

**Pennington Borough Council
Regular Meeting – December 29, 2008**

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

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

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

Open to the Public – Agenda Items Only

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

There were no comments from the public.

Approval of Minutes

Council Member Tucker made a motion to approve the minutes of the December 1, 2008 Regular Meeting, Second by Council Member Ogren with all members present voting in favor.

Council Member Tucker made a motion to approve the minutes of the December 10, 2008 Special Meeting, second by Council Member Chandler with all members present voting in favor.

Mayor's Business

Mayor Persichilli wished every one Happy Holidays.

Ordinances for Public Hearing and Adoption

Mayor Persichilli 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 Tucker made a motion to open the Public Hearing on Ordinance 2008-8, second by Council Member Ogren. There were no comments from the public. Council Member Tucker made a motion to close the Public Hearing, second by Council Member Chandler with all members present voting in favor. Council Member Tucker made a motion to adopt Ordinance 2008-8, second by Council Member Ogren with all members present voting in favor.

Mayor Persichilli read Ordinance 2008-10 by title.

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

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

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

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

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

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

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

WHEREAS on December 10, 2008, pursuant to N.J.A.C. 5:97-1 et seq., Borough Council adopted a revised Housing Plan Element and Fair Share Plan and revised resolution endorsing the revised Housing Plan Element and Fair Share Plan and petitioning COAH for Third Round Substantive Certification;

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 Tucker made a motion to open the Public Hearing on Ordinance 2008-10, second by Council Member Heinzl. There were no comments from the public. Mr. Bliss made non-substantive additional recital reflecting the fact that on December 10, 2008, Council adopted a revised Housing Plan Element and Fair Share Plan. Council Member Tucker made a motion to close the public hearing, second by Council Member Chandler with all members present voting in favor. Council Member Tucker made a motion to adopt Ordinance 2008-10, second by Council Member Chandler with all members present voting in favor.

Mayor Persichilli 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 Tucker made a motion to open the Public Hearing on Ordinance 2008-13, second by Council Member Heinzl. There were no comments from the public. Council Member Tucker made a motion to close the public hearing on Ordinance 2008-13, second by Council Member Heinzl with all members present voting in favor. Council Member Tucker made a motion to adopt Ordinance 2008-13, second by Council Member Chandler with all members present voting in favor.

New Business

Borough of Pennington Resolution #2008 – 12.12

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 \$ 273,469.73 from the following accounts:

Current	\$ 220,986.77
W/S Operating	\$ 28,273.84
Developers Escrow	\$ 2,710.75
Grant Fund	\$ 10,906.01
General Capital	\$ 6,027.56
Water/Sewer Capital	\$ 2,860.77
Animal Control Fund	\$ 970.38
Recreation Trust	\$ 425.96
Trust Other	\$ 307.69
TOTAL	\$ 273,469.73

Record of Council Vote on Passage

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

Council Member Tucker made a motion to approve Resolution 2008-12.12, second by Council Member Griffiths. Mrs. Sterling stated that Council received a revised bill list prior to the meeting. Mrs. Sterling reviewed for Council the bills that were added to the original list. Council Members raised questions on specific bills on the bill list. Upon a roll call vote, all members present voted in favor of approved the bills for payment.

**Borough of Pennington
Resolution #2008-12.13**

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:

Appropriations:	To:	From:
I/L - Municipal Alliance	\$ 50.00	
Finance – Other Expense		\$ 50.00
Municipal Clerk - Salaries	\$ 1,010.00	
Municipal Clerk – Other Expense		\$ 1,010.00
Legal Services	\$10,000.00	
Streets – Salaries		\$ 5,000.00
Trash – Salaries		\$ 2,000.00
Streets – Other Expense		\$ 3,000.00
Total Current Fund	\$ 11,060.00	\$ 11,060.00

Record of Council Vote on Passage

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

Council Member Chandler made a motion to approve Resolution 2008-12.13, second by Council Member Ogren with all members present voting in favor.

**Borough of Pennington
Resolution #2008 – 12.14**

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

WHEREAS, DeSantis Construction, Inc. has completed certain work pursuant to its contract for the Brookside Avenue Reconstruction Project (VNHA #36713-500-52); 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. 3 (\$36,765.67) less two percent (2%) retainage (\$735.31), the net due therefore amounting to \$36,030.36; and

WHEREAS, this is a partial payment under the contract;

WHEREAS, funds are available in account #G-02-44-931-000-250; and

NOW, THEREFORE, BE IT RESOLVED, by the Borough Council of the Borough of Pennington, that payment to DeSantis Construction, Inc. in the amount of \$36,030.36, pursuant to payment request No. 3, is hereby authorized.

Record of Council Vote on Passage

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

Council Member Chandler made a motion to approve Resolution 2008-12.14, second by Council Member Tucker with all members present voting in favor.

**Borough of Pennington
Resolution #2008 – 12.15**

RESOLUTION AUTHORIZING IMPLEMENTATION OF A SECTION 125 PREMIUM-ONLY PLAN FOR THE PRE-TAX DEDUCTION OF EMPLOYEE PREMIUM CONTRIBUTIONS AT NO COST TO THE BOROUGH OF PENNINGTON

WHEREAS, the Borough of Pennington has employees rendering valuable services; and

WHEREAS, providing an opportunity for employees to have employer sponsored benefit plan premium contributions, as well as, voluntary plan premiums, deducted pre-tax through payroll thereby saving immediate Federal and FICA taxes.

WHEREAS, Colonial Supplemental Insurance provides a free Section 125 Premium Only Plan through their Strategic Alliance Partner AmeriFlex, LLC, a Third Party Administrator, at no employer cost as a value added benefit to offering Colonial Supplemental Insurance benefits and services to employees on a voluntary basis at no employer cost.

WHEREAS, providing an opportunity for the employer to obtain said Section 125 Premium Only Plan documents consisting of 1) Section 125 Flexible Benefits Plan Document, 2) Adoption Resolution, 3) SPD (Summary Plan Description) and 4) Employee Enrollment Election Forms at no cost to the Borough of Pennington.

WHEREAS, providing an opportunity for the Borough of Pennington to save matching FICA payroll taxes on all premiums and premium contributions which are payroll deducted on a pre-tax basis through the Section 125 Premium Only Plan thereby saving the Borough of Pennington 7.65% of all pre-taxed premiums and premium contributions,

NOW, THEREFORE, BE IT RESOLVED, that the Borough of Pennington hereby recognizes and authorizes Colonial Supplemental Insurance to implement a Section 125 Premium Only Plan through AmeriFlex, LLC for its employees.

BE IT FURTHER RESOLVED, that the Borough of Pennington hereby recognizes and authorizes Colonial Supplemental Insurance representatives to enroll employees who elect to be enrolled in its pre-tax premium plan by means of Colonial's electronic enrollment systems with electronic signatures, the results of which will be proved back to the municipality for its records and payroll deduction implementation.

BE IT FURTHER RESOLVED, that the Borough of Pennington, hereby recognizes the need for enrollment meetings and individual meetings for all benefit eligible employees, which may be conducted at the worksite during normal working hours;

BE IT FURTHER RESOLVED, that the Section 125 Enrollment period will run concurrent with the Open Enrollment period for Colonial Supplemental Insurance.

BE IT FURTHER RESOLVED, that such payroll deductions for participation in Section 125 pre-tax premiums shall take effect with the first payroll after December 29, 2008.

BE IT FURTHER RESOLVED, that a copy of this Resolution be forwarded to the following:

Colonial Supplemental Insurance
District Sales Office Manager
75 Lane Road – 4th Floor
Fairfield, NJ 07004-1000

Record of Council Vote on Passage

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

Council Member Heinzel made a motion to approve Resolution 2008-12.15, second by Council Member Chandler. Mr. Bliss briefly explained that some employees have elected to purchase disability insurance and for those employees there is an option to have the deduction set up as pre-tax deductions. Upon a roll call vote, all members present voted in favor.

**Borough of Pennington
Resolution #2008 – 12.16**

RESOLUTION TO SATISFY COAH CHECKLIST ITEM N.J.A.C. 5:96-3.2

WHEREAS, the Pennington Borough Council pursuant to *N.J.A.C. 5:96-2.1* has endorsed a Housing Element and Fair Share Plan setting forth the Borough's commitment to Affordable Housing 2008 - 2018; and

WHEREAS, pursuant to *N.J.A.C. 5:96-3.1*, the Borough of Pennington is also petitioning the New Jersey Council on Affordable Housing ("COAH") for Substantive Certification of its Affordable Housing Plan; and

WHEREAS, the Borough's Housing Element and Fair Share Plan contains municipal sponsored affordable housing developments pursuant to *N.J.A.C. 5:97-6.7* and other compliance techniques for which the Borough is confident adequate and stable funding will be available from the collection of affordable housing development fees and/or Federal, State or County funding sources; and

WHEREAS, the provisions of the New Jersey Fair Housing Act of 1985, *N.J.S.A. 52:27D-311(d)* specifically provides that nothing in said Act shall require a municipality to raise or expend municipal revenues in order to provide low- and moderate-income housing; and

WHEREAS, COAH requires documentation to be submitted with the Borough's Housing Element and Fair Share Plan with its Petition for Substantive Certification to indicate the availability of funding for the Borough's affordable housing initiatives.

NOW, THEREFORE, BE IT RESOLVED by the Borough Council of the Borough of Pennington, County of Mercer, State of New Jersey as follows:

1. The Pennington Borough Council hereby determines that there are adequate and stable funding sources for all of the affordable housing compliance mechanisms set forth in the Borough's endorsed Housing Element and Fair Share Plan for the Borough's commitment to affordable housing 2008 - 2018.
2. In the event that adequate and stable funding in the form of Affordable Housing Development fees, Federal, State and County grants, etc. are not sufficient as the Borough's Affordable Housing Plan is implemented 2008 - 2018, the Borough Council, in the discretion of the Borough Council then representing the Borough, may determine to provide for an alternate source of affordable housing funding such as municipal bonding or elect to modify and change its Fair Share Plan to address its remaining affordable housing obligation in lieu of municipal bonding.

Record of Council Vote on Passage

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

Council Member Tucker made a motion to approve Resolution 2008-12.16, second by Council Member Heinzel. Mr. Griffiths stated that he had questions about this Resolution. Ms. Heinzel indicated that Borough Planner, Cindy Coppola would be arriving shortly and maybe it would be best to have a discussion of this Resolution later when Cindy could answer Borough Council's questions.

Council Discussion

Mayor Persichilli stated that there are three items on the agenda for Council Discussion:

- Accessory Apartment Plan
- Police – Feasibility Study Grant (Resolution 2008-12.17)
- COAH – Spending Plan – (Resolution 2008-12.18)

Mayor Persichilli stated that two of these items might raise questions for Cindy Coppola, the Accessory Apartment Plan and the COAH – Spending Plan so the first item for discussion would be the Police Feasibility Study Grant.

Mr. Dunworth gave some background information on the subject. Mr. Dunworth stated that the Borough received a grant award a while ago to study the possibility of a shared services arrangement with Hopewell Township for Police services. Mr. Dunworth stated that the award amount was somewhere around \$25,000. Mr. Dunworth stated that this grant was awarded about a year and a half ago and at the time Council had a lengthy discussion about whether to proceed with the study or not. The Council at the time agreed not to proceed. Mr. Dunworth stated that he was contacted recently and informed that the grant was still open and would remain open until the end of 2008. Mr. Dunworth stated that the question is whether to proceed and accept the grant or have the study done in-house. Mr. Dunworth stated that Finance Chair, Glen Griffiths and Chief Financial Officer Sandra Webb have done some preliminary calculations. Mr. Griffiths stated that he met with Gene Dunworth and Director Meytrott and had a discussion about the process for analyzing costs and services for public safety. Mr. Griffiths stated that the discussion produced a series of notes that he distributed to Borough Council members. Mr. Griffiths stated that page two is a preliminary cost spreadsheet, however Tom Ogren has put together some numbers and they are not reflected on this spreadsheet. Mr. Griffiths stated that he was impressed with Mr. Meytrott's understanding of the specifics of this issue and also the fact that this type of question had come before municipalities all over the country. Mr. Griffiths stated that these types of analysis' are extremely nuanced including not just costs, but also a number of other criteria for measuring performance. Mr. Griffiths stated that external consultants can be as wrong as they are right and they may not understand the nuances. Mr. Griffiths explained that even though the grant may cover the costs to do the study the Borough would be on the hook for expenses stemming from questions or additional information requested after the report is complete. Mr. Griffiths stated that what the Borough is faced with now is looking at the pros and cons of having Director Meytrott and George Myer from Hopewell Township along with Sandy Webb, CFO for the Borough and possibly the CFO for Hopewell Township do an in house analysis. Mr. Griffiths explained the process that was discussed and the handouts that were provided to Council. Mr. Griffiths stated that his thinking is that an internal analysis would inform and prepare Council better than an external analysis would. Mr. Griffiths stated that with no actual cost associated, an internal analysis seems to be the better route. Mr. Griffiths stated that an internal analysis could suggest multiple options of the Borough to look at, one being to proceed with an external analysis. Mr. Griffiths stated that the first step is to develop a scope for the analysis and the type of services involved. Mr. Griffiths stated secondly, the team Bill Meytrott, George Myer and Sandy Webb would be asked to get the facts on paper so that Borough Council can see what the costs are, what the service criteria are, how performance is measured, response time, hours of patrol, demographics of community served and so forth. Mr. Griffiths stated once the facts are identified and presented, then a value can be assigned. Mr. Griffiths stated that some things can not be valued such as the sense of identity. Mr. Griffiths stated that finally a determination of what the optimum course of action is; do nothing and leave things as they are, proceed with a full study which would include reapplying for a feasibility study grant, reduce service levels and costs without consolidation, or consolidate with another town, whether it be Hopewell Township or some other municipality. Mr. Griffiths stated that the team may come up with other alternatives as the study emerges. Mr. Griffiths stated that as this point he is leaning towards not pursuing the grant, but rather pursuing an internal study so that Council can become better informed. Council Members commented their thoughts on an external versus an internal study. Following the discussion, Council agreed to proceed with having Bill Meytrott, George Myer and Sandy Webb perform an internal study. Mayor Persichilli stated that Council owes it to the community to at least take a look and discuss the possibility of consolidation. Mayor Persichilli stated that there are good feelings about the Police Department and there is the "patrolman on the beat" feeling in town. Mayor Persichilli stated that it is difficult for residents who like that feeling to see the other side. Mayor Persichilli stated that it is important to study this issue and look at the recommendations. Mayor Persichilli stated that once the study is done there may be grant funds available for implementation. Mr. Meytrott stated that the proposal that is prepared would be devoid of any personal opinions or recommendations. Mr. Meytrott stated that all possible facts and figures will be provided but beyond that it will be up to Borough Council to decide how to proceed.

Mr. Griffiths suggested that Mr. Meytrott prepare a written scope for the analysis and that a formal letter be sent to Hopewell Township requesting that they approve Mr. Myer's participation in the analysis.

The following Resolution was prepared in the event that Borough Council decided to accept the grant. The Resolution was not adopted by Council.

**BOROUGH OF PENNINGTON
RESOLUTION 2008- 12.17**

**RESOLUTION ACCEPTING GRANT FROM NEW
JERSEY DEPARTMENT OF COMMUNITY AFFAIRS FOR PENNINGTON BOROUGH AND
HOPEWELL TOWNSHIP SHARED POLICE SERVICES FEASIBILITY STUDY**

WHEREAS, the Borough of Pennington wishes to investigate the feasibility of providing local police and emergency services on a shared basis with Hopewell Township;

WHEREAS, for this purpose the Borough and Hopewell Township have joined in making application to the New Jersey Department of Community Affairs for a grant to fund such a feasibility study;

WHEREAS, the proposed study would assess and evaluate the potential for sharing police and emergency services and, to any extent sharing is found to be feasible, develop a proposed plan to share or merge all or a portion of those services;

WHEREAS, the proposed study would investigate, in particular, the potential for saving costs through sharing of equipment, facilities and/or apparatus; the potential for more effective and efficient emergency services through sharing of communications; possible recommendations for improving overall efficiency in police and emergency management services; and the possibilities for consolidating services for improved operational efficiency, in such areas as dispatch, joint training and the like;

WHEREAS, the Department of Community Affairs has awarded the Borough and the Township a grant for the study in the amount of \$23,955., with the proviso that there be a local contribution of \$2,395, for a total project cost of \$26,350;

WHEREAS, the required local contribution will be provided by Hopewell Township;

WHEREAS, conduct of the study will require the retention of a qualified consultant within the project budget;

WHEREAS, Borough Council believes that acceptance of the grant funds in order to finance the proposed consultant study is in the best interests of the public;

NOW, THEREFORE, BE IT RESOLVED, by the Borough Council of the Borough of Pennington, that the aforesaid grant by the New Jersey Department of Community Affairs in the amount of \$23,955 is hereby accepted on a shared basis with Hopewell Township for the purposes and on the conditions expressed.

Mayor Persichilli asked Cindy Coppola to come forward for discussion of the two remaining items related to Affordable Housing.

Mayor Persichilli stated that the first item is Resolution 2008-12.16, a discussion of which was deferred earlier in the meeting. Mayor Persichilli asked Ms. Coppola to explain for Council the purpose of this Resolution. Ms. Coppola explained that this Resolution was prepared by Mr. Ed Schmierer and essentially this is an intent to bond resolution. Ms. Coppola stated that while COAH does require as part of their checklist that every Governing Body pass a resolution stated that if there is a shortfall in the Housing Trust Fund, that this intent to bond resolution has been passed. Ms. Coppola stated that as Mr. Schmierer explained at the Special Meeting held on December 10th, this requirement is contrary to the Fair Housing Act which states that municipalities do not have to spend their own monies on providing for Affordable Housing. Ms. Coppola stated that Mr. Schmierer has crafted language that basically says that the Borough will bond for additional monies if there is a shortage in the Housing Trust Fund or the Borough will amend the Housing Plan Element and Fair Share Plan. Ms. Coppola stated that in other words the Borough's hands are not tied for bonding for a shortfall, it means that the Borough can go back and revisit the Housing Plan Element and Fair Share Plan and adjust the mechanisms in the plan to be in concert with the monies available to the Borough, either in the Housing Trust Fund or through an number of funding programs available through the State and Federal Government. Ms. Coppola stated that she will forward to Mr. Dunworth the website that lists the funding mechanisms available for Affordable Housing. Ms. Coppola stated that this is the safest and easiest way to cover this checklist item while still protecting the Borough by not committing to bond for any shortfall.

Mr. Griffiths asked how this ties to the Spending Plan that will be submitted to COAH. Ms. Coppola stated that it is tied to some degree. Ms. Coppola stated that the Spending Plan really is a conceptual plan, that looks at how much money is in the Housing Trust Fund, how much money the Borough thinks will be generated from additional development, and how that money will be spent to meet the Affordable Housing Plan requirements. Ms. Coppola stated that when the Spending Plan is discussed later in the meeting, Council will see that there is a shortfall, the Borough does not have sufficient monies projected over the term of the next ten years to cover all the mechanisms that are proposed. Ms. Coppola stated, however that it is uncertain that the Borough will not obtain additional funding even two years from now. Ms. Coppola stated that there is always the option to look for State and Federal Grants or other funding mechanisms for Affordable Housing that have not been addressed in the Spending Plan.

Upon a roll call vote, all members present voted in favor of approving Resolution 2008-12.16.

Mayor Persichilli stated that the next item on the agenda is Resolution 2008-12.18.

**BOROUGH OF PENNINGTON
RESOLUTION 2008 – 12.18**

**RESOLUTION REQUESTING REVIEW AND APPROVAL OF
THE BOROUGH OF PENNINGTON'S AFFORDABLE HOUSING TRUST FUND SPENDING
PLAN**

WHEREAS, the Governing Body of the Borough of Pennington, Mercer County, petitioned the Council on Affordable Housing (COAH) for substantive certification on December 10, 2008; and

WHEREAS, Pennington Borough received approval from COAH on December 2, 2008 of its development fee ordinance; and

WHEREAS, the development fee ordinance establishes an affordable housing trust fund that includes development fees, payments from developers in lieu of constructing affordable units on-site, barrier free escrow funds, rental income, repayments from affordable housing program loans, recapture funds, proceeds from the sale of affordable units, affordable housing enforcement fines and/or any other funds collected in connection with the Borough's affordable housing program;

WHEREAS, N.J.A.C. 5:97-8.1(d) requires a municipality with an affordable housing trust fund to receive approval of a spending plan from COAH prior to spending any of the funds in its housing trust fund; and

WHEREAS, N.J.A.C. 5:97-8.10 requires a spending plan to include the following:

1. A projection of revenues anticipated from imposing fees on development, based on pending, approved and anticipated developments and historic development activity;
2. A projection of revenues anticipated from other sources, including payments in lieu of constructing affordable units on sites zoned for affordable housing, funds from the sale of units with extinguished controls, proceeds from the sale of affordable units, rental income, repayments from affordable housing program loans, and interest earned;
3. A description of the administrative mechanism that the municipality will use to collect and distribute revenues;
4. A description of the anticipated use of all affordable housing trust funds pursuant to N.J.A.C. 5:97-8.7, 8.8, and 8.9;
5. A schedule for the expenditure of all affordable housing trust funds;
6. If applicable, a schedule for the creation or rehabilitation of housing units;
7. A pro-forma statement of the anticipated costs and revenues associated with the development if the municipality envisions supporting or sponsoring public sector or non-profit construction of housing; and
8. A plan to spend the trust fund balance as of July 17, 2008 within four years of the Council's approval of the spending plan, or in accordance with an implementation schedule approved by the Council;
9. A plan to spend and/or contractually commit all development fees and any payments in lieu of construction within three years of the end of the calendar year in which funds are collected, but no later than the end of third round substantive certification period;
10. The manner through which the municipality will address any expected or unexpected shortfall if the anticipated revenues from development fees are not sufficient to implement the plan; and
11. A description of the anticipated use of excess affordable housing trust funds, in the event more funds than anticipated are collected, or projected funds exceed the amount necessary for satisfying the municipal affordable housing obligation.

WHEREAS, Pennington Borough has prepared a spending plan consistent with N.J.A.C. 5:97-8.10 and P.L. 2008, c.46.

NOW THEREFORE BE IT RESOLVED that the Governing Body of the Borough of Pennington, Mercer County, requests that COAH review and approve Pennington Borough's spending plan.

Record of Council Vote on Passage

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

Council Member Chandler made a motion to approve Resolution 2008-12.18, second by Council Member Griffiths. Mr. Ogren asked if costs associated with the Accessory Apartment Plan are considered administrative costs. Ms. Coppola stated that for all of the mechanisms, the Borough will is required to have an administrative agent and their costs are considered administrative. Mr. Ogren stated that he did not see those costs listed in the spending plan. Ms. Coppola stated that they are included under administrative costs and it is not required that they be shown separately. Mr. Griffiths asked if Ms. Coppola could identify these agents as he was unaware of some that she mentioned. Discussion followed regarding what these different agencies do for the Borough and how and where the costs are charged. Further discussion took place with regard to a proposed Interlocal with Hopewell Township to have their in house COAH person handle the Borough's needs. Mr. Dunworth stated that he has left a message for Paul Pogorzelski to discuss this arrangement. A minor change was made to the language of the Spending Plan related to administrative costs. Mr. Griffiths asked Ms. Coppola to clarify specific figures within the Spending Plan.

Mr. Griffiths stated that the report indicates a potential shortfall and he asked what implications that has for the Borough. Ms. Coppola stated that somewhere in the next few years the spending plan will need to be reviewed to see whether the projected income based on development fees, interest and the like is in line or if the spending plan needs to be adjusted. Ms. Coppola stated that the Spending Plan document is one that will need to be looked at and modified every couple of years. Ms. Coppola encouraged Council to pursue alternative sources of funding for Affordable Housing. Mr. Ogren inquired as to the twenty percent cap on administrative fees and whether that pertains to fees received in a calendar year or overall. Ms. Coppola stated technically in the calendar year although COAH made an exception for the preparation of the Housing Plan. Mr. Ogren asked if the Borough would be limited from this point on to twenty percent of what we collect. Ms. Coppola stated that she did not think so, that what COAH will do is ensure that the monies are available in the Housing Trust Fund until the Spending Plan is approved. Ms. Coppola stated that the rules on this are very vague on whether the twenty percent pertains to what is collected in a calendar year. Some discussion took place with regard to COAH rules, zoning regulations and accessory apartments. Mr. Griffiths reviewed items on a "to do" list with Ms. Coppola to see what has and has not been done for submission with the Housing Element and Fair Share Plan. Mr. Griffiths mentioned the following items: Growth Share Ordinance, (not done yet), Accessory Apartment Program, (Ordinance being submitted to COAH for review), change to MU3 Ordinance, (not done yet), changes to Overlay Zone Ordinance (not done yet), modifications for Lot 4, (not done yet). Mr. Griffiths stated that two other items the Intent to Bond Resolution and the Spending Plan Resolution were done tonight. Mr. Griffiths stated that it seems we are on target with the plan for submission.

Ms. Coppola stated that COAH has requested that all of the ordinances be submitted as part of the package. Ms. Coppola stated that some of them are not being done because of timing issues and will be done once COAH has reviewed the package and provided a checklist of what still needs to be completed. Ms. Coppola stated that the ordinances will be submitted to COAH prior to Borough Council taking action. Ms. Coppola stated that the submission packages were quite extensive and COAH requires a lot of paper work to be completed. Ms. Coppola stated that it would not make sense to spend a lot of time and money creating ordinances as we don't even know if COAH is going to accept the plan particularly since the Borough is arguing a reduction in the growth share. Ms. Coppola stated that they will be submitting the basic necessities such as the checklist, the application forms and some of the ordinances that did not require a lot of changes. Ms. Coppola stated that the next step will be to sit down with the COAH staff after they have gotten a glimpse of what is proposed and make sure that there are no glaring problems before proceeding with the remainder of the requirements. Ms. Coppola stated that they would like feedback from COAH before actually beginning to modify the language of the existing ordinances.

Mr. Bliss spoke briefly on some questions that arose at the December 1st, 2008 Council meeting when the HSI contract was discussed.

Upon a roll call vote, all members present voted in favor of Resolution 2008-12.18.

Mayor Persichilli thanked Ms. Coppola for attending.

Administrator's Report

Municipal Stimulus Package – Mr. Dunworth stated that the NJ State League of Municipalities is working with the National League of Cities to try to get stimulus funds from Washington DC. Mr. Dunworth stated that the League asked Municipalities to submit projects that are ready to go. Mr. Dunworth stated that a submission has been done with four projects submitted for Pennington Borough.

Professional Reports

There were no comments from Professionals.

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 8:45 pm, Council Member Tucker made a motion to adjourn the meeting, second by Council Member Chandler.

Respectfully submitted,

Elizabeth Sterling
Borough Clerk