Public Hearing and Adoption

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.

(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 Lawver made a motion to open the Public Hearing on Ordinance 2008-11, second by Council Member Heinzl. There were no comments from the public. Council Member Lawver made a motion to close the Public Hearing on Ordinance 2008-11, second by Council Member Heinzl with all members present voting in favor. Council Member Lawver made a motion to adopt Ordinance 2008-11, second by Council Member Heinzl with all members present voting in favor.

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:

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 Heinzl made a motion to open the Public Hearing on Ordinance 2008-12, second by Council Member Ogren. There were no comments from the public. Council Member Heinzl made a motion to close the Public Hearing on Ordinance 2008-12, second by Council Member Ogren with all members present voting in favor. Council Member Heinzl made a motion to adopt Ordinance 2008-12, second by Council Member Ogren with all members present voting in favor.

Committee Reports

Planning/Zoning and Library – Ms. Heinzl reported that the Library will be hosting two Puppet Shows on December 5th for the Holiday Walk. The times for the puppet shows are 7 and 7:45 pm., hot chocolate will be provided by the Friends of the Library.

Ms. Heinzl reported that the Planning Board met on November 12th. Ms. Heinzl stated that an application submitted by Gary Mertz for a small house on the vacant lot at 228 S. Main Street was approved. Ms. Heinzl stated that the house will be a three story home with an unfinished attic as the top floor. Ms. Heinzl stated that there was some discussion as to whether this could potentially be a COAH unit. Ms. Heinzl stated that another application for a use variance at 8 North Main Street was presented. Ms. Heinzl stated that this is the site of the old barber shop which has been on the market for a while. Ms. Heinzl stated that the potential buyer has made application for a use variance to modify and use the property as an office. Ms. Heinzl stated that there were quite a few people from the public who appeared and testified mostly in opposition. Ms. Heinzl stated that further discussion of the application will continue at the December 10th meeting.

Ms. Heinzl reported that the Environmental Commission met in November. Ms. Heinzl stated that the Environmental Commission recommended that the report to be submitted by the Hydrogeologist be peer reviewed by another hydrogeologist. Ms. Heinzl stated that they would also like the Borough to continue to consider alternative water sources and recommended that the water committee make a report to both the Environmental Commission and to Borough Council, possibly in January. Ms. Heinzl stated that they also talked about sustainability and green issues and the idea for a solar array for the Borough.

Ms. Heinzl stated that the Environmental Commission is starting a new program where they will be going out into the community and offering advice and education on how to save energy and money by doing simple things such as reducing paper etc.

Ms. Heinzl stated that the Environmental Commission will do a recycling presentation on January 15th, 2009 for members of the public. Ms. Heinzl stated that Tom Adelman has invited representatives from the Mercer County Improvement Authority to make presentations on recycling issues and there will be games for children. Ms. Heinzl stated that on January 26th the Environmental Commission will be meeting with the Hopewell Township Environmental Commission to talk about water issues.

Public Works/Economic Development – Mr. Lawver reported that the Economic Development Commission met in November and had a long discussion about the use variance for 8 North Main Street. Mr. Lawver stated that surprisingly in the end they voted to send a memo encouraging the Planning Board to resolve the use variance in favor of Black Dog Media. Mr. Lawver stated that the argument in favor was that the Economic Development Commission should be pro business and should support all new businesses trying to come into town. Mr. Lawver stated that though he agrees with that, he does not agree with the outcome of the decision. Mr. Lawver stated that the people who were most strongly in opposition did not show up for the meeting. Mr. Lawver stated that the next meeting will be next week to select a recipient of the Business Person of the Year award to be announced and awarded in January 2009.

Mr. Lawver stated that the Public Works Committee did not meet, but will be meeting within the next two weeks.

Mr. Lawver gave the following water and trash report.

PENNINGTON BOROUGH PUBLIC WORKS

TO: Joseph Lawver, Chairman
Public Works Committee

FROM: Jeff Wittkop, Superintendent

DATE: December 1, 2008

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

WATER

Water pumped for the month of November 2008 - 7,706,000
Daily- 256,800

Water pumped for the month of November 2007- 8,092,000
Daily- 269,700

For the month of November 2008 we averaged 13,000 gallons less per day than 2007.

TRASH

64.57 tons of household trash for the month of November 2008 vs. 90.88 tons in November 2007

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. Leaves will be picked up until January 1, 2009.

Mr. Lawver commended the Public Works employees for a great job in staying ahead of the leaves.

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

Community Services – Ms. Chandler stated that the Parks and Recreation Committee met to prepare for the final event of the 2008 season which is the annual Carol Sing on December 14th in connection with the Womanspace, Communities of Light event.

Finance – Mr. Griffiths stated that the budget process for 2009 has started and again the process is uncertain and the Borough will hope for the best, but prepare for the worst. Mr. Griffiths stated that a big concern for next year is a decrease in income due to reductions in property valuations. Mr. Griffiths stated that each department has been asked to identify potential cuts and which cuts would impact services.

Public Safety – Mr. Tucker reported that as reported in the newspaper, an armed robbery occurred at The Front Porch on South Main Street. Mr. Tucker stated that the investigation is ongoing.

Mr. Tucker stated that the Department is pleased to have Officer Daryl Burroughs on board which brings the Department back up to strength at six police officers.

Mr. Tucker reported that the Holiday Walk Committee continues to meet and make preparations for their annual Holiday Walk to be held on December 5th, between the hours of 6:00 and 9:30 pm. Mr. Tucker stated that Main Street between Laning Avenue and the Borough Hall driveway and Delaware Avenue between Burd Street and Eglantine Avenue will be closed during the event.

Mr. Tucker reported that Election Day occurred on November 4th with no reported incidents.

Mr. Tucker reported that on November 15th, Mr. Meytrott represented the Police Department at the Pennington First Aid Squad EMT graduation ceremony where approximately 40 persons successfully completed the course.

Mr. Tucker reported the following statistics for the month of November:

136 Motor Vehicle Stops
73 Summonses Issued
6 Parking Summonses Issued
74 Warnings
35 Operation reports
3 Adult Male Enforcement Arrests

New Business

**Borough of Pennington
Resolution #2008-12.1**

RESOLUTION AUTHORIZING REFUNDS

BE IT RESOLVED, that a refund be made to Kennen Gross, 122 Voorhees Avenue, for a Planning Board Escrow balance for Block 706, Lot 12 in the amount of \$169.25. (P07-001)

Record of Council Vote on Passage

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

Council Member Griffiths made a motion to approve Resolution 2008-12.1, second by Council Member Lawver with all members present voting in favor.

**Borough of Pennington
Resolution #2008 – 12.2**

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 \$ 879,025.68 from the following accounts:

Current	\$ 812,368.33
W/S Operating	\$ 40,565.47
Developers Escrow	\$ 8,875.91
Grant Fund	\$ 11,215.97
COAH Trust Fund	\$ 6,000.00
TOTAL	\$ 879,025.68

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 2008-12.2, second by Council Member Griffiths. Discussion took place with regard to specific bills on the bill list. Upon a roll call vote all members present voted in favor.

**Borough of Pennington
Resolution #2008-12.3**

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>
Police – Other Expense	\$ 4,000.00	
Court – Other Expense	\$ 6,000.00	
Finance – Salaries	\$ 3,000.00	
Tax Collection – Salaries		\$ 1,000.00
Mayor and Council – Other Expense		\$ 1,000.00
Municipal Clerk – Other Expense		\$ 600.00
Shade Tree – Other Expense		\$ 6,000.00
Celebration of Public Events – Other Expense		\$ 400.00
Electricity – Other Expense		\$ 4,000.00
Total Current Fund	\$ 13,000.00	\$ 13,000.00

Record of Council Vote on Passage

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

Council Member Griffiths made a motion to approve Resolution 2008-12.3, second by Council Member Lawver with all members present voting in favor.

**BOROUGH OF PENNINGTON
Resolution 2008- 12.4**

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

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

WHEREAS the Borough Council of the Borough of Pennington 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 in Mercer County filed the adopted "Housing Plan Element And Fair Share Plan" with COAH on May 11, 2007; and

WHEREAS, 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) permits municipalities that are under the jurisdiction of COAH or of a court of competent jurisdiction and that have a COAH-approved spending plan to impose and retain fees on residential and non-residential development; and

WHEREAS, subject 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), N.J.A.C. 5:97-8.3 permits a municipality to prepare and submit a development fee ordinance for review and approval by the Council on Affordable Housing (COAH) that is accompanied by and includes the following:

- A description of the types of developments that will be subject to fees per N.J.A.C. 5:97-8.3(c) and (d);
- A description of the types of developments that are exempted per N.J.A.C. 5:97-8.3(e);
- A description of the amount and nature of the fees imposed per N.J.A.C. 5:97-8.3(c) and (d);
- A description of collection procedures per N.J.A.C. 5:97-8.3(f);
- A description of development fee appeals per N.J.A.C. 5:97-8.3(g); and
- A provision authorizing COAH to direct trust funds in case of non-compliance per N.J.A.C. 5:97-8.3(h).

WHEREAS, the Borough of Pennington has prepared a development fee ordinance that establishes standards for the collection, maintenance, and expenditure of development fees consistent with COAH's regulations at N.J.A.C. 5:97-8 and in accordance with P.L.2008, c.46, Sections 8 (C. 52:27D-329.2) and 32-38 (C. 40:55D-8.1 through 8.7).

NOW THEREFORE BE IT RESOLVED that the Borough Council of the Borough of Pennington in the County of Mercer and the State of New Jersey requests that COAH review and approve Borough of Pennington's "Affordable Housing Development Fees" Ordinance, as attached herewith.

Record of Council Vote on Passage

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

Council Member Heinzel made a motion to approve Resolution 2008-12.4, second by Council Member Ogren with all members present voting in favor.

**Borough of Pennington
Resolution #2008 – 12.5**

RESOLUTION AUTHORIZING CHANGE ORDER NO. 1 UNDER THE BROOKSIDE AVENUE RECONSTRUCTION CONTRACT WITH DESANTIS CONSTRUCTION, INC.

WHEREAS, the Borough of Pennington has entered into a contract with DeSantis Construction, Inc. for the project known as the Brookside Avenue Reconstruction Project (VNHA #36713-500-52)

WHEREAS, the Borough Engineer, Van Note Harvey Associates, P.C. has recommended a change order, designated change order no. 1, under this contract; and

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

WHEREAS, the proposed change order would increase the contract price by \$4,843.32 to adjust the contract quantities to match the as-built quantities; would decrease the contract price by \$18,033.38 to further adjust contract quantities to match as-built quantities; and create a supplemental payment of \$2,650.00 for necessary work not part of the original contract, the net change in contract price being a decrease of \$10,540.06; and

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

NOW, THEREFORE, BE IT RESOLVED, by the Borough Council of the Borough of Pennington, that the aforesaid change order no. 1, producing a net decrease in contract price in the amount of \$10,540.06 under the contract for the Brookside Avenue Reconstruction Project, is hereby approved.

Record of Council Vote on Passage

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

Council Member Lawver made a motion to approve Resolution 2008-12.5, second by Council Member Heinzel with all members present voting in favor.

**Borough of Pennington
Resolution #2008 – 12.6**

**RESOLUTION AUTHORIZING PAYMENT REQUEST NO. 3
TO DESANTIS CONSTRUCTION, INC. FOR WORK COMPLETED
ON THE BROOKSIDE AVENUE RECONSTRUCTION PROJECT**

Council Member Lawver made a motion to approve Resolution 2008-12.6, second by Council Member Heinzel. Mr. Lawver pointed out an error on the backup paperwork and after a brief discussion the motion and second were both withdrawn and the Resolution was tabled to the December 29th meeting.

**Borough of Pennington
Resolution #2008 – 12.7**

**RESOLUTION AUTHORIZING CHANGE ORDER NO. 1
UNDER CONTRACT WITH TOP LINE CONSTRUCTION CORP. FOR
HALE STREET RECONSTRUCTION - PHASE II**

WHEREAS, the Borough of Pennington has entered into a contract with Top Line Construction Corp. for the project known as Hale Street Reconstruction - Phase II (VNHA #38029-500-52);

WHEREAS, the Borough Engineer, Van Note Harvey Associates, P.C. has recommended a change order, designated Change Order no. 1 under this contract; and

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

WHEREAS, the proposed change order would increase the contract price by \$10,159.98 to adjust the contract quantities to match the as-built quantities, and would decrease the contract price by \$9,307.82 to further adjust contract quantities to match as-built quantities, producing a net increase in contract price in the amount of \$852.16;

WHEREAS, funds are available in Account No. G-02-44-933-255; and

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

NOW, THEREFORE BE IT RESOLVED, by the Borough Council of the Borough of Pennington, that the aforesaid Change Order No. 1, producing a net increase of contract price in the amount of \$852.16 under the contract for Hale Street Reconstruction - Phase II, is hereby approved.

Record of Council Vote on Passage

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

Council Member Lawver made a motion to approve Resolution 2008-12.7, second by Council Member Heinzel with all members present voting in favor.

**Borough of Pennington
Resolution #2008 – 12.8**

**RESOLUTION AUTHORIZING PAYMENT REQUEST NO. 2
TO TOP LINE CONSTRUCTION CORP. FOR WORK COMPLETED
ON HALE STREET RECONSTRUCTION - PHASE II**

WHEREAS, Top Line Construction Corp. has completed certain work pursuant to its contract for the project known as Hale Street Reconstruction - Phase II (VNHA #38029-500-52); and

WHEREAS, Van Note Harvey Associates, P.C. has reviewed and inspected the improvements that have been constructed and has approved payment for same pursuant to the Contractor's Request for Payment No. 2 (\$10,286.97) less two percent (2%) retainage (\$205.74), the net due therefore amounting to \$10,081.23; 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 Corp. in the amount of \$10,081.23, pursuant to payment request No. 2, is hereby authorized.

Record of Council Vote on Passage

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

Council Member Lawver made a motion to approve Resolution 2008-12.8, second by Council Member Ogren with all members present voting in favor.

**BOROUGH OF PENNINGTON
Resolution 2008-12. 9**

**RESOLUTION APPOINTING ELIZABETH STERLING BOROUGH CLERK AND REGISTRAR
OF THE BOROUGH OF PENNINGTON**

WHEREAS, Elizabeth Sterling has served with distinction as Acting Borough Clerk from September 2004 to December 2005 and as Borough Clerk since December 2005;

WHEREAS, Elizabeth Sterling's three-year term as Borough Clerk is due to expire on December 26, 2008;

WHEREAS, the Mayor has recommended the reappointment of Elizabeth Sterling as Borough Clerk for a term of three years commencing December 27, 2008;

WHEREAS, in municipalities with a population of less than 5,000, as in the case of Pennington, state statutes provide that the Municipal Clerk shall be appointed as local registrar and shall serve as registrar for a three-year term concurrent with her term as Borough Clerk;

WHEREAS, while serving as Acting Borough Clerk and Borough Clerk, Elizabeth Sterling has also served as Registrar of the Borough and the Borough now wishes to appoint her as Registrar for a three-year term to be concurrent with her term as Borough Clerk, without additional compensation;

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

1. Elizabeth Sterling is hereby appointed Borough Clerk of the Borough of Pennington for a term of three (3) years effective December 27, 2008, to serve at her current salary subject to such increases as are hereafter provided for by law;
2. Elizabeth Sterling is hereby appointed Registrar of the Borough of Pennington for a term of three (3) years effective also on December 27, 2008, to perform the duties of this position without additional compensation.

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 2008-12.9, second by Council Member Heinzel. Mr. Bliss stated that he would like to note that with approval of this Resolution, Ms. Sterling will

be granted tenure as the Borough Clerk. Council had favorable comments regarding the appointment and upon a roll call vote, all members present voted in favor.

**Borough of Pennington
Resolution 2008-12.10**

**RESOLUTION TO AMEND THE 2008 ADOPTED BUDGET (CHAPTER 159)
SPECIAL ITEMS OF REVENUE AND APPROPRIATION FOR
BODY ARMOR REPLACEMENT FUND**

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 \$ 596.58 from the Body Armor Replacement Fund 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 \$ 596.58, which is now available as revenue from:

Body Armor Grant, and

BE IT FURTHER RESOLVED that a like sum of \$ 596.58 be and the same is hereby appropriated under the caption of:

Body Armor 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	X			
Griffiths	S				Ogren	X			
Heinzel	M				Tucker	X			

Council Member Heinzel made a motion to approve Resolution 2008-12.10, second by Council Member Griffiths with all members present voting in favor.

Council Discussion

Contract with Community Grants and Planning – Accessory Apartment Program – Mr. Bliss stated that as part of the Borough's Affordable Housing Program, we must certify to COAH that we have a professional entity supervising the accessory apartment program. Mr. Bliss outlined what the program entails and explained that the Borough has had a contract in the past with Housing Services Inc., (HSI) which is now Community Grants and Planning. Mr. Bliss stated that the proposed contract that was submitted includes amounts that are somewhat larger than what they were in the past. Mr. Bliss stated that the prior contract of \$15,000 was not used and secondly there are now 10 units as opposed to 6 that would be subject to the program. Mr. Bliss stated that actually having the units constructed and occupied is a much higher priority on the part of COAH than it has been before. Mr. Bliss stated that the contract was originally proposed as a two year contract and because by law professional services contracts can not exceed one year, the proposed term was cut to a year, but the amounts of the contract did not change. Mr. Bliss explained that the reason this is a discussion item is that there has to be a substantive discussion with the consultant to nail down what the fees should be and what services will be provided that have not been provided before and also whether the COAH cap on administrative fees will be honored in the process. Mr. Bliss stated that what Council needs to discuss is how to approach this. After some discussion of the numbers it was determined that Council did not have the correct copy of the contract from Community Grants and Planning. Ms. Sterling pointed out that Council also needs to determine where the funds will be coming from as after discussion with Cindy Coppola it does not appear that we can pay for this contract out of the COAH trust fund. Following a lengthy discussion, Ms Sterling indicated that he would get copies of the correct contract for Council Members and Mr. Ogren offered to contact Community Grants and Planning to discuss the contract. Mr. Griffiths stated that he will draft a list of questions for Cindy Coppola.

Administrator's Report

2009 Municipal Aid Award – Lower King George Road – Mr. Dunworth announced that the Borough has received an award from the DOT in the amount of \$352,000 for reconstruction of Lower King George Road.

Mr. Dunworth stated that a copy of the plans for Burd Street is available in the Borough office for review.

Comp Time Request – Mr. Dunworth announced that Mr. Wittkop has submitted his comp time summary requesting payment for 69 hours at his hourly rate of \$44.14 for a total payment of \$3,045.96. Council Member Lawver made a motion to approve payment to Mr. Wittkop, second by Council Member Griffiths with all members present voting in favor.

Mr. Dunworth announced that there will be garbage collection and the Borough will be open for business on Friday, December 26th, 2008.

Mr. Dunworth stated that the Mid Jersey Joint Insurance Fund has announced the schedule of seminars for which the Borough will receive premium deductions for elected officials that attend. Mr. Dunworth stated that unfortunately there are no scheduled seminars for this area. Mr. Dunworth stated that he has a call in to see if we can hold a seminar here at Borough Hall and he will advise Council as to if and when that it is scheduled.

Professional Reports

Ms. Sterling thanked Council for her reappointment. Ms. Sterling also stated that if anyone has questions with regard to Third Round report that was handed out, please contact Cindy Coppola prior to the December 10th meeting.

Public Comment Period

There were no comments from the public.

As there was no need for a closed session, the minutes from the May 12, 2008 and November 3, 2008 closed sessions will be carried until the next meeting.

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

Respectfully submitted,

Elizabeth Sterling
Borough Clerk