

**Pennington Borough Council
Regular Meeting – January 4, 2010**

Mayor Persichilli called the Regular Meeting of the Borough Council to order at 7:16 pm. Borough Clerk Betty Sterling called the roll with Council Members Chandler, Griffiths, Heinzel, Lawver, Ogren, and Tucker in attendance.

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

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

Open to the Public – Agenda Items Only

Mayor Persichilli read the following statement:

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

There were no comments from the public.

Mayor's Business

Ordinances for Introduction

Mayor Persichilli read Ordinance 2010-1 by title.

**BOROUGH OF PENNINGTON
ORDINANCE #2010-1**

**ORDINANCE PROHIBITING PARKING OUTSIDE
DESIGNATED PARKING SPACES IN THE MUNICIPAL
PARKING LOT AND AMENDING SECTION 200-15 OF
THE CODE OF THE BOROUGH OF PENNINGTON**

WHEREAS, the municipal parking lot contains parking spaces identified by painted parallel lines on the surface of the lot as well as signs indicating applicable time limitations pursuant to Section 200-15 of the Code of the Borough of Pennington;

WHEREAS, Borough Police have discovered that cars are being parked in the municipal parking lot outside of the designated spaces, and an amendment to the ordinance specifically prohibiting that practice is recommended;

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

1. Section 200-15 of the Code of the Borough of Pennington is hereby amended by the addition of a new subsection I to read:

“I. No person shall park in any location in the municipal parking lot except between the lines of a space designated for parking as set forth above.”

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

Council Member Tucker made a motion to introduce Ordinance 2010-1, second by Council Member Ogren. Mayor Persichilli explained that the reason for this ordinance is that on occasion vehicles are parked over the white line taking up two spaces and without an ordinance the Police Department is unable to issue tickets. Mr. Dunworth explained that this would allow for ticketing vehicles parked along the curb behind the water tower. Mr. Meytrott stated that signs will need to be installed in the parking lot. Upon a roll call vote, all members present voted in favor.

Mayor Persichilli read Ordinance 2010-2 by title.

**BOROUGH OF PENNINGTON
ORDINANCE #2010-2**

**ORDINANCE PROHIBITING RIGHT TURN ON RED AT ANY TIME AT THE INTERSECTION
OF MAIN STREET AND DELAWARE AVENUE
AND AMENDING SECTION 200-19 OF THE CODE
OF THE BOROUGH OF PENNINGTON**

WHEREAS, Section 200-19 of the Code of the Borough of Pennington prohibits a right turn on red at any of the corners of Main Street and Delaware Avenue between the hours of 7:00 a.m. and 4:00 p.m., Monday through Friday;

WHEREAS, Borough Council seeks to expand this restriction by prohibiting right turns on red at all times on every day of the week at this intersection;

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

1. Section 200-19 of the Code of the Borough of Pennington, concerning the prohibition of right turns on red at the intersection of Main Street and Delaware Avenue, is amended to read as follows (with new language denoted by underlining, deletions by brackets []):

“No motor vehicle shall make a right turn on red at any of the corners of Main Street and Delaware Avenue [between the hours of 7:00 a.m. and 4:00 p.m., Monday through Friday] at any time.”

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

Council Member Tucker made a motion to introduce Ordinance 2010-2, second by Council Member Heinzl. Mr. Meytrott explained that the Ordinance on the books now prohibits right turn on red only during certain hours. Mr. Meytrott explained that in order to enforce the signs that are posted now indicating no turn on red at any time; the Borough must do this ordinance. Ms. Heinzl stated that with this new barn dance set up where all traffic stops to allow pedestrians to cross can you diagonally cross the intersection. Mr. Meytrott stated that pedestrians can cross diagonally. Ms. Chandler stated that someone asked her if diagonal crosswalks could be painted. Mr. Meytrott indicated that he did not think that the NJ Department of Transportation would allow that. Mr. Lawver asked if Mr. Meytrott could follow up on this to see if diagonal crosswalks could be painted. Upon a roll call vote, all members present voted in favor.

Mayor Persichilli read Ordinance 2010-3 by title.

**BOROUGH OF PENNINGTON
ORDINANCE NO. 2010-3**

**AN ORDINANCE INCREASING RATES CHARGED BY THE PENNINGTON
BOROUGH WATER AND SEWER UTILITY, AND AMENDING THE CODE OF
THE BOROUGH OF PENNINGTON**

WHEREAS, the Pennington Borough Water and Sewer Utility continues to incur increased costs;

WHEREAS, Borough Council of the Borough of Pennington has determined that as a result of these increased costs the rates charged by the Utility for water and sewer services must be increased and the rates must be further differentiated for customers based on amount of usage;

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

1. Section 206-1 of the Code of the Borough of Pennington, pertaining to base and usage charges, is hereby amended as follows (with deletions bracketed and new language underlined):

§ 206-1. Base and usage charges.

A. There are hereby established the following quarterly charges for water customers:

| Usage Meter Size (inches) | Base Charge | First Excess Usage Block Charge | Second Excess Usage <u>Block</u> <u>Charge</u> | Third Excess Usage Block Charge | Fourth Excess Usage Block Charge |
|---------------------------------|-----------------------------|-------------------------------------------------------|------------------------------------------------------------|------------------------------------------------------------------|--------------------------------------------------------------------|
| | 4,000 Gallons or Less | 4,001- 20,000 Gallons (per 1,000 gallons) | 20,001- 60,000 Gallons (per 1,000 gallons) | 60,001- [100,000] <u>200,000</u> (per 1,000 gallons) | More than [100,000] <u>200,000</u> (per 1,000 gallons) |
| Less than 1 | [\$26.60] <u>26.87</u> | [\$6.15] <u>6.24</u> | [\$6.30] <u>6.43</u> | [\$6.45] <u>6.61</u> | [\$7.05] <u>7.30</u> |
| 1 | [\$40.60] <u>41.01</u> | [\$6.15] <u>6.24</u> | [\$6.30] <u>6.43</u> | [\$6.45] <u>6.61</u> | [\$7.05] <u>7.30</u> |
| 2 | [\$115.40] <u>116.55</u> | [\$6.15] <u>6.24</u> | [\$6.30] <u>6.43</u> | [\$6.45] <u>6.61</u> | [\$7.05] <u>7.30</u> |
| 3 | [\$258.85] <u>261.44</u> | [\$6.15] <u>6.24</u> | [\$6.30] <u>6.43</u> | [\$6.45] <u>6.61</u> | [\$7.05] <u>7.30</u> |
| 4 | [\$380.40] <u>384.20</u> | [\$6.15] <u>6.24</u> | [\$6.30] <u>6.43</u> | [\$6.45] <u>6.61</u> | [\$7.05] <u>7.30</u> |
| 6 | [\$710.80] <u>717.91</u> | [\$6.15] <u>6.24</u> | [\$6.30] <u>6.43</u> | [\$6.45] <u>6.61</u> | [\$7.05] <u>7.30</u> |

NOTE: Usage charges are per one-thousand-gallon increments, or portion thereof.

B. There are hereby established the following quarterly charges for sewer customers:

| Usage Meter Size (inches) | Base Charge | First Excess Usage Block Charge | Second Excess Usage <u>Block Charge</u> | Third Excess Usage Block Charge | Fourth Excess Usage Block Charge |
|---------------------------|------------------------------------------|------------------------------------------|-------------------------------------------|-------------------------------------------------------------|----------------------------------------------------------------|
| | 4,000 Gallons or Less | 4,001-20,000 Gallons (per 1,000 gallons) | 20,001-60,000 Gallons (per 1,000 gallons) | 60,001-[100,000] <u>200,000</u> Gallons (per 1,000 gallons) | More than [100,000] <u>200,000</u> Gallons (per 1,000 gallons) |
| All sizes | \$[29.25] <u>29.54</u> per 1,000 gallons | \$[6.55] <u>6.65</u> per 1,000 gallons | \$[6.60] <u>6.73</u> per 1,000 gallons | \$[6.65] <u>6.82</u> per 1,000 gallons | \$[6.65] <u>6.92</u> per 1,000 gallons |

NOTE: Usage charges are per one-thousand-gallon increments, or portion thereof.

C. The minimum quarterly base charge for multiunit residential or multiunit commercial or a combination thereof serviced through a single water meter shall be determined by the product of the number of units by the minimum quarterly base charge of a one-inch meter, regardless of the size of the meter(s) that feeds the units.

D. Sewage or other wastes containing unduly high concentrations of other substances which add to the operating costs of the sewage treatment works will be subject to a surcharge to be determined by the borough on the basis of the character and volume for such sewage and wastes. Where, in the opinion of the borough, sewage and other wastes of a deleterious character adversely affect the treatment processes, the borough reserves the right to require that such sewage and wastes be treated by the contributor to remove or neutralize the objectionable substances before discharge into the sewers.

E. Base and usage charges shall be due on March 1, June 1, September 1 and December 1.

F. Premises introducing water into a permanent private pool may be allowed a reduction in the charge of sewer usage in an amount equal to the volume of water introduced into the pool. This will require the installation and rental of a temporary meter [, as described further] in conformance with the Borough Code.

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

Council Member Chandler made a motion to introduce Ordinance 2010-3, second by Council Member Griffiths. Mr. Bliss explained that he prepared two versions of this ordinance; one calculated to the penny at a three percent increase and the other with numbers rounded to the nearest nickel which was the practice in the past. Mr. Bliss stated that Council needs to decide which ordinance is for introduction. Mr. Griffiths stated that he recommends the ordinance that calculates the increase to the penny. Mr. Griffiths stated that historically the numbers have been rounded to the nearest nickel at the request of an employee of the Borough and there is no real reason for the numbers to be rounded. Upon a roll call vote all members present voted in favor of introduction of Ordinance 2010-3 using the version calculated to the exact penny.

Committee Reports

Planning & Zoning / Environmental Commission / Library – Ms. Heinzl reported that the Planning Board and the Environmental Commissions did not meet during the month of December 2009. Ms. Heinzl reported that the Library Board met and decided to apply for a State grant known as the Library SWAT Team Grant. Ms. Heinzl explained that the idea behind this grant is that a team of renovators come into the Library, look at the space and the way it is being used and offer suggestions as to how to better use the space by making small renovations. Ms. Heinzl stated that if the grant is awarded the Library will have to commit to spending at least \$5,000 towards the recommended projects. Ms. Heinzl stated that the board discussed sources of funding and decided that if the grant were awarded the funding would come from the Library Trust Fund. Ms. Heinzl stated that the Library is beginning some new programs geared towards adults and senior citizens. Ms. Heinzl stated that the first program will be held on January 19th at 7:30pm. Ms. Heinzl stated that the Library Board will meet later this month for their Reorganization meeting.

Ms. Chandler inquired as to why the Library is applying for this SWAT Team grant. Ms. Heinzl explained that it goes back to the Library strategic plan and one of the things that came out of that is that the space inside the Library is not as well used as it could be. Ms. Heinzl stated that the commitment to spend \$5,000 is required to ensure that the State does not provide this money to do a survey and make recommendations only to have Libraries not follow through with any improvements.

Public Works / Economic Development – Mr. Lawver stated that he did not have anything to report.

Personnel - Mr. Ogren indicated that the Personnel Committee did not meet in December.

Community Services – Ms. Chandler stated that Pennington Parks and Recreation held the annual Carol Sing on December 20th which despite the snow was well attended. Ms. Chandler stated that the Parks and Recreation Commission is losing several of its members and they are seeking new members to join. Ms. Chandler stated that they are reviewing the calendar of events to evaluate attendance at events to see what events will continue into 2010.

Public Safety – Mr. Tucker reported that the 2003 Police Cruiser died in November and was replaced with a 2009 Ford Crown Victoria obtained under State Contract. Mr. Tucker stated that the new vehicle is awaiting installation of decals, and the transfer of radio equipment. Mr. Tucker stated that Acting Sergeant Friedman and Director Meytrott met with the Principal and members of the PTO of the Tollgate School to discuss recent vandalism at the school and to discuss improvements planned for the intersection of South Main Street and Curlis Avenue.

Mr. Tucker stated that on December 4th, the Annual Holiday Walk, sponsored by the Pennington Business and Professional Association was held with no reported incidents.

Mr. Tucker stated that on December 14th, the second session of negotiations with the Pennington Borough Fraternal Order of Police was held and another meeting is scheduled for some time in January 2010.

Mr. Tucker stated that the regular meeting of the Hopewell Valley Regional School System Security Group met and discussed items related to school security, a safety drill involving Tollgate School is being planned.

Mr. Tucker stated that preliminary work has begun on the Police budget for 2010.

Mr. Tucker stated that over the weekend of December 17th, this area received a heavy snow storm with approximately 14 inches of snow falling in Pennington Borough. Mr. Tucker stated that five summonses were issued for parking on snow covered streets, but no summonses were issued for failure to clear sidewalks.

Mr. Tucker stated that there were no reported incidents over the Christmas and New Years Holidays.

Mr. Tucker gave the following statistics for December 2009:

- 3 Thefts
- 1 Domestic Violence
- 113 Motor Vehicle Stops
- 56 Warnings Issued
- 1 DUI Summons Issued
- 8 Collision Reports
- 2 Adult Male Arrests
- 1 Adult Female Arrest
- 13 First Aid Call Responses

Finance – Mr. Griffiths reported that no formal meetings were held, but by e-mail the Water/Sewer Rate increase was formulated. Mr. Griffiths stated that he is working on a Master Fee Schedule so that all Borough Fees will be in one place and can be reviewed annually.

New Business

**Borough of Pennington
Resolution #2010-1.10**

**RESOLUTION AUTHORIZING AND APPROPRIATING A TEMPORARY BUDGET FOR THE
BOROUGH OF PENNINGTON**

WHEREAS, the Local Budget Law (N.J.S.A. 40A:4-19) provides that where any contract, commitments or payments are to be made prior to the final adoption of the 2010 budget, temporary appropriations in an amount not to exceed 26.25% of the total appropriations for the prior year shall be made for the purpose and amounts required in the manner and time therein provided; and

WHEREAS, 26.25% of the total appropriations of the 2009 budget exclusive of any appropriations for interest, debt redemption charges, Capital Improvement Fund and Public Assistance, in the said budget, is the sum of \$ 919,461.80 for the current fund budget and \$ 255,553.24 for the water and sewer utility fund;

NOW, THEREFORE, BE IT RESOLVED, that the attached temporary appropriations be made and that a certified copy of this resolution be transmitted to the Borough Finance Officer.

Record of Council Vote on Passage

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

Council Member Chandler made a motion to approve Resolution 2010-1.10, second by Council Member Tucker with all members present voting in favor.

**Borough of Pennington
Resolution #2009 – 1.11**

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 \$ 87,651.61 from the following accounts:

| | |
|---------------------|--------------|
| Current | \$ 76,310.86 |
| W/S Operating | \$ 10,251.66 |
| Grant Fund | \$ 814.09 |
| Animal Control Fund | \$ 275.00 |
| TOTAL | \$ 87,651.61 |

Record of Council Vote on Passage

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

Council Member Griffiths made a motion to approve Resolution 2010-1.11, second by Council Member Tucker with all members present voting in favor.

Resolution 2010-1.12 Authorizing Budget Transfers was listed on the agenda if needed and there was no need to make additional budget transfers for 2009.

**Borough of Pennington
Resolution #2010 –1.13**

**RESOLUTION APPOINTING ALTERNATE
PROSECUTORS FOR THE YEAR 2010**

WHEREAS, N.J.S.A. 2B:24-4e provides that a municipality may appoint municipal prosecutors as necessary to administer justice in a timely and effective manner in municipal court;

WHEREAS, N.J.S.A. 2B:25-6f requires that when a municipality has appointed more than one municipal prosecutor a chief municipal prosecutor shall be designated and appointed by the municipality;

WHEREAS, Borough Council has appointed Craig Hubert as the Chief Municipal Prosecutor; and

WHEREAS, the Borough seeks to appoint first, second and third alternate prosecutors to substitute in that order for the Chief Municipal Prosecutor when the Chief Municipal Prosecutor is not able to cover a court session; and

WHEREAS, it is understood that the municipal prosecutor and alternate prosecutors designated and appointed herein have not represented criminal defendants in any municipal court or Superior Court in Mercer County as of January 1, 2010;

WHEREAS, each alternate prosecutor has completed and submitted a sworn Business Entity Disclosure Certification which certifies that neither they nor their respective firms have made or shall make any political contribution prohibited by relevant provisions of N.J.S.A. 19:44A-20.5 or Chapter 15, Article I of the Pennington Borough Code, regarding pay-to-play;

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

1. Robert Yostembski is hereby appointed First Alternate Prosecutor of Pennington Borough.
2. Reed Gusciora is hereby appointed Second Alternate Prosecutor of Pennington Borough.
3. Renee LaMarre-Summers is hereby appointed Third Alternate Prosecutor of Pennington Borough.

Record of Council Vote on Passage

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

Council Member Tucker made a motion to approve Resolution 2010-1.13, second by Council Member Heinzel with all members present voting in favor.

**Borough of Pennington
Resolution 2010-1.14**

**RESOLUTION APPOINTING EUGENE DUNWORTH AS
JOINT INSURANCE FUND COMMISSIONER FOR A PERIOD
OF ONE YEAR FROM JANUARY 1 THROUGH DECEMBER 31, 2010**

WHEREAS, the Borough of Pennington is required to appoint annually a Joint Insurance Fund Commissioner to serve for the year;

WHEREAS, it is the desire of the Mayor and Council to appoint Eugene Dunworth to that position, for the period of one year from January 1 through December 31, 2010;

NOW, THEREFORE, BE IT RESOLVED, that Eugene Dunworth is hereby appointed as Joint Insurance Fund Commissioner for a one year term effective January 1, 2010 and ending December 31, 2010; and

BE IT FURTHER RESOLVED, by the Borough Council of the Borough of Pennington, that Mr. Dunworth shall serve in this capacity without additional compensation.

Record of Council Vote on Passage

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

Council Member Chandler made a motion to approve Resolution 2010-1.14, second by Council Member Heinzel with all members present voting in favor.

**Borough of Pennington
Resolution #2010 – 1.15**

**A RESOLUTION AUTHORIZING PAYMENT REQUEST NO. 3 TO
MECO, INC. FOR WORK COMPLETED ON THE BURD STREET RECONSTRUCTION
PROJECT**

WHEREAS, Meco, Inc. has completed certain work pursuant to the Burd Street Reconstruction Project (VNHA #38594-500-52) relating to reconstruction of Burd Street; 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 (\$200.00) less two percent (2%) retainage (\$4.00), the net due therefore amounting to \$196.00; and

WHEREAS, this is a partial payment under the contract;

WHEREAS, funds are available in account # G-02-44-939-000-250, NJ DOT – Burd Street;

NOW, THEREFORE BE IT RESOLVED, by the Borough Council of the Borough of Pennington, that payment to Meco, Inc. in the amount of \$196.00 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 | X | | | | Lawver | M | | | |
| Griffiths | X | | | | Ogren | X | | | |
| Heinzel | X | | | | Tucker | S | | | |

Council Member Lawver made a motion to approve Resolution 2010-1.15, second by Council Member Tucker. Mr. Lawver explained that this is a housekeeping resolution to get us closer to being able to close out this grant with the State. Upon a roll call vote all members present voted in favor.

**BOROUGH OF PENNINGTON
RESOLUTION #2010-1.16**

RESOLUTION AMENDING THE POLICIES AND PROCEDURES MANUAL AND EMPLOYEE HANDBOOK OF THE BOROUGH OF PENNINGTON CONCERNING PAID HOLIDAYS

WHEREAS, Borough Council of the Borough of Pennington has adopted a Personnel Policies and Procedures Manual and Employee Handbook effective May 1, 2008, superceding all previous personnel policy manuals and handbooks of the Borough;

WHEREAS, Section V, Subsection D of the Personnel Policies and Procedures Manual and Employee Handbook provides, inter alia, that all national holidays will be scheduled on the day designated by common business practice;

WHEREAS, the aforesaid provision of the Manual and Handbook requires revision to clarify the treatment of the New Year's Day holiday in those years in which it falls on a Saturday, to ensure that the Borough policy of twelve (12) holidays per year is maintained in every year;

NOW, THEREFORE, BE IT RESOLVED, by the Borough Council of the Borough of Pennington, that the aforesaid Section V, Subsection D of the Personnel Policies and Procedures Manual and Employee Handbook is amended to read as follows (with new language denoted by underlining, deletions by brackets []):

“D. Holiday Policies.

An employee may take time off to observe religious holidays. The time off is without pay. The employee must notify the supervisor at least ten business days in advance.

All national holidays will be scheduled on the day designated by common business practice, except if New Year's Day (January 1st) falls on a Saturday, the paid holiday will be the following Monday only.

If a holiday occurs during an employee's scheduled vacation, the employee may take an extra day of vacation.

In order to qualify for holiday pay, an employee must work the scheduled workday immediately before and after the holiday. Only time off[,] approved by the supervisor will be considered exceptions to this policy.

An employee is not eligible to receive holiday pay when on an unpaid leave of absence.”

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 | X | | | | Tucker | S | | | |

Council Member Ogren made a motion to approve Resolution 2010-1.16, second by Council Member Tucker with all members present voting in favor.

**Borough of Pennington
Resolution #2010-1.17**

A RESOLUTION AUTHORIZING AN AGREEMENT WITH VALLEY HEALTH MEDICAL GROUP TO PERFORM ALCOHOL AND DRUG TESTING SERVICES FOR THE BOROUGH OF PENNINGTON FOR THE YEAR 2010

WHEREAS, the Borough is required to provide an alcohol and controlled substances program for CDL (commercial drivers license) drivers and other participants in compliance with 49 CFR 382 and 49 CFR 40; and

WHEREAS, Valley Health Medical Group is experienced in and capable of providing such services; and

WHEREAS, this contract shall be for specific services set forth in the Agreement attached to this resolution;

WHEREAS, the Borough agrees to the fees per service (ranging from \$40.00 to \$180.00) set forth in the Fee Schedule included in the Agreement;

WHEREAS, the services authorized by the contract are professional services and the amount of expense expected to be incurred under this contract for these services is in any event substantially below the threshold for public bidding;

WHEREAS, Valley Health Medical Group has completed and submitted a sworn Business Entity Disclosure Certification which certifies that neither the group nor any of its members has made or shall make any political contribution prohibited by relevant provisions of N.J.S.A. 19:44A-20.5 or Chapter 15, Article I of the Pennington Borough Code, regarding pay-to-play;

NOW THEREFORE BE IT HEREBY RESOLVED, that the Mayor of the Borough, with the attestation of the Clerk, and subject to such changes in form as may be required by the Borough Attorney, is hereby authorized to execute the attached Agreement between the Borough and Valley Health Medical Group for the provision of Alcohol and Drug Testing Services for 2010.

Record of Council Vote on Passage

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

Council Member Tucker made a motion to approve Resolution 2010-1.17, second by Council Member Heinzel. Mayor Persichilli asked if anyone had looked into alternate providers for this service. Mr. Bliss stated that in years past this agreement has been made with Connor Strong who administered the agreement with Valley Health providing the service. Mr. Wittkop asked how many drug tests would be done in a given year. Mr. Dunworth stated that it would be randomly done four times a year. Mayor Persichilli stated that this company is located in North Jersey and he questions whether we should be considering a local organization for this service. Brief discussion followed as to whether this service could be discontinued. Upon a roll call vote, all members present voted in favor.

**BOROUGH OF PENNINGTON
Resolution #2010-1.18**

RESOLUTION AUTHORIZING PARTICIPATION IN COUNTYWIDE CONTINUITY OF OPERATIONS (COOP) AND CONTINUITY OF GOVERNMENT (COG) PLANNING MADE POSSIBLE THROUGH 2009 HOMELAND SECURITY FUNDING TO THE COUNTY

WHEREAS, government has a fundamental responsibility to ensure continuity of essential functions across a range of emergencies and events through the development of continuity plans; and

WHEREAS, a completed and fully functional continuity plan for the county and its municipalities will ensure all levels of government can effectively deal with extraordinary circumstances before, during and after any emergency situation; and

WHEREAS, the County of Mercer has been awarded 2009 funding from the State of New Jersey Office of Homeland Security and Preparedness with a portion to be allocated for county and municipal Continuity of Operations (COOP) and Continuity of Government (COG) planning; and

WHEREAS, the allocated funds are to be utilized for consulting services the county will provide for municipalities;

NOW, THEREFORE, BE IT RESOLVED, that the Borough of Pennington agrees to participate in countywide continuity planning.

Record of Council Vote on Passage

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

Council Member Tucker made a motion to approve Resolution 2010-1.18, second by Council Member Chandler. Mayor Persichilli stated that Borough Administrator Gene Dunworth and Public Safety Director Bill Meytrott will be representing Pennington Borough at these meetings. Upon a roll call vote, all members present voted in favor.

**Borough of Pennington
Resolution #2010 – 1.19**

A RESOLUTION AUTHORIZING PAYMENT REQUEST NO. 3 AND REFUND OF EXCESS RETAINAGE ON PRIOR PAYMENT REQUEST TO LIBERTY CONSTRUCTION AND DEVELOPMENT, INC. FOR WORK COMPLETED ON THE WELL 8 WATER TREATMENT SYSTEM PROJECT

WHEREAS, Liberty Construction and Development, Inc. has completed certain work pursuant to contract for the Well 8 Water Treatment System Project (VNHA #39203-500-22); and

WHEREAS, Van Note Harvey Associates, P.C. has reviewed the application and recommends payment for completed work and stored materials pursuant to the Contractor’s Request for Payment No. 3 (\$ 41,186.35) less two percent (2%) retainage (\$ 823.73), the net due therefore on this payment request amounting to \$40,362.62; and

WHEREAS, in the Contractor’s previous request for payment #2 excess retainage was deducted in the amount of \$782.78 which the Borough must refund to the Contractor;

WHEREAS, the total due to the Contractor for payment request #3 plus refund of excess retainage from payment request #2 is therefore \$41,145.40;

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

WHEREAS, funds are available in the Water/Sewer Capital budget;

NOW, THEREFORE BE IT RESOLVED, by the Borough Council of the Borough of Pennington, that payment to Liberty Construction and Development, Inc. in the amount of \$ 41,145.40 is hereby authorized.

Record of Council Vote on Passage

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

Council Member Lawver made a motion to approve Resolution 2010-1.18, second by Council Member Ogren. Mr. Lawver explained that when the last payment request was processed an additional \$782.78 was withheld for retainage in error. Mr. Bliss explained that the figure provided to the Borough by Van Note Harvey already had the retainage taken out which we did not realize. Upon a roll call vote, all members present voted in favor.

**BOROUGH OF PENNINGTON
RESOLUTION 2010-1.20**

RESOLUTION AUTHORIZING EXECUTION OF RIGHTS-OF-WAY USE AGREEMENT WITH SUNESYS, LLC AFFECTING THE BOROUGH PORTION OF WEST DELAWARE AVENUE

WHEREAS, Sunesys, LLC is a telecommunications service provider recognized as a public utility and authorized by the New Jersey Board of Public Utilities to do business as a competitive local exchange company in the State of New Jersey;

WHEREAS, Sunesys’ primary business is the provision of infrastructure, in the form of fiber optics distribution facilities, to end-user customers, and its operations include construction and leasing of dark fiber to other telecommunications carriers and enterprise customers, primarily large corporations, and providing wide area network services to educational, health and library systems;

WHEREAS, Sunesys is seeking to obtain a rights-of-way use agreement with the Borough of Pennington pursuant to N.J.S.A. 48:17-10, et seq., which would allow the company to install its fiber optic cabling on poles and in underground conduit installed in the public right-of-way in order to serve the Johnson & Johnson Plaza complex;

WHEREAS, the proposed Rights-of-Way Use Agreement, attached to this Resolution, provides for an initial term of 20 years and subsequent renewals;

WHEREAS, the proposed route of the new facilities proposed for the Borough includes portions of West Delaware Avenue on the east and west sides of Route 31 as shown on the attached map;

WHEREAS, under the proposed Agreement, Sunesys would compensate the Borough for its use of the Borough rights-of-way by payment of a one-time payment of \$1,700. together with up to \$1,500 as reimbursement to the Borough for the costs of the Borough’s legal and engineering review related to this request;

WHEREAS, the proposed agreement has been reviewed by the Superintendent of Public Works and found to be acceptable from the standpoint of likely costs and inconvenience to the Borough, except he

notes that the portion of the proposed route on West Delaware Avenue to the east of Route 31 is County right-of-way;

WHEREAS, Sunesys represents that it does not anticipate placing new poles or new underground conduit, but if it does so it must comply with street-opening permit requirements provided by law;

WHEREAS, a copy of the proposed agreement has been forwarded by the Borough Clerk to the Mercer County Engineer but no response has been received from the County to date;

WHEREAS, Borough Council agrees to approve the attached Rights-of-Way Use Agreement provided (1) it is limited to that portion of West Delaware Avenue to the west of Route 31 controlled by the Borough, and (2) it is reviewed and approved in final form by the Borough Attorney and Borough Engineer;

NOW, THEREFORE, BE IT RESOLVED, by the Borough Council of the Borough of Pennington, that the Mayor of the Borough, with the attestation of the Borough Clerk, is hereby authorized to execute the attached Rights-of-Way Use Agreement on behalf of the Borough upon approval of the Agreement by the Borough Attorney and Borough Engineer, subject to reimbursement for the costs of review and consistent with the other recitals set forth above.

Council Member Tucker made a motion to approve Resolution 2010-1.20, second by Council Member Ogren. Mr. Bliss stated that the agreement gives the Borough the choice in terms of compensation of a lump sum payment of \$1,700 in the year of execution or \$250.00 per anniversary year. Mr. Bliss stated that his understanding was that the one-time payment was preferred and he has since heard otherwise. Mr. Ogren stated that he would like to see an incremental adjustment each year. Mr. Bliss stated that when this request was received, we forwarded a copy to Mercer County for consideration given that a good portion of the right-of-way belongs to the County. Mr. Bliss stated that to the extent that Council has questions regarding compensation or anything else, it might make sense to wait to hear from Mercer County. After some discussion, Council decided to table the Resolution to the next meeting to give the County more time to respond. Council Member Ogren made a motion to table Resolution 2010-1.20, second by Council Member Tucker with all members present voting in favor.

Resolution 2010-1.21, Authorizing Lease of Pennington Borough Senior Citizens' Center to the County of Mercer was pulled off the agenda pending receipt of a revised agreement from Mercer County.

Council Discussion

Liquor License – Mr. Lawver stated that he intends to have an Alcohol Control Ordinance drafted for introduction at the February meeting. Mr. Lawver stated that he has several copies for towns in the area and after doing research and talking to people it seems that the best approach is to proceed with an ordinance rather than a referendum. Mr. Lawver stated that as we move forward there will be advertising requirements but he would like to go beyond that and actively seek public participation in the hearing of the ordinance. Mr. Lawver stated he would like to have friends at the newspapers write articles so that residents will be aware that this is happening. Mr. Lawver stated that once the Ordinance is adopted, Council will need to decide how to proceed with the sale of a liquor license or licenses. Mr. Lawver stated that the Borough qualifies for two licenses, one for distribution and one for consumption and he has had interest expressed in both. Mr. Lawver stated that he would like to do them one at a time so that we can learn the process as we go. Mr. Griffiths thanked Joe for all of his research and hard work on this.

Administrator's Report

Mr. Dunworth had no report

Professional Reports

Mr. Bliss thanked Borough Council for the opportunity to serve in 2010.

Public Comment Period

Mayor Persichilli asked anyone wishing to speak to come forward and state their name and address for the record and to limit comments to a maximum of five minutes.

There were no comments from the public.

Closed Session

Mayor Persichilli read the following statement to convene in Closed Session:

AT, 7:53 PM, BE IT RESOLVED, that Mayor and Council shall hereby convene in closed session for the purposes of discussing a subject or subjects permitted to be discussed in closed session by the Open Public Meetings Act, to wit:

Contract Negotiations – Teamsters
Personnel – Public Works
Public Works Garage
Tax Appeal – Commerce Bank

AT, 8:58 PM, Mayor and Council returned to open session.

Open Session

Mayor Persichilli read Ordinance 2010-4 by title.

**BOROUGH OF PENNINGTON
Ordinance No. 2010-4**

AN ORDINANCE OF THE BOROUGH OF PENNINGTON, COUNTY OF MERCER, STATE OF NEW JERSEY AUTHORIZING A COLLECTIVE BARGAINING AGREEMENT BETWEEN THE BOROUGH AND THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS LOCAL NO. 35

WHEREAS, the Borough of Pennington and the International Brotherhood of Teamsters Local No. 35 have negotiated the terms of a collective bargaining agreement for the years 2009 and 2010;

WHEREAS, the collective bargaining agreement establishes salaries and other conditions of employment;

WHEREAS, a copy of the collective bargaining agreement is available for inspection at the office of the Clerk in Borough Hall;

WHEREAS, the Borough desires to adopt this collective bargaining agreement and authorize the salary payments contained therein;

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

1. The collective bargaining agreement negotiated with the International Brotherhood of Teamsters Local No. 35 for the years 2009 and 2010, a copy of which is on file in the Office of the Borough Clerk, is hereby incorporated herein by reference and adopted by the Borough of Pennington.
2. In the event that the terms and conditions of the collective bargaining agreement are at variance with the Personnel Policies and Procedures Manual and Employee Handbook of the Borough of Pennington, the terms and conditions of the collective bargaining agreement shall be controlling.
3. The Mayor and Clerk are hereby authorized to sign and seal the said agreement on behalf of the Borough.
4. All ordinances or portions thereof inconsistent herewith are hereby repealed.
5. This Ordinance shall take effect upon final passage and publication according to law, provided, however, that the salaries set forth in said agreement shall be in effect retroactively to January 1, 2009 and January 1, 2010, respectively, as provided in the agreement.

Council Member Lawver made a motion to introduce Ordinance 2010-4, second by Council Member Tucker with all members present voting in favor.

**BOROUGH OF PENNINGTON
RESOLUTION 2010- 1.22**

RESOLUTION AUTHORIZING ADVERTISEMENT FOR BIDS FOR LEASING OR LICENSING USE OF THE FORMER PUBLIC WORKS GARAGE

WHEREAS, the Borough of Pennington no longer has use for the structure formerly used as the Public Works Garage on the Borough-owned property on West Delaware Avenue in the Borough designated Block 206, Lot 5 on the Borough Tax Map;

WHEREAS, Borough Council recognizes that while portions of the aforesaid Borough-owned property continue to be used for Borough purposes and planning for the site as a whole contemplates development for residential uses, including affordable housing, financial exigencies support leasing or licensing use of the Garage building to a private person or entity for private use on suitable terms;

WHEREAS, any such leasing or licensing of use of the Garage building shall be subject to the following terms, conditions, restrictions and limitations:

- a. the following uses shall be prohibited - food production, processing and packaging; manufacturing; chemical storage, packaging or distribution; hazardous waste management; waste disposal; retail or personal services; rentals; auto/truck service or repair; and such other uses as determined by the Borough based on likely damage to the building or property, incompatibility with adjoining uses or the economy of the Borough, or hazard to Borough residents and the quality of life in the Borough;
- b. the lease shall provide that no significant leasehold improvements may be made by the tenant without prior written approval by the Borough;

c. minimum rent of \$900 per month net of utilities, maintenance and insurance, which shall be the responsibility of the tenant;

d. a term of at least two years with options for one-year renewals, subject to unilateral termination by the Borough on sixty (60) days' notice in the event there is a contract of sale for the site;

e. rental of the building shall include the grounds adjacent to the building necessary and incidental to the tenant's use of the building, provided the land so utilized by tenant shall not exceed the land immediately in front of the building previously used for parking of vehicles and equipment by the Department of Public Works and the land extending out 25 feet from each side of the building, and provided further that the unpaved driveway in front of the building used for movement of vehicles and equipment by the Department of Public Works and others across and within the property shall not be obstructed;

f. rental of the building shall include ingress and egress to the building on that unpaved driveway from Delaware Avenue; and

g. the lease agreement shall provide that tenant accepts the building "as is" and shall indemnify and hold the Borough harmless from damage to the building and the property, including any environmental damage relating to tenant's use of the property;

h. the lease shall contain mandatory insurance provisions by which the tenant shall protect the Borough against damage to property and liability to third parties relating to tenant's use of the property;

i. the lease shall contain such additional terms, conditions, restrictions and limitations as may be required by the Borough Administrator, the Borough Attorney and/or the Borough's insurance carrier for the protection of the Borough;

NOW, THEREFORE, BE IT RESOLVED, by the Borough Council of the Borough of Pennington, that the Borough Administrator is hereby authorized to advertise for sealed bids for leasing or licensing use of the aforesaid building subject to the minimum required terms set forth above, using a form of advertisement approved by the Borough Attorney which ensures that the form of the required lease shall be available for inspection by bidders and which contains the following additional language: "Upon completion of the bidding, the highest bid may be accepted or all of the bids may be rejected."

Record of Council Vote on Passage

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

Council Member Lawver made a motion to approve Resolution 2010-1.22, second by Council Member Tucker with all members present voting in favor.

At 9:00 pm, Council Member Heinzel made a motion to adjourn the meeting, second by Council Member Tucker.

Respectfully submitted,

Elizabeth Sterling
Borough Clerk